

FISCAL NOTE
Requested by Legislative Council
01/10/2017

Bill/Resolution No.: HB 1261

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

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

see attachment

- 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.*

see attachment

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: John Halvorson

Agency: WSI

Telephone: 328-6016

Date Prepared: 01/13/2017

**WORKFORCE SAFETY & INSURANCE
2017 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION**

BILL NO: HB 1261

BILL DESCRIPTION: Mental-Mental Injuries/Wage Calculation and Presumption of Compensability for Volunteer Firefighters and Other Emergency Volunteers

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 makes a mental injury arising from a mental stimulus compensable; alters the average weekly wage coverage for volunteer firefighters and other emergency volunteers; and creates a presumption of compensability for volunteer firefighters and other emergency volunteers for certain conditions.

FISCAL IMPACT:

Section 1

Not quantifiable due to insufficient data to permit a comprehensive evaluation of the potential rate level and reserve impact of this proposed legislation. However, WSI anticipates that, if passed in its present form, the legislation will act to significantly increase both rates and reserves. Currently, workplace psychiatric injuries are compensable only if caused by a physical injury and the physical injury is determined to be 50% of the cause of the condition and the condition did not pre-exist the work injury. Further, a mental injury arising from a mental stimulus is not a compensable injury. The proposed legislation eliminates all the above criteria.

Prior to the 2015 legislative session, Sedgwick was selected by the State Auditor's Office to conduct the 2014 Performance Evaluation of WSI. Element Eight of this study was a review of providing coverage for Post-Traumatic Stress Disorder (PTSD). The analysis was limited to three scenarios: (1) first responders; (2) victims of violent crimes; and (3) witnesses to sudden and extraordinary events in the workplace. The range of the annual additional costs of providing coverage in these circumstances was very broad, ranging from a low of \$1.2 million to a high of \$56.6 million.

As detailed in the interim study, approximately one-half of the states do not cover mental injuries where there is no physical injury or cover mental injuries where there is no physical injury in very limited number of specific exceptions. The other half of the states cover mental injuries with fewer restrictions. The only example of very broad mental health-related workers' compensation claim experience we could locate was some anecdotal information from Australia, specifically Victoria. It was reported that \$273 million was paid out in 2013-14 in Victoria alone for workplace related stress claims. The mental health-related complaints have become Victoria's third leading workplace injury.

Section 2

The fiscal impact of establishing a base wage cap for volunteer firefighters and other emergency volunteers in Section 2 of the bill is not quantifiable. However, the fiscal impact on the volunteer firefighter and emergency volunteer classifications will result in future upward rate modifications as this increase in benefit is evidenced in the data.

Section 3

We do not have access to sufficient data to permit a comprehensive evaluation of the potential rate level impact for Section 3 of this proposed legislation. However, WSI anticipates that, if passed in its present form, the legislation will act to increase costs for the volunteer firefighter and emergency volunteer classifications. To the extent that such costs increase, local governmental entities will be faced with higher workers compensation premiums.

DATE: January 13, 2017

2017 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1261

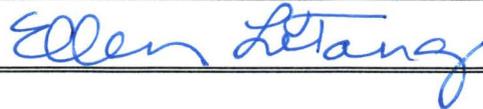
2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1261
1/16/2017
26931

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Competition between the government & private industry & to require a report to the legislative management.

Minutes:

Attachment 1, 2, 3, 4, 5

Chairman Keiser: Opens the hearing of HB 1261.

Representative M Nelson-District 9: Attachment 1.

6:45

Rep Ruby: You talked about the volunteer aspect, the PTSD's.

Rep M Nelson: The PTSD is not limited to volunteers.

Rep Ruby: Under the volunteer aspect, determining the wage off of their other occupation, basically they are paying the company they work for full or part time or retired. Would have to pay benefits based off that salary even though no premium has been paid at that level. Am I reading that correctly.

Rep M Nelson: That's the way it was & it was rescinded. The uncovered wages are not figured in anymore. When somebody has covered wages, it still can be figured like it was before over the average weekly wage but, everyone would be payable, if not less than the average weekly wage. Many volunteers have a small amount of minimum wages but they would get minimum of 60%. The problem is so many are volunteers with different situations. This is a way to stabilize it & give everyone a reasonable benefit to compensate them. Then you are talking about 100% of the average daily & those people with more wages will be paid at 120%. This pool will all be paying in that rate.

