

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1052

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1052
1/4/2023

Relating to preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, an employer conducting business with a known uninsured employer, requests for reconsideration of employer decisions issued by the organization, and privacy of records; and to provide for application.

1:00 p.m. Chairman Louser called to order

Members Present: Chairman Louser, Vice Chairman Ostlie, Representative Boschee, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.
Member Absent: Representative Christy

Discussion Topics:

- Preventative treatment
- Transfer of information
- Calculating employer premiums

In Favor:

Anne Jorgenson Green, Legal Department Director ND Workforce Safety, and Insurance
#12274

Chairman Louser adjourned the meeting at 1:43 p.m.

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1052
1/16/2023

Relating to preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, an employer conducting business with a known uninsured employer, requests for reconsideration of employer decisions issued by the organization, and privacy of records; and to provide for application.

Chairman Louser called to order at 2:35 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representative Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner.
Member Absent: Warrey

Discussion Topics:

- Subcontractors
- Certificate premium
- General contractor due diligence

Art Thompson, Director of Workforce Safety (no written testimony).

Representative Koppelman moved Do Pass on the amendment, #27778, LC #23.8094.01001

Representative Kasper seconded the motion.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	N
Representative Josh Boschee	N
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	N
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	N
Representative Jonathan Warrey	AB

Motion Carries: 9-4-1

Representative Koppelman moved Do Pass as further amended LC #23.8094.01002.
Representative Kasper seconded the motion.

Representative Koppelman withdraws motion

Representative Koppelman moved to amend typo on page 4, line 17.
Representative Boschee seconded.

Voice vote: Motion carries

Representative Koppelman moved DO PASS as amended, LC #23.8094.01002
Representative Kasper seconded the motion.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	AB

Motion carries: 13-0-1

Bill carrier: Representative Koppelman

Chairman Louser adjourned the meeting 3:19 PM

Diane Lillis, Committee Clerk

January 16, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1052

Page 1, line 2, after the fourth comma insert "section 65-04-26.2,"

Page 1, line 7, after the second comma insert "general contractor liability for subcontractors
and independent contractors,"

Page 4, after line 10, insert:

"SECTION 5. AMENDMENT. Section 65-04-26.2 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26.2. General contractor liability for subcontractors and independent contractors.

1. An individual employed by a subcontractor or by an independent contractor operating under an agreement with a general contractor is deemed to be an employee of the general contractor and any subcontractor that supplied work to the subcontractor or independent contractor. A general contractor and a subcontractor are liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage or pay the premium owing. The general contractor and a subcontractor are liable for payment of this premium and penalty until the subcontractor or independent contractor pays this premium and penalty. The liability imposed on a general contractor and a subcontractor under this section for the payment of premium and penalties under this title which are not paid by a subcontractor or independent contractor is limited to work performed under that general contractor.
2. Notwithstanding subsection 1, a general contractor is not liable for payment of any subcontractor or independent contractor owed premium and penalty if the general contractor collects a certificate specifying the payment has been made by the subcontractor or independent contractor, or the general contractor collects a signed form stating the subcontractor or independent contractor is exempt from payment of the premium. A signed form collected under this subsection waives the general contractor's liability for the remainder of the calendar year.
3. Upon request of the organization, a person the organization determines may have information that may assist the organization in determining the amount of wages expended by the subcontractor or independent contractor shall provide this information to the organization.
- ~~3.4.~~ If the organization is unable to obtain complete and reliable payroll information for a subcontractor or independent contractor, the organization may calculate premium using the available payroll information of the subcontractor or independent contractor for work performed under the liable general contractor or a subcontractor as permitted in section 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure coverage or pay the premium owing arises from a single project

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1/16/2023

with a general contractor, the liability of the general contractor and subcontractor is one hundred percent of the amount of premium and penalty owed by the subcontractor or independent contractor. If there is evidence showing the subcontractor or independent contractor was working on multiple projects during the period the subcontractor or independent contractor failed to secure coverage, the organization shall set the amount of the general contractor and subcontractor's liability which may not exceed seventy percent of the total premium and penalty owed by the subcontractor or independent contractor.

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1/16/2023

4.5. The definition of the term "contractor" under section 43-07-01 applies to this section."

Page 4, line 17, overstrike the first "of"

Page 5, line 21, replace "6" with "7"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1052: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1052 was placed on the Sixth order on the calendar.

