

**1999 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2214**

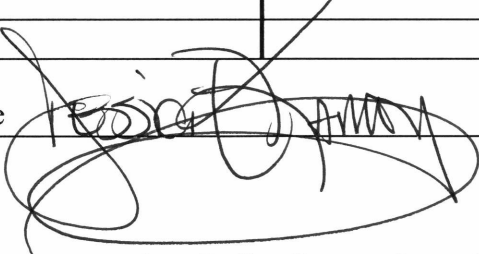
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2214

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/19/99

Tape Number	Side A	Side B	Meter #
1	X		0-3675
Committee Clerk Signature 			

Minutes:

Senator Mutch called the meeting to order. Roll call was taken, all were present. Senator Mutch opened the hearing on SB 2214.

Senator Krebsbach introduced the bill. She explained that in 1997 the Bureau was allowed to pay a pre-acceptance disability benefit to an injured worker while a complicated claim was pending. This was to be paid for a period up 60 days. This session disability benefits will again be improved in two areas, adding impartial disability in allowing weekly benefits to be paid at a rate of 110% of the state's weekly average, and in the area of supplemental benefits by shorting the period of waiting from 10 years to 7 years.

Julie Leer from the Workers Compensation Bureau spoke in support of SB 2214. Testimony is enclosed. No questions were asked of her.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb 2214

Hearing Date 1/19/99

David Kemnitz from the NDAFL-CIO spoke. He stated that the bill was a mixed bag for them.

He went over different sections bring certain things which they find good and bad.

Section 1- not sure that “regardless of the date of the injury or claim filing”. It seems to be a reach back. It may create more problems.

Section 2- line 14, the change from 100% to 110%, it a good thing, if it is as we understand it is a short term thing.

Section 3- line 6, lesser of the , and the new language or 110% of the states average weekly wage in affect. When we figured this out we figure it to be a loss of benefit. We feel the new language should be removed.

Senator Mutch: The first thing to do might be to clarify things before you make a judgment about the bill.

David Kemnitz: Yes that is what we are trying to do.

Gary Nelson from the Iron workers Local 793 spoke on behalf of the bill. He handed out a graph which shows how much money would be taken away and given to those who earn the disability (enclosed).

Senator Klein: Are we asking to work with the bureau or do you just want to go back to the old language.

Gary Nelson: What I would suggest is that you just strike the added language in that section (3), if you would just leave it the way it was it would be fine.

Senator Krebsbach: What they would want to remove is “the lesser of”.

Senator Sand: What happens to social security, is it taken out? Are the people who receive these benefits exempt from income tax?

Gary Nelson: I don't know for sure. I really can't answer that question.

Steve Latham from the ND Trail Lawyers Association spoke to make things a little more clear.

He said that the bureau does not pay into social security. Generally supportive of what was said before. Felt section 4 was a step forward. He believed 7 years was a long enough time to make a decision about whether or not someone could go back to work.

Senator Krebsbach: Could we have Julie explain section 3 and section 2 again.

Julie Leer: Section 2- this deals with temporary total or permanent total, there is no limitation to who this would apply to.

Section 3- the bureau has always put a cap on benefits. There is a 5 year limit for temporary partial benefits and that applies to most cases. The bureau has redone the system so that claims are looked over more closely.

Senator Krebsbach: In section 3, line 6-8, how does that correspond with the charts that were passed out by Mr. Nelson, I was under the impression that it was to improve benefits and he has a chart that say its not.

Julie Leer: This is the first that I've looked at the chart, what I can say is that the language that used to make it clear that the temporary cap applies was moved. What we are doing here is replacing this into 65-05-10, so that it is clear that this cap applies.

Senator Heitkamp: Is the 110% or the "lesser of the" the issue here?

Julie Leer: The intent of the bureau is that the maximum on temporary partial benefits be the same as the temporary total benefits.

Senator Mutch: Before we go on with this hearing maybe we should have Julie bring us some figures.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb 2214

Hearing Date 1/19/99

Julie Leer: We want the benefits to stay concise.

Senator Mutch asked that the bill be held.

Senator Mutch closed the hearing on SB 2214.

Committee discussion took place on January 27, 1999.

Senator Krebsbach moved to pass the amendments on SB 2214. Senator Thompson seconded

her motion. The motion was successful with a 6-0-1 vote.

Senator Mathern moved for a do pass as amended on SB 2214. Senator Krebsbach seconded her

motion. The motion was successful with a 6-0-1 vote.

Senator Mathern will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: SB 2214

Requested by Legislative Council Date of Request: 2-1-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached.

- 2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: \_\_\_\_\_
- b. For the 1999-2001 biennium: \_\_\_\_\_
- c. For the 2001-03 biennium: \_\_\_\_\_

- 4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Date Prepared: 02-02-99

Department Workers Compensation Bureau

Phone Number 328-3856

***NORTH DAKOTA WORKERS COMPENSATION BUREAU  
1999 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION***

***BILL DESCRIPTION:***      **Disability Benefits and Supplementary Benefits**

***BILL NO:*** SB 2214

***SUMMARY OF ACTUARIAL INFORMATION:*** The Workers Compensation Bureau, with the assistance of its Actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation increases the maximum disability benefit from 100% to 110% of the state's average weekly wage; shortens the waiting period for supplementary benefit eligibility from 10 years to 7 years; requires the Bureau to conduct a study of its benefit structure for long-term disability and death benefit recipients; and clarifies work and earnings reporting requirements for claimants receiving disability benefits.

***FISCAL IMPACT:***

**Rate Level Impact:** The proposed legislation will generate an increase in the rate level for F/Y 1999-00 of approximately **2.0%-2.5%** from the level that would otherwise be required. Approximately two-thirds of the change can be attributed to the proposed increase in the maximum time loss benefit and the remainder of the change can be attributed to the reduction in the supplemental benefit waiting period.

**Reserve Level Impact:** Anticipate no reserve level impact as this bill is designed to apply prospectively.

**AMENDMENT:** The amendment clarifies the caps on benefit rates for partial disability.

The proposed amendment results in no change to the fiscal impact for the bill as introduced.

***DATE:*** 2-1-99

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: SB 2214 Amendment to: \_\_\_\_\_

Requested by Legislative Council Date of Request: 1-13-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached.

- 2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: \_\_\_\_\_
- b. For the 1999-2001 biennium: \_\_\_\_\_
- c. For the 2001-03 biennium: \_\_\_\_\_

- 4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed J. Patrick Traynor  
 Typed Name J. Patrick Traynor  
 Department Workers Compensation Bureau  
 Phone Number 328-3856

Date Prepared: 01-18-99



***NORTH DAKOTA WORKERS COMPENSATION BUREAU***  
***1999 LEGISLATION***  
***SUMMARY OF ACTUARIAL INFORMATION***

***BILL DESCRIPTION:***      **Disability Benefits and Supplementary Benefits**

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The proposed legislation increases the maximum disability benefit from 100% to 110% of the state's average weekly wage; shortens the waiting period for supplementary benefit eligibility from 10 years to 7 years; requires the Bureau to conduct a study of its benefit structure for long-term disability and death benefit recipients; and clarifies work and earnings reporting requirements for claimants receiving disability benefits.