Rep Ruby: You are bringing the PTSD or mental mental injury. One of the problems for WSI is that it's not preexisting & usually one event caused it with work related. That is the difficult thing every time we see this bill. Do you have any way to address that or talked to WSI about it?

Nelson: I recognize that there is that problem under medical care. I also recognize that the basic law is sure & certain relief. There is certainly no relieve under the current law. This isn't any different than any other injury from work.

Chairman Keiser: So I understand it, we are taking on page 2, the physical injury that leads to a mental because, page 3, we are striking a mental injury arising from mental. What we are doing is backing all mental.

Rep Nelson: Yes.

Chairman Keiser: I know your intent is PDST, but what about depression? That's a much broader definition than PDST. Would that be covered.

Rep Nelson: If it's cause by the work, yes it would be covered with evidence.

Waylon Hedegaard~President of the ND AFL-CIO: Attachment 2.

15:11

Chairman Keiser: As the bill is written, if I have a heart condition, went to a doctor, schedule an appointment for next week, I'm working with a buyer & I have a heart attack. Is that covered with WSI with this bill?

Hedegaard: If you had heart attack after the call?

Chairman Keiser: During or an hour after the call, every indicator indicated that I was going to have a heart attack.

Hedegaard: I'm not sure how to answer that question, I'm not a medical person. We expect these people to do a critical for nothing. If we want them to continue to do it, we have to offer them some basic protections so they don't have to use their personal finance.

Dustin Peyer~Volunteer Fire Department: Attachment 3.

Chairman Keiser: Anyone here to testify in opposition?

Tim Wahlin~Director of Injury Services with Workforce Safety & Insurance (WSI): Attachment 4.

27:06

Rep Kasper: Page 3, third paragraph, I need more explanation. Someone has a heart attack, do they have to be injured after the heart attack. Explain what is required to be qualified.

Wahlin: The heart of the attack would be considered the injury & all the damage that came as a result would be considered an injury.

Rep Kasper: What we are saying, is that the injury is actually the heart attack, which is another condition?

Wahlin: That's the way I understand it.

Chairman Keiser: Rep Nelson talked about the whole for volunteers that if they are injured while working as a volunteer, their health insurance says they won't cover it & WSI won't cover it. Is that what is happening out there?

Wahlin: If you look at any sort of insured medical coverage that I'm aware of, one of the exemptions in any of those mental coverages is percolated injuries. My experience in ND is, generally with Blue Cross/Blue Shield, to the extent there is a work related injury, they will deny coverage. They will become a whole when coverage is denied from WSI, meaning it is a work related injury because of something you did, it is not compensable anymore. One of them is fraud, timely filing, those types of things there that were failure to secure worker's compensation benefits, that was otherwise available to them. In that case, the private health insurance company, now it's not ours either. This creates a significant liability for an injured worker who may have a huge injury.

The opposite is true, to the extent that when we say it's not a WSI covered or work related event, those insurers generally will always step in & cover to the extent that we say its half ours & half something else. Generally, they will jump in & pay their half. Because it's something you've done, you don't qualify for benefits. That is where the hole is created.

Chairman Keiser: If they are excluded because of an exclusion in our law, they are going to be covered unless they have committed some act like fraud or something else, that both side can then say, you will not be covered.

Wahlin: That's my understanding & experience.

Rep Ruby: I was going to clarify that too. For instance, a volunteer first responder is injured in a physical injury, they are currently covered?

Wahlin: Yes.

Rep Ruby: How do you base the premium & does that get charged ahead of time?

Wahlin: You absolutely correct. All volunteer firefighters, first responders in the state of ND have the same worker's compensation coverage that I have & most others. That coverage can't be charged, necessarily on wages, which it is for you & I. It is instead charged at a rate on the size of the fire district base on each 100 residences in that district. It's the only place we do it, we charge rate base upon the size of the district, not the size of the department.

Rep Ruby: Not only it would be adding to premium on covering all mental injuries, but also the presumption clause, then would be extended to all those? I didn't see how that was broke down on the fiscal note.

Wahlin: To the extent that pricing the increase that will be experience by the volunteers is in exact. We know how much the presumption costs for the whole full time based firefighters but this is a modified form of coverage for the volunteers. We can calculate the difference based on full time versus volunteer, however that probably overstates the amount. Then you also have the offset that the physical condition of the volunteer versus the full time paid, may be very different as well, which may in fact increase the account. We don't have exact ways of pricing.

