

**2011 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1051**

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1051  
January 10, 2011  
Recording No.: 12699

☐ Conference Committee

Committee Clerk Signature

*Re Mae Kuchma*

**Explanation or reason for introduction of bill/resolution:** Workers' compensation benefits upon attaining retirement age.

## Minutes:

**Chairman Keiser:** Opened the hearing on HB 1051

**Jodi Bjornson~General Counsel with WSI:** (See attached testimony #1)

**Chairman Keiser:** While the committee is thinking of questions, could you run us through a couple of scenarios.

**Jodi Bjornson:** Gives scenarios.

If somebody is injured five years ago, 2006, they are a disability benefit recipient and they come up the age of 65. They are presumed eligible for Social Security Retirement. Under our current law, their Workers' Compensation Benefits would end and they would roll onto the Social Security Retirement system. But at the same time they would be entitled to this Additional Benefits Payable. That is a percentage. Let's say that their pre-injury weekly benefit was \$600. Five years the percentage is 10% of that benefit. They would get a percentage of their benefit for five years—the same amount of time that they were on disability benefits is the amount of time they get Additional Benefits Payable. That is to cushion that transition for those injured workers. At the same time they are eligible for SSR.

If somebody is injured two years ago, 2009, they hit their age of retirement at 65. Again their benefits will terminate. They will roll onto Social Security Retirement but also will be eligible for Additional Benefits Payable. They will receive those Additional Benefits Payable for two years and a percentage of their disability benefits which is 5% for that time frame.

However, what this bill is intended to correct--what if they are injured a year before their retirement age? They are working, they are 64---

**Chairman Keiser:** Let's go one year and 364 days.

**Jodi Bjornson:** OK, they hit their retirement age of 65 and they would still be eligible for disability or SSR benefits. But within two years they are going to be done with ABP. They won't be entitled to ABP. Someone who is a long term benefit recipient gets a number of years of Additional Benefits Payable. This bill is trying to cure that inequity.

**Vice Chairman Kasper:** My concern is, we have an injured worker who is making \$4,000/month and they are injured. Now they can't go back to work. Their WSI benefit will begin to pay them about how much per month if they were making \$4,000/month.

**Bjornson:** \$4,000/month, they will be capped out at the wage cap which is somewhere at \$800/week.

**Vice Chairman Kasper:** \$800 a week until age 65? Let's say this was 10 years ago and now they are age 65 and they are ready for social security. What would their Social Security Benefit be based on after that 10 years on WSI payment?

**Jodi Bjornson:** Their SS benefit is determined by Social Security and their primary insurance rate. It is based on the wages that are paid in while you are working.

**Vice Chairman Kasper:** For the 10 years since they were disabled, their SS wage base is not increasing because they are not paying into Social Security. Correct?

**Jodi Bjornson:** Correct.

**Vice Chairman Kasper:** We have this disparity. If they would have worked, their income would have gone up and their SS benefit would have increased. Now it has stopped. Now they are going on Social Security and we have the ADP kicking in. In my example, what would that ADP pay about based upon the \$4,000/month salary of the injured worker.

**Jodi Bjornson:** That would be \$800/week. It will be a percentage of how long that injured worker was on benefits, in your example 10 years, a percentage, 20% of \$800 for 10 years.

**Vice Chairman Kasper:** So they will get 10 years of benefits because they were disabled for 10 years and after that ADP goes away. So cost of living is increasing, their SS benefit was frozen, they get ADP for a while. If they live 20 years, their income has gone down dramatically from before they were injured based upon our current statutes.

**Jodi Bjornson:** Those long term benefit recipients do receive a COLA as well. They are going to get a percentage of increase in the state's average weekly wage.

**Vice Chairman Kasper:** There are no other benefits for that injured worker?

**Jodi Bjornson:** No other than Permanent Partial Impairment and their medical payments.

**Representative Nathe:** On page 2, line 11, employee's presumed retirement date. Are we talking about eligibility date or age 65?

**Jodi Bjornson:** We are just mirroring the language that is used throughout the bill. Either you begin drawing or you hit that age of eligibility.

**Representative Nathe:** That is age 65

**Jodi Bjornson:** Yes

**Representative Vigesaa:** Why was the 2-year time frame was put into current law?

**Jodi Bjornson:** The 2 years was intended to be consistent with our temporary total disability cap which is received for two years. Under subpart 3, when you go back to work when you are retired you get an additional year.

