

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2426

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2426

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8339

Committee Clerk Signature

Eva Lubelt

Minutes:

Chairman Klein: Called the meeting back to order.

Senator O'Connell: The goal Senate Bill 2426 is to remove the provision that assumes the worker is retired if they are eligible for Social Security. People are not necessarily retired at social security age. Especially in today's economy. People are being forced to work past retirement age. It is a right that a person is past the traditional retirement age is assumed to be retired. Not only is the injured worker short money from lost income but they will have medical bills as well. Also as we age we become more likely to have injuries. The longer an individual has to work the more chances he will become injured at work. Is a person is planning to work past retirement age there needs to be six years in order to retire in a financial comfortable position.

Senator Tony Grindberg: Here to provide some supportive comments for Senate Bill 2426. My comments are more directed at taking a look at life's journey. I've learned of an individual and his issues that he has come to not being able to work and reached social security age but doesn't have enough money to retire.

Senator Andrist: Some people fall through the cracks and you wish they would qualify. It's finding the middle ground. I am searching for the language that would make that possible.

Chairman Klein: I think as we look at these issues what generally creates a little bit of anxiety is looking at twenty seven million dollars minimum fiscal impact and trying to sort all that out as we come down the road here and try to make all these things work out and still address the other concerns.

Senator Potter: The question becomes if not that age, social security retirement age, what age?

Senator Grindberg: I am not sure but working with WSI we should be able to come up with that.

Jerry Volk: Written Testimony Attached. In favor of the bill.

Senator Andrist: I thought it was a wage loss benefit that you lost when you reached retirement age. Seem to me most of your complaints about WSI and very rightly so, are that they didn't really handle your injury claim very well. Am I missing something here?

Jerry: I never had on retiring. This day and age, my wage is far different of what they were then. I can't retire. I don't have a choice. My social security and pension, I am going to take a hit on that pension because of the injury and not being able to work.

Senator Andrist: WSI is to pay wage loss benefit and all the medical care. You thought they abused you the most with medical expenses?

Jerry: Yes they did.

Senator Andrist: I don't believe in retirement either but I have to deal with it when my income stops when I reached social security age. I do other things. I am concerned of the impact of the fund if we keep paying wage loss benefits at the time you normally retire.

Senator Horne: You had an unfortunate situation. After a long period WSI came around and they paid you.

Senator Andrist: Is your wage loss benefit greater than your social security benefits?

Jerry: No.

Senator Andrist: So you are getting social security now along with WSI?

Sebald Vetter: I am going to explain how this bill works. If you're on social security and you're on workman's comp you get both. You're only going to get as much as your average weekly wage is. Then they offset you but when you turn sixty five the way the bill is now he's years, so you go from one to three, he gets five percent. That's what the law reads now and this is not what the law read in 1919. The law read if you can't work you have to be taken care of the rest of your life. Sebald continued to discuss the fairness of the bill.

Leroy Volk: Testified that he was hurt at the age of fifty and because he didn't work the years until he turned sixty five his social security is less.

Sylvan Loegering, Volunteer Coordinator, ND Injured Workers Support Group:

Written Testimony Attached.

Senator Horne: In this fiscal note summary it makes this statement the proposed bill would eliminate the three year cap on this disability benefits for employees after they become eligible for social security retirement. So does that mean that benefits would continue for three years after they become eligible under current law?

Sylvan: Three years from the date of injury.

Tim Wahlin, Chief of Injury Services at WSI: Written Testimony Attached. To answer Senator Horne's question, they are eligible for up to three years of disability benefits.

Bill Shalhoob, North Dakota Chamber of Commerce: Written Testimony Attached.

Dave Kemnitz, President of AFL-CIO: In favor of 2426. Talked about going to the house to address the deficit in 1995. The Twenty Seven Thousand fiscal not indicate what those people gave up from the WSI. This is a request to revisit what happened in 95,96, and97.

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Senate Industry, Business and Labor Committee

Bill/Resolution No. 2426

Hearing Date: February 2, 2009

Chairman Klein: We will not be taking any action today. Committee members take a look at the amendment you would be interested in. We will see if we can come up with a resolution.

We will adjourn.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2426

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8616

Committee Clerk Signature

Em Luelt

Minutes:

Chairman Klein: I have an amendment that would increase the ADP additional benefit payables by ten percent. The concern we are having with the bureau is that actuary needs more time.

Senator Potter moved to pass the amendment. Seconded by Senator Wanzek.

Roll Call Vote: Yes: 7 No:0 Absent: 0

Senator Potter moved a do pass as amended. Seconded by Senator Behm.

Roll Call Vote: Yes: 7 No: 0 Absent:0

Floor Assignment: Senator Klein.

This bill is re-referred to appropriations.

FISCAL NOTE
Requested by Legislative Council
02/06/2009

Amendment to: SB 2426

1A. **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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

The proposed legislation will act to increase Additional Benefits Payable (ABPs).

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.*

WORKFORCE SAFETY & INSURANCE
2009 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed SB 2426

BILL DESCRIPTION: Additional Benefit Payable (ABP) Benefits

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation will act to increase Additional Benefits Payable (ABPs). Under the proposed legislation, Tabular benefit amounts will increase by 10 percentage points. For example, an ABP associated with a disability of three years will increase from 5% to 15% of the weekly benefit amount – a 200% increase of the benefit itself.

Information provided by WSI indicates that aggregate ABP benefit levels will increase by 50% to 100%. We do not have detailed data that will easily permit quantification of the dollar impact of the proposed change. However, available information suggests that annual costs will increase by a material amount – in excess of \$1 million. Quantification of the impact of the proposed change is difficult because WSI does not segregate ABP reserves on claims not yet eligible for the benefit. Instead, such future costs are booked as part of the time loss / indemnity case reserve.

DATE: February 13, 2009

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 is also included in the executive budget or relates to a continuing appropriation.

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	02/13/2009

FISCAL NOTE
Requested by Legislative Council
01/28/2009

Bill/Resolution No.: SB 2426

1A. 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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

The proposed legislation repeals the retirement presumption and additional benefit payable statutes.

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.*

WORKFORCE SAFETY & INSURANCE
2009 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2426

BILL DESCRIPTION: Repeal of Retirement Presumption and Additional Benefit Payable Statutes

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation repeals the retirement presumption effective for post-1995 claims. Under this proposal, claimants will continue receiving wage-loss benefits even after they become eligible for social security retirement benefits. The proposed bill also eliminates the three year cap on disability benefits for employees injured after they become eligible for social security retirement benefits. The proposed bill also repeals the additional benefit payable (abp) statutes.

In assessing the impact of this proposal we relied on our analysis of 2009 HB 1525, a very similar proposal that was introduced in the House.

Reserve Level Impact: The reserve level impact of the current proposal will be limited to fiscal accident years 1995-96 and subsequent. The total reserve level increase for known claims will likely fall in a range between \$20 million and \$27 million. To the extent additional claims emerge; the cost estimates could be higher potentially double of the known claim estimate.