Rep Dobervich: On the WSI presentation given this morning, one of the things that helps keep our cost low in ND is the outstanding training programs in reducing workplace injury. Does WSI offer any types of training for emergency workers, whether paid or volunteered, that deals specifically with developing resiliency when it comes to trauma?

Wahlin: Yes & no. Yes, we provide significant amount of funding & access by the firefighter's association that they will use for training that they have to apply for. For the no answer, I don't know of anything where there is psychological training that I'm aware of.

Rep Dobervich: Of those trainings, has WSI set criteria about how that must be used or components in the training to insure there is evidence based & that emergency workers are learning techniques that have been proven to litigate this stress. Or is it just, we applied & they chose what kind of training?

Wahlin: There are a number of criteria that are reviewed in order to be considered a grant. I don't think there is anything in there which causes WSI to review the materials that says it's effective.

Rep Dobervich: It sounds like there is no evidence that this approach that helps litigate any of the stress that our ND emergency responders are going through. Has it been studies for the ethnicity that this is an approach to try to prevent PTSD & other psychological distress from trauma?

Wahlin: I can tell you that I'm not aware of anything that WSI done to review the ethnicity one of the safety training of health.

Rep Laning: Regarding the whole, would you see a significant problem in those situation where WSI & the insurance company not necessarily in agreement to temporarily splitting the costs until it gets settled, thereby relieving the financial stress on the injured person?

Wahlin: I see less problems with WSI to do that than to gather all these private insurers to get them to sign off on it. Again this is the body that directs WSI what we should be doing.

Rep Ruby: In section 1, that deals with all the requirements, conditions to receive benefits, how do you determine those requirements. Also, with the other injuries or potential injuries, you have safety programs, training & materials that are available, would you think at some

point at looking at some kind of way to litigate costs? Would you look at doing something preemptive?

Wahlin: To the extent that section 1 modifies the mental/psychological, essentially it takes down all the barriers.

Andy Peterson~Greater ND Chamber: Attachment 5.

45:15

Arik Spencer~ND Motor Carriers Association: We are also here in opposition. As I look at section 1 of the bill, it causes the most concern. It appears to open mental/mental up across the board. This language opens doors. Further, if you look at the financial note, the cost could be substantial.

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

Darrell Francis~Des Lacs Fire Department: I wanted to say one thing, there is gap insurance. The whole you talked about, we are looking at doing that for the fire department just for the firefighters, the gap insurance, when they are active, coming or going home from a fire.

Rep Ruby: The gap insurance, when do you envision that coverage?

Francis: We are working on it now, there are some departments already have it.

Rep Ruby: In your experience, have you seen any PTSD or mental stress in your area?

Francis: Yes, it's basically accumulation

Scot Nodland~Citizen of ND, not a firefighter or lobbyist: I learned today that 90% of our firefighters are volunteers. Listening to his testimony, it baffles me that he would have to try to figure out how to cover that gap. I don't know if the bill is appropriate, if it needs to be adjusted or thrown out, I have no idea. What we have just listened to is important.

Chairman Keiser: What are the wishes of the committee?

Rep Ruby: Moves a Do Not Pass.

Vice Chairman Sukut: Second.

Rep Ruby: We've addressed this issue over in the past. Some of these things are too broad. I'm going to support the motion.

Rep Kasper: I'm going to support the motion for two reasons. It opens & the gap insurance.

Chairman Keiser: I will support the motion. The gap insurance is new. If we move the mental to WSI, we will bankrupt the system on the issue.

Roll call was taken on HB 1261 for a Do Not Pass with 11 yes, 2 no, 1 absent & Rep Ruby is the carrier.

Date: Jan 16, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1261

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider _____

Motion Made By Rep Ruby

Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	<u>Ab</u>		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee		X
Rep Kasper	X		Rep Dobervich		X

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep D Ruby

REPORT OF STANDING COMMITTEE

HB 1261: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).
HB 1261 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1261

HB1261

Rep. Marvin E. Nelson, District 9.

1/16/2017

House Industry, Business and Labor

HB1261 Does three things

1. Puts in a floor for benefits for those generally called volunteers to be figured at the average state wage.
2. Creates a carve out which I took from the private disability coverage many fire departments are now purchasing of if it happens within 24 hours the presumption is it is related to the call.
3. Provides for mental/mental coverage.

