

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2057

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2057

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7185

Committee Clerk Signature

*Eva Lubelt*

Minutes:

Jennifer Clark, Legislative Council: This bill draft relates to permanent and partial impairment and the second evaluation. It focuses on the specific type of injury. Mostly amputation. We have a value on each injury to this bill. We are adding a specific injury to the value list. The injured worker who came before the committee who had lost his vision in his eye but not the eye. Looking at the dollar value, the greater loss of vision the more days you would qualify for. This individual loss of vision kept him from getting a commercial driver's license. This bill is trying to address this issue, what do you do if you have impaired vision in one eye. The initial bill drafted provided one impairment level for your vision and one dollar value. We amended it and that's the version that was finally recommended out of committee.

Discussion followed.

Tim Wahlin, Chief of Injury services, Workforce Safety and Insurance: (Testimony Written). In opposition of Senate Bill 2057. The system already exists, the AMA guide is a manual rating almost everything in the human body and it looks at the impact of daily living.

Chairman Klein: We are paying on loss of vision this takes away from the AMA guide and creates its own matrix on how we pay that?

Discussion followed.

Bill Shalhoob, North Dakota Chamber of Commerce: (Testimony Written). In opposition of Senate Bill 2057.

Discussion followed.

Chairman Klein: Senator Wanzek do you want to look at different avenues, I sense that there are some issues here but maybe there is a way we can get some more answers we can be looking for. We're going to close the hearing on 2057.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2057

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7386

Committee Clerk Signature

*Eva Liebelt*

Minutes:

Senator Wanzek: I went to visit with Jennifer Clark and we reviewed the hearing. We came up with a conclusion. And during that interim committee hearing there was a substitute amendment offered by WSI. One award would be offered for a certain loss of vision but I don't think they went far enough. We came up with an amendment. (Discussed amendment).

Senator Wanzek: According to Social Security Benefits, you are legally blind at twenty two hundred. So that seems like a good threshold for us. It would give them a onetime multiplier looking at some of the other states, Minnesota is around twenty to twenty two thousand. So that puts us somewhere close to that. It does not mean if the eye continues to get bad that they couldn't go under the full body impairment award.

Chairman Klein: The question I would have is they would continue to use AMA guidelines up to twenty two hundred and they could be paid more under the AMA guidelines in addition to this PPI payment.

Moved by Senator Wanzek to approve the amendment. Seconded by Senator Andrist.

Roll Call Vote: Yes: 6 No: 0 Absent: 1

Moved by Senator Wanzek, to pass as amended. Seconded by Senator Behm.

Roll Call Vote: Yes: 6 No:0 Absent: 1 Floor Assignment: Senator Wanzek.

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/29/2009

Amendment to: SB 2057

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The amended legislation adds a permanent impairment schedule award for the partial loss of eye sight.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**WORKFORCE SAFETY & INSURANCE**  
**2009 LEGISLATION**  
**SUMMARY OF ACTUARIAL INFORMATION**

BILL NO: Engrossed SB 2057

BILL DESCRIPTION: Loss of Vision Permanent Partial Impairment (PPI) Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with 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 amended legislation adds a permanent impairment schedule award for the partial loss of eye sight.

Reserve Level Impact: No reserve level impact as the legislation applies prospectively to injuries occurring on or after the effective date of the Act.

Rate Level Impact: Not quantifiable. The proposed legislation will increase future benefit costs in the State, but the potential increase is not likely to be material in relation to current premium rate levels. To the extent that costs increase, future rate levels will be adjusted accordingly.

DATE: January 29, 2009

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*

item, and fund affected and the number of FTE positions affected.

- C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	01/29/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/08/2008

Bill/Resolution No.: SB 2057

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation adds a graduated permanent impairment schedule for the partial loss of eye sight.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE  
2009 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2057

BILL DESCRIPTION: Loss of Vision Permanent Partial Impairment (PPI) Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with 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 adds a graduated permanent impairment schedule for the partial loss of eye sight.

Reserve Level Impact: No reserve level impact as the legislation applies prospectively to injuries occurring on or after the effective date of the Act.

