

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/07/2019**

Bill/Resolution No.: HB 1188

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

see attached

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

see attached

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** John Halvorson

**Agency:** WSI

**Telephone:** 328-6016

**Date Prepared:** 01/08/2019

**WORKFORCE SAFETY & INSURANCE  
2019 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: HB 1188**

**BILL DESCRIPTION: Post-Retirement Reapplications**

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its consulting actuaries, The Burkhalter Group, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation provides for up to three years of disability benefits for injured workers that had disability benefits discontinued pre-retirement and a reapplication for benefits post-retirement.

**FISCAL IMPACT:** No significant impact to premium rate and reserve levels is anticipated.

**DATE: January 8, 2019**

**2019 HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE**

**HB 1188**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1188  
1/23/2019  
31249

- Subcommittee  
 Conference Committee

Committee Clerk:

### Explanation or reason for introduction of bill/resolution:

Termination of benefits upon retirement & provide for application.

### Minutes:

Attachment 1

**Vice Chairman Lefor:** Opens the hearing on HB 1188.

**Rep Keiser~District :** Introduces HB 1188. This is for an injured worker who is injured & is able to report to work, which is recorded. Now they have a 2<sup>nd</sup> surgery on a different injury. This created a donut hole for the injured worker. Reads lines 21-25 on page 2. This is an attempt to correct this situation that is unfair to the injured worker.

**Tim Wahlin~Chief of Injury Services at WSI:** Attachment 1.

9:10

**Rep Schauer:** Has this only happened one time in your career?

**Tim Wahlin:** It has happened before & will happen.

**Rep Schauer:** Infrequent, you don't think that this will be abused by workers?

**Tim Wahlin:** We believe this is a policy change that will service a group of injured workers who were injured prior to, but had a recurring injury after the retirement date. Understand, that if they continue to work. The fiscal note indicates that this will not have an impact.

**Chairman Keiser:** Anyone else here to testify in support, opposition, neutral position on HB 1188? What are the wishes of the committee?

**Vice Chairman Lefor:** Moves a Do Pass.

**Rep Bosch:** Second.

**Chairman Keiser:** Further discussion?

House Industry, Business and Labor Committee

HB 1188

Jan 23, 2019

Page 2

**Roll call was taken on HB 1188 for a Do Pass with 13 yes, 0 no, 1 absent & Rep D Ruby is the carrier.**

Date: Feb 23, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1188

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar

Other Actions     Reconsider     \_\_\_\_\_

Motion Made by Rep Lefor    Seconded By Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson	Ab	

Total (Yes) 13    No 0

Absent 1

Floor Assignment Rep Ruby

**REPORT OF STANDING COMMITTEE**

**HB 1188: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1188 was placed on the Eleventh order on the calendar.



**2019 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1188**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1188  
3/5/2019  
Job #33249

- Subcommittee  
 Conference Committee

Committee Clerk: Amy Crane

### Explanation or reason for introduction of bill/resolution:

relating to the termination of benefits upon retirement; and to provide for application.

### Minutes:

Att. #1

**Chairman Klein:** Opened the hearing on HB 1188. All members were present.

**Representative Keiser:** this bill is simply an amendment to the presumption statute relating to retirement. In our worker's comp section of the statute, we have a presumption statute relative to retirement. Prior to 1985, North Dakota did not have an indemnity clause. This meant that up to the day before the employee's retirement, if they were injured on the job, they would get full wage repayment for life. This coupled with a significant increase in life expectancies created a fiscally untenable situation. The reserve liabilities that WSI is responsible for, were underfunded, going back to 1995. Under our current law if an injured employee is receiving indemnity payments, at the date of retirement, the indemnity benefits convert to a post-retirement benefit called ABP, additional benefits payable. That benefit is based on the amount and duration of the injured employee's indemnity benefit. The reason for ABP, is someone is injured at 25 years old and the receive salary replacement at a 25-year-old rate and they hit a retirement age, their social security payout is not going to be very big, because that is based on their last three years of work. We put in the ABP, the further your injury is from that age of retirement, the more adjustment we make using the ABP upon activating this provision. This statute allows for the payment of indemnity benefits, what this bill does is allow for the payment of indemnity benefits beyond that retirement date in very certain circumstances. The way that doesn't work is for people my age, who are still working and then become injured. I've reached my maximum age but I'm still working. I was injured I got my payout and now I go back to work. This is designed to address those many employees that are still working beyond retirement age. An employee who has exceeded the retirement age, and who receive a new injury, can receive up to three years' indemnity benefits. The statute also allows for an employee who received a new injury within two years of retirement to receive no more than two years of indemnity benefits. So we put a floor and a top in. The three year of indemnity benefits may extend beyond the retirement date so if I'm injured one year out I can still receive two years' indemnity benefits. This bill will also allow for the payment of post retirement indemnity benefits in the narrow set of circumstances, will allow the payment of indemnity benefits when an injury employee sustains a pre-retirement injury.

Before retirement I'm injured, I heal, I receive indemnity benefits, I go back to work and even if I am payed disability benefits and am presumed retired, but I continue to work after retirement and has a recurrence of disability due to the same retirement compensable injury. This group of injured employees will be able to reapply for indemnity benefits and may receive up to three years of benefits. The application section may apply after the effective date. There is no retroactive provision. As has happened occasionally, after the reformation movement of the '95 session, as we have been able to and has problems have arisen, we have given benefits back. This benefit is really a function of a change in society where people are working beyond that retirement age and the presumption statute doesn't work like it did in 1995.