Page 1, line 2, after the fourth comma insert "section 65-04-26.2,"

Page 1, line 7, after the second comma insert "general contractor liability for subcontractors and independent contractors,"

Page 4, after line 10, insert:

"SECTION 5. AMENDMENT. Section 65-04-26.2 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26.2. General contractor liability for subcontractors and independent contractors.

1. An individual employed by a subcontractor or by an independent contractor operating under an agreement with a general contractor is deemed to be an employee of the general contractor and any subcontractor that supplied work to the subcontractor or independent contractor. A general contractor and a subcontractor are liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage or pay the premium owing. The general contractor and a subcontractor are liable for payment of this premium and penalty until the subcontractor or independent contractor pays this premium and penalty. The liability imposed on a general contractor and a subcontractor under this section for the payment of premium and penalties under this title which are not paid by a subcontractor or independent contractor is limited to work performed under that general contractor.
2. Notwithstanding subsection 1, a general contractor is not liable for payment of any subcontractor or independent contractor owed premium and penalty if the general contractor collects a certificate specifying the payment has been made by the subcontractor or independent contractor, or the general contractor collects a signed form stating the subcontractor or independent contractor is exempt from payment of the premium. A signed form collected under this subsection waives the general contractor's liability for the remainder of the calendar year.
3. Upon request of the organization, a person the organization determines may have information that may assist the organization in determining the amount of wages expended by the subcontractor or independent contractor shall provide this information to the organization.
- ~~3.4.~~ If the organization is unable to obtain complete and reliable payroll information for a subcontractor or independent contractor, the organization may calculate premium using the available payroll information of the subcontractor or independent contractor for work performed under the liable general contractor or a subcontractor as permitted in section 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure coverage or pay the premium owing arises from a single project with a general contractor, the liability of the general contractor and subcontractor is one hundred percent of the amount of premium and penalty owed by the subcontractor or independent contractor. If there is evidence showing the subcontractor or independent contractor was working on multiple projects during the period the subcontractor or independent contractor failed to secure

coverage, the organization shall set the amount of the general contractor and subcontractor's liability which may not exceed seventy percent of the total premium and penalty owed by the subcontractor or independent contractor.

- ~~4.5.~~ The definition of the term "contractor" under section 43-07-01 applies to this section."

Page 4, line 17, overstrike the first "of"

Page 5, line 21, replace "6" with "7"

Renumber accordingly

2023 SENATE INDUSTRY AND BUSINESS

HB 1052

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1052
2/14/2023

A bill relating to preventive treatment, requests for reconsideration of claims decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, an employer conducting business with a known uninsured employer, general contractor liability for subcontractors and independent contractors, requests for reconsideration of employer decisions issued by the organization, and privacy of records; and to provide for application.

9:05 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Employee preventative care
- Privacy records

9:06 AM Anne Green, Legal Department Director, Workforce Safety and Insurance, testified in favor of HB 1052. #20619

9:31 AM Arik Spencer, President and CEO, Greater North Dakota Chamber of Commerce, testified in favor of HB 1052. No written testimony.

9:32 AM Russ Hanson, Association of General Contractors of North Dakota, testified in favor of HB 1052. No written testimony.

9:34 AM Kayla Pulvermacher, Chief Executive Officer, North Dakota Association of Home Builders, testified in favor of HB 1052. No written testimony.

9:35 AM Chairman D. Larsen closed the hearing on HB 1052.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1052
3/6/2023

A bill relating to preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, an employer conducting business with a known uninsured employer, general contractor liability for subcontractors and independent contractors, requests for reconsideration of employer decisions issued by the organization and privacy of records; and to provide for application.

2:51 PM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- WSI Insurance
- Government monopoly
- Contractors' insurance
- Remove responsibility of subcontractors

2:51 PM Representative Ben Koppelman, District 16, West Fargo, North Dakota, testified on HB 1052 and explained the amendment that the House had added to the bill. No written testimony.

3:00 PM Chairman D. Larsen closed the hearing on HB 1052

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1052
030723

A BILL for an Act relating to preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, an employer conducting business with a known uninsured employer, requests for reconsideration of employer decisions issued by the organization, and privacy of records; and to provide for application.

11:11 AM Chair Larsen called the meeting to order.

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Bill review
- Amendment

11:11 AM Senator Klein would like to wait and will speak to the House Chairman regarding the amendment.

