

2023 House Bill No. 1279
Testimony before the House Political Subdivisions Committee
Presented by Art Thompson, Executive Director
Workforce Safety and Insurance
Date: January 26, 2023

Mr. Chairman and Members of the Committee:

My name is Art Thompson, Executive Director of Workforce Safety & Insurance (WSI). I am here today to provide testimony regarding House Bill No. 1279. Governor Burgum has identified this legislation as a high priority, as noted in his State of the State address at the beginning of the 68th Legislative Assembly and requests your do-pass recommendation.

The proposed legislation would accomplish three things:

1. Remove the five-year continuous service requirement for presumption claims,
2. Designate the costs of required medical examinations be borne by employers, and
3. Remove the requirement for “nonfasting total blood cholesterol” testing as part of the medical examinations.

By way of background, presumption claims in this section of law differ significantly from other claims within the North Dakota workers’ compensation system. Generally, an injured employee bears the burden of proving an entitlement to benefits. In presumption claims, the claim is presumed compensable, and the burden of proof is upon WSI to show an employee is not entitled to benefits. WSI must do so by clear and convincing evidence.

The employee classes covered by the presumption law include fulltime paid firefighters and law enforcement officers. The types of claims for which the presumption law is available include “lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter(s).” These conditions are presumed to have been suffered in the line of duty.

The five-year continuous service requirement has been part of this statute since 1995. In other words, for the presumption law to apply, the firefighter or law enforcement officer must have five years of continuous service. Elimination of the five-year service requirement will entitle all law enforcement and firefighters covered under this statute the benefit of the presumption law on the first day of employment.

The Governor’s support of the elimination of the service requirement is the administration’s prioritization of recruitment and retention of employees in these critical professions. Allowing for the presumption law to apply from the beginning of employment is just one way we can try eliminate the shortage of employees in these difficult, yet very necessary professions. Of the thirty states that have presumption clauses, all have a service requirement ranging from two to twelve years.

The second notable change will clearly assign responsibility for payment of the required periodic medical examinations under this statute to the employer. The statute requires the firefighters and law enforcement personnel to undergo medical examinations at varying intervals based upon an employee’s term of service. Employers of the full-time firefighters and law enforcement officers are generally the State of North Dakota and its political subdivisions.

Finally, the requirement that these examinations include “nonfasting total blood cholesterol” tests is proposed to be removed. Instead, the medical provider has the discretion to perform testing to gather necessary information to evaluate an employee’s cardiovascular health.

Elimination of the 5-year minimum service requirement provision for future claims, or prospectively, will serve to increase the number of presumption related claims. To what extent is unclear, as we do not have the historical experience to make that determination. Because of this unknown, the WSI Board has taken a neutral position on this bill.

What we do know is WSI averages approximately 10 presumption claims a year. The highest cost presumption claim was \$11.5 million. Excluding that large claim from the averages, the average cost for presumption claims has been \$227,340 for time-loss presumption claims and \$29,670 for medical only presumption claims.

For the law enforcement and paid firefighter classes, the average costs for presumption claims are significantly higher than non-presumption claims, 6.8 times higher for time-loss claims and 18.8 times higher for medical only claims. The average costs for presumption claims are significantly higher than claims from all other rate classes, 3.8x higher for time-loss claims and 21.5x higher for medical only claims.

On behalf of the Governor, we ask for your support on HB 1279. This concludes my testimony and I’d be happy to answer any questions you may have.