

2023 Engrossed Senate Bill No. 2116
Testimony before the House Industry Business and Labor Committee
Presented by Tim Wahlin, Chief of Injury Services
Workforce Safety and Insurance
Date: March 21, 2023

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at Workforce Safety & Insurance (WSI). I am here today to provide testimony regarding Engrossed Senate Bill No. 2116. The WSI Board supports this bill.

This bill is a result of the Governor's initiative to eliminate obstacles in government services. This initiative led to a review of the workers' compensation statutes and the following proposed amendments and repeals to eliminate outdated, inefficient, or redundant statutory provisions.

It also contains amendments to the workers' compensation presumption law, which relate to Engrossed HB 1279 but are contained in this bill due to information that arose after the passage of Engrossed HB 1279.

Section 1 Amendment 54-06-04:

The proposed amendment to this section removes WSI from the list of state agencies required to submit a biennial report regarding its operations to the office of the governor and secretary of state. The information required to be contained in the report is currently published routinely in other documents that are maintained on WSI's website. The repeal will eliminate the cost of staff member's time in compiling, drafting, editing, and producing a printed biennial report. In addition, the proposed amendment will eliminate the printing costs for the required copies sent to additional entities as also directed by section 54-06-04. With the information contained in the biennial reports already available in other publications, and accessible to public officials and citizens in electronic format, WSI submits this amendment makes good business sense.

Sections 2 and 3 Amendment 65-01-15.1 and 15.2:

The amendments to this section provide the benefits of the presumption law for full-time paid law enforcement officers and firefighters to officers of the Bismarck State College Police Department. 2023 Engrossed HB 1279 amended several presumption law provisions and was signed into law by the Governor on February 6, 2023. Subsequently, a BSC police officer made legislators aware its police department was not included in presumption law coverage. At that time, SB 2116 was still being considered in the Senate Workforce Development Committee, so SB 2116 was amended to include the BSC Police Department in presumption law coverage prior to its passage out of committee. The BSC Police Department is currently the only university system police department not included in presumption law coverage.

Section 4 Amend 65-02-09:

In its original form, this section proposed a repeal of Section 65-02-09 to eliminate the specific content requirements for WSI's biennial report. This section corresponds with the proposed changes in Section 1, eliminating the submission of a biennial report. While in the Senate, questions were raised regarding continued public access to the information contained in the biennial report if the report was no longer prepared. As a result, the Senate amended this section

to include language requiring WSI to make the required biennial report information that is contained in other publications always available to the public.

Section 5 Amendment 65-03-01:

The proposed change in this section is intended to provide WSI discretion in the issuance and enforcement of safety rules and regulations in the workplace. WSI's historical approach with employers regarding safety and loss prevention has been collaborative. WSI seeks to work with employers to achieve a safe work environment because we have had greater success in providing solutions to safety concerns rather than adopting a punitive approach.

The additional edits found in this proposed amendment are form and style edits, with no substantive intent.

Section 6 Amendment 65-04-30:

The proposed amendment to this section is to remove the requirement for WSI to submit to the Office of Management & Budget (OMB) a monthly financial statement. Due to the accounting software that is currently used by the state, OMB can obtain this information on its own. As a result, there is no need for a statute requiring WSI to send OMB a report each month.

Section 7 Amendment 65-05.1-08:

Section 65-05.1-08 was enacted in 2005. It created a loan program where WSI serves as guarantor for student loans issued through the Bank of North Dakota to injured employees; spouses and children of deceased injured employees; as well as spouses and children of employees deemed permanently and totally disabled under section 65-01-02. The loans cannot exceed \$2.5 million per year and the maximum amount any applicant may receive is fifty thousand dollars.

Since the program has been in existence, only thirteen individuals have been extended loans. The last individual to receive a loan was in fiscal year 2015. The program appeared to be a good idea; however, the lack of participation has indicated otherwise.

The reasons for the lack of participation likely include retraining awards issued within WSI's vocational rehabilitation system that pay all school expenses and an injured employee's lost wages throughout the duration of the retraining program. Additionally, in cases of catastrophic injury or death, the spouses and children of the injured employee may qualify for scholarships under section 65-05-20.1. Unlike the loan program, the scholarships do not require repayment. It appears these programs have essentially obviated the need for the loan program.

Because there is little interest in the program and because the program requires considerable administrative investment by both WSI and the Bank of North Dakota, we seek the removal of subsections 1-3 of section 65-05.1-08.

Section 8 Repeal 65-01-13:

The proposed repeal of this section is due to WSI no longer needing a continuing appropriation to sustain an information fund provided in this section. The continuing appropriation was created to account for moneys received for publications and statistics WSI provided to various stakeholders. With the advancement of technology, publications are now electronic, which means

WSI does not incur additional expenses to provide publications nor does WSI charge for these items.

Section 8 Repeal 65-02-28:

The proposed repeal of this section is to allow WSI to manage injured employee claim file information within the state's established records management system. Currently, section 65-02-28 directs the organization to retain claim file information "for at least ten years" past the injured employee's death. This presents significant problems for the organization. First, there exists no reliable national database which collects and retains death information. Second, many of our injured employees reside outside of the United States. As a result, there exists an ever-growing trove of claim file information held by WSI. While there are costs involved in managing this information, our biggest concern is the unnecessary cyber-security risk created by retaining inactive claim file information.

Injured employees are required to provide sensitive medical and personal information to qualify for benefits. We must be responsible stewards of that information and more timely dispose of claim file data.

Currently NDIT provides a records management service which includes developing retention schedules for all records held by the state. WSI proposes to establish a retention schedule for claim files within this structure, just as it does with confidential employer file information. If the repeal of this section is successful, WSI will propose retaining claim files for 30 years following the last payment made on a claim or if a claim has no payments, 30 years following the last activity in the claim. This proposed retention schedule would be subject to the state's record management system's review and approval process.

Section 8 Repeal 65-03-02:

The repeal of section 65-03-02 proposes to eliminate an obsolete penalty provision of the safety chapter of the North Dakota Century Code. As a matter of practice, WSI Safety Consultants do not assess penalties for safety infractions. Rather, WSI safety consultants work with employers to establish and maintain safe work environments as explained previously in Section 5 of this testimony.

Section 8 Repeal 65-04-17.1:

The proposed repeal of this section is intended to eliminate an obsolete special premium program that was enacted in the early 1990's called the retrospective rating program. It was intended to provide large employers with a minimum premium of \$250,000 and with favorable loss histories, an opportunity to pay reduced premiums.

Under this program, premium is calculated using a nontraditional, rather complicated formula. The last employer to participate in the program was in 2005, and only four employers have participated in the program over the last thirty years.

The lack of participation is likely attributable to traditional premium calculations such as the guaranteed cost or the large deductible programs being a better option for large employers. WSI has the lowest premiums in the nation before any safety discounts and dividend credits are applied. The retrospective rating program formula does not allow for the application of any safety

discounts or dividend credits. The program appeared to be a good idea at the time; however, the lack of participation has indicated otherwise.

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