11:12 AM Senator Larsen adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1052
3/21/2023

A bill relating top preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, an employer conducting business with a known uninsured employer, general contractor liability for subcontractors and independent contractors, requests for reconsideration of employer decisions issued by the organization, and privacy of records; and to provide for application.

9:14 AM Chairman D. Larsen called the meeting to order.

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics

- Preventive treatment
- Privacy of records
- Contractor liability
- Committee action

9:17 AM Senator Klein moved to adopt the Amendment LC 23.8094.02001.

Senator Kessel seconded the motion.

9:18 AM Art Thompson, Workforce Safety and Insurance Department answered questions from the committee. No written testimony.

9:18 AM Further discussion on amendment.

Roll call vote:

Senators	Vote
Senator Doug Larsen	N
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 4-1-0 DO PASS to ADOPT THE AMENDMENT to HB 1052.

9:20 AM Senator Klein Moved DO PASS HB 1052 as AMENDED.

Senator Barta seconded.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0 DO PASS HB 1052 AS AMENDED.

Senator Klein will carry the bill.

9:22 AM Chairman Larsen closed the hearing.

Brenda Cook, Committee Clerk

23.8094.02001
Title.03000

Adopted by the Senate Industry and Business
Committee

March 21, 2023

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3-21-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1052

Page 1, line 3, remove "section 65-04-26.2,"

Page 1, line 8, remove "general contractor liability for subcontractors and independent contractors,"

Page 4, remove lines 13 through 31

Page 5, remove lines 1 through 23

Page 7, line 2, replace "7" with "6"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1052, as engrossed: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1052 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 3, remove "section 65-04-26.2,"

Page 1, line 8, remove "general contractor liability for subcontractors and independent contractors,"

Page 4, remove lines 13 through 31

Page 5, remove lines 1 through 23

Page 7, line 2, replace "7" with "6"

Renumber accordingly

2023 CONFERENCE COMMITTEE

HB 1052

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1052
4/12/2023

Conference Committee

Relating to preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, and employer conducting business with a known uninsured employer, requests for reconsideration of employer decisions issued by the organization, and privacy of records; and to provide for application.

Chairman Koppelman called to order at 10:00 AM

Members Present: Chairman Koppelman, Representatives Dakane, Ruby, Senators Kessel, Larsen, Klein

Discussion Topics:

- Contractors
- Recommendations
- Subcontractors
- Responsibility

Chairman Koppelman reported that Representative Ruby has been appointed to replace Representative Christy.

Chairman Koppelman lead a discussion on the House and Senate amendments.

Chairman Koppelman adjourned the meeting 10:29 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1052
4/14/2023

Conference Committee

Relating to preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, and employer conducting business with a known uninsured employer, requests for reconsideration of employer decisions issued by the organization, and privacy of records; and to provide for application.

Chairman Koppelman called to order at 9:34 AM

Members Present: Chairman Koppelman, Representatives Dakane, Ruby, Senators Kessel, Larsen, Klein

Discussion Topics:

- Committee work

Chairman Koppelman presented study language to use for a possible amendment, #27585

Senator Klein moved the House to accede to the Senate amendments and further amend; LC #23.8094.02002.

Senator Kessel seconded.

Motion passed 6-0-0

House carrier Representative Koppelman
Senate carrier Senator Klein.

Chairman Koppelman adjourned the meeting 9:50 AM

Diane Lillis, Committee Clerk

April 14, 2023

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4-14-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1052

That the House accede to the Senate amendments as printed on page 1076 of the Senate Journal and page 1389 of the House Journal and that Engrossed House Bill No. 1052 be further amended as follows:

Page 1, line 9, after "records;" remove "and"

Page 1, line 9, after "to" insert "provide for a legislative management report; and to"

Page 7, after line 3, insert

SECTION 9. WORKFORCE SAFETY AND INSURANCE - STUDY GENERAL CONTRACTOR LIABILITY FOR SUBCONTRACTORS AND INDEPENDENT CONTRACTS - REPORT TO LEGISLATIVE MANAGEMENT. During the 2023-24 interim, workforce safety and insurance shall study section 65-04-26.2 regarding the liability of a general contractor or the payment of premium for subcontractors and independent contractors who do not secure required coverage or pay premiums owed. The study must address whether changes can be made to gain efficiencies for those subject to 65-04-26.2 and determine whether changes can be made to increase the effective application of the statute. The study must include research of comparable laws in other jurisdictions and a review of workforce safety and insurance policies and procedures in applying 65-04-26.2. Workforce safety and insurance shall seek input from relevant stakeholders including business personnel and industry groups. Before July 1, 2024, workforce safety and insurance shall report the findings of the study and recommend any statutory changes to the legislative management.

