

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1427

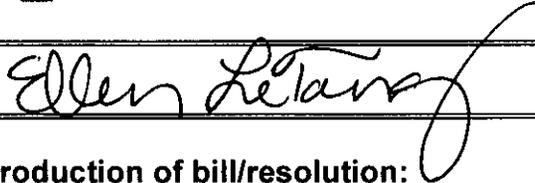
2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1427
January 26, 2011
13483

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation coverage of mental injuries arising from a mental stimulus; and to provide for application

Minutes:

Chairman Keiser: Opens the hearing on HB 1427.

Representative Ron Guggisberg~District 11-Fargo: (See attached testimony).

Representative Vigesaa: Out in rural North Dakota where we have a mess, we have individuals that are classified first responders, in that case would they be the only ones eligible? I assume that the categories are much broader than that. Could explain who would be under the umbrella of first responders?

Ron Guggisberg: If you look in the bill on page 2, line 20 it's defined.

Representative Frantsvog: With this mental injury, would they be on active or light duty?

Ron Guggisberg: It would depend; it's up to the treating physician.

Representative Ruby: I looked at this section, the dealing with emergency medical services personnel, it's pretty broad, you mentioned volunteers, is that term first responders means volunteers as well or is it just paid staff?

Ron Guggisberg: It means volunteers as well, they are trained to respond.

Representative Ruby: I can see for the medical costs, under the volunteers, there is no wage for the volunteers to cover wage loss benefits. How can they qualify?

Ron Guggisberg: There is coverage for lost wages for volunteers. I don't see this as career ending.

Representative Ruby: I agree, if it resulted in some time off, like more than 5 days and that would be affecting their primary occupation, I am wondering what that does to the

employers experience rating when he has employees who are volunteers. Will this hinder them?

Ron Guggisberg: I'm not sure about the particulars of the coverage of whether that would affect, as far as I know this would only affect the premiums on the political subdivisions or a private ambulance service.

Representative Gruchalla: The amendments that you mentioned that are coming, will you support the amendments or not?

Ron Guggisberg: I need something. I just don't see a need for these amendments, but certainly anything is better than nothing.

Representative Gruchalla: What part of the amendment do you not want?

Ron Guggisberg: The biggest one is the 6 month, where it's at the point of injury. I'm also concerned with our personnel the former military members, if that will affect them or not.

Representative Kreun: I do believe this is a very viable illness and it should be treated. Would there ever be a trigger point where this would be required instead of voluntary?

Ron Guggisberg: I don't know how we would mandate it.

Representative Kreun: What we do in Grand Forks is it comes out of our budget and we do send them to the health care clinic. Where would the individual who owns health care come into play with this, would this be supplement or would it be separate?

Ron Guggisberg: It's been brought up to me before and wouldn't your health care cover that, it does to a point. It goes back to where they were hurt on the job and should not be responsible for a co pays and that's why I feel it should be under worker's comp. If there was a limit, then the health insurance could cover that.

Justin Adolf~President of the Professional Firefighters of North Dakota (PFFND):
(see attached testimony 2).

Representative Nathe: Do the fire department have mental health specialists on staff?

Justin Adolf: What the firefighters have is a CISD team and an employee assistance program through a hospital, there is some limited benefits, after that there is no continuing check up unless you go on your own health care.

Representative Ruby: To become a fireman, you are trained in medical information, how to treat people initially, how to use equipment, read and fight fires, are you prepared in your training for high stress? How much are you trained ahead of time to deal with the stress?

Justin Adolf: There isn't enough in getting individuals ready to see the things they do. You can tell yourself, especially when you are young, that you can deal with the stress but

you never can prepare yourself fully? On the amendments, the question I have is the time frame or the money amount.

Chairman Keiser: We recognize that are situations that are very difficult to see, frequent you take those people into the emergency room, now those people see those people only they see a lot more than you do, 24 hours a day, shouldn't we add them to this bill.

Justin Adolf: Absolutely, mental health is new and our statues are behind.