Rate Level Impact: 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 abp statutes is anticipated to be between 2.5% to 3.5%, likely more than \$4.0 million per year.

DATE: January 31, 2009

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 is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	02/01/2009

February 3, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2426

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 65-05-09.4 of the North Dakota Century Code, relating to workers' compensation additional benefit payable; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-09.4 of the North Dakota Century Code is amended and reenacted as follows:

65-05-09.4. Additional benefit payable.

1. If an injured employee's benefits cease under subsection 2 of section 65-05-09.3, the organization shall pay to that employee every twenty-eight days a benefit based on the length of time the injured employee received disability benefits during the term of that claim. The organization shall pay the injured employee's additional benefits until the employee's death or for a period of time not to exceed the total length of time the employee received disability benefits under sections 65-05-08, 65-05-08.1, 65-05-09, and 65-05-10, and a vocational rehabilitation allowance under chapter 65-05.1, for that claim, whichever occurs first. The benefit is based on the injured employee's compensation rate before any applicable social security offset. The percentage of that final payment payable as the additional benefit is:

At least 1 year and less than 3 years of disability	6 <u>15</u> percent of weekly benefit.
At least 3 years and less than 5 years of disability	10 <u>20</u> percent of weekly benefit.
At least 5 years and less than 7 years of disability	15 <u>25</u> percent of weekly benefit.
At least 7 years and less than 9 years of disability	20 <u>30</u> percent of weekly benefit.
At least 9 years and less than 11 years of disability	25 <u>35</u> percent of weekly benefit.
At least 11 years and less than 13 years of disability	30 <u>40</u> percent of weekly benefit.
At least 13 years and less than 15 years of disability	35 <u>45</u> percent of weekly benefit.
At least 15 years and less than 17 years of disability	40 <u>50</u> percent of weekly benefit.
At least 17 years and less than 20 years of disability	45 <u>55</u> percent of weekly benefit.
Twenty or more years of disability	50 <u>60</u> percent of weekly benefit.

2. However, the organization shall pay to an injured employee who has been determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee, equal to one hundred percent of the final payment of the disability benefit that was discontinued under subsection 2 or 3 of section 65-05-09.3.

SECTION 2. APPLICATION. This Act applies to additional benefit payable payments made on or after the effective date of this Act."

Renumber accordingly

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2426

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number Amendment

Action Taken Pass Do Not Pass Amended

Motion Made By Senator Potter Seconded By Senator Wanzek

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

re-referred

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2426

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass Do Not Pass Amended

Motion Made By Senator Wanzek Seconded By Senator Behm

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

This Bill is re-refered to appropriations.

REPORT OF STANDING COMMITTEE

SB 2426: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2426 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 65-05-09.4 of the North Dakota Century Code, relating to workers' compensation additional benefit payable; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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At least 1 year and less than 3 years of disability	5 <u>15</u> percent of weekly benefit.
At least 3 years and less than 5 years of disability	10 <u>20</u> percent of weekly benefit.
At least 5 years and less than 7 years of disability	15 <u>25</u> percent of weekly benefit.
At least 7 years and less than 9 years of disability	20 <u>30</u> percent of weekly benefit.
At least 9 years and less than 11 years of disability	25 <u>35</u> percent of weekly benefit.
At least 11 years and less than 13 years of disability	30 <u>40</u> percent of weekly benefit.
At least 13 years and less than 15 years of disability	35 <u>45</u> percent of weekly benefit.
At least 15 years and less than 17 years of disability	40 <u>50</u> percent of weekly benefit.
At least 17 years and less than 20 years of disability	45 <u>55</u> percent of weekly benefit.
Twenty or more years of disability	50 <u>60</u> percent of weekly benefit.

2. However, the organization shall pay to an injured employee who has been determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee, equal to one hundred percent of the final payment of the disability benefit that was discontinued under subsection 2 or 3 of section 65-05-09.3.

SECTION 2. APPLICATION. This Act applies to additional benefit payable payments made on or after the effective date of this Act."

Renumber accordingly

2009 SENATE APPROPRIATIONS

SB 2426

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2426

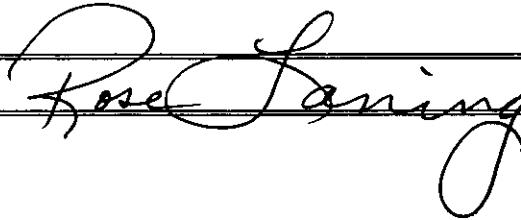
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: February 13, 2009

Recorder Job Number: 9451

Committee Clerk Signature



Minutes:

Chairman Holmberg: Called the committee hearing to order on SB 2426, relating to a repealed reference to the workers' compensation retirement presumption.

Sebald Vetter, C.A.R.E.: Testified in favor of Senate Bill 2426. It's not what we want but it helps. It was taken away from us in 1997.

Leroy Volk: Testified in favor, written medical budget handout.

What they're doing to me, which I feel they should do more. When I applied for Social Security Disability Benefits, I got ten thousand dollars. Out of the ten thousand dollars, WSI got three thousand right off the top. They never helped me to get a lawyer; they never helped me to fight to get my disability. So I had a lawyer expense of two thousand and five hundred dollars.

Which left me with four thousand and five hundred dollars? Now you take that three thousand that they got and I took it at four percent interest. First year it came to a hundred and twenty dollars, five years later it came to six hundred dollars, ten years later it came to one thousand two hundred dollars and eighteen years later it came to one thousand and eight hundred dollars. And on top of that they took out of my pay check, every month one hundred dollars.

That comes to a total of Eight thousand four hundred dollars plus interest. (Continued with his testimony of how he felt he was not treated fairly in regard to the money received).

Chairman Holmberg: Are there any questions? Thank you for sharing with us. Senator O'Connell is here now. Would you like to address 2426? We just received the fiscal note.

Senator O'Connell: The goal of Senate Bill 2426 is to remove the provision that assumes a worker is retired if they are eligible for social security. People are not necessarily retiring at social security age, especially in today's economy. People have to continue to work past what is considered retirement age. And I don't think it's right to take the benefits away from them just because they turned sixty two or sixty five.

Senator Christmann: What is the assumption, sixty two or sixty five? At what age do they assume they are retired?

Senator O'Connell: I was told sixty-five. It is all different ages in social security, max is sixty-eight.

Chairman Holmberg: Anyone testifying against the bill?

Jodi Bjornson, Legal Counsel, Workforce Safety Insurance

Testified in opposition to Engrossed Senate Bill 2426. (Written testimony attached # 2.)

Chairman Holmberg: Jodi, do you think that the study would allow the fiscal note to have more clarity? Right now it's pretty amorphous. It might be a million or whatever.

Jodi Bjornson: Mr. Chairman, I do.