Renumber accordingly

**2023 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL NO. HB 1052 as engrossed

House Industry, Business and Labor Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Klein Seconded by: Kessel

Representatives			Yes	No		Senators			Yes	No
	4-12	4-14					4-12	4-14		
Chairman Koppelman	X	X	X			Chairman Kessel	X	X	X	
Representative Dakane	X	X	X			Senator Larsen	X	X	X	
Representative Ruby	X	X	X			Senator Klein	X	X	X	
Total Rep. Vote			3	0		Total Senate Vote			3	0

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Koppelman Senate Carrier Klein

LC Number 23.8094 . 02002 of amendment

LC Number 23.8094 . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1052, as engrossed: Your conference committee (Sens. Kessel, Larsen, Klein and Reps. Koppelman, Dakane, D. Ruby) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1389, adopt further amendments as follows, and place HB 1052 on the Seventh order:

That the House accede to the Senate amendments as printed on page 1076 of the Senate Journal and page 1389 of the House Journal and that Engrossed House Bill No. 1052 be further amended as follows:

Page 1, line 9, after "records;" remove "and"

Page 1, line 9, after "to" insert "provide for a legislative management report; and to"

Page 7, after line 3, insert

SECTION 9. WORKFORCE SAFETY AND INSURANCE - STUDY GENERAL CONTRACTOR LIABILITY FOR SUBCONTRACTORS AND INDEPENDENT CONTRACTS - REPORT TO LEGISLATIVE MANAGEMENT. During the 2023-24 interim, workforce safety and insurance shall study section 65-04-26.2 regarding the liability of a general contractor or the payment of premium for subcontractors and independent contractors who do not secure required coverage or pay premiums owed. The study must address whether changes can be made to gain efficiencies for those subject to 65-04-26.2 and determine whether changes can be made to increase the effective application of the statute. The study must include research of comparable laws in other jurisdictions and a review of workforce safety and insurance policies and procedures in applying 65-04-26.2. Workforce safety and insurance shall seek input from relevant stakeholders including business personnel and industry groups. Before July 1, 2024, workforce safety and insurance shall report the findings of the study and recommend any statutory changes to the legislative management.

ReNUMBER accordingly

Engrossed HB 1052 was placed on the Seventh order of business on the calendar.

TESTIMONY

HB 1052

2023 House Bill No. 1052
Testimony before the House IBL Committee
Presented by Anne Jorgenson Green, Workforce Safety and Insurance
Date: January 4, 2023

Mr. Chairman and Members of the Committee: My name is Anne Green, Legal Department Director at Workforce Safety & Insurance (WSI). I am here today to provide testimony regarding HB No. 1052. The WSI Board supports this bill.

SECTION 1:

Section 65-01-02(11)(b)(1) establishes the conditions necessary for WSI to pay for preventative treatment when an employee is exposed to bloodborne pathogens. In its current form, the organization will only cover preventative care for what are commonly understood to be first responders. However, WSI does cover all North Dakota employees for preventative care for rabies exposures.

The list of covered employees includes "a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment." More importantly, it excludes all other North Dakota employees.

Examples of bloodborne pathogens for which reliable preventative treatments exist include HIV and Hepatitis C. Common exposures outside of first responders include janitorial staff and sanitation workers who might be subjected to needle sticks within the course of their employment. In the event the needle stick would cause one of these diseases, the claim would be compensable. This statute just controls preventative treatments.

The changes proposed would remove the restrictions on the classes of employees to whom preventative care may be rendered. In other words, this opens the coverage to all North Dakota employees. While it is impossible to accurately estimate how many exposures might arise, typical reimbursements for the preventative cares are about \$1,000 and, in most cases, must be administered within 72 hours.

SECTION 2:

This subsection is part of the statute that governs injured employee appeals of WSI decisions. The proposed change is in response to recent litigation at the North Dakota Supreme Court in which WSI was a party. The issue was whether an appeal was timely filed with WSI. If an appeal is not timely filed, it cannot be considered by WSI.