Chairman Keiser: Anyone else here to testify in support of HB 1127?

Dave Kemnitz~President of the North Dakota AFL-CIO: We support HB 1427 and the amendments.

Chairman Keiser: Anyone else here to testify in support of HB 1127?

Donavan Voeller: We have in place a mechanism for a safety net for when we get physically injured on the job. What I would like to see is WSI to become that safety net for the mental illness that we may acquire through the course of our job. We do have our CISD's, talking helps but when the time comes and we don't have the training, we are not the experts and we need the help.

Ed Christianson: First responders are going to have some preexisting; I don't think you can hold a preexisting because he might go through 3 of these in a career, are you going to only cover one. I don't think there should be no preexisting condition.

Chairman Keiser: Anyone else here to testify in support of HB 1127?

David Boeck~Lawyer for the Protection & Advocacy Project: Must of the testimony heard today was already covered that I was going to talk about but I want to remind us that the term first responders really came after 911. Another term we often use to describe these workers is heroes. That's why we hire them to face the worst trauma in our world for heroic acts. It's a mistake we already don't cover mental/mental for first responders. Senate Bill 2093 is remarkable different, it doesn't deal with first responders at least when it was introduced. The 6 month that may be proposed on the amendment, it's unrealistic and inappropriate. There is a condition that is delayed and is called a delayed PTSD. The symptoms don't arise for more than 6 months after the traumatic incident. We should be covering that. There is also chronic PTSD that last longer than 6 months. Six months of coverage for acute PTSD and would be even useful for chronic PTSD that begins early. Treating early is important can have a traumatic affect on reducing the course of the disease. In terms of the 15 thousand dollar benefit, there is no similar limit on benefits for a mental or physiological injury that arises from a physical injury. The condition is the same. There is no reason to limit it in one paragraph and not in another. Most troubling is the possibility that there would be an amendment not to cover preexisting condition, traumatic conditions will probably happen more than once in a career lifetime. Beyond that, we have a lot of military and they have skills that lead into firefighters, medics and law enforcements. There are studies about the rates of PTSD that exist in returning veterans from war, the range goes from 5% to 20% on how common this condition arises and it would be a

mistake not to cover them. Passing this bill would be a patriotic act, so I recommend a Do Pass without an amendment.

North Dakota Peace Officers: Are in support of HB 1427.

Chairman Keiser: Anyone else here to testify in support, in opposition to HB 1427?

Tom Balzer~On behalf of Bill Shalhoob: (see testimony 3). Our concern on the mental/mental regardless of the constrictions on it is that those constrictions very quickly grow. The issue we have is the growth of this issue. The issue we have is that there is no way to objectively measure this issue. A mental injury caused by a mental stimulus, is one of those that is unlimited. This has the potential to grow beyond those first responders very quickly. It's not a popular decision or I enjoy doing, but it's one that the business community has a firm stance on. We would ask you not to support this particular piece of legislation.

Chairman Keiser: Anyone else here to testify in opposition, in neutral?

Rob Forward~Staff Attorney at WSI. (See attached testimony 4).

Chairman Keiser: You do need a fiscal note to be in compliance.

Representative Amerman: This bill does not account for non work stimulus, could you elaborate?

Rob Forward: The way mental injuries are compensated no, is that if the physical injury is 50% of the cause of the mental injury, combines with the non work stressors in the person's life, HB 1427 doesn't have similar language that accounts for the other stressors in that person's life.

Representative Nathe: In my scenario as a first responder for the Federal Government, I was sent to New Orleans and we went through mental training, under this bill, would I be covered for state assistance under this bill the way it's written in regard to the preexisting condition.

Rob Forward: No, you would not be covered.

Representative Vigesaa: I employ several people at my business that are volunteer firefighters, they would make a claim under this type of scenario, how would you see that affecting my rates?

Rob Forward: If would not affect your premiums at all.

Representative M Nelson: I understand that you don't want unknowns, how do you determine the 50% or more that would be work related?

