

2025 Senate Bill No. 2094
Testimony before the Senate Industry and Business Committee
Presented by Jodi Bjornson, Workforce Safety and Insurance
January 15, 2025

My name is Jodi Bjornson, General Counsel with Workforce Safety and Insurance (WSI). On behalf of the WSI Board of Directors, I am here to testify in opposition to SB 2094, which proposes to eliminate the significant provisions of the retirement presumption laws and return the law to what it was prior to the 1995 reforms.

In 1995, the Legislative Assembly amended the retirement statute to end the payment of ongoing disability benefits when an injured employee began receiving Social Security Retirement benefits or reached full retirement age.

The 1995 legislation identified the North Dakota's workers' compensation system as a safety net to provide lost wages and medical treatment for work-related injuries during the healing process. It further established that WSI disability benefits, commonly called wage loss benefits, are not intended to be a retirement replacement system.

In North Dakota, wage loss benefits and retirement benefits have different and inconsistent purposes: wage loss benefits are paid to workers who are physically unable to earn wages during their earning years, while retirement benefits are paid to workers after their wage-earning years have come to an end, regardless of their physical condition.

In 1995, at the end of the debate that took place with respect to workers' compensation benefits and their interplay with retirement benefits, it was the conclusion of the Legislative Assembly for WSI to serve the role as a wage replacement benefit system, not a retirement benefit system.

To temper the impact to injured workers who were unable to work due to their work injuries, an additional benefit payable statute was created in 1997. This benefit was founded on three basic principles: It begins when wage loss benefits end, it is paid for the same length of time as the worker had been unable to work; and the longer the worker had been unable to work, the higher the post-retirement benefit payment. In essence it made up for the lost Social Security Retirement payments an injured employee was unable to make because they were out of the workforce.

The current law is intended to strike a good balance that provides wage loss benefits until the time of retirement, and then an additional benefit payable (post-retirement benefit) based on the length of time the worker has been unable to work. In addition, the injured worker continues to be eligible for medical benefits and permanent partial impairment awards for the life of the injury.

Eliminating the retirement presumption law and additional benefit payment law as it exists today and resurrecting the pre-1995 retirement presumption law retroactively, would obviously have a significant impact on the fund. Since 1995, insurance rates have been established and charged to employers consistent with this financial direction. The application section indicates the proposed law applies "to all claims regardless of date of injury." This means all claims since 1995 would potentially be reopened and repaid consistent with this bill's direction.

For example, an injured employee with a claim from 2000, who transitioned off disability benefits because of reaching retirement eligibility, would likely now have a claim to ongoing entitlement to wage loss benefits. It takes little to appreciate the enormity of the financial impact. WSI cannot

charge premiums retroactively. As a result, reserves, those funds set aside to pay existing claims, will need to be significantly reestablished to service this shortfall.

Our actuary estimates the reserve level increase for known claims will be approximately \$100 million. This amount does not consider those claims that have left the system and may be required to be reopened because of this legislation. Nor does it consider benefit adjustments to claims that transitioned to an additional benefits payable status. Our actuaries indicate these unknown claims will likely move the reserve level impact "significantly higher."

In addition, the proposed legislation will serve to increase the costs associated with future claims. The premium rate level increase associated with the elimination of the retirement presumption and the additional benefit payable statutes is anticipated to be 1.2%.

As a result, WSI requests a recommendation of "do not pass" on this bill. This concludes my testimony and I would be happy to answer any questions you may have.