WSI's historical interpretation of this statute requires WSI to be in possession of the appeal document within 45 days to be timely filed. In litigation, the assertion was made the appeal was timely because it had been mailed within 45 days, even though it was received by WSI after the 45 day deadline.

WSI's interpretation prevailed at the Supreme Court but we agree clarification is prudent. This proposed amendment clarifies the term "file" requires receipt by WSI within 45 days. This same proposed change appears again in Section 6 of this bill for appeals involving employer coverage matters. In summary, if the appeal document, sent electronically, by mail, or personally delivered, is in WSI's possession within 45 days, it is timely filed.

SECTION 3:

Section 65-04-15 is WSI's confidentiality statute for employer files. It is restrictive by design and intended to protect an employer's account information held by WSI. There are situations, however, where good customer service requires the release of certain types of information. The proposed changes in subsection 4 is just that situation and were suggested by staff who handle these types of requests.

A good example of a situation where the proposed changes would be beneficial is the release of information to a business that is purchasing another business. A prospective buyer has an interest in the claims history, the surcharge or discount to premium attributable to a business, and the experience rating of an entity they are considering purchasing. The proposed changes allow for the release of this information to the prospective buyer.

This proposed language also permits the disclosure of confidential information to another employer assessed general contractor liability under section 65-04-26.2. A general contractor can be required to pay the premium owed by one of its subcontractors who does not secure required coverage or pay the premium owing. If this situation occurs, the proposed change allows WSI to provide the general contractor with account information of the delinquent subcontractor.

The next proposed change provides an exception to this statute for local law enforcement's benefit. Under current law, WSI may provide any state or federal agency with employer file information for the administration of that agency's job duties. Working with other agencies, WSI shares information with OSHA, North Dakota's BCI, Federal Immigration agencies, the North Dakota Tax Department and Job Service North Dakota.

The changes in subsection 6 propose a narrow expansion to sharing data with local law enforcement agencies such as county and city law enforcement. WSI has received inquiries from local law enforcement looking for information which might prove valuable in a local criminal investigation. Under current law, we are unable to provide that information.

Subsection 7 proposes to align the law and WSI practice. As mentioned above, WSI shares information with other state agencies for the administration of the agency's job duties but does not automatically forward its information to other state agencies.

SECTION 4:

Section 4 creates a presumption in favor of WSI to calculate premium based on information gathered through Job Service North Dakota or through WSI's investigative processes in cases where an employer does not provide WSI with the required information to calculate premium. The premium paid by employers is based on the payroll report submitted by the employer. Most employers provide timely, accurate payroll information and premium is calculated without incident.

WSI only calculates premium without the employer supplied payroll report when it is confronted with a nonresponsive, noncompliant employer where WSI's best efforts did not result in a response from the employer. In these limited cases, WSI must have a method to generate reliable payroll information to calculate an employer's premium.

The proposed change is in response to a recent North Dakota Supreme Court decision which called into question the requirements of WSI to calculate premium without the benefit of an

employer supplied payroll report. While the Supreme Court found the information WSI used to calculate premium in that situation to be insufficient, it did not provide WSI guidance on what was sufficient in these types of cases.

As a result, WSI proposes the change before you which allows WSI to calculate premium in these situations with the best information possible. The employer then has an opportunity to rebut that presumption by providing additional information. If the presumption is not rebutted, WSI's premium calculation stands.

SECTION 5:

WSI's cease and desist authority is an infrequently used, but powerful compliance tool. It permits the agency to require a business to stop operating where there is solid evidence that an employer has employees working, but without workers' compensation coverage. The statute also provides penalties for this violation.

The proposed changes expand this tool to another business that engages in commerce with a business precluded from operating by a cease and desist order. The burden on WSI to issue a cease and desist order against a business is high. WSI must prove the entity "knowingly" engaged in commerce with the business ordered to stop operating. This proposal also assigns a penalty of \$5000 to the offending business.

A correction, with no substantive intent, is also included in this section. An employer has 45 days to request reconsideration from a WSI cease and desist order. This is consistent with other appeal timelines within workers' compensation law.

SECTION 6:

This subsection is part of the statute that governs employer appeals of WSI decisions. The purpose of the proposed change is the same as in Section 2. The only difference is Section 2 applies to claim decisions and this section applies to employer coverage decisions.

North Dakota's workers' compensation laws have specific sections which apply to claims benefits and others which apply to employer coverage. Some statutory language is equally applicable to both areas. WSI tries, whenever possible, to align statutory language of the claims benefits and employer coverage sections of the law.