Rob Forward: The treating psychologist or psychiatrist. The claims adjuster would write a letter flat out asking them that question.

Chairman Keiser: Who is bringing the amendments?

Rob Forward: We would help Representative Guggisberg with the amendment but the agency is taking a neutral position and is not going to be offering any amendments?

Chairman Keiser: We will wait. Closes the hearing on HB 1427.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1427
February 1, 2011
13769

Conference Committee

Committee Clerk Signature

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation coverage of mental injuries arising from a mental stimulus.

Work Committee Session Minutes:

Chairman Keiser: Opens the work committee session on HB 1427.

Chairman Keiser: Is that all the amendment that he was considering?

Representative Gruchalla: I do believe that WSI had some reservations about that it did not having a time limit on it. He was amenable to going with 6 months and this is not in this amendment. We would limit it to 6 months from the day of injury, whatever occurred first, all benefits payable. The amendment just say to delete (inaudible).

Chairman Keiser: A mental injury arising from a mental stimulus if the injured employee is the first responder and the injured employee establishes by preponderance of the evidence that the condition that causing the mental injury was extraordinary and unusual in comparison to the normal condition of the particular employment and that there is medical causation between the mental injury and the employment conditions. Any questions from committee members, do we have a motion on the amendment?

Representative Gruchalla: Moves the amendment.

Representative Sukut: Second.

Chairman Keiser: Further discussion on the amendment?

Voice vote, motion carries.

Chairman Keiser: The amendment is on the bill before us, what are the wishes of the committee?

Representative Frantsvog: One thing that this bill doesn't consider is that in the event of a mental injury and the employee is off the job for 6 months, that's a cost to the political subdivision, there is no fiscal note.

Chairman Keiser: Good, bad or indifferent, fiscal notes are only issued only as it applies to the state. You are correct there is not a fiscal note related to the political subdivision.

Representative Ruby: I think the amendment is fine; I have a problem with this. This is a profession by nature is stressful and unusual things. I know they said that they can't necessarily be trained for every instance, I didn't volunteer as a first responder because I don't look forward to putting myself in that position. I think it sets a dangerous precedent to adding the mental injury to the worker's comp side where especially for professions where this is what they do. Why just these people, what about other people in stress professions, then we really open it up.

Representative Ruby: Motions for a Do No Pass as Amended.

Representative Nathe: Second.

Chairman Keiser: Further discussion?

Representative Amerman: I've long thought that sooner or later, that WSI are going to have to start looking at mental stress and I believe that is sometime in the future. This is a tiny step is appropriate, it's a good step, and I hope we can support this.

Representative Nathe: I agree with Representative Ruby. I support the motion.

Representative M Nelson: Yes, there are hazards to jobs but being singling out effectively because we are saying it is mental but especially for first responders, their mind is what they operate with. Do you want a first responder, responding to your situation with some stress he saw in his job and he is not getting help from workman's comp to deal with that? I think it potentially puts the public at risk not passing this bill.

Representative Nathe: Just a comment on handling the stress, there are programs in place in the field with professional counseling and they can get proper counseling as they go through the process.

Roll call was taken for a Do Not Pass as Amended on HB 1427 with 8 yeas, 4 nays, 2 absent and Representative Sukut is the carrier.

FISCAL NOTE

Requested by Legislative Council
02/03/2011

Amendment to: HB 1427

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 expands the definition of "compensable injury" to include mental injury arising from mental stimulus if the injured employee is a first responder, i.e. a law enforcement officer, a firefighter, or emergency medical services personnel as defined under section 23-27-02.

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
2011 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1427

BILL DESCRIPTION: Mental-Mental First Responders

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation expands the definition of "compensable injury" to include mental injury arising from mental stimulus if the injured employee is a first responder, i.e. a law enforcement officer, a firefighter, or emergency medical services personnel as defined under section 23-27-02.