**Chairman Keiser:** The review process done, are other states providing an ADP type of payment for the entire period up to the point of retirement?

**Jodi Bjornson:** No they are not. We are unique in that regard. We are the only state that provides that cushion.

**Chairman Keiser:** The reason that we had that 2-year period which was an arbitrary decision, people have reached their maximum earning capacity that would be used for determination of Social Security with the exception of 2 years. During those 2 years there would be some payment that would be in the form of salary replacement. By extending this bill we do create an inequality in the sense that now those who are injured in less than 2 years to get more of a benefit than those people who are injured 2 years and 1 day.

**Jodi Bjornson:** I see the problem they are trying to address, but I do think it is reasonable.

**Chairman Keiser:** Would you review the fiscal note?

**Jodi Bjornson:** The actuaries looked at the impact of this bill. They went back to the start of 1995 and found that there were 1 to 2 workers per year that would be affected by this bill. It would have a minimum impact to the fund.

**Chairman Keiser:** Anyone else here in support of HB 1051?

**Bill Shalhoob~North Dakota Chamber of Commerce:** (See attached testimony #2)

**Chairman Keiser:** anyone in opposition?

**Dave Kemnitz~President of the AFLCIO.** (See testimony attachment #3a & #3b).

**Representative Ruby:** Age 65 is presumed but does that change if somebody does retire at 62? Is it where somebody actually retires or when they look into retirement or is it full retirement?

**Dave Kemnitz:** "Presumes" says the agency makes the presumptions on fact, fact, fact. Let's take a look at 1993, what is so difficult about those four premises?

**Chairman Keiser:** You're appearing in opposition to the bill. Your objection is to a section of current law that is not addressed in this bill in the form of an amendment. If you are not worried about your issue which isn't in the bill, are you in support of extending this benefit to injured workers?

**Dave Kemnitz:** It is difficult for me to answer in the affirmative. Because my premise was using the words "presumed." I need to understand "that part of the bill." I didn't see a lot of problems in 1993. Why are we doing this?

**Chairman Keiser:** Opposition, neutral?

**NONE**

**Jodi Bjornson:** To clarify the age that we use to determine eligibility for SS retirement benefits is full retirement age which for some is 65, some is 67.

**Chairman Keiser:** Close the hearing. What are the wishes?

**Representative Ruby:** Moved **Do pass**.

**Representative Kreun:** **Seconded the motion**

**Representative Ruby:** The intent was to fix the inequity of the person that got injured before they retired compared to somebody who got injured after they retired and continued working. Did we have the Additional Benefits Payable before with the presumed retirement age language or was that created after 1993?

**Chairman Keiser:** I believe that was created after 1993. It is important to note, these are nontaxable dollars.

**Representative Ruby:** That previous language was used to base when your disability benefits ended prior to 1993 and you are then subject to just Social Security. Now the new language that was put in after 1993 was not only when the disability benefits ended but then the ADP kicked in. I think it is a good bill.

**Roll call vote was taken on Do Pass on HB 1051.**

**Chairman Keiser:** Motion for **Do Pass** carries with **14 Yes** and **0 No**.

**FISCAL NOTE**  
Requested by Legislative Council  
12/15/2010

Bill/Resolution No.: HB 1051

**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.*

|                | 2009-2011 Biennium |             | 2011-2013 Biennium |             | 2013-2015 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.*

| 2009-2011 Biennium |        |                  | 2011-2013 Biennium |        |                  | 2013-2015 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 provides up to two years of benefits for those workers injured within two years of their presumed retirement date.

**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  
2011 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1051

BILL DESCRIPTION: Injuries within Two Years of Presumed Retirement Age

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, 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 up to two years of benefits for those workers injured within two years of their presumed retirement date.

FISCAL IMPACT: The proposed legislation will serve to increase benefit payments for workers injured within two years of their presumed retirement date. The impact of the proposed legislation is not significant to statewide premium and reserve levels.

