

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2430

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2430

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 3, 2009

Recorder Job Number: 8458

Committee Clerk Signature

*Eva Lubelt*

Minutes:

Senator O'Connell: This bill is relating to the duration of workers' comp temporary partial disability benefits.

Sylvan Loegering, Volunteer Coordinator, ND Injured Workers Support Group: Written testimony in support of Senate Bill 2430. I believe relief should be awarded if an injury hasn't gotten better after five years.

Senator Potter: How does this bill relate to retirement age?

Sylvan: This bill would not affect other legislation regarding retirement age.

Senator Potter: WSI has the ability to wave the five year limit. Are you aware of cases where they have waved it?

Sylvan: I don't know.

Sebald Vetter: President of C.A.R.E., in support of the bill.

Ed Christianson: In support of the bill. When we do these studies for one hundred thousand dollars, for P.P.I., after the study the legislation turned around and said they wouldn't adopt it.

I would like you to put this in your resolution and if we find out we're wrong we will go back and put his retro-active.

Tim Wahlin, Chief of Injury Services of WSI: Written testimony in opposition of the bill. They find that 2430 would eliminate the cap for temporary partial disability benefits that injured workers may receive.

Senator Potter: You have this safety belt how often do you wave it?

Tim: I don't have percentages of those that have been waved. We do have committee meetings to look at these cases that should be waved and I have attended several of them.

Senator Potter: Have you waved any this year or last?

Tim: Yes we have.

Senator Andrist: I realize that you can extend this five years. You should be able to make the decision to make them permanently impaired after five years.

Senator Wanzek: Temporary partial disability payment, you would determine how?

Tim: Sixty six and two thirds of the difference of what you were earning.

Bill Shalhoob, ND Chamber of Commerce: Written testimony in opposition. When we evaluate our position on a benefit increase we always consider whether a measure e maintains the incentive for employees to return to work.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2430

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8704

Committee Clerk Signature

*Erin Lubelt*

Minutes:

Chairman Klein: Twenty four thirty committee deals with partial disability benefits. This one that the WSI board unanimously opposed.

Senator Potter: This is one where the testimony of Bill Shalhoob was that he thought there should be a partial disability settlement. It would remove the incentive for someone to go back to work.

Senator Andrist: That is a slightly different issue than the bill itself.

Senator Potter: Yes. I think he was saying that he was surprised that there wasn't some kind of payment after the end of that period that would say okay you are going to be permanently or partially disabled. Here is your settlement and now you're off the system. Which would give the certainty that the WSI wants but I suppose this one is similar and we're up against the deadline.

Chairman Klein: And that's what I am reading here, we believe the impact of 2430 on raising the levels would be material.

Senator Klein: I move a do not pass.

Senator Wanzek: I will second that motion.

Senator Horne: What the bill as proposed to do is to remove the five year time period on partial disability and so there would be no time limit on that payment then, if we approve this?

Senator Andrist: If we approve this, the bill is to disapprove it.

Chairman Klein: I believe in one of the audits that was one of the issues we had the most claims opened in this area than any other state. I believe we have to draw this bright line and find a time.

Senator Horne: Maybe this is one that we should look into.

Chairman Klein: I believe in thirty three jurisdictions they are capped in some sort of weeks.

Senator Andrist: I believe they gave us a chart on that.

Senator Potter: This is one of the cases where the organization does have some flexibility. The problem doesn't lie in the code it lies in the execution at WSI. The law isn't bad.

Senator Wanzek: As I understand it they are talking about benefits partial benefits that are paid for somebody that has been injured and is limited to the ability to put a full week's worth of work in. As I understand it part of the reason for having a deadline is in some point in time they need to decide either the impairment is a permanent impairment or they are going to be permanently unable to work a full schedule. I would prefer rather than this approach if after five years if they are still in this position there should be have to sit down and evaluate and determine either you're going to work full time or you will never go to work full time. And call it what it is.

Roll Call Vote: Yes: 7 No: 0 Absent:0

Floor Assignment: Senator Horne

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/28/2009

Bill/Resolution No.: SB 2430

**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 removes the 5 year cap for temporary partial disability benefits and requires benefits to be paid during the continuance of partial disability.

**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 2430

**BILL DESCRIPTION:** Removes the 5 Year Cap for Temporary Partial Disability (TPD) Benefits

**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 removes the 5 year cap for temporary partial disability benefits and requires benefits to be paid during the continuance of partial disability.

**Premium Rate and Reserve Level Impact:**

The rate and reserve level impact of this bill is difficult to quantify – in part because historical information that would make such an evaluation possible is difficult to extract from WSI's database, and in part because of the very short timeframe available to perform the evaluation itself.