FISCAL IMPACT:

Not quantifiable. We don't anticipate that the proposed legislation will have a material impact on statewide premium rate levels; however, rates for the specific first responder classifications may increase over time as a result of the expanded coverage. To what extent is unclear as we don't have access to an appropriate base of historical experience to use in deriving the estimates.

DATE: February 3, 2011

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.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	02/03/2011

FISCAL NOTE

Requested by Legislative Council
01/19/2011

Bill/Resolution No.: HB 1427

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 expands the definition of "compensable injury" to include mental injury arising from mental stimulus if the injured employee is a first responder, i.e. a law enforcement officer, a firefighter, or emergency medical services personnel as defined under section 23-27-02.

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
2011 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1427

BILL DESCRIPTION: Mental-Mental First Responders

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation expands the definition of "compensable injury" to include mental injury arising from mental stimulus if the injured employee is a first responder, i.e. a law enforcement officer, a firefighter, or emergency medical services personnel as defined under section 23-27-02.

FISCAL IMPACT:

Not quantifiable. We don't anticipate that the proposed legislation will have a material impact on statewide premium rate levels; however, rates for the specific first responder classifications may increase over time as a result of the expanded coverage. To what extent is unclear as we don't have access to an appropriate base of historical experience to use in deriving the estimates.

DATE: January 24, 2011

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.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	01/25/2011

11.0384.03001
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Adopted by the Industry, Business and Labor
Committee

February 1, 2011

VR
2/1/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1427

Page 2, line 13, after "that" insert "the condition causing the mental injury was extraordinary and unusual in comparison to the normal conditions of the particular employment and
that"

Renumber accordingly

Date: Feb 1, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1427

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Gruchalla Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote, motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

*p. 2 line 13-14 - Delete
p. 2 line 13 insert - (see attachment)*

Date: Feb 1, 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1427

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	ABO		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla		✓
Representative Frantsvog	✓		Representative M Nelson		✓
Representative N Johnson	✓				
Representative Kreun	ABO				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 8 No 4

Absent 2

Floor Assignment Rep Sukut

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

REPORT OF STANDING COMMITTEE

HB 1427: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). HB 1427 was placed on the Sixth order on the calendar.

Page 2, line 13, after "that" insert "the condition causing the mental injury was extraordinary and unusual in comparison to the normal conditions of the particular employment and that"

Renumber accordingly

2011 TESTIMONY

HB 1427

Testimony 1

Testimony HB1427

Representative Ron Guggisberg

District 11 Fargo

Chairman Keiser and members of the Industry Business and Labor Committee,

I am before you today in to testify in support of HB 1427. This bill would create what is referred to as mental-mental coverage for North Dakota's First Responders. Under current law, to be entitled to benefits for a mental injury the injury must have arisen from a physical injury. For example, if a construction worker injures his back and as a result of that injury suffers a mental condition the treatment would be covered as a work related injury. If the mental injury is not accompanied by a physical injury it is not covered. Another example of this could be a vehicle accident on the highway involving two responders. If a passing vehicle strikes the two responders killing one and injuring the other, the injured responder would be covered for their physical injury. If the responder develops a mental condition because of the physical injury they would be covered. If, however, the responder suffers mental injury because of the incident itself the responder would not be covered.

Our first responders are certainly aware they will witness difficult incidents through the course of their careers. Because of this, precautions have been taken to minimize the consequences. In most cases responders covered under this bill have resources available to help them cope with traumatically stressful situations. These include informal debriefing and structured post traumatic stress debriefings from peers and or professionals in the community. What this bill

would do is take care of responders who either do not have these services available to them, or need help beyond what is available.

Passing this bill will not only send a message to our responders that we will take care of them in their time of need, but will get them back to a more productive role as responders. In the case of our full time responders, when they are suffering from post traumatic stress they are less productive. By getting them the treatment they need we will get them back to full performance as soon as possible. In the case of volunteers, critical stress incidents may drive them from their careers as volunteers; this is costly to North Dakota. In a news story over the weekend Bismarck Rural Fire Chief Al Klein explained retention concerns he is faced with, "Our biggest issue I think is keeping the people we get on board once we have them trained," According to the National Volunteer Fire Council, the cost of training and equipping a volunteer firefighter just over \$10,000. Treating these issues will keep more volunteers on the force to protect their communities.