***FISCAL IMPACT:***

**Rate Level Impact:** The increase in the maximum disability benefit from 100% to 110% will have approximately a 1% impact on rate levels. The shortening of the supplementary benefit eligibility period from 10 to 7 years will also have an approximate 1% impact on rate levels. The actuary anticipates the proposed bill will have a **2.0%-2.5%** overall impact on rate levels.

**Reserve Level Impact:** Anticipate no reserve level impact as bill is designed to apply prospectively.

***DATE:*** 1-17-99

**PROPOSED AMENDMENTS TO 1999 SENATE BILL NO. 2214**

Page 3, line 5, overstrike "plus dependency allowance and"

Page 3, line 6, overstrike "earning capacity", overstrike "the", remove "lesser of the", and overstrike "weekly wage of the employee after"

Page 3, line 7, overstrike "deductions for social security and federal", overstrike "income tax", and remove ", or one hundred ten percent of"

Page 3, line 8, remove "the state's average weekly wage in effect on the date of first disability" and insert immediately thereafter, "benefit rates as defined in section 65-05-09"

Re-number accordingly

Date: 1/27/99  
Roll Call Vote #: ~~2014~~ 2014

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ADOPT AMENDMENTS

Motion Made By KREBSBACH Seconded By THOMPSON

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp					
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**SB 2214: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2214 was placed on the Sixth order on the calendar.

Page 3, line 5, overstrike "plus dependency allowance and"

Page 3, line 6, overstrike "earning capacity", overstrike the first "the", remove "lesser of the", and overstrike "weekly wage of the employee after"

Page 3, line 7, overstrike "deductions for social security and federal", overstrike "income tax", and remove ", or one hundred ten percent of"

Page 3, line 8, replace "the state's average weekly wage in effect on the date of first disability" with "benefit rates as defined in section 65-05-09"

Renumber accordingly

**1999 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2214**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2214

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-24-99

Tape Number	Side A	Side B	Meter #
2	x		3.9 - 17.8
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

SB Relating to maximum wage-loss benefits payable by the Workers Compensation Bureau and the waiting period for supplementary workers compensation benefits; to provide for a study of long-term benefits; and to provide an effective date.

Chairman Berg opened the hearing on the bill.

Julie Leer, Workers Compensation Bureau, testified in support of the bill.

(see attached written testimony)

Rep. Kempenich asked where does this bill put us compared to other states.

Leer said that 5 other states have greater benefits than this.

Glassheim asked about the reduction per cent age.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number Sb 2214

Hearing Date 2-24-99

Leer said that there will be fewer workers who will be considered high wage earners.

Johnson spoke on the fiscal not.

Chairman Berg closed the hearing on the bill.



1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2214

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-1-99

Tape Number	Side A	Side B	Meter #
2		x	2067 - 2565
Committee Clerk Signature <i>Lisa Honer</i>			

Minutes: **SB 2214**

Chairman Berg opened the discussion of SB 2214.

Rep. Martinson explained to the committee what the bill was about.

Rep. Klein made a motion for a Do Pass.

Rep. Martinson second the motion.

the roll callvote was 14 yea, 0 nay, 1 absent.

The motion carried.

Rep. Martinson will carry the bill.

Date: 3-1-99  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2214**

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken do pass

Motion Made By Klein Seconded By Martinson

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe	/	
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom	/				
Rep. Froseth	/				
Rep. Glassheim					
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Martinson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
March 1, 1999 4:35 p.m.

Module No: HR-36-3819  
Carrier: Martinson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2214: Industry, Business and Labor Committee (Rep. Berg, Chairman)** recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2214 was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY**

**SB 2214**

**SENATE BILL NO. 2214  
WAGE-LOSS BENEFITS INCREASE  
TESTIMONY BEFORE THE SENATE INDUSTRY, BUSINESS AND LABOR  
COMMITTEE  
JANUARY 19, 1999**

Mr. Chairman, Members of the Committee:

My name is Julie Leer. I am an attorney for the Workers Compensation Bureau and I am here to testify in support of 1999 Senate Bill No. 2214. The Workers Compensation Board of Directors unanimously supports this bill.

**WAGE – LOSS BENEFITS STUDY**

During this past interim, the Bureau conducted a study to determine whether there is a need to adjust the calculation of wage-loss benefits and where the greatest need lies. (A copy of the study, dated September, 1998, is included with my testimony.) The study found that a worker with a low wage who is injured on the job and is paid wage-loss benefits in the amount of 66 2/3% of his or her preinjury wage, receives a wage-loss benefit close to his or her net wages before the injury. In fact, the study, which was based on wage-loss claims accepted and paid during FYE 1997, showed that 34% of injured workers received a wage-loss benefit that equaled their preinjury net wage and 78.2% received 80% or more of their net preinjury wage. (The table on page 3 shows that 7 states base their wage-loss benefits on a percentage of the injured worker's preinjury *net* wage.) Interestingly, the study also showed that, of the 17 states whose minimum wage-loss benefit rate is a percentage of the state's average weekly wage, North Dakota's minimum benefit rate of 60% of the state's average weekly wage is the *highest*. (See page 8 of the study.)

A high wage earner, being paid benefits at 66 2/3% of his or her preinjury wage, however, typically does not receive a wage-loss benefit that approximates his or her preinjury net wage. For example, for *FYE 1997* (the year upon which the study was based), 367 people received the maximum benefit of \$387/week because their wages at the date of first disability exceeded \$581/week. This represents approximately 14% of injured workers who began receiving workers' compensation wage-loss benefits during FYE 1997.

**SENATE BILL NO. 2214**

It is my pleasure to point out that the main reason for this bill is to increase the maximum wage-loss benefit payable from 100% of the state's average weekly wage to 110%. This change is found in **section 2** of the bill. This increase in the maximum wage-loss benefit rate would put North Dakota's maximum wage-loss rate as one of the highest in the nation. (The information contained in the study shows that only 5 states have a maximum benefit rate greater than 110% of their states' average weekly wages

and one other state has a maximum benefit rate equal to 110% of that state's average weekly wage.)

For **FYE 1998**, the state's average weekly wage was \$402. Of the injured workers who began receiving wage-loss benefits during FYE 1998, 15.6% received the maximum wage-loss benefit of \$402. If the maximum benefit were 110% of the state's average weekly wage, or \$442/week, only 11% of injured workers would have had wages high enough to make them eligible to receive the maximum wage-loss benefit. As of July 1, 1998, the state's average weekly wage is \$417. (The state's average weekly wage is calculated by Job Service North Dakota and is adjusted on July 1<sup>st</sup> of each year.) A high wage earner is one whose wages exceed \$625/week. Anyone earning this amount or greater receives the maximum benefit of 100% of the state's average weekly wage. If the current maximum were 110% of the state's average weekly wage (\$442/week), a person receiving greater than \$689/week would be eligible for the maximum. In short: an injured worker with a **preinjury wage of \$750/week** would receive **\$417/week** in wage-loss under the **current** statute. Under the **proposed** statute, the worker would receive **\$442/week**.