Senator Grindberg: From my perspective, a study is unacceptable. I testified in support of this bill, when it was in Senate IBL. I was under the understanding with a seven to zero do pass, with these amendments that at least I would at least have the assumption that WSI was involved with those amendments. As I testified it seemed morally the right thing to do, is to identify a mechanism to address some of these workers who have been severely permanently disabled, prior to retirement. So the point that was made earlier sixty six is not the magical age to retire anymore and if somebody cannot reenter the work force. It doesn't seem morally right

that we are going to cut them off financially and not help them make their monthly obligations.

So I am a little surprised, my assumption was that we'd make some progress, at least a gesture to try to identify this group that is caught in the middle. I am not in support of killing this bill. I feel you can figure this out. I am really disappointed.

Senator Robinson: Mr. Chairman, I would echo Senator Grindberg. As I understand it we've been here before. This went away and now we are back. I really think in a number of areas with fourteen thousand workers out there. We need to develop a perception out there in terms of how friendly we are to our employees. I hear that from folks from other states, from friends, to me it's a small step but a step overdue, certainly a step in the right direction.

Senator Matthern: Is the material brought to us by Mr. Volk is the way you perceive the situation? And how is it, what he call his money, does WSI get part of it?

Jodi Bjornson: I don't know. I would have to go back and look at this to give you some answers that I would be comfortable with. From what I've heard I'm uncomfortable answering any questions right now. What I heard of the board discussions. The school of thought is that this is very complicated area when you offset retirement benefits. The benefit structure needs to be changed. The board supports an increase but let's do it right. We were not involved in amendments or aware of them. They were a surprise to us as well.

Bill Shalhoob, ND Chamber of Commerce

Neutral testimony on the bill. (No written testimony)

In 1995 as part of work force safety reforms the legislature eliminated, cut it off at social security. In 1997 they developed an ADP, which was supposed to make up a differential between retirement and what the folks lost. It hasn't been looked at since. We generally feel that workers comp is workers' comp not a retirement product, not a long term annuity, its workers comp. The legislature made the policy decision in 1997 that there is going to be a

retirement offset. It became obvious after testifying on so many of these bills that something is wrong in the ADP area. We did suggest that this be looked at in the interim in effort to see at least where we are in relation to 1997. People have lost a lot of purchasing power between 1997 and 2009. We think this is an area that we should look at, this is the first time we saw the amendment with the cost on it and we certainly favor the study. You might not like what you hear in terms of where that benefit has decreased to.

Senator Robinson: I hope we don't go down the road of a study and should that be the end result and the study comes out as you say, we might be afraid of the results. Would the business community lead the charge next session to see this is done right?

Bill Shalhoob: I don't know that I will be leading the charge but certainly. I don't know what we're going to think of the fiscal note. Considering this is a workers' comp product that is a lot of money. We want everyone to get what they want but it has to be fair on both sides.

Chairman Holmberg: I think the committee needs to also think about the fact that in passing this bill and having a study are not mutually exclusive. You could do both.

Senator Robinson: This isn't a bill that is for anybody. This is the only WSI bill we've had that's had administrative implications why is it here?

Chairman Holmberg: Because it has the implication of up to a million dollars or so, they believe in a fiscal note of an impact on the fund. So that is why we have it. We have special and general fund.

Senator Robinson: In other words in the forty other bills we dealt with WSI, none of these had these implications?

Chairman Holmberg: Not to the extent that, we have another one today and we had one yesterday.

Sebald Vetter: Let's just stop and look at what Leroy said. I am grandfathered in but I am out there helping people who fall into the category. (Discussed the unfairness of WSI).

Senator Mathern moved Do Pass on SB 2426.

Senator Robinson seconded.

Discussion:

Senator Christmann: This is probably, in the next two years, the best and most accurate study that could be done. We will see what it cost if we pass this. And since it seems to be questionable whether we should still wait for it or it could be way long. If we weren't moving so fast with it I just wonder would there be wisdom in putting in a sunset clause, so just in case we do a study that was either suggested in the house bill or this is kind of a study of trying something. If it shows it is too much, when we get the right numbers and the right way to fix the problem. If it lessons benefits it doesn't seem like their coming in two years and whacking the benefits down from where they are.

Chairman Holmberg: We will have that opportunity because we will have WSI budget the second half, so we can see how this is going through and if we want to do something in that area if they take the study out or don't have a study we can add it in. So we will have control of that issue.

A Roll Call vote was taken. Yea: 12 Nay: 1 Absent: 1

The bill goes back to Industry, Business and Labor.

Date: 2-13-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2426

Senate _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Mather Seconded By Sen Robinson

Representatives	Yes	No	Representatives	Yes	No
Senator Fischer			Senator Warner	✓	
Senator Christmann	✓		Senator Robinson	✓	
Senator Krebsbach	✓		Senator Krauter	✓	
Senator Bowman	✓		Senator Lindaas	✓	
Senator Kilzer		✓	Senator Mather	✓	
Senator Grindberg	✓		Senator Seymour	✓	
Senator Wardner	✓				
Chairman Holmberg	✓				

Total Yes 12 No 1

Absent 1

Floor Assignment goes back to IBL

If the vote is on an amendment, briefly indicate intent:

File

REPORT OF STANDING COMMITTEE

SB 2426, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2426 was placed on the Eleventh order on the calendar.

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2426

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2426

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10013

Committee Clerk Signature

Ellen LeTang

Chairman Keiser: Opened the hearing on SB relating to Worker's Compensation additional benefit payable & provide for application.

Sylvan Loegering~North Dakota Injured Workers Support Group. Looking at that engrossed version before you, there is no similarity to the original bill. The original bill called for repealing all the references to what happens when an injured worker reaches retirement age. We are dealing with primarily with people that are permanently totally disabled, currently law as a member of things that happened when a person reaches retirement age including assuming that they are retired, disability checks stop. In the law there is an additional benefit payable that would compensate for loss of reimbursement social security. If you were injured prior to retirement age, let's say 10 years, you continue to get a check based on a percentage of your previous disability check for another ten years, so, there is a temporary additional benefits payable, depending on how long your injured prior to retirement. The committee took the position that no way the bill will pass in its original form where we decide to take retirement benefits until people die. They also expressed an opinion that we could meet half way between not getting anything and paying disability until death. What you have in front of you is the middle ground. What they did is they looked at the additional benefits payable and

increased the percentages by 10% each level of the number of years that this disability prior to retirement.

Chairman Keiser: Basically this is just taking the ABP (Additional Benefit Payable) program and updating every step up 10% on the weekly benefits. Is that right?

Loegering: That's correct.

Sylvan: What I'm handing out is the remarks that I made to the Senate committee on February 2 and a set of very brief remarks I prepared for today. See testimony attachments.

Dave Kemnitz~President of the North Dakota AFL-CIO. If I understand the bill right, Senate House Industry, Business and Labor committee heard testimony and decided this was they want and passed with a unanimous vote. So before you as a bipartisan, it a concerted effort to adjust for the claimants, particularly the ones most recently injured.

Sebald Vetter~C.A.R.E. I support SB 2426, it's not what we want but it helps.