SECTION 7:

This subsection is part of the statute that governs confidentiality of injured employee claim files. An employee's claim file is generally confidential, with few exceptions. The purpose of the proposed change is the same as in Section 3. The only difference is Section 3 applies to employer file information and this section applies to injured employee claim file information.

SECTION 8:

This section provides an application to Section 1 making it applicable on or after August 1, 2023. Sections 2 and 6 of this bill apply to all requests for reconsideration regardless of the date of decision issued by WSI.

This concludes my testimony. I am happy to answer any questions you may have.

2023 Engrossed House Bill No. 1052
Testimony before the Senate Industry & Business Committee
Presented by Anne Jorgenson Green, Workforce Safety and Insurance
Date: February 14, 2023

Mr. Chairman and Members of the Committee: My name is Anne Green, Legal Department Director at Workforce Safety & Insurance (WSI). I am here today to provide testimony regarding Engrossed HB No. 1052. The WSI Board supports this bill with a proposed amendment that I will discuss later in my testimony.

SECTION 1:

Section 65-01-02(11)(b)(1) establishes the conditions necessary for WSI to pay for preventative treatment when an employee is exposed to bloodborne pathogens. In its current form, the organization will only cover preventative care for what are commonly understood to be first responders. However, WSI does cover all North Dakota employees for preventative care for rabies exposures.

The list of covered employees includes “a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment.” More importantly, it excludes all other North Dakota employees.

Examples of bloodborne pathogens for which reliable preventative treatments exist include HIV and Hepatitis C. Common exposures outside of first responders include janitorial staff and sanitation workers who might be subjected to needle sticks within the course of their employment. In the event the needle stick would cause one of these diseases, the claim would be compensable. This statute just controls preventative treatments.

The changes proposed would remove the restrictions on the classes of employees to whom preventative care may be rendered. In other words, this opens the coverage to all North Dakota employees. While it is impossible to accurately estimate how many exposures might arise, typical reimbursements for the preventative cares are about \$1,000 and, in most cases, must be administered within 72 hours.

SECTION 2:

This subsection is part of the statute that governs injured employee appeals of WSI decisions. The proposed change is in response to recent litigation at the North Dakota Supreme Court in which WSI was a party. The issue was whether an appeal was timely filed with WSI. If an appeal is not timely filed, it cannot be considered by WSI.

WSI’s historical interpretation of this statute requires WSI to be in possession of the appeal document within 45 days to be timely filed. In litigation, the assertion was made the appeal was timely because it had been mailed within 45 days, even though it was received by WSI after the 45 day deadline.

WSI’s interpretation prevailed at the Supreme Court but we agree clarification is prudent. This proposed amendment clarifies the term “file” requires receipt by WSI within 45 days. This same proposed change appears again in Section 6 of this bill for appeals involving employer coverage

matters. In summary, if the appeal document, sent electronically, by mail, or personally delivered, is in WSI's possession within 45 days, it is timely filed.

SECTION 3:

Section 65-04-15 is WSI's confidentiality statute for employer files. It is restrictive by design and intended to protect an employer's account information held by WSI. There are situations, however, where good customer service requires the release of certain types of information. The proposed changes in subsection 4 is just that situation and were suggested by staff who handle these types of requests.

A good example of a situation where the proposed changes would be beneficial is the release of information to a business that is purchasing another business. A prospective buyer has an interest in the claims history, the surcharge or discount to premium attributable to a business, and the experience rating of an entity they are considering purchasing. The proposed changes allow for the release of this information to the prospective buyer.

This proposed language also permits the disclosure of confidential information to another employer assessed general contractor liability under section 65-04-26.2. A general contractor can be required to pay the premium owed by one of its subcontractors who does not secure required coverage or pay the premium owing. If this situation occurs, the proposed change allows WSI to provide the general contractor with account information of the delinquent subcontractor.

The next proposed change provides an exception to this statute for local law enforcement's benefit. Under current law, WSI may provide any state or federal agency with employer file information for the administration of that agency's job duties. Working with other agencies, WSI shares information with OSHA, North Dakota's BCI, Federal Immigration agencies, the North Dakota Tax Department and Job Service North Dakota.

The changes in subsection 6 propose a narrow expansion to sharing data with local law enforcement agencies such as county and city law enforcement. WSI has received inquiries from local law enforcement looking for information which might prove valuable in a local criminal investigation. Under current law, we are unable to provide that information.