Rate Level Impact: Not quantifiable. The proposed legislation will increase future benefit costs in the State, but the potential increase is not likely to be material in relation to current premium rate levels. To the extent that costs increase, future rate levels will be adjusted accordingly.

DATE: December 26, 2008

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	12/26/2008



PROPOSED AMENDMENTS TO SENATE BILL NO. 2057

Page 2, replace lines 29 through 31 with:

"For the loss of vision of an eye which  
equals or exceeds 20/200 corrected

permanent impairment  
multiplier of 100"

Page 3, remove lines 1 through 21

Renumber accordingly





**REPORT OF STANDING COMMITTEE**

**SB 2057: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2057 was placed on the Sixth order on the calendar.**

Page 2, replace lines 29 through 31 with:

"For the loss of vision of an eye which equals or exceeds 20/200 corrected      permanent impairment multiplier of 100"

Page 3, remove lines 1 through 21

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2057

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2057

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9890

Committee Clerk Signature

*Ellen LeTang*

**Chairman Keiser: Opened the hearing on SB relating to workers' compensation permanent partial impairment awards for loss of vision, provide for application and declare an emergency.**

**Jennifer Clark~Legislative Council.** This bill has been engrossed. Dealing with permanent & partial impairment awards as it relates to WSI. Generally, what it means is that you reached you maximum medical assortment and you still have some type of impairment. The WSI law is designed to compensate for you that damage to your body. It doesn't directly have to do with the loss of wages with your inability to go back to work, that's not it. It's saying that the body is damage and there is a value to that and we are going to recognize it. That's the universe that we are in now. Now we are going to value how much your body has been damaged. You have two different systems within that universe with what we call PPI. We have a basic analysis with a whole lot of impairment evaluation. Let's say I have a significant leg, hip and back workforce injury, they are going to evaluate all those parts together and figure out how much of my body is impaired. If it's 16% or more, I'm going to get a PPI award or a lump of sum paid over time. That's one way to get your award, 16% or more full body impairment.

That's not what we are dealing with here; we are dealing with the other way you can get a PPI award. We have what you call a scheduled list and these are primarily amputations. That

where we put specific value to that outside of that universal whole body impairment. If you look on page two at the very end on lines 29 & 30, we are adding on a new type of scheduled injury. It's not for the physical loss of your eye, you can still physically have your eye, but the vision loss to your eye, with correction, the best you can see is 20/200 out of that eye. That's how we are going to reimburse you and you will get a multipliers and I will leave it to WSI to talk about how those multipliers help you. I want to point out that we have an application and emergency clause on the third page.

**Representative Ruby:** These are one time payments?

**JClark:** That's my understanding.

**Tim Wahlin~Chief of Injury Services, WSI. See testimony attachment.**

**Vice Chairman Kasper:** This per eye, is it \$20,900 or is it total of one or two eyes?

**Wahlin:** This contemplates loss of vision in an eye. Once you have loss in two eyes, I expect the amount of the award under the guides with substantially exceed the amounts under the award. As a result they will be awarded under the guide rating.

**Chairman Keiser:** If there is a potential application of either of the two, the schedule or total body, we will take the highest of two?

**Wahlin:** That's correct.

**Bill Shalhoob~North Dakota Chamber of Commerce. See testimony attachment.**

**Sylvan Loegering~North Dakota Injured Workers Support Group.** I appreciate the fact that this committee are recognizing the loss of vision as a permanent impairment. I'm waiting for calls back from attorneys and some doctors. Talking about the 6<sup>th</sup> additions of the AMA guidelines, at this point, I can't say I really want to do it, but it's an issue that should be considered. I have prepared a possible amendment that accomplish that and leave it as a

question The sixth addition is more recent allocated technology approach to things. I support the bill, should we hold the bill to consider the 6<sup>th</sup> addition versus the 5<sup>th</sup>.

**Chairman Keiser:** We can certainly hold this for you.

**Sebald Vetter:** I support the bill.

**Chairman Keiser:** Does WSI have any thought on the 6<sup>th</sup> addition versus the 5<sup>th</sup>?

**Wahlin:** Sixth addition came out roughly a year ago. We have been tracking award under the 6<sup>th</sup> versus the 5<sup>th</sup>, with the new publication there are some issues with areas that were missed, we have not recommended not going with the sixth addition, are non scientific whole indicates some of the awards have been dropped, some back awards have dropped, but some awards have gone up at this point because there is a number of comments coming from other insurers around the state.

