

2023 SENATE INDUSTRY AND BUSINESS

SB 2218

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2218
1/30/2023

Relating to Workers' compensation disability benefits and retirement presumption; relating to workers' compensation additional benefits payable; and to provide for application.
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9:30 AM Chairman D. Larsen called the meeting to order.

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Boehm, Senator Klein.

Discussion Topics:

- Disability benefits
- WSI claims

9:30 AM Senator Veeda introduced SB 2218 and testified in favor of SB 2218. (verbal)

9:39 AM Kevin Wenger, Granville, ND, testified in favor of SB 2218. (verbal)

10:10 AM Russ Hanson, Associated General Contractors, testified in opposition to SB 2218. (verbal)

10:30 AM Andrea Pfennig, Director of Government Affairs, Greater North Dakota Association, testified in opposition to SB 2218. (verbal)

Additional Written Testimony:

Tim Wahlin #17582

10:31 AM Chairman D. Larsen closed the hearing on SB 2218.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2218
2/1/2023

A bill relating to the workers' compensation disability benefits and retirement presumption; and relating to workers' compensation additional benefit payable; and to provide for application.

2:39 PM Chairman D. Larsen opened the meeting.

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Boehm, Senator Klein.

Discussion Topics:

- Discussion on SB 2218
- Committee action

2:39 PM Chairman D. Larsen presented an amendment to SB 2218. LC 23.0682.01001 #19652

2:45 PM Senator Boehm moved to adopt the amendment to SB 2218. LC 23.0682.01001

2:46 PM Motion failed due to lack of a seconded.

2:46 PM Senator Barta moved to DO NOT PASS SB 2218.

2:46 PM Senator Klein seconded DO NOT PASS SB 2218.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion passed. 5-0-0

Senator Barta will carry the bill.

2:48 PM Chairman D. Larsen closed the committee work on SB 2218.

Brenda Cook, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2218: Industry and Business Committee (Sen. Larsen, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2218 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

TESTIMONY

SB 2218

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

Mr. Chairman and Members of the Committee:

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

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

The 1995 legislation reformed and reestablished that the North Dakota's workers' compensation system is a safety net to provide lost wages and medical treatment for work-related injuries during the healing process. It established that WSI indemnity benefits, commonly called wage loss benefits, are not intended to be a retirement replacement system.

In North Dakota, wage loss benefits and retirement benefits have different and inconsistent purposes: wage loss benefits are paid to workers who are physically unable to earn wages during their earning years, while retirement benefits are paid to workers after their wage-earning years have come to an end, regardless of their physical condition.

In 1995, at the end of the debate that took place with respect to workers' compensation benefits and their interplay with retirement benefits, it was the conclusion of the Legislative Assembly for WSI to serve the role as a wage replacement benefit system, not a retirement benefit system.

To temper the impact to injured workers who were unable to work due to their work injuries, an additional benefit payable statute was created in 1997. This benefit was founded on three basic principles: It begins when wage loss benefits end, it is paid for the same length of time as the worker had been unable to work; and the longer the worker had been unable to work, the higher the post-retirement benefit payment. In essence it made up for the lost Social Security Retirement payments an injured employee was unable to make because they were out of the workforce.

WSI submits the current law strikes a good balance that provides wage loss benefits until the time of retirement, and then an additional benefit payable (post-retirement benefit) based on the length of time the worker has been unable to work. In addition, the injured worker continues to be eligible for medical benefits and permanent partial impairment awards for the life of the injury.

Eliminating the retirement presumption law and additional benefit payment law as it exists today and resurrecting the pre-1995 retirement presumption law retroactively would obviously have a significant impact on the fund. Since 1995 insurance rates have been established and charged to employers consistent with this financial direction. Section 4 of this bill sets the application “to all claims regardless of date of injury.” That means all claims since 1995 would potentially be reopened and repaid consistent with this bill’s direction.

For example, an injured employee with a claim from 2000, who transitioned off disability benefits because of reaching the age of 65, would likely now have a claim to ongoing entitlement to wage benefits. It takes little to appreciate the enormity of the financial impact. WSI cannot charge premiums retroactively. As a result, reserves, those funds set aside to pay existing claims, will need to be significantly reestablished to service this shortfall.

Our actuary estimates the reserve level increase for known claims will likely be \$100 million. This amount does not consider those claims which have left the system and may be reopened because of this legislation, or to benefit adjustments to claims that have transitioned to an additional benefits payable status. These unknown claims will likely move the reserve level impact “significantly higher.”

In addition, the proposed legislation will serve to increase the costs associated with future claims. The premium rate level increase associated with the elimination of the retirement presumption and the additional benefit payable statutes is anticipated to be 1.2%.

As a result, WSI requests a recommendation of “do not pass” on this bill. This concludes my testimony and I would be happy to answer any questions you may have.

23.0682.01001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2218

Introduced by

Senator Vedaa

Representatives D. Anderson, Louser, Thomas

1 A BILL ~~for an Act to amend and reenact subsection 1 of section 65-05-08 and section~~
2 ~~65-05-09.3 of the North Dakota Century Code, relating to the workers' compensation disability~~
3 ~~benefits and retirement presumption; and to repeal sections 65-05-09.4 and 65-05-09.5 of the~~
4 ~~North Dakota Century Code, relating to workers' compensation additional benefits payable; and~~
5 ~~to provide for application for an Act to provide for a legislative management study regarding~~
6 repealing the workers' compensation retirement presumption and additional benefits payable.