Subsection 7 proposes to align the law and WSI practice. As mentioned above, WSI shares information with other state agencies for the administration of the agency's job duties but does not automatically forward its information to other state agencies.

SECTION 4:

Section 4 creates a presumption in favor of WSI to calculate premium based on information gathered through Job Service North Dakota or through WSI's investigative processes in cases where an employer does not provide WSI with the required information to calculate premium. The premium paid by employers is based on the payroll report submitted by the employer. Most employers provide timely, accurate payroll information and premium is calculated without incident.

WSI only calculates premium without the employer supplied payroll report when it is confronted with a nonresponsive, noncompliant employer where WSI's best efforts did not result in a response from the employer. In these limited cases, WSI must have a method to generate reliable payroll information to calculate an employer's premium.

The proposed change is in response to a recent North Dakota Supreme Court decision which called into question the requirements of WSI to calculate premium without the benefit of an employer supplied payroll report. While the Supreme Court found the information WSI used to calculate premium in that situation to be insufficient, it did not provide WSI guidance on what was sufficient in these types of cases.

As a result, WSI proposes the change before you which allows WSI to calculate premium in these situations with the best information possible. The employer then has an opportunity to rebut that presumption by providing additional information. If the presumption is not rebutted, WSI's premium calculation stands.

SECTION 5:

When discussed in the House IBL committee, an amendment was proposed and passed by the committee. The amendment modifies WSI's general contractor liability statute. This important, although infrequently used tool permits WSI to assess liability for the unpaid premium of an independent contractor or subcontractor to the general contractor when the independent contractor or subcontractor does not pay their WSI premium.

The amendment creates a mechanism where the general contractor can confirm only annually that the subs and independents on their worksite had workers compensation in effect and thereafter, cannot be held liable for unpaid premium for that calendar year. Interestingly, WSI's website currently provides the general contractor the ongoing ability to check into a subcontractor or independent contractor's insured status at any time. This tool is available to anyone seeking to confirm the insured status of an entity that has workers. Section 5 shifts the burden away from the general contractor to ensure that the entities working on a project are continuously covered by WSI for their workers compensation exposure even where a tool already exists to confirm good standing.

A challenge in confirming coverage at only one point in time is that it does not ensure that a subcontractor or independent contractor maintains their coverage and premium payment. In other words, a sub or independent could present a legitimate certificate of coverage, secure the contract for the work with the general and then let their coverage lapse by not continuing to pay the premium beyond what is required to secure the initial certificate of payment. WSI does not pursue a civil action against a delinquent employer until a number of steps have been taken to bring the employer current. During that time, the entity is likely working on the general contractor's worksite when they are uninsured.

The amendment also provides a sub or independent the opportunity to present a "signed form" to the general contractor indicating they are exempt from securing workers compensation coverage. Presumably, this form would generate from WSI. The process of representing that an entity is exempt from coverage takes time and research. This would likely have the effect of slowing down the process of an entity securing the necessary paperwork to bid and secure a project with a general contractor.

This tool was enhanced and tightened in the 2017 and 2019 sessions in response to the influx of out of state entities resulting from hail events, floods and the oil boom. Entities coming to North Dakota for short term, transient work are difficult to pursue once they leave the state. It's use by WSI is for the general contractor who isn't diligent. Current law, and the infrequency in which WSI uses this tool, reflects that most general contractors, those in the best position to know the status

of their subcontractors, do the footwork to ensure that workers are covered on their worksites. The amendment to HB 1052 hampers WSI's ability to hold accountable those who are not diligent.

For these reasons, WSI proposes an amendment which removes section 5 from Engrossed HB 1052.

SECTION 6:

WSI's cease and desist authority is an infrequently used, but powerful compliance tool. It permits the agency to require a business to stop operating where there is solid evidence that an employer has employees working, but without workers' compensation coverage. The statute also provides penalties for this violation.

The proposed changes expand this tool to another business that engages in commerce with a business precluded from operating by a cease and desist order. The burden on WSI to issue a cease and desist order against a business is high. WSI must prove the entity "knowingly" engaged in commerce with the business ordered to stop operating. This proposal also assigns a penalty of \$5000 to the offending business.

A correction, with no substantive intent, is also included in this section. An employer has 45 days to request reconsideration from a WSI cease and desist order. This is consistent with other appeal timelines within workers' compensation law.