Chairman Keiser: Is there anyone here to testify in opposition to SB 2426?

Tim Wahlin~Chief of Injury Services for WSI. See testimony attachment.

Bill Shalhoob~North Dakota Chamber of Commerce. See testimony attachment.

Chairman Keiser: Tim, could you explain the fiscal note.

Wahlin: I can explain why we can't explain the total effect. Our thought was that this should be very rhematic and we should be able to get a price out of this. As Mr. Evans going through the process, said "no", this is not something that is easily priced because of the way you count your reverses and the complexity of that benefit and know how that benefit will affect people currently reserved on the system. This is a large project. It will be material impact; it will be in excess of a million dollars, how much I simply do with this at this time. It's more difficult than you are anticipating.

Chairman Keiser: Could you go over that again?

Wahlin: The actuarial impact on this particular bill has been difficult to price of the 10% across the board and that means that you apply a sliding scale all the way up this graphing. Each graphing has to be priced separately because of the significantly different effect of each bracket. Secondly, because of how we account for our reserves on the book, when we a claim, we reserve indemnity benefits that includes their post retirement ABP. There is no way right now to extract meaningful information out of those reserves to apply to these changes to because they are part of the indemnity program, meaning all the way. He believes he will be able to generate but this is a month long project rather than a day or week long.

Chairman Keiser: I have never won against an actuary; it turns out once they explain it and I didn't have such a great idea. It seem to me that you should be able to at least minimally take total ABP payment and say what happens if that pool goes up 10%?

Wahlin: That was our thought and he said for a variety of reason, you simply will get an inaccurate number.

Vice Chairman Kasper: Is the inaccuracy based upon the unknown future claims as well as half claims?

Wahlin: Yes, additionally it is the known future effects that the retirement system out there are going to have on the pool of unknown and how that is going to drive peoples patterns of employment or not.

Vice Chairman Kasper: You said you thought it would take about a month, the day of the fiscal note is February 6, we are not March 3, is he within three days of giving you the fiscal note?

Wahlin: No, I have not spoken with him since crossover.

Vice Chairman Kasper: Wouldn't that be something to find out or are you saying the fiscal note is so expensive to obtain that WSI didn't want to spend the money or want the answer.

Wahlin: At that point in time when he generated the fiscal note on this particular note on this bill, it was not his intentions or our direction to enter the month long project.

Vice Chairman Kasper: You might want to find out. We have to take action on the bill and we are in the dark. Maybe you want to check and see.

Wahlin: We will follow up on that.

Chairman Keiser: I asked Tyler to run off HB 1525 because it was reference by Tim Wahlin. This is a required study; it is not an optional study.

Chairman Keiser: What are the wishes of the committee?

Vice Chairman Kasper: I ask that you hold it at least until next week until Tim can give us an answer on how long it will take.

Chairman Keiser: We will hold it.

Closes the hearing on SB 2426.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2426

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10089

Committee Clerk Signature

Ellende Tana

Chairman Keiser: Opened the committee work session on SB 2426.

LeRoy Volk~Self. I'm here to talk about money left over, what they should do with it. **See attachment.** When I apply for my Social Security disability benefits, I have \$10,000.

Worker's Compensation gets one third off the top that would be \$3,000. My lawyer is ¼ for

help filling the paperwork which is \$2,500 and leaves a balance of \$4,500. Now you go down the side for the first and second years, they take \$100 a month out of my check for Social Security. That will leave me a balance of \$8,400 that they took out already plus the \$3,000.

Now at the age of 65 after seven years, they take \$200 a month out of my check because I qualify up to a higher category. Now when I'm done at the age of 65, what they took out of my checks is 27,600 plus the 3,000 that put it at a total of \$30,600. Now go across the bottom where they say they pay out and I live to the age of 70 which 45% of a \$1,000 which I will be getting is \$450 that I will be getting every month. It would leave a total of \$27,000 that they would pay me and up here they took \$30,000 from me already. That's without the interest on the top and along the side which I added up at 4%. What do they do with the extra money is what I'm trying to figure out. If I live to the age of 70, there is money left over and this money should go to my wife or to my children who is ever in charge of my will when I gone. I feel

Worker's Compensation shouldn't be able to hold on to my money what they have already and keep it.

Representative Ruby: That's the amount you saved, it's the reduction in benefits?

Volk: Right.

Chairman Keiser: These are you amounts being offset because of Social Security.

Volk: There is no place for this money to go. You always say we are stealing and committing fraud, to me this is embezzlement on their part, not giving us our money back. I should get something to where they say when I die, where this money goes to my spouse or one of my kids. You take that over a 1,000 people who are in there, which leaves into millions of dollars where they are taking.

Representative Clark: It could be put into an annuity.

Chairman Keiser: Closes the hearing on SB 2426.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2426

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10181

Committee Clerk Signature

Ellen Retana

Chairman Keiser: Opened the committee work session on SB 2426.

Vice Chairman Kasper: I didn't actually want to put you on the spot but you had a month to do some looking into and you said, well, we just thought it was such a big stretch that we just didn't even think we would want to even go there, so they failed to even ask. It would be quite costly. They sent this email this morning with sort of an explanation what they think the whole thing would do and so on. I guess with that, I'm not concerned at this time.

Chairman Keiser: What are the wishes of the committee on SB 2426.

Vice Chairman Kasper: Moves a Do Pass.

Representative Schneider: Second.

Vice Chairman Kasper: I would like to withdraw my motion if the Representative Schneider who seconded it would allow me.

Representative Ruby: Move a Do Not Pass.

Representative Vigesaa: Second.

Representative Ruby: Just doing a ten percent in the low end on line 17 from five to fifteen percent is actually a 200% increase. I was going to ask them about it, but they had it their testimony because I thought that it was not very equitable. I don't think just an arbitrary increase is the right way to go either. I know we have the study in place to take a look at what

we are doing now is comparable to what they would they get normally to what they would get from the Social Security through not being able to pay into it over a period of time. I think that was the intent of this program for the additional payable and that's the right way to go.

Chairman Keiser: I am very supportive of this study. We have a system that really isn't working, it's not fair. If you have a pre 1995 right now with the ABP right now, you come out way ahead. If you are between 1995 and 2005, I think you get a really bad deal. If you come in after 2005, it's maybe more fair. Our system needs to be addressed but this approach simply makes an unfair system more unfair.

Chairman Keiser: Further discussion.

Voting rolling was taken on SB 2426 as engrossed for a Do Not Pass with 8 yeas, 5 nays, 0 absent and Vice Chairman Kasper is the carrier.

Date: Mar 4 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2426

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Ruby Seconded By Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	1		Representative Amerman		1
Vice Chairman Kasper	1		Representative Boe		1
Representative Clark	1		Representative Gruchalla		1
Representative N Johnson	1		Representative Schneider		1
Representative Nottestad	1		Representative Thorpe		1
Representative Ruby	1				
Representative Sukut	1				
Representative Vigesaa	1				

Total (Yes) 8 No 5

Absent 0

Floor Assignment Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 4, 2009 3:33 p.m.