**Chairman Keiser:** We will wait for Sylvan.

**Dave Kemnitz:** We support this bill.

**Chairman Keiser:** Anyone here to testify in support of SB 2057, opposition, neutral. Closes the hearing.



# 2009 HOUSE STANDING COMMITTEE MINUTES

**Bill/Resolution No. 2057**

**House Industry, Business and Labor Committee**

Check here for Conference Committee

**Hearing Date:** March 2, 2009

**Recorder Job Number:** 9991

Committee Clerk Signature
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**Chairman Keiser:** Opened the committee work session on SB 2057.

**Sylvan Loegering~North Dakota Injured Worker's Support Group.** I withdraw my request for the amendment.

**Chairman Keiser:** Further discussion.

**Representative Ruby:** Motions for a Do Pass.

**Representative Nottestad:** Second

**Voting rolling was taken on SB 2057 for a Do Pass with 11 ayes, 0 nays, 2 absent and**

**Representative Boe is the carrier.**

Date: Mar 2 - 2009

Roll Call Vote # \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 2057

House House, Business & Labor Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper			Representative Boe	7	
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider		
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby	7				
Representative Sukut	7				
Representative Vigesaa	7				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Boe

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

**REPORT OF STANDING COMMITTEE (410)**  
March 2, 2009 5:20 p.m.

**Module No: HR-37-3863**  
**Carrier: Boe**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2057, as engrossed: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2057 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

SB 2057



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
SB 2057  
January 19, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing six local chambers with total membership over 3,900 members ten employer associations. A list of those associations is attached. As a group we stand in opposition of SB 2057 and urge a do not pass from the committee on this bill.

The addition of loss of vision "based on a change of corrected visual acuity" creates an open ended claim that the bureau will have difficulty applying a consistent standard for. Vision loss and change is tied to aging as much or more than any outside event. How are we to determine which factor, the workplace accident or normal aging, caused the loss of vision? We feel by adding this open ended language we will be creating a benefit that will become a source of contention for the bureau and claimants.

Thank you for the opportunity to appear before you today in opposition of SB 2057. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*



The following associations support our testimony and position on WSI issues:

AGC of ND  
ND Grocers Association  
ND Motor Carriers  
ND Hospitality Association  
ND Petroleum Council  
ND Automobile Dealers Association  
ND Implement Dealers Association  
ND Retail Association  
ND Petroleum Marketers  
ND Health Care Association

The following chambers are members of a coalition that support our 2009 Legislative Policy Statements:

Chamber of Commerce of Fargo Moorhead  
Greater Bottineau Area Chamber of Commerce  
Hettinger Area Chamber of Commerce  
Kenmare Association of Commerce  
Minot Chamber of Commerce  
Oakes Area Chamber of Commerce

*THE VOICE OF NORTH DAKOTA BUSINESS*

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**2009 Senate Bill No. 2057**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Presented by: Tim Wahlin, Chief of Injury Services**  
**Workforce Safety & Insurance**  
**January 19, 2009**

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services with WSI. I am here on behalf of WSI to testify in opposition to this bill, a proposal submitted by the Interim Legislative Workers' Compensation Review Committee, and to provide information to the Committee to assist in making its determination. WSI's Board of Directors opposes this bill.

This bill is intended to augment and ultimately increase one particular area of Permanent Partial Impairment awards specifically having to do with gradations of vision impairment suffered by an injured worker in the course of employment. WSI's opposition is based upon the bill's departure from a system of impairment rating that already exists. The system which has been adopted has standardized rating methodologies and relative weights assigned to awards within our system.

North Dakota law has codified the usage of the American Medical Associations fifth edition of Guides to the Evaluation of Permanent Impairment. This publication is compiled in order to provide a standardized method to assess permanent impairments and the relative impacts those impairments comprise on an individual's ability to perform activities of daily living.

The Guides use objective and scientifically based data when available and reference these sources. When objective data is not available, estimates of impairment are based upon clinical experience and consensus of a wide variety of medical specialists.