Disability benefits are figured like it is for all workers but puts a floor at the average weekly wage. Currently benefits are between 60% and 125% of the average weekly wage if the worker has covered wages. This puts the floor at the average weekly wage. With many volunteers being self-employed, it can be problematic when the businessperson has a loss or shows low income. It also is a problem for the volunteer EMT's in some cases when for instance the volunteer is a homemaker, doesn't show a lot of income, but if they are disabled, it can have a devastating effect on the family financially. The volunteers are their own pool.

The carve out is in response to the situation that it is possible and indeed has happened where the health insurance of the volunteer says it's related to the work, and WSI says it is not. I took it from the private disability insurance that many fire departments are now buying to cover their firefighters. The idea is the volunteer should, at the least, be covered by one or the other. I admit in reading the bill, I have become a bit unsure if it actually closes the ability of the health insurance to say it's job related after the 24 hours. I would ask the committee to consider whether it does or doesn't because the desire is to not have a hole the volunteer can fall into. It is certainly possible to have heart attacks, strokes and so forth longer than 24 hours after being on call that are job related but it is also

possible to have them sooner than 24 hours when they really aren't, the need to make sure there is not a hole the volunteer falls into where the different levels of proof and procedures between WSI and health insurance create one.

The is also the mental/mental coverage. We see situations like the protest where workers are subjected to high levels of stress and it is in the public's interest to see that they receive treatment. Not doing so can jeopardize the lives of the worker, family, and the public. Armed robbery has become more common in the state these last years and there too the worker can be mentally affected and indeed disabled from mental stimulus, the threat of life and limb. It is in our best interests to treat the worker of his injuries so that he may continue to be productive.

**Testimony for 2017 House Bill 1261
House Industry, Business and Labor Committee
Presented by Waylon Hedegaard
President of the North Dakota AFL-CIO
January 16th.**

Mr. Chairman, Members of the Committee:

My name is Waylon Hedegaard, President of the North Dakota AFL-CIO. I am here today to provide testimony on House Bill 1261.

Our emergency responders do a job that is critical to our society. They are expected to run into burning buildings to save our children, confront threats to public safety and preform dozens of other dangerous activities in the course of their jobs. In return, they have every right to expect to be covered in those cases where the situations were too much for their physical and mental health. With our first responding volunteers, they do much of this for little compensation.

It's not too much to grant these volunteers protection for heart attacks and stroke that occur immediately after the end of the emergency situation. In addition, we need to offer our emergency responders coverage for emotional trauma caused by some of the horrific events that some of these people may go through in their careers.

We expect amazing things out of our first responders, and they are justified in expecting basic protections.

I urge the committee to vote yes on HB-1261.

Thank you for hearing me, and I would stand for any questions.

HB 1261

Jan 16, 2017

Dustin Peyer
328 SE 1ST
Driscoll, ND 58532
!(701)-421-2685

Labor and committee

VFD - Means Volunteer Fire Department
Incident commander typing NWCG standards
Engine typing NWCG standards
NWCG - National Wildfire Coordinating Group
IA-Initial Attack first 24hrs
EA-extended after 24hrs

This is a good deal for our local emergency responders. Not only does it give better coverage but it eliminates the 24hr loophole. I want to specifically talk about one amendment,

HB 1261

if with in twenty four hours of a volunteer firefighter, emergency or disaster volunteer, community emergency response team member, or volunteer health practitioner performing volunteer services or participating in training under this chapter, the volunteer experiences an injury due to heart attack or other heart-related disease, stroke, or physical injury caused by mental stimulus, it is presumed with reasonable medical certainty the injury was caused by the employee's employment.