Module No: HR-39-4056
Carrier: Kasper
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2426, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO NOT PASS (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2426 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2426

February 1, 2009

58,2426

Hi, I'm Jerry Volk, and I would like to say thank you at this time to Chairman Jerry Klein and committee members for allowing me the opportunity to give my testimony today regarding this bill.

RE: Gerald Volk
Claim #2006732973

This letter is in response to receiving notices of denying benefits from February 23, 2006 to present day.

To whom it may concern:

On February 23, 2006, at Geo. E Haggart Inc. shop, 3:30 pm, the following took place:

I was air pressure testing the tires on a bulk-fuel truck. I was on my knees, with my left arm leaning against the tire, the tire stem was located on the bottom. Upon testing the driver's side front, after adding air, I rechecked the pressure, I noticed the rim of the tire moving, the tire then exploded, sending myself into the air up against an a-frame hoist. My two co-workers were at the opposite end of the shop when the explosion occurred. My co-worker found me unconscious and called 911. When the ambulance arrived, I had regained consciousness. I couldn't move my left arm, I couldn't breathe; I had severe chest pains, I couldn't move my right leg, and I couldn't hear. The ambulance transported me to Meritcare ER, located on Broadway & 7th Av in Fargo. Upon admittance, I had to have a splenectomy, to cease the bleeding. I had 8 fractured ribs (in two places), a punctured lung, and a head concussion. I was put into a drug induced-coma for approximately 6 weeks. I then left the ICU (I don't recall this), to a rehab room for approximately 3 weeks, when I noticed problems from my injuries: severe headaches, blurred vision, extreme pressure behind my right ear, numbness on my entire right side. These problems continued and elevated after my release from the hospital, in addition, I had severe pain and drainage from my incision. The scar tissue from my incision made it extremely difficult to perform daily tasks; driving was next to impossible; the sitting position was the worst.

On May 3, 2006, I was released from the hospital. On May 8, Nadine contacted John at Haggart Construction and discussed my future with him; possible retirement when I am 62; I had no knowledge of this conversation. Now, it seems at this point, Nadine at WSI is deciding my future without any input from me, as clearly stated in the document from WSI, notepad date- 05/08/2006.

Upon coming home, I then started to receive letters of denial that pertained to this accident from WSI. WSI rejected claims for my head injuries (vision and hearing), and my knees and shoulders. I then spoke to my case manager, Nadene Lenz; she told me to call Paula H. at WSI. During my phone conversation with Paula, I asked her why every single claim I had was denied. Paula's answer was, "This is standard procedure and it's the law" with a hearty laugh. I never did understand what "The law" was about, due to the fact it was changed constantly, several times.

On June 6th, I received a letter from WSI Paula H., stating that vocational rehabilitation may be beneficial to me. At this time, I was in no shape for any kind of rehab; I was extremely weak, I had lost 30 lbs of weight, it was very hard to climb stairs, as well as getting in and out of a vehicle. One month after my discharge, Dr. Lindquist said it would now be okay to drive a vehicle. I was so weak, and having both right and left rotator cuffs torn made it impossible for me to turn the ignition key on my vehicle; I had to use a six inch crescent wrench on the ignition key to start my vehicle. My incision from my surgery was bleeding and draining, therefore, this made it extremely hard to sit and drive, for any amount of time.

WSI Paula H. hired Corvel Cooperation to start vocation and rehabilitation. During my first meeting with Mary

Jo Anderson, my incision started to drain and bleed. Mary Jo then ended the interview and asked me "What on earth are you doing here in this condition?" She also asked if she could drive me home. During this period of time, I was in severe pain constantly and in no physical and mental state of mind ready to get back to work; the only consideration I received from WSI Paula H. was how soon I could get back to work. On June 20, after 10 days in bed, my wife took me to the ER with problems from my incision, which, in turn, WSI Paula H. had denied the claim for this incident, stating that it "wasn't work related".

During my entire hospital stay, WSI failed to contact the co-workers that witnessed the accident, who could have explained exactly what happened. I felt, because of this, I felt at that time, WSI took advantage of me. My head trauma kept me from making decisions regarding these denials from WSI. My wife, DeLilah, did not know how to properly handle these matters, which left us with no other choice, but to hire an attorney; which made us feel at ease. This feeling, would only be temporary.

The unprofessionalism of WSI would not copy my attorney when the denials were sent to me. The intent of my attorney was to handle my denied claims and problems, but WSI would not copy my attorney, so I had to deliver my copies myself to him; which, in turn, also cost me more money. This is when the anxiety started all over again, resulting in medications to treat my severe anxiety and migraine headaches and insomnia. At this period of time, when I was very vulnerable, WSI took advantage of me.

I feel that the severity of my accident was incorrectly categorized.

1. Paula H. at WSI reported that I was repairing a TRACTOR tire, and STANDING in front of it. This is completely inaccurate. The tire was attached to a TRUCK,(NOT a tractor), as I was AIRING it up,(NOT repairing it), on my KNEES,(NOT standing in front of it).
2. The point of impact was on my left arm, between the elbow and shoulder, and all claims regarding this injury were denied, due to inaccurate recording from WSI.
3. I feel what WSI has put me through, is above and beyond anybody's capacity to handle a matter such as this. Is this the nature of how WSI handles cases, or am I an exception??
4. After endless letters and phone calls from Meritcare demanding payment from the bills that were originally denied from WSI, WSI has finally accepted and paid most of these bills after an unusually long period of time.
5. WSI has notified me that upon my 66th Birthday, all my weekly benefits will be terminated. Since I am totally disabled, I still cannot work. This is unacceptable.
6. I had no plans on retiring at age 66, as my co-workers never did.
7. My pension is now substantially lower because I haven't been able to contribute to it since the accident; especially with today's economy, this will be quite a hardship.
8. My social security is lower for the same reason.
9. My living expenses haven't decreased; they're going up.
10. Due to WSI's lack of cooperation, consideration, and giving out misinformation, I feel WSI's professionalism and decisions are questionable. I also question why there is no "grading" of injuries-mild, moderate, severe; how can they possibly lump all injuries into one category, from severe to "Monday morning" claims?
11. Due to the severity of my accident, I feel I shouldn't have to prove every detail of my injuries. My lawyer fees are in the thousands of dollars. I feel I have been discriminated on, and I feel the tactics they use are

criminal within the agency of WSI.

The passage of this bill is extremely important to me for these reasons as well as other people in this same situation. I urge your support.

Medically, for awhile it seems things were slightly improving. The swelling behind my eyes has now returned. Dr. Witzig at Mayo Clinic is treating me for orbital pseudolymphoma.

Sincerely,



Gerald J. Volk
701-282-2865
701-412-1049

2009 House Bill No. 2426
Testimony before the Senate, Industry, Business and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety and Insurance
February 2, 2009

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin and I am 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 2426. 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 1995 and 1997, the Legislative Assembly amended the retirement presumption statute and enacted the additional benefit payable statute to clearly provide that wage loss benefits ended for all injured workers when they received Social Security Retirement benefits, or when they reached retirement age and were eligible to receive Social Security Retirement benefits.