The change made in **section 1** of the bill will require all injured workers receiving wage-loss benefits, regardless of their dates of injury, to submit periodically to the Bureau verification that they are not working. There has been some question of whether this requirement applies to all injured workers or only to those injured after a certain date. This method of verification has become a valuable tool in preventing overpayments of disability and in helping injured workers report their activities.

The changes made to 65-05-10, in **section 3** of the bill, would clarify that the maximum temporary partial disability benefit payable would not exceed the maximum temporary total disability benefit payable. This language brings the temporary partial disability maximum benefit in line with the increase in temporary total disability benefits proposed in section 2. Additionally, in 1997, this statute was amended to read that the net wages of the injured worker are wages after deductions for social security and federal **and state** income tax. Deducting state income taxes has become something of a logistical nightmare because injured workers who live in other states typically have tax rates different from North Dakota tax rates. This provision also was only applicable to temporary partial disability benefit calculations. Because the savings the Bureau might generate by offsetting state income tax is not worth the administrative costs of offsetting it, the Bureau asks that this be removed from the statute.

The change made in **section 4** of the bill would allow an injured worker who has been receiving disability for at least seven years to become eligible for supplementary benefits. Supplementary benefits are the means by which injured workers who are permanently and totally disabled are given an adjustment in wage-loss benefits to bring injured workers with a very low preinjury wage up to a minimum benefit level of 60% of the state's average weekly wage. Currently, the law requires an injured worker to have been receiving disability benefits for ten years before this increase may be given. The length of the "waiting period" in this section of the statute has been a concern of injured

workers in the past. The Bureau and the Workers Compensation Board of Directors view this reduction as a preliminary step in an overall study of long-term wage-loss benefits.

The other change made in **section 4** will allow the Bureau to pay supplementary benefits to an injured worker when the worker reaches the month of eligibility. The statute currently provides that eligibility for supplementary benefits be reviewed once a year for all workers who have become eligible during that year. The Workers Compensation Board of Directors voted in favor of this change based on information they received at one of their meetings from a concerned injured worker. It was determined subsequently that a statutory change was needed to effect this change and it has been included in this bill accordingly.

**Section 5** of the bill contains the proposal for the study referred to above. This study will require the Bureau to examine the current supplementary benefits structure to determine its adequacy and examine its purpose. The Bureau has been considering whether supplementary benefits should be paid earlier in an injured worker's disability and whether the current method of calculating those benefits is appropriate for the intended purpose of supplementary benefits. The Bureau also intends to review the impact of Social Security Disability offsets, as done by either the Bureau or the Social Security Administration, as well as the impact any other comparable programs may have on workers' compensation benefits. The Bureau expects that a study will answer some of these questions and allow us to request any appropriate changes in the 2001 session.

**Section 6** of the bill provides effective dates. The benefit rate increases will be effective for injuries occurring after July 31, 1999. The shortened waiting period will also be effective for injuries occurring after July 31, 1999. The change in the date of payment for supplementary benefits (month of eligibility vs. year of eligibility) will be effective for all claims.

The Bureau requests your favorable consideration of 1999 Senate Bill No. 2214. If you have any questions, I'll try to answer them at this time.

Thank you.

*NORTH DAKOTA  
WORKERS  
COMPENSATION  
BUREAU*

*WAGE-LOSS  
BENEFIT  
STRUCTURE  
STUDY*

*September 1998*

*Prepared by:  
John Halvorson  
Research & Statistics  
NDWCB*



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## ***Overview:***

The North Dakota Workers Compensation Fund exists to prevent workplace injuries and provide benefits to workers injured during the course of employment. The benefits available include:

- Payment for medical treatment of work injuries with no maximum cap and no deductibles or co-pays;
- Wage replacement benefits to replace wages lost because of disability caused by the work injury;
- Supplemental cost of living benefits for qualifying long-term disabled workers;
- Additional monthly benefits past the time of retirement based on the length of disability and the monthly wage-loss benefit rate received prior to retirement;
- Vocational rehabilitation benefits, including the costs of retraining, school, books, supplies, and relocation expenses for injured workers unable to return to their pre-injury occupation;
- Permanent partial impairment lump sum cash awards for workers with substantial permanent injuries; and
- Monthly benefits and scholarships for the spouses and dependent children of workers killed in workplace accidents.

## ***Purpose:***

The 1997 Legislative Assembly directed the Bureau to perform a study on its wage-loss benefit structure to determine whether the current structure provides equitable compensation for lost wages resulting from work-related injuries. The Legislature requested that the study identify the advantages and disadvantages of the current system and of any proposed alternative system. Additionally, the study must include recommendations on how the benefit structure could be refined to provide an appropriate balance between adequate benefits and return-to-work incentives.

## ***Background:***

The objective of any workers' compensation wage replacement system is to provide a balance between providing sufficient benefits while maintaining an incentive to return to work. If benefit levels are too low, an injured worker will not have sufficient financial support during the period of disability. If benefit levels are too high, an injured worker will lack a financial incentive to return to the workforce.

Compensation experts recently gathered at the 21<sup>st</sup> Annual National Symposium on Workers' Compensation and debated this topic. Some argued that compensation benefits should be lower, to encourage rehabilitation and self-sufficiency rather than reward dependency. Others argued workers should be fully compensated with benefits equal to the income they would have received if they were working to prevent any short-term financial hardship.

Determining the ideal wage-loss benefit level is affected by political, economic, and moral perspectives. The benefits a worker will receive during the period of disability are generally based on the wages the worker was earning before the injury. Benefits therefore vary from state to state due to the different economic conditions and wage levels in each state. Differences between what different workers earn within each state also adds to the difficulty of setting statutory benefit levels that will provide adequate benefits to all injured workers. The maximum and minimum benefits set by each state may cause a high wage earner to be undercompensated and a low wage earner to be overcompensated.

*The 1972 National Commission on State Workmen's Compensation Laws* recommended that states use 80% of after-tax earnings as the goal for temporary total disability benefits. Based on the National Commission's standards, income replacement rates below 80% of pre-injury net wages may be inadequate to meet the worker's financial needs, while the worker's incentive to return to work is diminished as benefit rates rise above 80% of pre-injury net wages.

### ***Scope:***

This study provides an overview of North Dakota's current workers compensation wage-loss benefit structure and how it compares with other states. The primary focus of the study is on the benefits paid through the workers compensation system to workers experiencing short-term disability from work, because more than 90% of disabled workers return to the workforce within six months.