DATE: December 15, 2010

**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.*

|                      |                |                       |            |
|----------------------|----------------|-----------------------|------------|
| <b>Name:</b>         | John Halvorson | <b>Agency:</b>        | WSI        |
| <b>Phone Number:</b> | 328-6016       | <b>Date Prepared:</b> | 12/22/2010 |

Date: Jan 10, 2011

Roll Call Vote # 1

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1051**

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Ruby Seconded By Rep Kreun

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Keiser          | ✓   |    | Representative Amerman   | ✓   |    |
| Vice Chairman Kasper     | ✓   |    | Representative Boe       | ✓   |    |
| Representative Clark     | ✓   |    | Representative Gruchalla | ✓   |    |
| Representative Frantsvog | ✓   |    | Representative M Nelson  | ✓   |    |
| Representative N Johnson | ✓   |    |                          |     |    |
| Representative Kreun     | ✓   |    |                          |     |    |
| Representative Nathe     | ✓   |    |                          |     |    |
| Representative Ruby      | ✓   |    |                          |     |    |
| Representative Sukut     | ✓   |    |                          |     |    |
| Representative Vigesaa   | ✓   |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |

Total (Yes) 14 No 0

Absent \_\_\_\_\_

Floor Assignment Sukut

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



**REPORT OF STANDING COMMITTEE**

**HB 1051: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1051 was placed on the Eleventh order on the calendar.

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1051

# 2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1051  
February 15, 2011  
Job Number 14564

☐ Conference Committee

Committee Clerk Signature

*Eva Lebelt*

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

Relating to workers compensation benefits upon attaining retirement age, and to provide for application

## Minutes:

Testimony attached

**Chairman Klein:** Called the hearing back to order.

**Representative Dan Ruby:** Introduced the bill. He said it was a result of the performance evaluation and came out of the work comp review committee. He said that there was a discrepancy with someone becoming disabled while they are working. He explained that they are on the disability benefit until they hit the presumed retirement age. At the time you are presumed to be retired your disability benefits cease to exist and you go to the additional benefits payable, that supplements your social security. If you are injured shortly before that retirement age you would only get the disability benefit up to that point. If you continue working after that age and you were injured, you could receive disability for up to three years under existing law. This is seeking to correct this, if you get injured within two years of your presumed retirement age you can receive disability benefits for two years even if that extended past your presumed retirement age. At that point you would go on the additional benefits payable which are to compensate you for what you had lost for not paying into social security over the years that you were injured.

**Chairman Klein:** We have adjusted the benefits over the years and this is just tweaking it?

**Representative Ruby:** This creates another level of benefits in other areas.

**Senator Schneider:** Asked if there was a chance for the injured worker to rebut the retirement presumption under subsection four or is this just hard and fast?

**Representative Ruby:** He believed it was pretty hard and fast but they could address that if he is wrong.

**Jennifer Clark, Legislative Council:** She said she received a performance audit of WSI and that a lot of the recommendations that came from that led to this legislation. The reason it was included in the performance audit is that WSI was charged with studying post

retirement benefits available to an individual that has disability benefits at the time of presumed retirement.

**Jody Bjornson, General Counsel Workforce Safety and Insurance:** Testimony attached.

**Chairman Klein:** Asked if his presumed retirement age was sixty five and he was sixty four at the time of injury if he would get benefits for only one year.

**Jody:** She explained that you get it two years regardless and that you are in that two year window. Anything within that two year window, you can get up to two years ABP on the backend.

**Senator Schneider:** How does the additional benefits payable compare to disability benefits?

**Jody:** There is the sliding scale grid for the amount. She goes through the statute.

**Bill Shalhoob, North Dakota Chamber of Commerce:** Testimony attached.

**David Klemnitz, North Dakota AFL-CIO:** Neutral on the bill. Stated his opinion and handed out 65-05-09.3 of the North Dakota Century Code and 2010 Oregon Workers' compensation premium rate ranking summary sheet.

**Chairman Klein:** Closed the hearing.

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Industry, Business and Labor Committee**  
Roosevelt Park Room, State Capitol

HB 1051  
February 16, 2011  
Job Number 14622

☐ Conference Committee

Committee Clerk Signature

*Eva Lietelt*

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

Relating to workers compensation benefits upon attaining retirement age, and to provide for application

## Minutes:

Discussion and Vote

**Chairman Klein:** Said that this bill deals with the additional benefit payable and the injury date. When that was added, it seems to correct an error and provide additional benefits for someone who is injured close to their retirement age.