This is extremely important to secure protection against heart attacks. As a Wildland firefighter for 10 years I personally know the stress of IA and EA. In ND we have the most explosive potential for extreme fire behavior based on 2 things. 1. Grass is a fine fuel that can cure in as little as 1 hr and is extremely dangerous as just about anything can ignite a grass fire under the red flag conditions. 2. Wind. ND is one of the windiest states and wind driven fires are extremely dangerous. Put these two together and you have a recipe for disaster. Take the Umary fire a couple years back. VFDs from 60 miles away were being called. Anyone and everyone with water capacity was jumping in trying to help. extreme spring dry conditions and an abundance of fuel drove that fire right up to many door steps in a matter of minutes. That same spring I was dispatched to Standing Rock for red flag warnings and heavy IA going on there. My second shift a fire broke out just south of cannonball along gravel county road 8th AVE SW the road. We were about 40 miles away when we got the call. We were the third type 6 engine to respond and already were having trouble trying to hold the pavement as a anchor point. we saw the fire jump the road and we went in the ditch to try and catch it but the 40mph sustained winds were to much with in seconds the ditch went from 5 square feet to five acres and raced into a cut corn field. We got another truck behind us cut the fence and started trying to knock down the flames. They grew to 30-40ft in height and we had to pull back. Additional resources were arriving along with aircraft and now the fire now was at least 200 acers in a matter of about 45 minutes. The radio was full of chatter, in coming resources, aircraft size up, structures threatened, heavy equipment coming in, all this going on while two type 3 Incident commanders gained control and

we made a solid hold on a gravel road after a successful back burn operation. With the fire now somewhat corralled between the Missouri river and a gravel road we were gaining on it. by this time the fire was approaching 1000 acres and about 4hrs had gone by. more recourses showing up. fire crossed the gravel road and equipment was brought in way out in front to made a fire break. we had a short window where the wind died for about ten minutes. Along with aircraft the fire was slowed enough to start another back fire operation. Spots were contained and we had the fire stopped. Mop up operations started and later that night AAR was conducted. To my surprise at AAR at least 100 trucks had answered the call. I learned the corn field we were unable to hold earlier that day took 6 trucks to stop. I learned every structure was saved. I learned the fire was stopped but we had a lot of work to do to secure the back side of the fire that was backing down through some heavy cotton wood river bottom land. The wind had stopped as a wind shift was predicted for midnight that night. VFDs from 60-80 miles answered the call. The smoke was seen from Bismarck. The fire known as the big lake fire was only defeated through the courage of many people from all backgrounds who came together for a common purpose. My engine was assigned night shift and we worked through the night going on 28hr shift. we were relieved in the morning round 9 am but still had to rehab the truck to get ready for the next day and were told to keep our phones on and be IA ready. I ask that the amendments to 1261 be passed without objection. The stress of a firefighter is one that is not easily described. I could tell you about ten years worth of stories about stress related t the job. During the 2016 Wildland firefighter refresher course it was discussed that heart attacks are the #1 killer of firefighters. Its not the fire, its what comes from serving in the job for years that takes a toll on our bodies. Thank you

**2017 House Bill 1261
Testimony before the House Industry, Business and Labor Committee
Presented by Tim Wahlin
Workforce Safety and Insurance
January 16, 2017**

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Director of Injury Services with Workforce Safety and Insurance (WSI). On behalf of WSI, I am here to provide information on House Bill 1261. The WSI Board of Directors does not support this bill.

This bill proposes to allow coverage for mental and psychological conditions and proposes various changes to the coverage and benefits received by volunteer firefighters, emergency or disaster volunteers, community emergency response team members and volunteer health practitioners.

Section 1. Currently, N.D.C.C. section 65-01-02(10)(a)(6) allows for the payment of claims for mental injuries when the mental injuries are caused by a compensable physical injury, the physical injury is at least 50% of the cause of the mental condition, and the mental condition did not preexist the physical injury. North Dakota law specifically excludes mental injuries arising from mental stimulus. N.D.C.C 65-01-02(10)(b)(10). These are commonly referred to as "mental-mental" claims.

The bill proposes to cover any mental or psychological condition that arises out of and in the course of employment. The bill would remove the requirement that a physical injury must be at least 50% of the cause of the mental condition in order for the mental condition to be compensable.

Mental-mental claims provide a particular problem because there is neither an objectively viewable stressor nor injury. There is no physical manifestation of the claimed injury, nor is there even an objectively viewable stimulus or cause of the claimed injury. The lack of any physical symptom in mental-mental claims is particularly troublesome, because it is felt that if there is a significant mental injury, the injury will

produce at least some physical manifestation, like an ulcer. People who claim mental-mental injuries could also be suffering stress at home or financial problems, which may be much more significant. For these reasons, in 1995, legislation was enacted eliminating mental-mental claims, requiring that alleged mental injuries either be caused by physical injury or that there be a physical manifestation of mental injury. If that physical injury requirement is eliminated, we expect significant difficulties in adjudicating mental conditions that are claimed to be part of a work injury.