The following aspects of the wage-loss benefit structure are reviewed:

- **Wage-loss benefit rates;**
- **Maximum wage-loss benefit rates;**
- **Minimum wage-loss benefit rates;**
- **Duration of wage-loss benefits; and**
- **Income replacement.**

An overview of this information is presented on the next page in Table 1, and explained in greater detail below.

Table 1

<b>1997 Temporary Total Disability Benefits</b>					
<b>Jurisdiction</b>	<b>% of Workers' Wages</b>	<b>Minimum</b>	<b>Maximum</b>		<b>Limit on Duration</b>
			<b>Amount</b>	<b>Percentage of SAWW*</b>	
Alabama	66 2/3	Min or Wages	\$474.00	100	No Limit
Alaska	80 Net	Min or Wages	\$700.00	N/A	No Limit
Arizona	66 2/3	None	\$323.10	N/A	No Limit
Arkansas	66 2/3	Minimum	\$359.00	85	450 weeks
California	66 2/3	Minimum	\$490.00	N/A	No Limit
Colorado	66 2/3	None	\$493.08	91	No Limit
Connecticut	75 Net	Min or Wages	\$715.00	100	No Limit
Delaware	66 2/3	Min or Wages	\$392.46	66 2/3	No Limit
DC	80 Net**	Minimum	\$774.82	100	No Limit
Florida	66 2/3	Min or Wages	\$494.00	100	104 weeks
Georgia	66 2/3	Min or Wages	\$325.00	N/A	400 weeks
Hawaii	66 2/3	Min or Wages	\$508.00	100	No Limit
Idaho	66 2/3	Minimum	\$398.70***	90	No Limit
Illinois	66 2/3	Min or Wages	\$815.08	133	No Limit
Indiana	66 2/3	Min or Wages	\$448.00	N/A	500 weeks
Iowa	80 Net	Min or Wages	\$903.00	200	No Limit
Kansas	66 2/3	Minimum	\$351.00	75	No Limit
Kentucky	66 2/3	Minimum	\$465.36	100	No Limit
Louisiana	66 2/3	Min or Wages	\$350.00	75	No Limit
Maine	80 Net	None	\$441.00	90	No Limit
Maryland	66 2/3	Min or Wages	\$573.00	100	No Limit
Massachusetts	60	Min or Wages	\$665.55	100	156 weeks
Michigan	80 Net	None	\$553.00	90	No Limit
Minnesota	66 2/3	Min or Wages	\$615.00	N/A	104 weeks
Mississippi	66 2/3	Minimum	\$279.78	66 2/3	450 weeks
Missouri	66 2/3	Minimum	\$531.52	105	400 weeks
Montana	66 2/3	None	\$396.00	100	No Limit
Nebraska	66 2/3	Min or Wages	\$441.00	100	No Limit
Nevada	66 2/3	None	\$514.22	100	No Limit
New Hampshire	60	Min or Wages	\$793.50	150	No Limit
New Jersey	70	Minimum	\$516.00	75	400 weeks
New Mexico	66 2/3	Min or Wages	\$375.98	85	No Limit
New York	66 2/3	Min or Wages	\$400.00	N/A	No Limit
North Carolina	66 2/3	Minimum	\$532.00	110	No Limit
<b>North Dakota</b>	<b>66 2/3</b>	<b>Min or Wages</b>	<b>\$402.00</b>	<b>100</b>	<b>No Limit</b>
Ohio	66 2/3**	Min or Wages	\$541.00	100	No Limit
Oklahoma	70	Min or Wages	\$426.00	100	156 weeks
Oregon	66 2/3	Min or Wages	\$546.13	100	No Limit
Pennsylvania	66 2/3	Min or Wages	\$561.00	100	No Limit
Rhode Island	75 Net	None	\$519.97	100	No Limit
South Carolina	66 2/3	Min or Wages	\$465.18	100	500 weeks
South Dakota	66 2/3	Min or Wages	\$390.00	100	No Limit
Tennessee	66 2/3	Minimum	\$492.00	N/A	400 weeks
Texas	70**	Minimum	\$508.26	100	104 weeks
Utah	66 2/3	Minimum	\$465.00	100	312 weeks
Vermont	66 2/3	Min or Wages	\$699.00	150	No Limit
Virginia	66 2/3	Min or Wages	\$513.00	100	500 weeks
Washington	60-75	Minimum	\$659.86	120	No Limit
West Virginia	70	Minimum	\$454.68	100	208 weeks
Wisconsin	66 2/3	Min or Wages	\$523.00	100	No Limit
Wyoming	66 2/3	None	\$487.50	100	No Limit

\* "SAWW" stands for "State Average Weekly Wage"

\*\* DC 66 2/3% or 80% of Net whichever is less. Ohio 72% for the first 12 weeks, then 66 2/3%. Texas 70% for workers earning over \$8.50/hour, 75% for all others.

\*\*\* \$398.70 for the first 52 weeks thereafter \$296.81

Source: Aug '98 Issue On Workers Compensation

### ***Wage-Loss Benefit Rate:***

North Dakota's wage-loss benefit rate is  $66\frac{2}{3}\%$  of the injured worker's average pre-injury gross weekly wage. Injured workers also receive a \$10 per-week dependency allowance for each dependent child (the combined wage-loss benefit plus the dependency allowance cannot exceed the worker's pre-injury net wages).

For purposes of determining workers' compensation benefits, North Dakota law defines "net wages" as gross wages minus deductions for federal income tax and social security. State taxes are not deducted in determining the net wage. For example, an unmarried worker with gross wages of \$350 per week incurs state taxes of \$6.30 per week. Therefore, the net wage used by the Bureau in certain benefit calculations is actually slightly higher than the worker's actual pre-injury take home pay. In certain circumstances, this can lead to a worker being paid slightly more in wage-loss benefits than the actual spendable income of that worker before the injury. This subject is discussed further in the section "Minimum Wage-loss Benefit Rate" section, below.

The wage-loss benefit in all states is calculated as a percentage of an injured worker's average pre-injury wage. In 37 of the 51 jurisdictions, including North Dakota, the benefit rate is  $66\frac{2}{3}\%$  of the worker's gross wages. Seven states calculate benefits as a percentage of after-tax net wages. Table 2 below provides a distribution of benefit rates by state.

**Table 2**

<b><i>Wage-loss Benefit Rate</i></b>	
<b>Gross Wages</b>	<b>Number of States</b>
70%	4
Varies ( $66\frac{2}{3}\%$ -70)	1
$66\frac{2}{3}\%$	37 (ND)
60%	2
<b>Net Wages</b>	
80%	5
75%	2

Based on this national comparison, **North Dakota's wage-loss benefit rate is slightly above average.** North Dakota's rate is equal to the rate paid in 36 other states. There are only five states that pay a slightly higher rate, while nine states pay a lower rate. The dollar amount of North Dakota's maximum wage-loss benefit will be lower than other states that pay the same benefit rate, but have higher average wages. For example, the dollar amount of North Dakota's wage-loss benefit is higher than South Dakota's and Montana's, but lower than Minnesota's.