The 1995 legislation was in accordance with the basic purposes of workers' compensation. A primary function of workers' compensation systems is to pay benefits partially compensating for wage loss as a result of work injuries. This is a wage replacement benefit. 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, or post retirement benefit statute was created in 1997. This benefit was founded on three basic principles: it begins when wage loss benefits end at retirement eligibility, it is paid for the same length of time as the worker had been unable to work prior to retirement eligibility; and the longer the worker had been unable to work, the higher the post-retirement benefit payment. In the case of catastrophic injuries, the worker receives 100% of their benefit for life.

WSI submits the current law strikes a 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 life.

Eliminating the retirement presumption law and additional benefit payment law as it exists today would have a profound impact on the fund. Our actuary estimates the reserve level increase for known claims will likely fall in a range between \$20 million and \$27 million. To the extent additional claims emerge; the cost estimates could be potentially double of the known claim estimate.

In addition, the proposed legislation will 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 between 2.5% to 3.5%, or likely more than \$4.0 million per year.

This concludes my testimony.

NDCC 65-05-09.4--Additional Benefit Payble (Post-Retirement Benefit)

Pre-Retirement Eligibility Disability Period	ABP Benefit Amount	ABP Benefit Duration
At least 1 year and less than 3 years of disability	5 percent of weekly benefit	Equals pre-retirement disability period
At least 3 years and less than 5 years of disability	10 percent of weekly benefit	Equals pre-retirement disability period
At least 5 years and less than 7 years of disability	15 percent of weekly benefit	Equals pre-retirement disability period
At least 7 years and less than 9 years of disability	20 percent of weekly benefit	Equals pre-retirement disability period
At least 9 years and less than 11 years of disability	25 percent of weekly benefit	Equals pre-retirement disability period
At least 11 years and less than 13 years of disability	30 percent of weekly benefit	Equals pre-retirement disability period
At least 13 years and less than 15 years of disability	35 percent of weekly benefit	Equals pre-retirement disability period
At least 15 years and less than 17 years of disability	40 percent of weekly benefit	Equals pre-retirement disability period
At least 17 years and less than 20 years of disability	45 percent of weekly benefit	Equals pre-retirement disability period
Twenty or more years of disability	50 percent of weekly benefit	Equals pre-retirement disability period
Catastrophic Injuries	100 percent of weekly benefit	Lifetime



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2426
February 2, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in opposition to SB 2426 and urge a do not pass from the committee on this bill.

^{SB} HB 2426 does two things which are troubling, including eliminating both the current presumption of retirement at the time of retirement eligibility and the ABP statutes. This would mean claimants who meet these criteria would be able to continue payments at pre-retirement levels. WSI benefits were and are intended to be worker's comp insurance. Making this change converts them to a retirement product like social security an IRA, 401 K or annuity. That is not a change we should make. Every worker in any class in America would like to be able to retire at the same income level as when working. I, for one, would like to get more. The system in the work place does and cannot work in this way and we should not corrupt our workers comp product by eliminating these provisions. This is a policy change that is ill advised at this or any other time.

Thank you for the opportunity to appear before you today in opposition to SB 2426. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS

REMARKS FOR IBL COMMITTEE re SB 2426

Sylvan Loegering, Volunteer Coordinator, ND Injured Workers Support Group
February 2, 2009

As I see it, this bill is designed to deal with a fact of life in society today. Society's concept of a "normal" lifestyle has changed periodically as needs, opportunities and preferences have changed. Many years ago most people had no choice but to work until they died or were physically unable to work. Then it became the norm to quit and retire when they reached social security retirement age or sooner. Today the trend is that more and more people are working, sometimes for many years, after they begin collecting social security retirement benefits. The reasons are multiple and include generally better health, longer life spans or a desire to have a more comfortable life compared to just a few years ago. Other factors are little or no retirement savings, inflation and a need to earn, especially now as our economy is struggling. **To put it briefly, many people no longer expect to quit working when they reach so-called retirement age.**

This bill is designed for those individuals who want to work after Social Security Retirement age but are prevented from doing so by an employment-related injury. I don't need to remind you that living expenses don't go down because age goes up. Employees forced to live on Social Security alone simply because they got hurt on the job could very easily end up on some type of financial aid paid for by our tax dollars. I am convinced that most North Dakotans would rather work than get money for nothing. There would be a lot more dignity in receiving income from a work-related benefit than going on charity. ^{our} If government promised our employees sure and certain relief if they get hurt on the job and I feel that if a job-related injury is the only reason they aren't out earning money we as a state owe them relief through workers' compensation.

I know this bill will come with a large fiscal note. I'm not privy to how those numbers are calculated, but they will very likely be based on something close to a worst-case scenario. The backers of this bill do not intend for the organization to pay everyone disability benefits after retirement age. The law as amended would still have many safeguards. Here are some examples: Social security and other retirement and part-time work would still be offset. There would still be a cap on income based on pre-injury wages. The burden of proving inability to earn due to injury falls on the employee. Voluntarily limiting income or declining employment would disqualify an employee from earning benefits. Verification of disability would still be available. There would still be penalties for false statements by employees. Continuing jurisdiction would still exist. Mr. Chairman, members of the committee. This bill would not be a windfall for injured workers. It would merely give them relief from their injuries and get them part way back to where they would be without their work-related injury.

The reality, commonly understood, is that retirement is a choice for most people. I don't have the time or the resources to research case law, but even a cursory examination of the red book reveals several cases which refer to retirement being voluntary. I do not believe we as a society or our workers' compensation department have the right to decide for someone else when he or she should retire. An injured employee who sincerely wants to work and can't simply because of job-related injuries is not retired. He or she is involuntarily unemployed and deserves support.

Since this will be my only chance to address this committee on this bill let me think out loud for a moment. I ask you to at least accept the reality that many people can and do work past retirement age. I, personally, can accept the reality that earnings do typically go down because of reduced hours or the type of employment available. I ask you to vote "do pass" on this bill. If you, as a committee, can not vote "do pass" as it exists then I ask you to amend it to allow for phased-in reduction of benefits after retirement age for those people who fit the standards we have discussed. Let us give our injured employees the dignity of being able to choose their retirement age like everyone else.

Thank you for your consideration.