**Tim Wahlin, Chief of Injury Services at WSI:** see attachment #1 for testimony in support of the bill.

**Chairman Klein:** Can you speak to the constituent issue and give us an example of what happened?

**Tim:** If you look at the retirement presumption statute as it exists prior to this, this is simply making an addition to that, it is not overturning it. That takes a presumed retirement date, when you're fully eligible, at that point you cannot draw anymore disability on injuries that occurred prior to that date. That's a cut off, a ceiling. The individual who was injured ten years ago, knew was out they need surgery but they pushed the surgery off and continued to work. This person hits the retirement presumption, under the old law, if they went in for surgery afterwards, they would not be entitled to disability benefits because they've hit the retirement presumption. Now, they would be able to reapply if they continued to work and that pre-retirement injury caused that disability post-retirement, they can get up to three years. That's the same as an individual who continues to work after retirement, gets hurt, has three years of disability benefits available to them. Basically, it takes the person injured prior to retirement, who continues to work and has additional needs post retirement, puts them in the same bucket as the person working beyond retirement who gets injured.

**Chairman Klein:** So those of us who may be 66 and continue to work and cuts our finger cutting meat, that's different because he continued. If he hurt his arm five years ago and postponed it and now needs to get that fixed but now continues to work?

**Tim:** Yes, a fictional meat cutter who injured himself, drew some disability benefits prior to retirement and now has a recurrence of disability benefits post retirement, would be able to draw up to three years of benefits.

**Chairman Klein:** So if you're an injured worker who is receiving disability benefits and you hit retirement age, those benefits are offset? Or how does that work? Just so everybody understands that you don't get both, am I correct?

**Tim:** If you are drawing disability benefits and you hit that retirement date or choose to take your social security retirement, your indemnity benefits with WSI end. They will be replaced by an additional benefit payable at that time. Which is going to be calculated according to the statute and will be, quite a bit lower than your actual benefits at your time of retirement, but those will go on for the same amount of time as you drew benefits prior to retirement.

**Chairman Klein:** Closed the hearing on HB 1188.

**Chairman Klein:** I think the more difficult thing is explaining this to others so they understand it.

**Senator Roers:** Moved a Do Pass.

**Vice Chairman Vedaa:** Seconded.

**A Roll Call Vote Was Taken:** 6 yeas, 0 nays, 0 absent.

**Motion Carried.**

**Chairman Klein will carry the bill.**



**REPORT OF STANDING COMMITTEE**

**HB 1188: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1188 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**HB 1188**

**2019 House Bill No. 1188**  
**Testimony before the House Industry, Business and Labor Committee**  
**Presented by Tim Wahlin**  
**Workforce Safety and Insurance**  
**January 23, 2019**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here today to provide information regarding House Bill No. 1188. The WSI Board supports this bill.

This bill is an amendment to the retirement presumption statute. This statute has a long history which I will briefly touch on to assist in your understanding of this proposed change.

Prior to 1995, North Dakota did not have a retirement presumption statute. In essence, an injury the day before an employee's actual retirement could lead to indemnity benefits for life. This, coupled with a significant increase in life expectancy, created a fiscally untenable situation. Reserve liabilities were underfunded by nearly \$250 million and rates were not allowed to track the shortfalls. Reforms were needed and occurred in the 1990's.

As part of these reforms, a retirement presumption was created, which ended eligibility for indemnity benefits upon an injured employee electing to take Social Security retirement benefits or attaining the age of eligibility for full Social Security retirement benefits, whichever occurred first. Under the current law, if an injured employee is receiving indemnity benefits at the date of retirement, the indemnity benefits convert to a post-retirement benefit called additional benefits payable (ABP) pursuant to NDCC 65-05-09.4. This benefit is based on the amount and duration of the injured employee's indemnity benefit.

This statute allows for the payment of indemnity benefits beyond the retirement date in certain circumstances. Specifically, an employee who works beyond the retirement date and who sustains a new injury, may receive up to three years of indemnity benefits.

The statute also allows for an employee who is injured within two years of retirement, to receive no more than two years of indemnity benefits. The two-year period of indemnity benefits may extend beyond the retirement date.

The proposed amendment in this bill will also allow for the payment of post-retirement indemnity benefits in a narrow set of circumstances and recently came to light following a constituent's request for legislative assistance. This proposed change will allow for the payment of indemnity benefits when an injured employee sustains a pre-retirement injury and was paid disability benefits, is presumed retired, continues to work after retirement, and has a recurrence of disability due to same pre-retirement compensable injury. This group of injured employees will be able to re-apply for indemnity benefits and if otherwise entitled may receive up to three years of indemnity benefit payments.

The application section clarifies the proposed changes in this bill apply to all claims with reapplications after the effective date of the bill.

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



HB 1188 3/5/19 ATT#

**2019 House Bill No. 1188**  
**Testimony before the Senate Industry, Business and Labor Committee**  
**Presented by Tim Wahlin**  
**Workforce Safety and Insurance**  
**March 5, 2019**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here today to provide information regarding House Bill No. 1188. The WSI Board supports this bill.

This bill is an amendment to the retirement presumption statute. This statute has a long history which I will briefly touch on to assist in your understanding of this proposed change.

Prior to 1995, North Dakota did not have a retirement presumption statute. In essence, an injury the day before an employee's actual retirement could lead to indemnity benefits for life. This, coupled with a significant increase in life expectancy, created a fiscally untenable situation. Reserve liabilities were underfunded by nearly \$250 million and rates were not allowed to track the shortfalls. Reforms were needed and occurred in the 1990's.

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