### ***Maximum Wage-loss Benefit Rate:***

North Dakota law sets a maximum cap on wage-loss benefits equal to 100% of the State's Average Weekly Wage (SAWW). Effective July 1, 1998, North Dakota's maximum benefit rate is \$417 per week. No injured worker can receive a wage-loss benefit higher than \$417 per week, except when the dependency allowance is paid on top of wage-loss benefits. At the current SAWW, any injured worker with an average weekly wage greater than or equal to \$625 will be limited to the maximum benefit, because  $66\frac{2}{3}\%$  of their gross wages would exceed \$417 per week. The SAWW is calculated by Job Service through its annual survey of wages paid in North Dakota. Table 3 below shows how North Dakota's maximum benefit cap has increased each year since 1990, reflecting increases in the wages earned in the state:

**Table 3**

<b><i>NORTH DAKOTA MAXIMUM BENEFIT LEVELS</i></b>		
<b>EFFECTIVE</b>	<b>MAXIMUM</b>	<b>% INCREASE</b>
07-01-90	\$321	---
07-01-91	\$334	4.0%
07-01-92	\$343	2.7%
07-01-93	\$358	4.4%
07-01-94	\$366	2.2%
07-01-95	\$376	2.7%
07-01-96	\$387	2.9%
07-01-97	\$402	3.9%
07-01-98	\$417	3.7%

All states have a maximum cap on wage-loss benefits. In eight states (AL, AZ, CA, GA, IN, MN, NY, TN) the maximum is a dollar amount set by the Legislature in state law. However, this approach requires the Legislature to regularly amend the cap to adjust for inflation or recession and makes the cap subject to non-economic political considerations. The other 43 states, including North Dakota, set the maximum as a percentage of the SAWW. Therefore, the dollar amount of the maximum benefit changes each year with changes in each state's average wages, which provides an automatic adjustment for inflation. Twenty-five of those 43 jurisdictions, including North Dakota, have a maximum benefit rate equal to 100% of the SAWW. **North Dakota's wage-loss benefit cap is slightly above average.**

Of the 43 states that use a percentage of SAWW as the benefit cap, North Dakota's benefit cap is higher than 11 states, and is lower than 7. Table 4 below provides a summary of the maximum benefit levels in the different states.

**Table 4**

<i>State Maximum Wage-Loss Benefit Levels</i>	
Percent of SAWW	Number of States
200%	1
150%	2
133%	1
120%	1
110%	1
105%	1
100%	25 (including ND)
91%	1
90%	3
85%	2
75%	3
66 <sup>2</sup> / <sub>3</sub> %	2
(Fixed By Statute)	(8)

***Minimum Wage-loss Benefit:***

North Dakota's minimum wage-loss benefit is equal to 60% of the SAWW or 100% of the worker's pre-injury net wages, whichever is lower.

Effective July 1, 1998, 60% of the SAWW equals \$251 per week. Workers with low wages will receive a benefit of \$251 per week, or equal to 100% of their pre-injury net wage, whichever is lower. These benefits are greater than the standard benefit rate of 66<sup>2</sup>/<sub>3</sub>% of gross wages.

Table 5 shows how North Dakota's minimum benefit has increased each year since 1990:

**Table 5**

<i><b>NORTH DAKOTA MINIMUM BENEFIT LEVELS</b></i>	
EFFECTIVE	MINIMUM
07-01-90	\$193
07-01-91	\$201
07-01-92	\$206
07-01-93	\$215
07-01-94	\$220
07-01-95	\$226
07-01-96	\$233
07-01-97	\$241
07-01-98	\$251

North Dakota's minimum benefit can be compared to the minimum benefit in other states. Of the 51 jurisdictions, 8 states have no minimum benefit at all. Fifteen states have a fixed minimum that applies to all workers. The remaining 28 states, including North Dakota, have a minimum that is a specific minimum or the worker's pre-injury net wage, whichever is less.

**North Dakota's minimum benefit is exceptionally high.** Of the states that use a percentage of SAWW as a minimum, North Dakota's 60% is the highest in the country. Other states set a minimum dollar amount in their statutes instead of using a percentage of SAWW. The minimum benefit in those states ranges from \$20 to \$126 per week, much lower than North Dakota's current \$251 per week. A comparison of the states that use a percentage of SAWW as a minimum benefit is presented in Table 6:



**Table 6**

<i>Minimum Benefit Rates</i>	
North Dakota	60% SAWW
Pennsylvania	50% SAWW
South Dakota	50% SAWW
Vermont	50% SAWW
Idaho	45% SAWW
Ohio	33 <sup>1</sup> / <sub>3</sub> % SAWW
West Virginia	33 <sup>1</sup> / <sub>3</sub> % SAWW
New Hampshire	30% SAWW
Alabama	27 <sup>1</sup> / <sub>2</sub> % SAWW
District of Columbia	25% SAWW
Hawaii	25% SAWW
Virginia	25% SAWW
Kentucky	20% SAWW
Louisiana	20% SAWW
Massachusetts	20% SAWW
New Jersey	20% SAWW
Texas	15% SAWW

In states with fixed minimum benefits, some low wage workers may actually receive more in wage-loss benefits than they earned in net wages before the injury. North Dakota's approach prevents that from occurring. For example, a worker with gross earnings of \$100 per week injured in Arizona, a state with no minimum benefit, would receive a weekly benefit of \$66.67 (66 <sup>2</sup>/<sub>3</sub>% of the gross wage). A worker with the same wage injured in California, a state with a fixed minimum, would receive \$126 (the statutory minimum benefit). A worker with the same wage injured in North Dakota would receive \$92.35 per week (the worker's pre-injury net wage).

### ***Duration of Wage-loss Benefits:***

Limitations on wage-loss benefits vary widely from state to state:

- In 16 states there is a maximum cap on the number of weeks an injured worker can receive temporary total disability benefits, but in the other 34 states, including North Dakota, benefits are paid for the duration of the wage-loss period without any set time limit.
- Some states have maximum dollar caps on the amount of total disability benefits an injured worker can receive, but North Dakota does not.
- In some states total disability benefits end when an injured worker reaches maximum medical improvement (MMI), but in North Dakota disability benefits continue beyond MMI.

- In some states, including North Dakota, wage-loss benefits end when injured workers reach retirement, however in North Dakota, unlike other states, workers receive a post-retirement additional benefit based on the length of time they had been disabled and the wage-loss benefit rate in effect at the time of retirement.