**Senator Nodland:** Moved a do pass on House Bill 1051.

**Senator Murphy:** Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Nodland to carry the bill

Date: 2/16/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HR 1051

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations    ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Murphy

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Nodland

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

**REPORT OF STANDING COMMITTEE**

**HB 1051: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1051 was placed on the Fourteenth order on the calendar.

**2011 TESTIMONY**

**HB 1051**



H1

2011 House Bill No. 1051  
Testimony before the House, Industry, Business and Labor Committee  
Presented by Jodi Bjornson, General Counsel  
Workforce Safety & Insurance  
January 10, 2011

Mr. Chairman and Members of the Committee:

My name is Jodi Bjornson, General Counsel with Workforce Safety and Insurance. I am here today to provide information on HB 1051. This bill stems from the 2010 *Performance Evaluation of North Dakota Workforce Safety and Insurance* conducted by Sedgwick Claims Management Services, Inc. One of the elements reviewed was the evaluation of the adequacy of North Dakota's post-retirement benefit structure. Sedgwick's recommendations were reviewed by the interim Workers' Compensation Review Committee and the proposed legislation was brought forward by this interim Committee.

Currently, an injured worker who is not able to return to work is entitled to disability benefits, commonly referred to as wage replacement benefits. In 1995, the Legislature enacted the retirement presumption law. Under this law, when a injured employee who is a disability benefit recipient begins receiving federal Social Security retirement benefits (SSR) or reaches Social Security retirement eligibility age, the injured worker is considered retired and disability benefits are discontinued.

However, the injured worker now becomes eligible for a post-retirement benefit, commonly referred to as an additional benefit payable (ABP). This benefit is a percentage of an injured workers' disability benefit and the duration of payment of this benefit is equivalent to the length of time the injured worker received disability benefits.

When the performance evaluators reviewed this area of the law, they identified a perceived inequity. Some injured workers elect to go back to work in some capacity in their post-retirement years. Currently, the law allows for payment of disability benefits

for up to three years if an individual is injured while working during their post-retirement years and eligible for or are receiving SSR.

On the other hand, for example, if an employee is injured and begins receiving disability benefits six months prior to his or her retirement eligibility date, benefits are discontinued in six months, and he or she is not entitled to any ABP.

The proposed language in this bill is intended to address the inequity that occurs when an employee is injured close to his or her retirement eligibility date. Under the proposed language, employees injured within two years of their retirement eligibility date will be eligible to receive up to two years' of benefits or until the date their disability ends, whichever occurs first. Disability may extend beyond the retirement eligibility date. The injured employee then becomes eligible for ABP. Eligibility requirements still need to be met under 65-05-09.4, the statute governing ABP.

The changes to this bill apply to those injured workers who become eligible for SSR on or after the effective date of this Act.

This concludes my testimony. I would be happy to answer any questions you may have at this time.

#2



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1051  
January 10, 2011

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing the North Dakota Chamber of Commerce, the principal 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 and all Workforce Safety hearings we are also representing five local chambers with over 5,000 members and seven employer associations. I have attached a list of those parties to my testimony for this hearing only. As a group we stand in support of HB 1051 and urge a do pass from the committee on this bill

HB 1051 adds a benefit for employees injured within two years of retirement and the combination of disability payments and additional benefits payable will help bridge any gap that may exist between disability benefits and retirement benefits.

Thank you for the opportunity to appear before you today in support of HB 1051. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*

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North Dakota Chamber of Commerce  
Groups Represented for Workforce Safety Hearings

Bismarck-Mandan Chamber of Commerce  
The Chamber Grand Forks-East Grand Forks  
Minot Chamber of Commerce  
Wahpeton-Breckenridge Area Chamber of Commerce  
AGC of ND  
ND Retail Association  
ND Petroleum Council  
ND Hospitality Association  
ND Motor Carriers Association  
ND Association of Petroleum Marketers  
ND Grocers Association

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#3a

ND AFL-CIO

David Kemnitz; President

House IBL

January 10, 2011

HB 1051

The ND AFL-CIO is opposed to the new language on Page 2 lines 11 through 17.

The basis for opposition is that the question of when a person retires or expects to retire has become complicated to the point of exclusion from Workers' Compensation benefits when all other eligibility criteria are met.

1. Page 1 lines 11 through 14 explain that a "presumption" made by WSI to be rebutted must have a preponderance of the evidence. Claimant statements cannot overcome WSI's presumed decision.

Preponderance of evidence; Black's Law Dictionary, 6<sup>th</sup>. edition- "The word preponderance means something more than weight it denotes a superiority of weight, or our weighing."

Presumption is defined as- "An inference in favor of a particular fact. A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted."