That said, individual claim data provided by WSI suggests that there are roughly 150 currently open claims classified as TPD's with injury dates prior to June 30, 2003-04. Though the number of claims drops off with increasing age, the average claim size tends to increase with age.

Though difficult to quantify, we believe that the impact of SB 2430 on rate and reserve levels would be material.

We evaluated potential costs associated with SB 2430 under the assumption that no other changes would be made

concurrently to the State's benefit structure. To the extent that this piece of legislation passes in conjunction with other changes under consideration – the costs could compound.

DATE: February 2, 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>	02/02/2009

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2430

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

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

Action Taken  Pass  Do Not Pass  Amended

Motion Made By Senator Andrist Seconded By Senator Wanzek

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Horne

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



**REPORT OF STANDING COMMITTEE (410)**  
February 4, 2009 5:04 p.m.

**Module No: SR-22-1682**  
**Carrier: Horne**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2430: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2430 was placed on the Eleventh order on the calendar.**

2009 TESTIMONY

SB 2430

**REMARKS FOR IBL COMMITTEE re SB 2430**  
Sylvan Loegering, Volunteer Coordinator, ND Injured Workers Support Group  
February 3, 2009

I support HB 2430 regarding partial disability benefits. A partial loss of earnings capacity caused by a compensable injury does not automatically go away at some arbitrary point in time. In its present form 65-05-10 demands an arbitrary ending of benefits based on the calendar.

This statute in its present form does nothing to provide sure and certain relief and it adds to the anxiety of injured workers. I submit that as long as an injury is considered temporary and it is causing partial decrease in earning capacity the injured worker deserves the relief afforded by partial disability benefits.

Some may feel that this bill opens the door to unending partial disability payments. However, once an injured worker reaches maximum medical improvement the disability would be considered permanent and handled under the permanent partial impairment statute and payments under this statute would cease. I believe chances are slim that a disability would be considered temporary for more than 5 years. Chances are the medical situation would resolve itself within 5 years by either getting better or being declared permanent. Those few individuals who do not fit into either of those categories should not be allowed to fall through the cracks in the system.

I respectfully ask that you support this bill. I'd like to suggest that while you're at it you could minimize complexity and red tape in the system by removing a phrase in 65-05-10.1. I have copied that section and highlighted in red one phrase that would be meaningless after passage of this bill. Refer to copy of 65.05.10.1. As you can see a waiver of the 5 year cap would be meaningless without a 5-year limit. I ask that you vote in favor of SB 2430 after amending it to delete that phrase

Sylvan Loegering SB 2430 supplement

**65-05-10.1. Long-term temporary partial disability inflation adjustment.** This benefit only applies to claims with a date of first disability or date of successful reapplication occurring after June 30, 1991. For these claims, beginning on the first day of July immediately following the fifth full year of partial disability and every year thereafter, an injured employee who has received a waiver of the five-year cap on partial disability benefits under section 65-05-10 is eligible for a lump sum inflation adjustment. The organization shall calculate the lump sum inflation adjustment under this section on July first of each year by multiplying the previous year's percent increase in the state's average weekly wage, if any, by the total amount of partial disability payments paid to the injured employee in the preceding twelve months, including the preceding year's inflationary adjustment award.



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
SB 2430  
February 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 seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in opposition to SB 2430 and urge a do not pass from the committee on this bill.

When we evaluate our position on a benefit increase we always consider whether a measure maintains the incentive for employees to return to work. The change proposed in this bill, extending the temporary partial disability beyond the five year cap seems to provide both a negative incentive to return to work and not provide any closure to a case or file. After five years we should be able to make a decision. In those cases where it is truly not possible to make a ruling, WSI does have the right to grant an extension. The current statute is appropriate and should be maintained as is.

Thank you for the opportunity to appear before you today in opposition to SB 2430. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*

**2009 Senate Bill No. 2430**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Presented by: Tim Wahlin, Chief of Injury Services**  
**Workforce Safety & Insurance**  
**February 3, 2009**

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin and I am Chief of Injury Services with Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am here to testify in opposition to SB 2430. The WSI Board unanimously opposes this bill.

SB 2430 would eliminate the five-year cap for temporary partial disability benefits that injured workers may receive. Temporary partial disability benefits (TPD) are the wage loss payment given to injured workers when they are able to work, but have suffered a reduction in the amount of money they can earn as a result of a work injury. TPD benefits are intended to fill the gap between what their pre-injury wages were and their temporary post-injury wages.

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This five-year maximum was put in place in 1991. Prior to that, injured workers' TPD benefits were unlimited and ran for the duration of the injured workers' partial disability. This led to costly abuses. Our research shows that there are no jurisdictions in the nation that currently have an unlimited duration for partial disability benefits like the one proposed in SB 2430.