The opposition will say this is an "open door" or a "camel's nose". But just last year the State of Nebraska passed a bill with the same language. Their legislative fiscal analysis estimate was just under \$7,500 annually. North Dakota, with a population one-third of Nebraska's could, using their estimates can assume less than \$2,500 average cost. After reading the testimony and debate from Nebraska they had the same arguments. The opposition did not believe the fiscal note. The opposition attempted to amend the bill by limiting the duration of coverage and dollar amount. Both attempts failed. The bill ultimately passed with a 40-5 vote, with 3 present and not voting and 1 excused and not voting. Since the passage of the bill no claims have been filed.



One Hundred First Legislature - Second Session - 2010
Introducer's Statement of Intent
LB 780

Chairperson: Steve Lathrop
Committee: Business and Labor
Date of Hearing: February 08, 2010

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

Current law disallows workers' compensation benefits for mental injuries suffered in the absence of corresponding physical trauma. LB 780 would create a limited exception for first responders who only suffer mental injury. The mental injury must be a result of extraordinary and unusual conditions as compared to the normal conditions of the employment and cannot result from events which are incidental to employee/employer relations.

Principal Introducer:

Senator Steve Lathrop

PREPARED BY: Doug Nichols
 DATE PREPARED: March 26, 2010
 PHONE: 471-0052

LB 780

Revision: 04

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

Updated to reflect amendments adopted through March 25, 2010.

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2010-11		FY 2011-12	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See Below		See Below	

*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

This bill, as amended, would change Nebraska Workers' Compensation Act provisions relating to personal injuries. The Workers' Compensation Act is amended to state that personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder under conditions as specified in the bill.

This fiscal note is updated to include only the cost and claims experience of first responders in Arkansas and Missouri. Additionally, this updated fiscal note clarifies the estimated impact to the state and the political subdivisions based on further information received by the Legislative Fiscal Office analyst (LFO).

The cost information presented directly below includes both the estimated impact to the state and to political subdivisions: \$7,472 per year total state and local estimated impact. It appears from the cost and claims experience of first responders in Arkansas and Missouri that this information included both state-level first responders, such as the State Patrol, and local-level first responders, such as local police and firefighters. The LFO is not able to separate the state and local impact at this time.

This updated fiscal note provides summary information first, followed by state-specific information, and then the responses of agency and political subdivisions. All numbers are rounded.

Cost and Claims Summary Information

The following summary table uses the cost and claims experience of first responders in Arkansas and Missouri to estimate a cost to Nebraska from this bill (amounts rounded):

Average Cost Per Claim: Arkansas 2006-2009	2,385
Average Cost Per Claim: Missouri 2006-2009	5,627
Average Cost Per Claim: Average of AR + MO	4,006
Estimated claims per year in Nebraska: State and Local	2
Estimated cost per year in Nebraska: State and Local	7,472

For "Estimated claims per year in Nebraska", the LFO calculated this number as follows (amounts rounded):

State	Population as of July 1, 2009	NE population as a percent of AR and MO	Average annual mental only claims for first responders from 2006-2009	Estimated # of mental only claims for first responders adjusted to NE population	Estimated # of mental only claims for first responders in NE. Avg of AR & MO
Arkansas	2,889,450	62%	3	2	
Missouri	5,987,580	30%	7	2	
Nebraska	1,796,619				2

Both of these states are larger than Nebraska. In order to estimate the potential number of claims in Nebraska, Arkansas and Missouri's average number of actual claims was adjusted to a Nebraska estimate based on population.

States with Similar Provisions

Arkansas ←

Mental only injuries are excluded unless the claimant was a victim of a crime of violence, the condition must be diagnosed by a psychiatrist or psychologist, benefits capped at 26 weeks, death benefits available only if claimant dies from the condition within one year from the DOI. Ark. Code. Ann. § 11-9-113.