2. All this language and the new language in on Page 2 lines 11 through 17 brings the claimant into a situation of being denied benefits unless said claimant resorts to judicial relief. An expense that prior to 1995 legislative session was mitigated by what appeared to be commonsense language in the 1993 NDCC 65-05-09.3 Retirement presumption. (copy attached) — #3b

1. Is actively seeking employment;
2. Is available for gainful employment;
3. Has not rejected any job offer made by a former employer, or other bona fide job offer by another employer; and
4. Has not provide the employer, upon written request, with written notice of a scheduled retirement date.

The presumption does not apply to any employee who is permanently and totally disabled as defined under this title.

3. Adding another subsection to an already confusing section of WSI law does not serve claimants or commonsense. When will this type of lawmaking end? It seems that the more convoluted the statute the more circumstance specific each addition needs to be.
4. Going back to the law addressing "retirement presumption" makes more sense than continually tuning what is in the law today.
5. Final point for exposing what "presumption" can mean, if a person is thinking about retiring say at age 62 and researches by visiting the Social Security Office to determine what the benefit amount would be and when the best date would be to file, those facts become a presumption that the person was indeed presumed to retire at age 62. It would be almost impossible to overcome that presumption using preponderance of evidence criteria. To clarify this scenario, the example would play if that person became injured sometime between the research and the actual act of retiring. In today's world retirement is more than ever, wishful thinking.

#36

January 5, 2011  
Submitted by NDAFL-CIO



*Example of simplicity and easily understood.*

**65-05-09.3. Retirement presumption.** An employee who has retired or voluntarily withdrawn from the labor force is presumed retired from the labor market and is ineligible for receipt of disability benefits under this title. The presumption may be rebutted by a preponderance of the evidence that the worker:

1. Is actively seeking employment;

*N.D. Century Code  
1993*

89

2. Is available for gainful employment;
3. Has not rejected any job offer made by a former employer, or other bona fide job offer by another employer; and
4. Has not provided the employer, upon written request, with written notice of a scheduled retirement date.

The presumption does not apply to any employee who is permanently and totally disabled as defined under this title.

Source: S.L. 1991, ch. 714, § 46.

Kallhoff v. North Dakota Workers' Comp. Bureau (1992) 484 NW 2d 510.

**Note.**

This section became effective July 1, 1991, pursuant to N.D. Const., Art. IV, § 13. Section 77 of chapter 714, S.L. 1991, provides that the section is retroactive to July 1, 1991.

**Voluntary Withdrawal.**

For purposes of eligibility for disability benefits, this section creates a presumption that an employee has "retired" when the employee has "voluntarily withdrawn from the labor force." So, retirement is linked with the ordinary and commonly understood meaning that retirement is voluntary. Kallhoff v. North Dakota Workers' Comp. Bureau (1992) 484 NW 2d 510.

**Permanently Disabled Employee.**

There is no statutory presumption of retirement for any employee who is permanently and totally disabled as defined in this title.

**2011 House Bill No. 1051**  
**Testimony before the Senate Industry, Business and Labor Committee**  
**Presented by: Jodi Bjornson, General Counsel**  
**Workforce Safety & Insurance**  
**February 15, 2011**

Mr. Chairman and Members of the Committee:


My name is Jodi Bjornson, General Counsel with Workforce Safety and Insurance. I am here today to provide information on HB 1051. This bill stems from the *2010 Performance Evaluation of North Dakota Workforce Safety and Insurance* conducted by Sedgwick Claims Management Services, Inc. One of the elements reviewed was the evaluation of the adequacy of North Dakota's post-retirement benefit structure. Sedgwick's recommendations were reviewed by the interim Workers' Compensation Review Committee and the proposed legislation was brought forward by this interim Committee.

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However, the injured worker now becomes eligible for a post-retirement benefit, commonly referred to as an additional benefit payable (ABP). This benefit is a percentage of an injured workers' disability benefit and the duration of payment of this benefit is equivalent to the length of time the injured worker received disability benefits.

When the performance evaluators reviewed this area of the law, they identified a perceived inequity. Some injured workers elect to go back to work in some capacity in their post-retirement years. Currently, the law allows for payment of disability benefits






for up to three years if an individual is injured while working during their post-retirement years and eligible for or are receiving SSR.

On the other hand, for example, if an employee is injured and begins receiving disability benefits six months prior to his or her retirement eligibility date, benefits are discontinued in six months, and he or she is not entitled to any ABP.