Attached to my testimony is an excellent comparison and explanation of TPD benefits in 51 jurisdictions. You will see in the attachment that:

--Twelve states limit TPD benefits to the time period injured workers are partially disabled and have not reached maximum medical improvement, meaning that TPD halts when either of those circumstances change;

--In 33 jurisdictions, TPD benefits are capped in a range from 26 weeks in Montana to 700 weeks in New Mexico;

--One state, Washington, pays TPD until an injured worker reaches maximum medical improvement;

--Another state, South Dakota, pays TPD until an injured worker receives a disability rating; and

--Four states do not have TPD benefits.

The reason I raise this comparison information is to stress that North Dakota's approach to TPD is not or unusual. It reflects a valid assumption that upon returning to the workforce, an injured employee will eventually be responsible to secure employment and over time progress in that endeavor.

Finally, it is important to note that the current five-year maximum is not without a safety-valve for hardship situations. WSI has the discretion to waive the cap for catastrophically injured workers, and for injured workers who are working and are limited to working less than 28 hours a week due to permanent restrictions from their work injuries.

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WSI requests a "do not pass" recommendation on SB 2430.

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This concludes my testimony.

**Table 2**  
**Temporary Partial Disability Benefits as of 1/1/08**

		Minimum (1)	Maximum (2)	Percent (3)	Duration (4)
Alabama	AL		682.00	66 2/3	300 weeks
Alaska	AK		939.00	80 S	5 years
Arizona	AZ		466.06	See Special Formula	Disability
Arkansas	AR	20.00	522.00	66	450 weeks
California	CA		916.33	66 2/3	104 weeks for most injuries
Colorado	CO		753.41	66 2/3	Disability
Connecticut	CT		1,077.00	75 S	520 weeks
Delaware	DE	197.42	592.25	66 2/3	300 weeks
Dis. Of Columbia	DC		1,288.00	66 2/3	5 years
Florida	FL	20.00	746.00	See special formula	104 weeks
Georgia	GA		334.00	66 2/3	350 weeks
Hawaii	HI	174.00	696.00	66 2/3	Disability
Idaho	ID		556.00	66 2/3	Disability
Illinois	IL	Varies with Dependency	1,178.00	See special formula	Disability
Indiana	IN	50.00	620.00	66 2/3	300 weeks
Iowa	IA		1,311.00	66 2/3	Disability
Kansas	KS		510.00	66 2/3	415 weeks
Kentucky	KY	No TPD Benefits			
Louisiana	LA		522.00	66 2/3	520 weeks
Maine	ME		574.08	80 S	416 weeks
Maryland	MD		439.00	See special formula	Disability
Massachusetts	MA		782.66 (see note)	60	260 weeks
Michigan	MI		739.00	80 S	Disability
Minnesota	MN		750.00 (see note)	66 2/3	450 weeks
Mississippi	MS		398.93	66 2/3	450 weeks
Missouri	MO		742.72	66 2/3	100 weeks
Montana	MT		573.00	66 2/3	26 weeks
Nebraska	NE		644.00	See special formula	300 weeks
Nevada	NV		745.00	See special formula	24 months
New Hampshire	NH		1,218.00	60	262 weeks
New Jersey	NJ	No TPD Benefits			
New Mexico	NM	36.00	635.46	66 2/3	Physical impairment 700 weeks
New York	NY	100.00 (see note)	500.00	See special formula	Disability
North Carolina	NC		786.00	66 2/3	300 weeks
North Dakota	ND		653.00	66 2/3	5 years



**Table 2**  
**Temporary Partial Disability Benefits as of 1/1/08**

		Minimum (1)	Maximum (2)	Percent (3)	Duration (4)
Ohio	OH	No TPD Benefits			
Oklahoma	OK	30.00	577.00 (see note)	70	300 weeks
Oregon	OR		1,006.54	See special formula	Disability
Pennsylvania	PA		807.00	66 2/3	500 weeks
Rhode Island	RI		882.00	75 S	312 weeks
South Carolina	SC		661.29	66 2/3	340 weeks
South Dakota	SD		571.00	50	Until Dis. Rating
Tennessee	TN	106.95	784.00	66 2/3	400 weeks
Texas	TX	107.00	712.00	70	104
Utah	UT		665.00	66 2/3	312 weeks
Vermont	VT		1,013.00	66 2/3	Disability
Virginia	VA		816.00	66 2/3	500
Washington	WA		993.58	See special formula	Date of MMI
West Virginia	WV	No TPD Benefits			
Wisconsin	WI		805.00	See special formula	Disability
Wyoming	WY		3,202.33 (Monthly)	See special formula	12 months

### Explanations of Entries in Table 2

#### COLUMN (1)

Minimum weekly benefit for temporary partial disability benefits in dollars.