The objective of the Guides are to provide a valid and reproducible measurement system which standardizes the relative impacts an impairment may have on an injured worker's activities of daily living. The Guides are subjected to a constant process of refinement and redefinition as medical evidence evolves and new research becomes available.

WSI's concerns with this legislation are that this bill rejects the scientific rating system and supplants that with the subjective valuations regarding certain impairments. WSI views the departure from this longstanding and scientifically supported rating system as a step backwards, to a system of scheduled impairments.

Scheduled awards still exist within WSI's law for a limited number of amputations. They are the lone departure from our Guide's regulated system and are a carry over from earlier days. They are manageable based upon the clarity of the injury and the immediately measurable impairment. This is not the case with the bill before this committee.

WSI's concerns are not with respect to an increase in the awards for vision loss, but, rather with the methodology and ultimately with the dislocation of award values as compared with other impairments.

SB 2057 does contain an emergency clause and would apply to injuries occurring after the effective date of this Act. The bill will serve to increase future benefit costs, but the potential increase is not likely to be material to statewide premium levels.

This concludes my testimony. I would be happy to answer any questions at this time.



**Engrossed 2009 Senate Bill No. 2057**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Presented by: Tim Wahlin, Chief of Injury Services**  
**Workforce Safety & Insurance**  
**March 2, 2009**

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services with WSI. I am here on behalf of WSI to testify in support of this bill, a proposal submitted by the Interim Legislative Workers' Compensation Review Committee, and to provide information to the Committee to assist in making its determination. WSI's Board of Directors supports this bill.

This bill is intended to augment and ultimately increase one particular area of Permanent Partial Impairment (PPI) awards specifically having to do with vision impairment suffered by an injured worker in the course of employment.

North Dakota law has codified the usage of the American Medical Association's fifth edition of Guides to the Evaluation of Permanent Impairment. This publication is compiled in order to provide a standardized method to assess permanent impairments and the relative impacts those impairments comprise on an individual's ability to perform activities of daily living.

The objective of the Guides are to provide a valid and reproducible measurement system which standardizes the relative impacts an impairment may have on an injured worker's activities of daily living. The Guides provide for the rating of vision loss, however, not at the level proposed by this bill.

North Dakota law also provides for PPI awards in cases of amputation pursuant to a schedule contained within the statute. This bill adds vision loss in one eye which equals or exceeds 20/200 corrected, to this schedule. The corresponding award is an

impairment multiplier of 100. Currently, with one third of the state's average weekly wage at \$209, this will make an award under this provision worth \$20,900.

Engrossed SB 2057 contains an emergency clause and would apply to injuries occurring after the effective date of this Act. The bill will serve to increase future benefit costs, but the potential increase is not likely to be material to statewide premium levels.

This concludes my testimony. I would be happy to answer any questions at this time.



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
SB 2057  
March 3, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing six local chambers with total membership over 3,900 members ten employer associations. A list of those associations is attached. As a group we stand in support of SB 2057 as amended and urge a do pass from the committee on this bill.

The addition of loss of vision and the 20/200 standard in the bill is consistent with the other applications in this section and incorporates the objective and measurable standards necessary for fair and impartial claims adjudication.

Thank you for the opportunity to appear before you today in support of SB 2057. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*



The following associations support our testimony and position on WSI issues:

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ND Grocers Association  
ND Motor Carriers  
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Hettinger Area Chamber of Commerce  
Kenmare Association of Commerce  
Minot Chamber of Commerce  
Oakes Area Chamber of Commerce  
Bismarck-Mandan Area Chamber of Commerce

*THE VOICE OF NORTH DAKOTA BUSINESS*

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**PROPOSED AMENDMENT FOR SB 2057**  
Sylvan Loegering, ND Injured Workers Support Group  
March 2, 2009

**SECTION 1. AMENDMENT**

On page 3 line 7, change the word "fifth" to "sixth".

**NEW SECTION 2. AMENDMENT.** Subsection 6 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

6. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the fifth sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Subject to rules adopted under this subsection, impairments must be evaluated under the fifth sixth edition of the guides.

Renumber other sections accordingly.