The proposed language in this bill is intended to address the inequity that occurs when an employee is injured close to his or her retirement eligibility date. Under the proposed language, employees injured within two years of their retirement eligibility date will be eligible to receive up to two years' of benefits or until the date their disability ends, whichever occurs first. Disability may extend beyond the retirement eligibility date. The injured employee then becomes eligible for ABP. Eligibility requirements still need to be met under 65-05-09.4, the statute governing ABP.



The changes to this bill apply to those injured workers who become eligible for SSR on or after the effective date of this Act.

This concludes my testimony. I would be happy to answer any questions you may have at this time.



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1051  
February 15, 2011

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing the North Dakota Chamber of Commerce, the principal 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 and all Workforce Safety hearings we are also representing five local chambers with over 5,000 members and seven employer associations. As a group we stand in support of HB 1051 and urge a do pass from the committee on this bill.

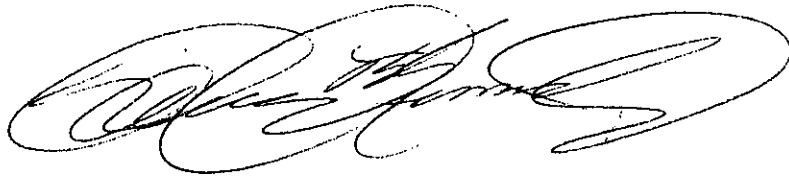
HB 1051 adds a benefit for employees injured within two years of retirement and the combination of disability payments and additional benefits payable will help bridge any gap that may exist between disability benefits and retirement benefits.

Thank you for the opportunity to appear before you today in support of HB 1051. I would be happy to answer any questions.

*THE VOICE of NORTH DAKOTA BUSINESS*

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February 15, 2011  
Submitted by NDAFL-CIO



*Example of simplicity and easily understood.*

**65-05-09.3. Retirement presumption.** An employee who has retired or voluntarily withdrawn from the labor force is presumed retired from the labor market and is ineligible for receipt of disability benefits under this title. The presumption may be rebutted by a preponderance of the evidence that the worker:

1. Is actively seeking employment;

*N.D. Century Code  
1993*

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2. Is available for gainful employment;
3. Has not rejected any job offer made by a former employer, or other bona fide job offer by another employer; and
4. Has not provided the employer, upon written request, with written notice of a scheduled retirement date.

The presumption does not apply to any employee who is permanently and totally disabled as defined under this title.

Source: S.L. 1991, ch. 714, § 46.

**Note.**

This section became effective July 1, 1991, pursuant to N.D. Const., Art. IV, § 13. Section 77 of chapter 714, S.L. 1991, provides that the section is retroactive to July 1, 1991.

**Permanently Disabled Employee.**

There is no statutory presumption of retirement for any employee who is permanently and totally disabled as defined in this title.

Kallhoff v. North Dakota Workers' Comp. Bureau (1992), 484 NW 2d 510.

**Voluntary Withdrawal.**

For purposes of eligibility for disability benefits, this section creates a presumption that an employee has "retired" when the employee has "voluntarily withdrawn from the labor force." So, retirement is linked with the ordinary and commonly understood meaning that retirement is voluntary. Kallhoff v. North Dakota Workers' Comp. Bureau (1992), 484 NW 2d 510.



# 2010 Oregon Workers' Compensation Premium Rate Ranking Summary

Department of Consumer and Business Services

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By Jay Dotter and Mike Manley

Oregon employers in the voluntary market pay, on average, the 41st highest workers' compensation premium rates in the nation. Oregon rates are 17 percent below those of the median state in the study.

Premium rate indices are calculated based on data from 51 jurisdictions, for rates in effect as of Jan. 1, 2010. Oregon's premium rate index is \$1.69 per \$100 of payroll, or 83 percent of the national median. National premium rate indices range from a low of \$1.02 in North Dakota to a high of \$3.33 in Montana. The 2010 median value is \$2.04, which is a drop of 10 percent from the \$2.26 median of the 2008 study. Three jurisdictions have an index rate in the \$3.00 to \$3.49 range; five are in the \$2.50 to \$2.99 range; 20 are in the \$2.00 to \$2.49 range; 16 are in the \$1.50 to \$1.99 range; and seven have indices under \$1.50.