LFO has received additional information from the state of Arkansas that contains occupation codes and titles that appear to be first responders, and this information is shown in the following table (amounts rounded):

First Responders Mental Only - AR occupation codes and titles	Amount Paid				Average
	2006	2007	2008	2009	2006-2009
occupation 418 - police and detectives public service	22,314				
occupation 417 - firefighting occupations	0				
occupation 418 - police and detectives public service	0				
occupation 418 - police and detectives public service		0			
occupation 418 - police and detectives public service			1,200		
occupation 418 - police and detectives public service			+		
occupation 418 - police and detectives public service			0		
occupation 418 - police and detectives public service			339		
occupation 418 - police and detectives public service				0	
occupation 416 - fire inspection and fire prevention				0	
Total Cost	22,314	0	1,539	0	5,963
Total Claims	3	1	4	2	3
Average Cost Per Claim	7,438	0	385	0	2,385
+ case is still open but no cost data received.					

Arkansas's law as it applies to first responders is probably narrower than this bill because LB 780 is not limited to crimes.

Missouri

The Missouri statute reads as follows:

Mo. Rev. Stat. § 287.120 (2000):

8. Mental injury resulting from work-related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and extraordinary and unusual actual events.

9. A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

10. The ability of a firefighter to receive benefits for psychological stress under section 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

Missouri's law as it applies to first responders appears to be similar to this bill because the Missouri language states that "the stress is work related and was extraordinary and unusual".

The following table uses cost and claims information for first responders from Missouri (amounts rounded):

Total Case Costs for Firefighters, Police Officers and Hospital: All Other Employees					Average
	2006	2007	2008	2009	2006-2009
Averages for the cases that were closed with costs	5,228	6,401	6,112	4,769	5,627
Number of cases that were used in calculating the averages	8	9	10	2	7

Table Notes:

For 2009, Missouri eliminated 4 specific cases that would have greatly inflated the average costs. The stipulations for these cases clearly state the employer and insurance company did not agree this was a valid claim; they disputed the compensability of the claim and were only settling with the employees to close an open case and relieve the employer's trust of any liability. Upon further contact with Missouri, it appears that these cases involved personnel actions, which are exempted under the provisions of this bill.

The National Council on Compensation Insurance, Inc. did an estimate of LB780 and their estimate used information from states with similar provisions to this bill. NCCI manages the nation's largest database of workers compensation insurance information and they also determine the cost of proposed legislation (taken in part from their website).

NCCI's conclusion is as follows:

[NCCI] analyzed five years of losses for first responders' mental injuries and illnesses for states with similar statutory language (Alaska, Colorado, Maine, Missouri, Nevada, New Mexico, Oregon, South Carolina, and Utah). Each of these states had, at most, a negligible amount of benefits paid or expected to be paid (i.e. reported case reserves) for those types of claims.

The analysis above indicates that any increase in Nebraska's overall workers compensation costs would be negligible if LB 780 is enacted. The proposed bill may have a negligible to moderate impact on first responder class codes depending on the interpretation and adjudication of these types of claims.

A copy of the entire NCCI analysis is available from LFO upon request.

Agency Responses

Administrative Services (DAS) estimates that the amended bill will result in 7 claims per year for a total cost of \$388,954 per year. Their response is attached.

LFO notes that the Administrative Services (DAS) estimate of 7 additional claims per year seems high based on the cost and claims experience of first responders in Arkansas and Missouri.

The DAS estimate of \$46,304 per mental only claim seems high based on the cost and claims experience of first responders in Arkansas and Missouri.

DAS states that they will have litigation and expenses of \$92,608 per year. See their response for details. This seems high considering the cost and claims experience of first responders in Arkansas and Missouri.

DAS charges state agencies an assessment to pay for workers' compensation costs. If the costs of this bill are closer to the estimate of DAS rather than the LFO estimate based on the cost and claims experience of first responders in Arkansas and Missouri, then workers' compensation assessments could be adjusted to reflect the additional costs of the DAS estimate.