WSI paid 2426
 Leroy Volk

4 2/6

SSC Dis	WSI	Lawyer	Totak
\$10,000	\$2,000	\$2,500	\$4,500
Interest 1yr \$120.	5yr \$600.	10yr \$1,200	15yr \$1,500
Month	End yr.		Interest
1 \$100.00	\$1,200		\$48.00
2 \$100.00	\$2,400		\$98.00
3 \$100.00	\$3,600		\$148.00
4 \$100.00	\$4,800		\$199.00
5 \$100.00	\$6,000		\$248.00
6 \$100.00	\$7,200		\$298.00
7 \$100.00	\$8,400		\$348.00
8 \$200.00	\$10,800		\$446.00
9 \$200.00	\$13,200		\$546.00
10 \$200.00	\$15,600		\$646.00
11 \$200.00	\$18,000		\$746.00
12 \$200.00	\$20,000		\$830.00
13 \$200.00	\$22,900		\$945.00
14 \$300.00	\$26,200		\$1,046.00
15 \$300.00	<u>\$27,600</u>		<u>\$1,146.00</u>
	\$3,000	\$3,000	\$1,500.00
Total	<u>\$30,600</u>		
	2,946	Total	<u>\$12,946.00</u>
Total	<u>\$32,546</u>		

1	45	\$1,000	\$450.00	\$5,400
2	45	\$1,000	\$450.00	\$10,800
3	45	\$1,000	\$450.00	\$16,200
4	45	\$1,000	\$450.00	\$21,600
5	45	\$1,000	\$450.00	\$27,000

2

**2009 Engrossed Senate Bill No. 2426
Testimony before the Senate Appropriations Committee
Jodi Bjornson, General Counsel
Workforce Safety and Insurance
February 13, 2009**

Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson. I am legal counsel for Workforce Safety and Insurance (WSI). On behalf of WSI I am here to testify in opposition to Engrossed SB 2426.

The engrossed bill proposes to increase the additional benefit payable (ABP) benefits for injured workers that attain retirement age. Workers compensation disability benefits end at the time of social security retirement eligibility, at which time they convert to an additional benefit payable, a post-retirement benefit.

The duration of the ABP benefit directly correlates to the pre-retirement disability period. For example, a 10 year pre-retirement disability period equates to a 10 year post-retirement ABP period.

The amount of ABP benefits is dependent upon the period of pre-retirement disability. The longer the disability period prior to retirement eligibility, the higher the post-retirement ABP benefit amount. The proposal increases the ABP benefit schedule by ten percentage points across the board.

A bill passed by the House, 2009 Engrossed HB 1525, provides for a study of the post retirement, or ABP, benefit structure and requires WSI to report the study results to the Interim Workers' Compensation Review Committee no later than August 1, 2010. WSI is currently supporting this approach. After a comprehensive study, WSI will be in a better position to address the overall adequacy of the ABP benefit structure.

The engrossed bill is a benefit bill and has no impact on WSI's administrative appropriation.

That concludes my testimony. I am happy to answer any questions that you might have.

REMARKS FOR IBL COMMITTEE re SB2426

Sylvan Loegering March 3, 2009

At the Senate IBL hearing advocates for injured workers were asked to present ideas for an approach “half-way between paying benefits for life and doing nothing. I presented 4 ideas to the Senate IBL Committee: 1) Pay disability benefits but offset social security entirely 2) Pay disability benefits for a specified time such as 3 or 5 years. 3) Pay disability benefits at a decreasing rate phasing them out after a certain period such as 5 or 7 years 4) (Described as “way down the list”) Increase additional benefits payable. They chose Number 4.

Increasing additional benefits payable will help those who have been disabled for a long time and that is appreciated. However, it will miss that segment of the population that are permanently and totally disabled shortly before they reach retirement age. (By the way, if I remember correctly, a WSI representative stated that the number of people on permanent total disability in North Dakota is about 1,000.) I understand the principal that “Workers’ compensation is not a retirement program”, which implies that workers who can work up to retirement age should have adequate funds set aside for retirement age and shouldn’t need wage replacement. The truth is that a percentage of people that work till retirement age never had a chance to build their retirement even with good money management. Maybe they didn’t have the training or other skills to earn an adequate wage and every penny they earned went toward daily living. Maybe their health or that of a family member went bad and drained their resources. Maybe they lost their job through down-sizing, company closure, etc at an age where they couldn’t find an adequate replacement job. There could be other scenarios but they all have one thing in common. Under normal circumstances they would have to work past retirement age. If only their job-related injury prevents their working they need sure and certain relief but do not get it under this plan.

I have resisted the temptation to offer an amendment to help some of these people. After considerable soul-searching I decided I could not offer a plan that was simple enough and comprehensive enough to be adequately considered in the time you have available after this hearing.

That leaves me with my final option: I ask you to vote “do pass” on this bill.

2009 Engrossed Senate Bill No. 2426
Testimony before the House Industry, Business & Labor Committee
Tim Wahlin, Chief of Injury Services
Workforce Safety and Insurance
March 3, 2009

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin. I am Chief of Injury Services for Workforce Safety and Insurance (WSI). On behalf of WSI, I am here to testify in opposition to Engrossed SB 2426.

The engrossed bill proposes to increase additional benefits payable (ABP) for injured workers that attain retirement age. Workers compensation disability benefits end at the time of social security retirement eligibility, at which time they convert to an additional benefit payable, a post-retirement benefit. This is commonly referred to as the "retirement presumption."

The duration of the ABP benefit directly correlates to the pre-retirement disability period. For example, a ten year pre-retirement disability period equates to a ten year post-retirement ABP period.

The amount of ABP benefits is dependent both upon the length of pre-retirement disability as well as the level of pre-retirement benefits paid. The longer the disability period prior to retirement eligibility, the higher the percentage for post-retirement ABP benefit amounts. Attached you will find a matrix describing the current ABP benefit schedule which may aid in this explanation.

Engrossed SB 2426 proposes to increase the ABP benefit schedule by ten percentage points across the board. This method of benefit increase affects injured employees disparately—for example the lowest benefit level will be increased 200% and a higher benefit level is only increased 20%. This may be

supportable. It may be totally unjustifiable. We simply do not possess the information that allows us to reach an informed conclusion and a supported recommendation.

A bill passed by the House, 2009 Engrossed HB 1525, provides for a study of the post retirement, or ABP, benefit structure and requires WSI to report the study results to the Interim Workers' Compensation Review Committee no later than August 1, 2010. WSI is currently supporting this approach. Only after a comprehensive study will WSI be able to meaningfully address the overall adequacy of the current ABP benefit structure.

WSI projects this proposed change will have a material impact on both reserves and statewide premium levels (more than \$1 million). Quantification of the exact affect is not possible with our current data. This is a result of our reserving process which does not separately delineate ABP reserves outside of the general indemnity component. With a study, we expect to better quantify the financial impacts of any proposed changes.

WSI would request a "do not pass" on Engrossed SB 2426.

That concludes my testimony. I am happy to answer any questions that you might have.