Figure 1. 2010 Workers' compensation premium index rates

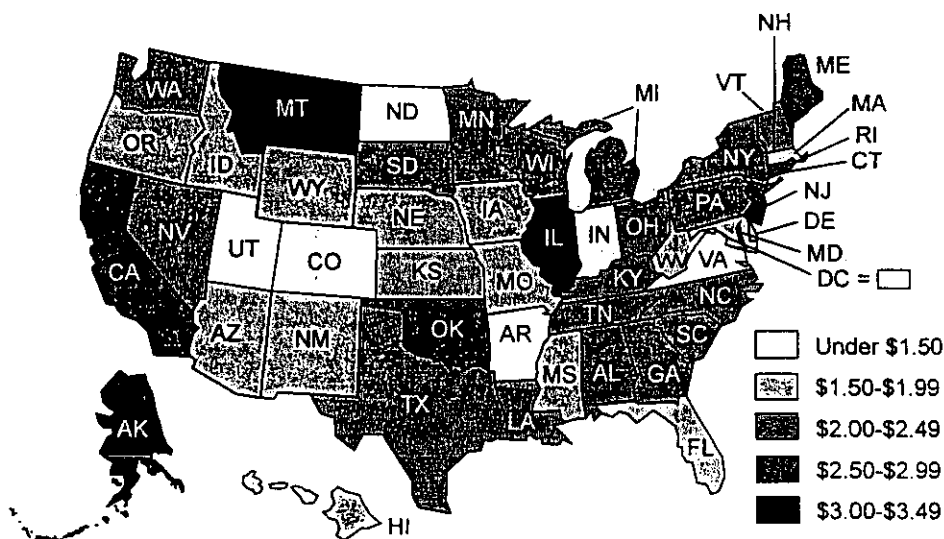


Table 1. Oregon's ranking in the top 10 classifications

| Occupation  | Ranking |
|---|---------|
| Clerical office employees NOC                             | 45      |
| Salespersons - outside                                    | 48      |
| College: professional employees and clerical              | 39      |
| Physician and clerical                                    | 42      |
| Restaurant NOC  | 40      |
| Store: retail, NOC  | 41      |
| Hospital: professional employees                          | 36      |
| Automobile service/repair center and drivers              | 34      |
| Trucking: NOC - all employees and drivers                 | 28      |
| Health care employees - retirement, nursing, convalescent | 21      |

This study used classification codes from the National Council on Compensation Insurance (NCCI). Of approximately 450 active classes in Oregon, 50 were selected based on relative importance as measured by share of losses in Oregon. To control for differences in industry distributions, each state's rates were weighted by 2004-2006 Oregon payroll to obtain an average manual rate for that state. Listed in Table 1 are Oregon's rankings in the top 10 of the 50 classifications used.

Table 2 (on the back) contains the premium rate ranking for all 51 jurisdictions.

