

**2023 Senate Bill 2218**  
**Testimony before the Senate Industry and Business Committee**  
**Presented by: Tim Wahlin**  
**Workforce Safety and Insurance**  
**January 30,2023**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services with Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am here to testify in opposition to SB 2218. This bill proposes to eliminate the retirement presumption, the additional benefits payable statutes, and the three-year cap on benefits for those injured in their post-retirement years. In effect, the pre-1995 retirement law would be reinstated.

In 1995 and 1997, the Legislative Assembly amended the retirement statute and enacted the additional benefit payable statute which provides reduced indemnity benefits injured workers when they began receiving Social Security Retirement benefits, or when they reached retirement age.

The 1995 legislation reformed and reestablished that the North Dakota's workers' compensation system is a safety net to provide lost wages and medical treatment for work-related injuries during the healing process. It established that WSI indemnity 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.

WSI submits the current law strikes 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. Section 4 of this bill sets the application “to all claims regardless of date of injury.” That 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 the age of 65, would likely now have a claim to ongoing entitlement to wage 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 likely be \$100 million. This amount does not consider those claims which have left the system and may be reopened because of this legislation, or to benefit adjustments to claims that have transitioned to an additional benefits payable status. 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.