SECTION 7:

This subsection is part of the statute that governs employer appeals of WSI decisions. The purpose of the proposed change is the same as in Section 2. The only difference is Section 2 applies to claim decisions and this section applies to employer coverage decisions.

North Dakota's workers' compensation laws have specific sections which apply to claims benefits and others which apply to employer coverage. Some statutory language is equally applicable to both areas. WSI tries, whenever possible, to align statutory language of the claims benefits and employer coverage sections of the law.

SECTION 8:

This subsection is part of the statute that governs confidentiality of injured employee claim files. An employee's claim file is generally confidential, with few exceptions. The purpose of the proposed change is the same as in Section 3. The only difference is Section 3 applies to employer file information and this section applies to injured employee claim file information.

SECTION 9:

This section provides an application to Section 1 making it applicable on or after August 1, 2023. Sections 2 and 7 of this bill apply to all requests for reconsideration regardless of the date of decision issued by WSI.

This concludes my testimony. Our proposed amendment as discussed previously is attached to my written testimony. I am happy to answer any questions you may have.

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1052

Page 1, line 3, remove "section 65-04-26.2,"

Page 1, line 8, remove "general contractor liability for subcontractors and independent contractors,"

Page 4, remove lines 13 – 31

Page 5, remove lines 1 - 23

Re-number accordingly

During the 2023-2024 Interim, workforce safety and insurance shall study section 65-04-26.2 regarding the liability of a general contractor for the payment of premium for subcontractors and independent contractors who do not secure required coverage or pay premiums owed. The study must address whether changes can be made to gain efficiencies for those subject to the statute and determine whether changes can be made to increase the effective application of the statute. The study must include research of comparable laws in other jurisdictions and a review of workforce safety and insurance policies and procedures in applying the statute. Workforce safety and insurance shall seek input from relevant stakeholders including business personnel and industry groups and report its findings and any recommended statutory changes to the legislative management no later than July 1, 2024.

23.8094.01001
Title.

Prepared by the Legislative Council staff for
Representative Koppelman
January 11, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1052

Page 1, line 2, after the fourth comma insert "section 65-04-26.2,"

Page 1, line 7, after the second comma insert "general contractor liability for subcontractors and independent contractors,"

Page 4, after line 10, insert:

"SECTION 5. AMENDMENT. Section 65-04-26.2 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26.2. General contractor liability for subcontractors and independent contractors.

1. An individual employed by a subcontractor or by an independent contractor operating under an agreement with a general contractor is deemed to be an employee of the general contractor and any subcontractor that supplied work to the subcontractor or independent contractor. A general contractor and a subcontractor are liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage or pay the premium owing. The general contractor and a subcontractor are liable for payment of this premium and penalty until the subcontractor or independent contractor pays this premium and penalty. The liability imposed on a general contractor and a subcontractor under this section for the payment of premium and penalties under this title which are not paid by a subcontractor or independent contractor is limited to work performed under that general contractor.
2. Notwithstanding subsection 1, a general contractor is not liable for payment of any subcontractor or independent contractor owed premium and penalty if the general contractor collects a certificate specifying the payment has been made by the subcontractor or independent contractor, or the general contractor collects a signed form stating the subcontractor or independent contractor is exempt from payment of the premium. A signed form collected under this subsection waives the general contractor's liability for the remainder of the calendar year.
3. Upon request of the organization, a person the organization determines may have information that may assist the organization in determining the amount of wages expended by the subcontractor or independent contractor shall provide this information to the organization.
- ~~3.4.~~ If the organization is unable to obtain complete and reliable payroll information for a subcontractor or independent contractor, the organization may calculate premium using the available payroll information of the subcontractor or independent contractor for work performed under the liable general contractor or a subcontractor as permitted in section 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure coverage or pay the premium owing arises from a single project with a general contractor, the liability of the general contractor and

subcontractor is one hundred percent of the amount of premium and penalty owed by the subcontractor or independent contractor. If there is evidence showing the subcontractor or independent contractor was working on multiple projects during the period the subcontractor or independent contractor failed to secure coverage, the organization shall set the amount of the general contractor and subcontractor's liability which may not exceed seventy percent of the total premium and penalty owed by the subcontractor or independent contractor.

~~4.5.~~ The definition of the term "contractor" under section 43-07-01 applies to this section."

Page 5, line 21, replace "6" with "7"

Renumber accordingly