Workers' compensation payments come from Fund 58920 - Workers' Compensation Claims. The beginning balance in FY2006-07 was \$9.5 million and the ending balance in FY2008-09 was \$22.6 million. Based on the large balance existing in this Fund, if the costs of this bill are closer to the DAS estimate, then there appear to be sufficient funds to cover the additional costs until the assessments can be adjusted.

The Workers' Compensation Court states that there would likely be increased expenditures from the Workers' Compensation Trust Fund due to this bill. Vocational rehabilitation benefit payments are made from this fund if, due to a work related injury, a worker is unable to return to suitable employment for which he or she has previous training or experience. This bill would allow compensation for a new class of injuries (purely mental injuries without a causal connection to a physical injury), a certain percentage of those new cases would qualify for vocational rehabilitation benefits. However, because this type of injury has not been previously compensated under the Workers' Compensation Act, the court has no basis for determining how many of those cases would qualify for these benefits.

The court also states that this bill could result in an increase in workload for the judges and staff in processing cases relating to this new type of injury, although this is impossible to quantify. At this time the court does not anticipate that the additional workload would require an increase in staffing or other substantial court expenditures.

IMPACT ON POLITICAL SUBDIVISIONS: The City of Lincoln estimates that this bill will increase their workers' compensation expenditures by \$130,726 per year. This estimate seems high based on the cost and claims experience of first responders in Arkansas and Missouri.

48-101.01. Mental injuries and mental illness; first responder; compensation; when.

(1) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder if such first responder:

(a) Establishes, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(b) Establishes, by a preponderance of the evidence, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

(2) For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.

(3) For purposes of this section, first responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Source: Laws 2010, LB780, § 1. **Note:** For applicability of this section, see section 48-1,111.

48-1,111. Laws 2010, LB780, changes; applicability.

The changes made by Laws 2010, LB780 to the Nebraska Workers' Compensation Act apply only to personal injuries that occurred on or after July 15, 2010, and before June 30, 2014.

Source: Laws 2010, LB780, § 4.

House Bill 1427

Professional Firefighters of North Dakota

01/25/2011

Mr. Chairman and members of the committee, my name is Justin Adolf and I am the President of the Professional Firefighters of North Dakota. I am here today representing over 300 firefighters of the PFFND and asking for a "DO PASS" recommendation.

Our profession is filled with many different jobs and calls. One moment we are fighting a fire and the next we can be called to a car accident. We may have a medical call and turn around and respond to a building collapse. The day of a professional firefighter is always changing and we must be able to adjust. Several calls over a firefighter's career can be very traumatic to understand the trauma that ensues from an accident or a fire or the mind of an individual who has done something horrific to someone else. These scenes are all part of our job and we doing them well.

We sometimes have to deal with scenes that might shake us to the core. Accidents and scenes with children are always the worst, but we manage most of

the time by taking care of each other. We are like a family around the firehouse, if someone is having trouble with a call we most of the time see that and help each other get through it. If this is not enough we can set up a Critical Incident Stress Debriefing (CISD), members responding to the call get together and try to talk out our feelings, which are very helpful. I have been to two of these in my career and without a doubt they help a lot. I can also say that even after these CISDs there are somethings you have a hard time getting through.

For example, I responded to a call a few years ago with a tractor trailer and a compact car. The semi ended up tipping over on the car with a full load in the trailer. The two passengers of the car were killed instantly. It was a mother and her son returning from a concert in Winnipeg and heading back to Indiana. The mother was doing everything correct, driving way under the speed limit for the weather conditions, using their seat belts, and paying attention to the road. Two semis were trying to pass each other and in a hurry and this mother and son paid the price. This call really hit me and all other firefighters on scene very hard. It took us two and a half hours to remove the trailer. We went back to the stations, talked about the call and went through a CISD. These things all help and for me they let me get through this incident. Or course I still think about it when I am

passing a semi. This is just an example of the very stressful calls we may go on, and everyone does not deal with the stress in the same manner.