New York The minimum weekly TPD benefit is \$100 or 100% of the worker's preinjury wage, whichever is less.

#### COLUMN (2)

Maximum weekly benefit for temporary partial disability benefits in dollars. The exception is Wyoming, where the figure is a monthly maximum in dollars.

Massachusetts TPD benefit cannot exceed 75% of TTD benefit the worker would have received if totally disabled. The TPD benefit plus the worker's actual earnings in the healing period cannot exceed 200% of state's average weekly wage.

Minnesota TPD benefit plus wage the worker is capable of earning in partially disabled condition cannot exceed 500% of state's average weekly wage.

Oklahoma The TPD benefit plus the worker's actual earnings in the healing period cannot exceed 80% of the worker's preinjury wages.

**Explanations of Entries in Table 2 (continued)****COLUMN (3)**

Most States: Percentage of wage loss = percentage of (preinjury gross wage - gross wage in healing period).

Some States: Percentage of Wage Loss = Percentage of (preinjury gross wage - [actual gross wage in healing period or earning capacity in healing period, whichever is larger]).

S = Percentage of (spendable earnings in preinjury period - spendable earnings in healing period).

**Special Formulas**

Arizona TPD Benefit =  $66 \frac{2}{3}\%$  x (preinjury wage - post injury earning capacity in modified duty)

Florida TPD Benefit = 80% of difference between 80% of preinjury wage and 100% of postinjury wage.

Illinois TPD Benefit =  $66 \frac{2}{3}\%$  x (current wage of preinjury wage - net actual wage in healing period)

Indiana TPD Benefit =  $66 \frac{2}{3}\%$  ([lesser of (1) preinjury wage or (2) wage that produces maximum weekly benefit] - (3) actual wage in healing period)

Maryland TPD Benefit = 50% (preinjury gross wage - [actual gross wage in healing period or earning capacity in healing period, whichever is greater])

Nebraska TPB Benefit =  $66 \frac{2}{3}\%$  x (preinjury wage - postinjury earning capacity)

Nevada TPD Benefit = TTD Benefit - 100% of actual wage in healing period

New York TPD Benefit for worker who has returned to work at less than full wages =  $66 \frac{2}{3}\%$  x (preinjury wages - actual wages in healing period). New York TPB benefit for worker who has not returned to work =  $66 \frac{2}{3}\%$  x (preinjury wages x degree of disability)

Oregon TPD Benefit = TTD Benefit x % [(preinjury wage - actual wage in healing period)/preinjury wage]

Washington TPD Benefit = 80% x (earning capacity in healing period - actual wages in healing period)

Wisconsin TPD Benefit = TTD Benefit x % (preinjury wage - actual wage in healing period)

Wyoming TPD Benefit = 80% x (earning capacity in light duty employment - actual wages in healing period)

**COLUMN (4)**

Disability means the temporary partial disability benefits continue as long as (1) the worker is partially disabled and (2) the worker has not reached the date of maximum medical recovery.

Date of MMI means the TPD benefits can continue until the worker reaches the date of maximum medical improvement.

Duration in weeks in most states is the maximum number of weeks after the date of injury for which the benefits can be paid.

500 weeks or \$310,000 or similar entries means the temporary partial disability benefits cease when 500 weeks have occurred since the date of injury or the worker has received \$310,000, whichever is sooner.



**Sent:** Friday, January 30, 2009 3:56 PM

**To:** Halvorson, John L.

**Subject:** Re: Workers' Compensation Temporary Disability Benefits

John -

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John

John F. Burton, Jr.

Former Editor

*Workers' Compensation Policy Review*



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

**BILL NO: SB 2430**

**BILL DESCRIPTION: Removes the 5 Year Cap for Temporary Partial Disability (TPD) Benefits**

**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 removes the 5 year cap for temporary partial disability benefits and requires benefits to be paid during the continuance of partial disability.

**Premium Rate and Reserve Level Impact:**

The rate and reserve level impact of this bill is difficult to quantify – in part because historical information that would make such an evaluation possible is difficult to extract from WSI's database, and in part because of the very short time frame available to perform the evaluation itself.

That said, individual claim data provided by WSI suggests that there are roughly 150 currently open claims classified as TPD's with injury dates prior to June 30, 2003-04. Though the number of claims drops off with increasing age, the average claim size tends to increase with age.

Though difficult to quantify, we believe that the impact of SB 2430 on rate and reserve levels would be material.

We evaluated potential costs associated with SB 2430 under the assumption that no other changes would be made concurrently to the State's benefit structure. To the extent that this piece of legislation passes in conjunction with other changes under consideration – the costs could compound.

**DATE: February 2, 2009**