Although this study is primarily focused on the wage-loss benefits paid through the workers' compensation system, the availability of Social Security disability benefits has an impact that must be considered. Social Security provides disability benefits to persons disabled for 6 months or more. More than 90% of all disabled workers return to the workforce within 6 months. Those disabled workers who do remain off work for six months or more may apply for, and receive, Social Security disability benefits in addition to their workers' compensation benefits. Workers' compensation benefits are partially offset against the Social Security benefits (the offset equals 50% of the amount of the initial Social Security benefit). A previous study of long-term Social Security and workers' compensation disability recipients showed that for 72% of the workers, their combined disability benefits were equal to or higher than their pre-injury take-home wage. (A copy of that study is attached.)

Long-term disability recipients may also receive benefits in addition to the wage-loss benefit. For example, claimants who have been disabled for ten years and who are permanently and totally disabled are eligible for supplemental cost of living adjustment benefits, which can dramatically increase the amount of the benefit they receive. Injured workers are also eligible for an additional benefit that replaces a percentage of their disability payment after they reach retirement.

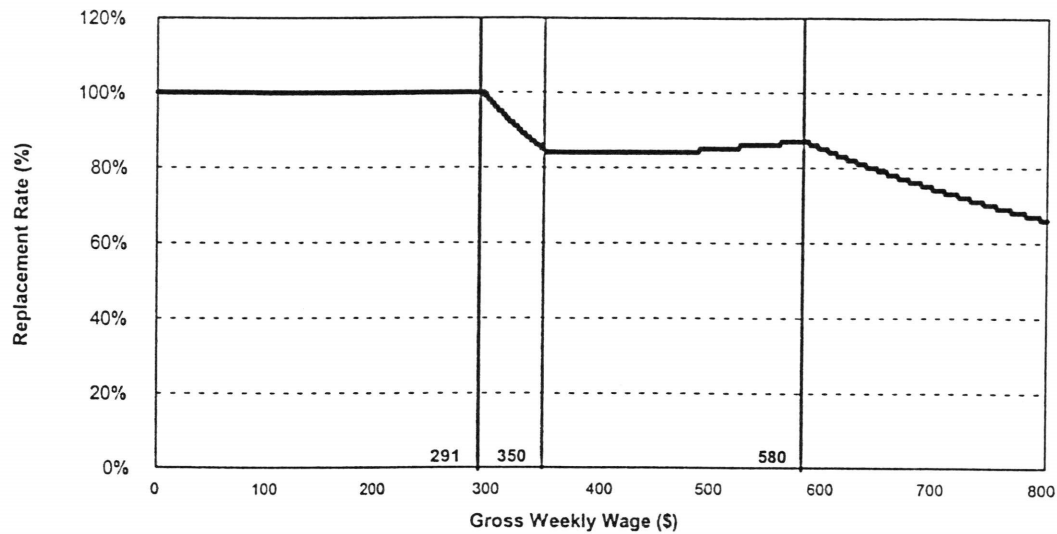
### ***Level of Wage Replacement:***

To determine whether wage-loss benefits are sufficient, we need to determine what percentage of an injured worker's pre-injury take-home income is replaced by the wage-loss benefit. For example, a worker earning a net wage of \$317 per week before the injury received \$267 per week in wage-loss benefits after the injury, which means the benefits replaced 84% of the pre-injury net wages. Table 7 depicts the typical wage replacement at different wage levels, assuming an unmarried North Dakota worker with no dependents:

Table 7

## Income Replacement

North Dakota, 1997



~Actual Replacement Rates, unmarried workers, no dependents

This graph reflects the following:

- From \$0 to \$291 in gross weekly wages, workers received benefits equal to 100% of their pre-injury net wages, because of the minimum benefit law;
- Between \$292 to \$350 in gross weekly wages, workers received the 1996-97 minimum benefit of \$233 per week, which is less than their pre-injury net wage but greater than  $66\frac{2}{3}\%$  of their pre-injury gross wages. The wage-loss benefit replaced between 84% and 100% of their pre-injury net wages.
- Between \$351 and \$580 in gross weekly wages, workers received  $66\frac{2}{3}\%$  of their pre-injury gross wages, which replaced 84% to 87% of their pre-injury net wages (workers earning more than \$480 per week were in a higher federal tax bracket, giving them a lower pre-injury net wage, which means their wage-loss benefit replaced a slightly higher percentage of their pre-injury net wage).
- For gross weekly wages of \$581 and above, workers received the maximum benefit of \$387 per week, which replaced a smaller and smaller percentage of pre-injury net wages for higher wage levels.

The Workers Compensation Research Institute (WCRI) has conducted wage-loss benefit studies in several states. The results of the WCRI studies conducted in 18 other states are presented in Table 8. For comparative purposes, we analyzed 2,699 temporary total disability claims incurred in North Dakota during fiscal year 1997 and included those figures in the table. The findings are as follows:

Table 8

**Percentage of Workers with Replacement Rates Above 100 Percent and Below 80 Percent  
by State and Reasons**

Replacement Rates	State																		
	ND 1997	TN	IL	OH	NH	MS	GA	AR	LA	MO	FL	IN	NJ	CA	VA	WV	WI	MA	MI
Percentage of workers between 80 and 100 percent	78	74	78	78	70	56	57	58	68	76	78	78	76	74	80	75	83	88	92
Percentage of workers over 100 percent	-	2	17	16	27	0	0	0	2	5	1	1	6	7	8	11	6	6	5
Because of																			
Minimum Benefit	-	1	4	9	19	-	-	-	2	-	-	1	2	5	5	9	-	2	-
Maximum Benefit	-	1	13	7	8	-	-	-	-	5	1	-	4	2	3	3	5	-	5
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	-
Percentage of workers under 80 percent	22	23	5	6	4	44	43	42	30	19	21	21	18	19	12	14	12	6	3
Because of																			
Low Gross																			
Replacement Rate	8	21	5	4	4	23	12	19	15	18	17	18	4	10	10	7	7	4	-
Maximum Benefit	14	2	-	2	-	21	30	23	15	1	4	2	14	10	2	7	5	2	3

Indiana: as of September 1995; Virginia: January 1, 1995; New Hampshire: January 1, 1993; California: December 31, 1992 using the 1994 benefit structure; New Jersey: January 1992; Missouri: January 1, 1992; Arkansas, Georgia, and West Virginia: January 1, 1991; Mississippi: January 1, 1990; Massachusetts: January 1, 1990, but using the current benefit rate of 60 percent of the worker's average weekly wage; other states: January 1, 1988.

NOTE: The table omits the impact of waiting periods. Also, details may not add to totals because of rounding.

Source: WCRI Research Brief Volume 12 Number 3S

### Percentage of workers between 80 and 100 percent income replacement

Of the North Dakota claims studied, 78.2% (2,111) of the injured workers had between 80 and 100% of their pre-injury net wages replaced by wage-loss benefits. In 34.0% (918) of the claims, injured workers had 100% of their pre-injury net wages replaced. This is because of North Dakota's high minimum benefit level.