This bill would offer the suffering first responder get the help that they may need to deal with the stress in a healthy manner. A firefighter needs to see a doctor for a broken leg or arm, but why would that same firefighter not be covered for a mental stress at an incident that may make them quit their job or do something worse. Many hours and a lot of funds are placed into training and making a great firefighter, why would we not give them the tools to keep them on the job and protecting our cities.

In closing, firefighters are a different breed of people. We take care of each other whenever we can like a second family. We are here today to ask that you help us take care of our own and help make us the best firefighters that we can be. With that I again ask for a "DO PASS" recommendation and would like to answer any questions you have.



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1427
January 26, 2011

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing the North Dakota Chamber of Commerce, the principal 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 and all Workforce Safety hearings we are also representing five local chambers with over 5,000 members and seven employer associations. I have attached a list of those parties to my testimony for this hearing only. As a group we stand in opposition to HB 1427 and urge a do not pass from the committee on this bill.

This is the first time we have appeared on a first responder or law enforcement bill on WSI issues as we have chosen to let policy be set by the legislature in regard to these classes of workers. We cannot be without a position on this issue. We believe that any initial move to compensation for mental injuries has the potential for litigation nightmares and will lead to places we do not want to go in the courts and in future legislative sessions. Questions of injury and degree of injury in mental/mental cases will always be highly subjective and should be avoided for that reason. Most states have all private insurers have avoided coverage for these reasons and those that allow them have them very narrowly defined. In the Senate hearing on mental injuries in SB 2093 Director Klipfel testified "Claims of mental injury arising from a mental stimulus provide a particular problem because there is no physical manifestation of the claimed injury, nor is the mental stimulus objectively measureable since each individual reacts differently to stimuli. As a result, benefits are unpredictable leading to increased litigation and higher costs." The current policy that mental/mental are not part of WSI compensable benefits should be upheld and this bill rejected.

Thank you for the opportunity to appear before you today in opposition to HB 1427. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS

2011 House Bill No. 1427
Testimony before the House Industry, Business, and Labor Committee
Presented by: Rob Forward, Staff Attorney
Workforce Safety & Insurance
January 26, 2011

Good morning Mr. Chairman and Members of Committee:

My name is Rob Forward. I am a staff attorney at Workforce Safety & Insurance (WSI) and on behalf of the agency I am here to offer technical assistance on HB 1427.

This bill proposes to create a new benefit and allow claims by first responders for mental injuries caused by mental stimulus, excluding conditions caused by human resource situations like terminations, evaluations, demotions, et cetera.

Currently, claims for mental injuries are accepted when they are caused by a physical injury but only when that injury is at least 50% of the cause of the mental condition, and only when the mental condition did not preexist the injury. This law applies to the state's entire workforce, not just first responders.

As you review the language of HB 1427, you may want to consider the following:

- WSI's actuaries are not able to price this bill because there is no reliable claims data to analyze in North Dakota or other states;
- The language of the bill is from Nebraska, but there is a limitation from the Nebraska statute that was not included in HB 1427. Nebraska restricts these claims to employment conditions that were "extraordinary and unusual in comparison to the normal conditions of the particular employment." This limitation, or the lack of it, is meaningful if there are to be comparisons to Nebraska's fiscal information. In other words, the

proposed North Dakota version would cost more than Nebraska's legislation;

- The bill proposes to include claims from firefighters and ambulance crews who are volunteers; and
- The bill does not account for nonwork stimulus that contributes to the condition, and does not account for preexisting mental condition;

This concludes my testimony. I'd be happy to answer any of your questions.

HB 1427

Page 2 line 13-14 delete- "there is medical causation between the mental injury and the employment condition"

Page 2 line 13 after that insert- "the condition causing the mental injury was extraordinary and unusual in comparison to the normal conditions of the particular employment and that there is medical causation between the mental injury and the employment conditions."