Table 2. Workers' compensation premium rate ranking

| 2010 Ranking | 2008 Ranking | State                | Index Rate | Percent of study median | Effective Date                     |
|--------------|--------------|----------------------|------------|-------------------------|------------------------------------|
| 1            | 2            | Montana              | 3.33       | 163%                    | July 1, 2009                       |
| 2            | 1            | Alaska               | 3.10       | 152%                    | Jan. 1, 2010                       |
| 3            | 10           | Illinois             | 3.05       | 149%                    | Jan. 1, 2010                       |
| 4            | 9            | Oklahoma             | 2.87       | 141%                    | 11/1/09 state fund, 1/1/10 private |
| 5            | 13           | California           | 2.68       | 131%                    | Jan. 1, 2010                       |
| 6            | 20           | Connecticut          | 2.55       | 125%                    | Jan. 1, 2010                       |
| 7            | 16           | New Jersey           | 2.53       | 124%                    | Jan. 1, 2010                       |
| 8            | 5            | Maine                | 2.52       | 123%                    | Jan. 1, 2010                       |
| 10           | 14           | New Hampshire        | 2.45       | 120%                    | Jan. 1, 2010                       |
| 10           | 8            | Alabama              | 2.45       | 120%                    | March 1, 2009                      |
| 12           | 17           | Texas                | 2.38       | 117%                    | May 1, 2009                        |
| 12           | 12           | South Carolina       | 2.38       | 117%                    | July 1, 2009                       |
| 13           | 19           | New York             | 2.34       | 115%                    | Oct. 1, 2009                       |
| 14           | 15           | Pennsylvania         | 2.32       | 114%                    | April 1, 2009                      |
| 15           | 7            | Kentucky             | 2.29       | 112%                    | Oct. 1, 2009                       |
| 16           | 24           | Minnesota            | 2.27       | 111%                    | Jan. 1, 2010                       |
| 17           | 3            | Ohio                 | 2.24       | 110%                    | July 1, 2009                       |
| 18           | 4            | Vermont              | 2.22       | 109%                    | April 1, 2009                      |
| 19           | 34           | Wisconsin            | 2.21       | 108%                    | Oct. 1, 2009                       |
| 20           | 21           | Tennessee            | 2.19       | 108%                    | Nov. 4, 2009                       |
| 21           | 18           | Nevada               | 2.13       | 104%                    | March 2, 2009                      |
| 23           | 32           | Michigan             | 2.12       | 104%                    | Jan. 1, 2009                       |
| 23           | 22           | North Carolina       | 2.12       | 104%                    | April 1, 2009                      |
| 24           | 25           | Georgia              | 2.08       | 102%                    | July 1, 2009                       |
| 25           | 11           | Louisiana            | 2.06       | 101%                    | Oct. 1, 2009                       |
| 26           | 38           | Washington           | 2.04       | 100%                    | Jan. 1, 2010                       |
| 28           | 36           | South Dakota         | 2.02       | 99%                     | July 1, 2009                       |
| 28           | 26           | Rhode Island         | 2.02       | 99%                     | Jan. 1, 2010                       |
| 29           | 34           | Idaho                | 1.98       | 97%                     | Jan. 1, 2010                       |
| 30           | 32           | Nebraska             | 1.97       | 97%                     | Feb. 1, 2009                       |
| 31           | 24           | Mississippi          | 1.96       | 96%                     | March 1, 2009                      |
| 32           | 32           | New Mexico           | 1.91       | 94%                     | Jan. 1, 2010                       |
| 33           | 28           | Missouri             | 1.90       | 93%                     | Jan. 1, 2010                       |
| 34           | 7            | Delaware             | 1.85       | 91%                     | Dec. 1, 2009                       |
| 35           | 41           | West Virginia        | 1.84       | 90%                     | Nov. 1, 2009                       |
| 36           | 41           | Iowa                 | 1.82       | 89%                     | Jan. 1, 2010                       |
| 37           | 37           | Wyoming              | 1.79       | 88%                     | Jan. 1, 2010                       |
| 38           | 45           | Arizona              | 1.71       | 84%                     | Jan. 1, 2010                       |
| 40           | 36           | Hawaii               | 1.70       | 83%                     | Jan. 1, 2010                       |
| 40           | 28           | Florida              | 1.70       | 83%                     | Jan. 1, 2010                       |
| 41           | 39           | OREGON               | 1.69       | 83%                     | Jan. 1, 2010                       |
| 42           | 44           | Maryland             | 1.63       | 80%                     | Jan. 1, 2010                       |
| 43           | 42           | Kansas               | 1.55       | 76%                     | Jan. 1, 2010                       |
| 44           | 49           | Massachusetts        | 1.54       | 75%                     | Sept. 1, 2008                      |
| 45           | 46           | Utah                 | 1.46       | 71%                     | Dec. 1, 2009                       |
| 47           | 43           | Colorado             | 1.39       | 68%                     | Jan. 1, 2010                       |
| 47           | 48           | Virginia             | 1.39       | 68%                     | April 1, 2009                      |
| 48           | 29           | District of Columbia | 1.32       | 65%                     | Nov. 1, 2009                       |
| 49           | 47           | Arkansas             | 1.18       | 58%                     | July 1, 2009                       |
| 50           | 50           | Indiana              | 1.16       | 57%                     | Jan. 1, 2010                       |
| 51           | 51           | North Dakota         | 1.02       | 50%                     | July 1, 2009                       |

Notes: Starting with the 2008 study, when two or more states' Index Rate values are the same, they are assigned the same ranking. The index rates reflect adjustments for the characteristics of each individual state's residual market. Rates vary by classification and insurer in each state. Actual cost to an employer can be adjusted by the employer's experience rating, premium discount, retrospective rating, and dividends. [Link to previous reports and summaries.](#)

Employers can reduce their workers' compensation rates through accident prevention, safety training, and by helping injured workers return to work quickly.

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