Section 2. The determination of the average weekly wage for various volunteers was addressed and the section was modified last session. The language of 65-06-03 was clarified last session to confirm WSI's long standing policy to only replace wages that are secured by coverage. This is the same for all injured workers because the changes made last session to this section mirror the language in the definition of average weekly wage found in N.D.C.C. Section 65-01-02(5), which requires that for inclusion in the calculation of an injured worker's average weekly wage, the wages must be in employment for which coverage is required or is otherwise secured at the date of first disability.

The bill proposes to pay volunteer firefighters disability based on the state's average weekly wage in the event their wages from primary employment are not insured or are lower than the state's average weekly wage. This creates a base average weekly wage for these volunteers if they do not have coverage for their primary wages. No other injured worker receives the benefit of this type of base average weekly wage.

Section 3. Currently, volunteer firefighters, emergency or disaster volunteers, community emergency response team members and volunteer health practitioners are covered by WSI in the same way other workers in North Dakota are covered. To the extent they are injured in a work-related accident, they are entitled to the same benefits as other injured employees in North Dakota. Under NDCC 65-01-02(10)(a)(3) if an employee suffers a heart attack or other heart related disease, stroke or physical injury

caused by mental stimulus, those conditions may be compensable if the employees employment caused the condition and only when unusual stress is at least 50% of the cause of the injury or disease as compared with all other contributing causes combined. The statute goes on to define that unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.

This bill seeks to apply a presumption of causation to certain situations. The committee may be familiar with the presumption clause related to full-time paid firefighters. Normally, an injured employee is required to prove that the injury arose out of and was sustained in the course of employment. However, the presumption clause presumes certain conditions found in law enforcement officers and full-time paid firefighters were caused by their employment and the burden of proof is placed on WSI and the employer to prove it was not. In other words, these conditions are presumed to be attributable to their employment unless WSI can prove they are not.

HB 1261 seeks to use a similar presumption clause for volunteer firefighters, emergency or disaster volunteers, community emergency response team members and volunteer health practitioners performing volunteer services if within 24 hours of performing volunteer services or participating in training they experience an injury due to heart attack or other heart related disease, stroke, or physical injury caused by mental stimulus. The bill removes the requirement that unusual stress caused the conditions and presumes that employment caused the conditions.

WSI believes it is important to point out that in order to qualify for the presumption, a full-time paid firefighter is required to undergo periodic medical examinations which are paid for by the employer. Additionally, the rates paid for this coverage by the employers of the full-time paid firefighter are substantially higher than those paid for volunteer firefighters. Information gathered from the United States Fire Administration's website indicates that as of January 1, 2016 there are: 323 fire departments in North Dakota; 10 have only full-time paid firefighters; 15 are staffed with a combination of full-time paid firefighters and volunteers; and the remaining 298 fire departments are staffed only with

volunteers; there are 539 active full-time paid firefighters and 7,687 volunteers. In addition to the volunteer firefighters, emergency or disaster volunteers, community emergency response team members and volunteer health practitioners would have access to the benefits provided for in the bill. If the presumption were to be applied to these categories of workers the premiums paid for their coverage will increase.

This concludes my testimony and I would be happy to answer any questions you may have.

**Testimony of Andy Peterson
Greater North Dakota Chamber of Commerce
IBL Committee
George Keiser - Chair
HB 1261
January 16th, 2017**

Mr. Chairman and members of the committee, my name is Andy Peterson. The GNDC is described by some in the media as the most prominent business organization in the state. We work on behalf of our members and for the business community at large. We also represent local chambers of commerce and work collaboratively with numerous business organizations. We are affiliated with the US Chamber and the National Association of Manufacturers in Washington DC. As a group we oppose HB 1261.

It is difficult for us to oppose this bill considering the fact that certain volunteers help protect the public and past circumstances that have generated this response. We are sympathetic to those individuals involved and think the bill sponsor did a reasonable job in trying to draft a law that gives a benefit while trying to limit the fund's liability. However, we believe that this initial move to compensation for mental injuries or PTSD is a lawyer's dream and this step will lead to a never ending list of expansions.

Questions of mental injury and the degree of the injury will always be highly subjective and ripe for fraud and should be avoided for that reason. The current policy that they are not part of WSI benefits should be upheld and this bill should be rejected.

Thank you for allowing me to testify, we would support a DO NOT PASS recommendation on 1261. I would now be happy to attempt to answer any questions.