North Dakota's high minimum benefit level results in a high percentage of workers who receive benefits equal to 100% of their pre-injury net wages. As stated earlier in the study, when income replacement approaches 100% the financial incentive to return to work is diminished. However, this study found no correlation between the percentage of income replacement and the duration of disability. Injured workers whose benefits replaced 100% of their pre-injury net wages remained on benefits for about the same length of time as injured workers who received benefits replacing less than 100% of the pre-injury net wages.

One advantage of North Dakota's current minimum wage-loss benefit is that it provides exceptionally high wage replacement for lower wage earners.

### Percentage of Workers Receiving 100 Percent Wage Replacement

Unlike many jurisdictions, North Dakota has a statutory provision that does not allow for an injured worker's combined benefit and dependency allowance to exceed their pre-injury net wages. As Table 7 indicates, some states have a high percentage of workers in this category. Replacement rates in excess of 100% may diminish return-to-work incentives.

### Percentage of Workers Receiving Less Than 80 Percent Wage Replacement

Of the 19 states for which information is available, North Dakota was slightly below average in the percentage of workers who had at least 80% of their pre-injury net wages replaced by wage-loss benefits. We cannot be certain that the 19 states for which data was available are a representative sample. Because North Dakota's maximum benefit cap is slightly above average nationally, we would expect that the percentage of workers who have at least 80% of their pre-injury net wages replaced by wage-loss benefits should also be slightly above average.

Provided below (Table 9) is a cumulative percentage distribution of claims by percent of income replacement. Of the claims studied, 21.8% had less than 80% of their pre-injury net wage replaced. In the majority of those claims, this was due to the effect of the maximum cap on benefits.

Note that 92.6% of injured workers in North Dakota receive wage replacement of 70% or more. The workers falling below 70% are all a result of the maximum benefit cap. These are the higher wage earners that are limited in the percentage of their pre-injury wages that can be replaced because of the maximum benefit cap.

**Table 9**

<i>Percentage Distribution of North Dakota Claims by Percentage of Income Replacement</i>	
<b>Percent of Income Replacement</b>	<b>Percent of Workers</b>
100%	34.0%
Greater than or equal to 90%	42.8%
Greater than or equal to 80%	78.2%
Greater than or equal to 70%	92.6%
Greater than or equal to 60%	96.1%
Greater than or equal to 50%	98.8%

### *Summary*

Injured workers in North Dakota receive wage loss benefits at a rate comparable to, or slightly higher than, the average benefit rates in other states. This indicates that we have a fundamentally sound wage-loss benefit structure that is not in need of substantial reform.

North Dakota's wage-loss benefit rate generally meets the National Commission's standard for adequate income replacement. However, many disabled workers receive benefits that are actually higher or lower than that rate because of the minimum benefit and the maximum benefit cap. The Legislature could ensure that a higher percentage of disabled workers receive benefits at the statutory rate by increasing the maximum benefit cap and/or decreasing the minimum benefit.

These options, as well as other options the Legislature can consider, are described below:

**Consideration 1:** The Legislature could consider increasing the maximum benefit cap, which is currently indexed at 100% of the SAWW. An increase in that cap would give North Dakota one of the highest caps in the country.

One approach would be to increase the current cap of 100% of SAWW to a higher rate. For example, the cap could be increased to 105% or 110% of SAWW. There are only seven states that index states' average wages at a rate higher than 100%. These states are: Missouri (105%), North Carolina (110%), Washington (120%), Illinois (133%), New Hampshire (150%), Vermont (150%), and Iowa (200%).

Another approach would be to stop indexing the cap to changes in the SAWW and adopt a fixed dollar amount maximum. However, the disadvantage with a fixed maximum is that inflation will erode the actual value of the benefit over time, and the cap is also more subject to non-economic political considerations.

**Consideration 2:** North Dakota has a high percentage of workers receiving benefits at a rate exceeding 90% of their pre-injury net wages, because of our high minimum benefit. The Legislature could consider changing the minimum benefit to bring it in line with the rest of the country.

One approach would be to decrease the minimum benefit from 60% of SAWW to a lower percentage.

Another approach would be to keep the 60% of SAWW minimum benefit level, determine the desired level of wage replacement, and provide the lesser of 60% of SAWW or a percentage (for example 90%) of the pre-injury net wage. An example for a \$200 per week wage earner who is single with no dependents is illustrated below.

#### Current System

Gross Wages:	\$200/week
Net Wages:	\$170/week
Current Benefit (100% Net Wages):	\$170/week
Wage Replacement:	100%

#### Alternative System

Gross Wages:	\$200/week
Net Wages:	\$170/week
Benefit (90% of Net Wages)	\$153/week
Wage Replacement:	90%

**Consideration 3:** The Legislature could adopt a benefit rate based on net wages rather than gross wages, as some states have done. One advantage of the net wage approach is that income replacement levels are slightly more equitable because they are not affected by the various tax brackets, which have a small impact on benefits calculated on a gross wage basis. One disadvantage of a system based on net wages is that the number of disputes about the pre-injury wage tends to increase. A clearer definition of “net wage” would need to be established if this approach were adopted.

**Consideration 4:** The Legislature could amend the definition of “net wage” to include the impact of state taxes. Because current law does not deduct state taxes when computing net wages, some disabled workers actually receive slightly more in wage-loss benefits than they were earning in take-home income before the injury. Any change in the law would have to take into consideration injured workers who pay state taxes in other states.



65-05-10. Partial Disability - Weekly Bennefit.

PER HR	\$20.00	\$18.00	\$16.00	\$14.00	\$12.00	\$10.00	\$8.00
PER WK	\$800.00	\$720.00	\$640.00	\$560.00	\$480.00	\$400.00	\$320.00
PER HR	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00
PER WK	\$320.00	\$320.00	\$320.00	\$320.00	\$320.00	\$320.00	\$320.00
	\$800.00	\$720.00	\$640.00	\$560.00	\$480.00	\$400.00	\$320.00
	<del>-\$320.00</del>	<del>-\$320.00</del>	<del>-\$320.00</del>	<del>-\$320.00</del>	<del>-\$320.00</del>	<del>-\$320.00</del>	<del>-\$320.00</del>
	\$480.00	\$400.00	\$320.00	\$240.00	\$160.00	\$80.00	\$0.00
	66 2/3	66 2/3	66 2/3	66 2/3	66 2/3	66 2/3	66 2/3
	\$320.00	\$267.00	\$214.00	\$160.00	\$107.00	\$54.00	\$0.00
	<del>+\$320.00</del>	<del>+\$320.00</del>	<del>+\$320.00</del>	<del>+\$320.00</del>	<del>+\$320.00</del>	<del>+\$320.00</del>	<del>+\$320.00</del>
XD LAW	\$640.00	\$587.00	\$534.00	\$480.00	\$427.00	\$374.00	\$320.00
110%	\$459.00	\$459.00	\$459.00	\$459.00	\$459.00		
PROPOSED ADDITIONAL LOSS OF WAGES	\$181.00	\$128.00	\$75.00	\$21.00			

**ENGROSSED SENATE BILL NO. 2214  
WAGE-LOSS BENEFITS INCREASE  
TESTIMONY BEFORE THE HOUSE INDUSTRY, BUSINESS AND LABOR  
COMMITTEE  
FEBRUARY 24, 1999**

Mr. Chairman, Members of the Committee:

My name is Julie Leer. I am an attorney for the Workers Compensation Bureau and I am here to testify in support of 1999 Engrossed Senate Bill No. 2214. The Workers Compensation Board of Directors unanimously supports this bill.