NDCC 65-05-09.4--Additional Benefit Payble (Post-Retirement Benefit)

Pre-Retirement Eligibility Disability Period	ABP Benefit Amount	ABP Benefit Duration
At least 1 year and less than 3 years of disability	5 percent of weekly benefit	Equals pre-retirement disability period
At least 3 years and less than 5 years of disability	10 percent of weekly benefit	Equals pre-retirement disability period
At least 5 years and less than 7 years of disability	15 percent of weekly benefit	Equals pre-retirement disability period
At least 7 years and less than 9 years of disability	20 percent of weekly benefit	Equals pre-retirement disability period
At least 9 years and less than 11 years of disability	25 percent of weekly benefit	Equals pre-retirement disability period
At least 11 years and less than 13 years of disability	30 percent of weekly benefit	Equals pre-retirement disability period
At least 13 years and less than 15 years of disability	35 percent of weekly benefit	Equals pre-retirement disability period
At least 15 years and less than 17 years of disability	40 percent of weekly benefit	Equals pre-retirement disability period
At least 17 years and less than 20 years of disability	45 percent of weekly benefit	Equals pre-retirement disability period
Twenty or more years of disability	50 percent of weekly benefit	Equals pre-retirement disability period
Catastrophic Injuries	100 percent of weekly benefit	Lifetime



The following associations support our testimony and position on WSI issues:

AGC of ND
ND Grocers Association
ND Motor Carriers
ND Hospitality Association
ND Petroleum Council
ND Automobile Dealers Association
ND Implement Dealers Association
ND Retail Association
ND Petroleum Marketers
ND Health Care Association

The following chambers are members of a coalition that support our 2009 Legislative Policy Statements:

Chamber of Commerce of Fargo Moorhead
Greater Bottineau Area Chamber of Commerce
Hettinger Area Chamber of Commerce
Kenmare Association of Commerce
Minot Chamber of Commerce
Oakes Area Chamber of Commerce
Bismarck-Mandan Area Chamber of Commerce

THE VOICE OF NORTH DAKOTA BUSINESS

PO Box 2639 BISMARCK, ND 58502 Toll-free: 800-382-1405 Local: 701-222-0929 Fax: 701-222-1611
www.ndchamber.com ndchamber@ndchamber.com



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2426
March 3, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in opposition to SB 2426 and urge a do not pass from the committee on this bill.

The Chamber has tried to resist WSI benefit changes that do not address workers comp. benefits. We realize the legislature decided as a matter of policy that ABP's are a part of the North Dakota benefit package. Understanding that the policy decision has been made the only question left is the appropriate benefit level. This session there were bills in both the House and Senate offering possible changes to the benefit structure. The House passed HB 1525 which calls for a study of this issue and a report to the next assembly. The Senate passed this bill which increases benefits 10% in each category as an interim step and I believe will also support the study. Retirement replacement is complicated and we think the process will best be served by following the plan in HB 1525. By gathering information on our position we can act with certainty in setting the benefits at an appropriate level.

Thank you for the opportunity to appear before you today in opposition to SB 2426. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS

Tim Wahlin Attachment

90805.0200

FIRST ENGROSSMENT

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1525

Introduced by

Representatives Amerman, J. Kelsh, Wolf

Senator Pomeroy

1 A BILL for an Act to provide for a workforce safety and insurance study of post-retirement
2 benefits within the workers compensation system.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Post-retirement benefits study.** During the 2009-10 interim, workforce
5 safety and insurance shall study the additional benefits payable benefit structure that comprises
6 the post-retirement benefits available to an individual whose disability benefits end at the time
7 of social security retirement eligibility. The study must identify the advantages and
8 disadvantages of the current system to workers' compensation benefit recipients. The study
9 must include recommendations on whether changes are necessary and the cost of any
10 proposed changes. Before August 1, 2010, workforce safety and insurance shall report the
11 results of the study to the legislative council's workers' compensation review committee.

NDLA, Intern 08

From: Wahlin, Timothy J.
Sent: Wednesday, March 04, 2009 2:00 PM
To: NDLA, Intern 08
Cc: Halvorson, John L.
Subject: FW: Engrossed SB 2426-Additional Benefit Payable (ABP) Increase

Tyler,

This is the additional information we pulled together for Rep. Kasper regarding his request on HB 2426. Again because of the difficulties in pricing we are presented with severe obstacles in generating an accurate amount for the fiscal impacts.

Timothy J. Wahlin

Chief of Injury Services
Workforce Safety & Insurance ND
email twahlin@nd.gov
(701)328-7201

From: Halvorson, John L.
Sent: Wednesday, March 04, 2009 11:49 AM
To: Kasper, Jim M.
Cc: Wahlin, Timothy J.
Subject: Engrossed SB 2426-Additional Benefit Payable (ABP) Increase

Jim Kasper,

This is the best we could do with the information requested. We know this doesn't adequately answer all of your questions but it is the best we could do at this time. Please let Tim or I know if you have additional questions. Thanks.

John

SB 2426: Additional Benefit Payable

The engrossed bill serves to increase the additional benefit payable (ABP) benefits for injured workers that attain retirement age.

- WC disability benefits end at the time of social security retirement eligibility at which time they convert to an additional benefit payable, a post-retirement benefit provided to injured workers.
- In the event of a catastrophic injury, the ABP amount is 100% of their disability benefit for life.
- For non-catastrophic injuries, the duration of the additional benefit payable directly correlates to the pre-retirement disability period (i.e. 10 years pre-retirement disability equates to 10 years post-retirement ABP)
- The amount of ABP benefits currently is dependent upon the period of pre-retirement disability and the amount of the disability benefit received at retirement eligibility. The longer the disability period, the higher the post-retirement ABP.

Questions:

Engrossed SB 2426 Increases post-retirement benefits (ABP Benefits) by ten percentage points across the board--Proposed increases appear rather arbitrary and would affect injured workers disparately. The increases would range from 200% (5% to 15%) for shorter term disabilities to 20% (50% to 60%) for longer term disabilities.

Quantification of the impact of the proposed change is difficult because WSI does not segregate ABP reserves on claims not yet eligible for the benefit. Instead, such future costs are booked as part of the aggregate indemnity reserve.

Due to some significant, unsegregated variables, we cannot project actual costs with any reasonable certainty. It is possible some highly labor intensive manual data reviews may yield trends which will become the basis for projectable effects; those processes have not been undertaken based upon the schedule of the required information. Without completing such efforts, WSI is comfortable projecting the cost as being material (at least \$1 million) both to our discounted reserves as well as state wide premium levels.

It is not clear whether current ABP benefit levels are inadequate. Various viewpoints exist--some view current levels as less than adequate, some view current levels as adequate, and some view current levels as more than adequate. Other policy questions include:

Is it the role of the workers' compensation system to supplement retirement for individuals with spotty work histories? And, if so, to what extent?

The House previously passed 2009 Engrossed HB 1525 (94-0) which requires WSI to study the post-retirement benefit (ABP) structure and report its recommendations and costs of any proposed changes to the Interim Workers Compensation Review Committee by August 1, 2010. Should the study indicate current levels are deficient, the legislature can correct moving forward. \$50,000 has been requested to secure the resources to perform this study.

Short term study not feasible. Longer term comprehensive study is necessary as much of the process will be manual and involve extensive actuarial analysis.

After comprehensive study, we will be in a better position to meaningfully address the overall adequacy of the current ABP benefit structure.