**WAGE – LOSS BENEFITS STUDY**

During this past interim, the Bureau conducted a study to determine whether there is a need to adjust the calculation of wage-loss benefits and where the greatest need lies. (A copy of the study, dated September, 1998, is included with my testimony.) The study found that a worker with a low wage who is injured on the job and is paid wage-loss benefits in the amount of 66 2/3% of his or her preinjury wage, receives a wage-loss benefit close to his or her net wages before the injury. In fact, the study, which was based on wage-loss claims accepted and paid during FYE 1997, showed that 34% of injured workers received a wage-loss benefit that equaled their preinjury net wage and 78.2% received 80% or more of their net preinjury wage. (The table on page 3 shows that 7 states base their wage-loss benefits on a percentage of the injured worker's preinjury *net* wage.) Interestingly, the study also showed that, of the 17 states whose minimum wage-loss benefit rate is a percentage of the state's average weekly wage, North Dakota's minimum benefit rate of 60% of the state's average weekly wage is the *highest*. (See page 8 of the study.)

A high wage earner, being paid benefits at 66 2/3% of his or her preinjury wage, however, typically does not receive a wage-loss benefit that approximates his or her preinjury net wage. For example, for *FYE 1997* (the year upon which the study was based), 367 people received the maximum benefit of \$387/week because their wages at the date of first disability exceeded \$581/week. This represents approximately 14% of injured workers who began receiving workers' compensation wage-loss benefits during FYE 1997.

**SENATE BILL NO. 2214**

It is my pleasure to point out that the main reason for this bill is to increase the maximum wage-loss benefit payable from 100% of the state's average weekly wage to 110%. This change is found in **section 2** of the bill. This increase in the maximum wage-loss benefit rate would put North Dakota's maximum wage-loss rate as one of the highest in the nation. (The information contained in the study shows that only 5 states have a maximum benefit rate greater than 110% of their states' average weekly wages

and one other state has a maximum benefit rate equal to 110% of that state's average weekly wage.)

For **FYE 1998**, the state's average weekly wage was \$402. Of the injured workers who began receiving wage-loss benefits during FYE 1998, 15.6% received the maximum wage-loss benefit of \$402. If the maximum benefit were 110% of the state's average weekly wage, or \$442/week, only 11% of injured workers would have had wages high enough to make them eligible to receive the maximum wage-loss benefit. As of July 1, 1998, the state's average weekly wage is \$417. (The state's average weekly wage is calculated by Job Service North Dakota and is adjusted on July 1<sup>st</sup> of each year.) A high wage earner is one whose wages exceed \$625/week. Anyone earning this amount or greater receives the maximum benefit of 100% of the state's average weekly wage. If the current maximum were 110% of the state's average weekly wage (\$442/week), a person receiving greater than \$689/week would be eligible for the maximum. In short: an injured worker with a **preinjury wage of \$750/week** would receive **\$417/week** in wage-loss under the **current** statute. Under the **proposed** statute, the worker would receive **\$442/week**.

The change made in **section 1** of the bill will require all injured workers receiving wage-loss benefits, regardless of their dates of injury, to submit periodically to the Bureau verification that they are not working. There has been some question of whether this requirement applies to all injured workers or only to those injured after a certain date. This method of verification has become a valuable tool in preventing overpayments of disability and in helping injured workers report their activities.

The changes made to 65-05-10, in **section 3** of the bill, clarify that the maximum temporary partial disability benefit payable would not exceed the maximum temporary total disability benefit payable. This language brings the temporary partial disability maximum benefit in line with the increase in temporary total disability benefits proposed in section 2. Additionally, in 1997, this statute was amended to read that the net wages of the injured worker are wages after deductions for social security and **federal and state** income tax. Deducting state income taxes has become something of a logistical nightmare because injured workers who live in other states typically have tax rates different from North Dakota tax rates. This provision also was only applicable to temporary partial disability benefit calculations. Because the savings the Bureau might generate by offsetting state income tax is not worth the administrative costs of offsetting it, the Bureau asks that this be removed from the statute.

This is the section that was amended in the Senate. The language of the bill as introduced was incorrect. The amendment changed the statute to read as it did before some language was moved to another section in 1997 and includes the amendment to remove the deduction for state income tax.

The change made in **section 4** of the bill would allow an injured worker who has been receiving disability for at least seven years to become eligible for supplementary benefits. Supplementary benefits are the means by which injured workers who are

permanently and totally disabled are given an adjustment in wage-loss benefits to bring injured workers with a very low preinjury wage up to a minimum benefit level of 60% of the state's average weekly wage. Currently, the law requires an injured worker to have been receiving disability benefits for ten years before this increase may be given. The length of the "waiting period" in this section of the statute has been a concern of injured workers in the past. The Bureau and the Workers Compensation Board of Directors view this reduction as a preliminary step in an overall study of long-term wage-loss benefits.

The other change made in **section 4** will allow the Bureau to pay supplementary benefits to an injured worker when the worker reaches the month of eligibility. The statute currently provides that eligibility for supplementary benefits be reviewed once a year for all workers who have become eligible during that year. The Workers Compensation Board of Directors voted in favor of this change based on information they received at one of their meetings from a concerned injured worker. It was determined subsequently that a statutory change was needed to effect this change and it has been included in this bill accordingly.

**Section 5** of the bill contains the proposal for the study referred to above. This study will require the Bureau to examine the current supplementary benefits structure to determine its adequacy and examine its purpose. The Bureau has been considering whether supplementary benefits should be paid earlier in an injured worker's disability and whether the current method of calculating those benefits is appropriate for the intended purpose of supplementary benefits. The Bureau also intends to review the impact of Social Security Disability offsets, as done by either the Bureau or the Social Security Administration, as well as the impact any other comparable programs may have on workers' compensation benefits. The Bureau expects that a study will answer some of these questions and allow us to request any appropriate changes in the 2001 session.

**Section 6** of the bill provides effective dates. The benefit rate increases will be effective for injuries occurring after July 31, 1999. The shortened waiting period will also be effective for injuries occurring after July 31, 1999. The change in the date of payment for supplementary benefits (month of eligibility vs. year of eligibility) will be effective for all claims.

The Bureau requests your favorable consideration of 1999 Engrossed Senate Bill No. 2214. If you have any questions, I'll try to answer them at this time.

Thank you.