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

8 ~~— **SECTION 1. AMENDMENT.** Subsection 1 of section 65-05-08 of the North Dakota Century~~
9 ~~Code is amended and reenacted as follows:~~

10 ~~— 1. When disability benefits are discontinued, the organization may not begin payment~~
11 ~~again unless the injured employee files a reapplication for disability benefits on a form~~
12 ~~supplied by the organization. In case of reapplication, the award may commence no~~
13 ~~more than thirty days before the date of reapplication. Disability benefits must be~~
14 ~~reinstated upon proof by the injured employee that:~~

15 ~~— a. The employee has sustained a significant change in the compensable medical~~
16 ~~condition; and~~

17 ~~— b. The employee has sustained an actual wage loss caused by the significant~~
18 ~~change in the compensable medical condition; and~~

19 ~~— c. The employee has not retired or voluntarily withdrawn from the job market as~~
20 ~~defined in section 65-05-09.3.~~

21 ~~— **SECTION 2. AMENDMENT.** Section 65-05-09.3 of the North Dakota Century Code is~~
22 ~~amended and reenacted as follows:~~

1 ~~— 65-05-09.3. Retirement presumption—Termination of benefits upon retirement.~~

2 ~~— 1. An employee who has retired or voluntarily withdrawn from the labor force and who, at~~
3 ~~that time, was not eligible to receive temporary total disability, temporary partial~~
4 ~~disability, or permanent total disability benefits or to receive a rehabilitation allowance~~
5 ~~from the organization is presumed retired from the labor market and is ineligible for~~
6 ~~receipt of disability benefits under this title. The presumption may be rebutted by a~~
7 ~~preponderance of the evidence; however, the subjective statement of an employee~~
8 ~~that the employee is not retired is not sufficient in itself to rebut objective evidence of~~
9 ~~retirement.~~

10 ~~— 2. An injured employee who begins receiving social security retirement benefits or other~~
11 ~~retirement benefits in lieu of social security retirement benefits or who attains~~
12 ~~retirement age for social security retirement benefits, unless the employee proves the~~
13 ~~employee is not eligible to receive social security retirement benefits or other benefits~~
14 ~~in lieu of social security retirement benefits, is considered retired. The organization~~
15 ~~may not pay any disability benefits, rehabilitation benefits, or supplementary benefits~~
16 ~~to an employee who is considered retired; however, the employee remains eligible for~~
17 ~~medical benefits, permanent partial impairment benefits, and the additional benefit~~
18 ~~payable under section 65-05-09.4.~~

19 ~~— 3. The organization retains liability for disability benefits, rehabilitation benefits,~~
20 ~~permanent partial impairment benefits, and medical benefits for an injured employee~~
21 ~~who is receiving social security retirement benefits or other retirement benefits in lieu~~
22 ~~of social security retirement benefits or who attains retirement age for social security~~
23 ~~retirement benefits, unless the employee is not eligible to receive social security~~
24 ~~retirement benefits or other benefits in lieu of social security retirement benefits, and~~
25 ~~who is gainfully employed and who suffers an injury arising out of and in the course of~~
26 ~~that employment. The organization may not pay disability or rehabilitation benefits~~
27 ~~under this subsection for more than three years, subject to section 65-05-09.2, for~~
28 ~~injuries occurring after August 1, 1997.~~

29 ~~— 4. If an employee is injured within the two years preceding the employee's presumed~~
30 ~~retirement date, the organization shall pay disability benefits, rehabilitation benefits, or~~
31 ~~a combination of both benefits for no more than two years. If the duration of disability~~

1 ~~benefits, rehabilitation benefits, or a combination of both benefits extends beyond the~~
2 ~~presumed retirement date, the organization shall convert the benefit to an additional~~
3 ~~benefit payable at the date the disability ends or when two years of benefits have been~~
4 ~~paid, whichever occurs first.~~

5 ~~5. This section applies to an individual who begins receiving social security retirement~~
6 ~~benefits or other retirement benefits in lieu of social security retirement benefits or who~~
7 ~~attains retirement age for social security retirement benefits unless the employee~~
8 ~~proves the employee is not eligible to receive social security retirement benefits or~~
9 ~~other benefits in lieu of social security retirement benefits, after July 31, 1995.~~

10 ~~6. An injured employee who has received disability benefits that have been discontinued~~
11 ~~before retirement in accordance with this section is eligible to receive disability~~
12 ~~benefits after retirement if the injured employee meets the reapplication criteria under~~
13 ~~subsection 1 of section 65-05-08. Disability and rehabilitation benefits received under~~
14 ~~this subsection may not exceed three years;~~

15 ~~a. Is actively seeking employment;~~

16 ~~b. Is available for gainful employment;~~

17 ~~c. Has not rejected any job offer made by a former employer or any other bona fide~~
18 ~~job offer made by another employer; and~~

19 ~~d. Has not provided the employer, upon written request, with written notice of a~~
20 ~~scheduled retirement date;~~

21 ~~2. The presumption under this section does not apply to an employee who is~~
22 ~~permanently and totally disabled.~~

23 ~~SECTION 3. REPEAL. Sections 65-05-09.4 and 65-05-09.5 of the North Dakota Century~~
24 ~~Code are repealed.~~

25 ~~SECTION 4. APPLICATION. This Act applies to all claims regardless of date of injury.~~

26 **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - WORKERS' COMPENSATION**

27 **RETIREMENT PRESUMPTION AND ADDITIONAL BENEFITS PAYABLE.** During the 2023-24
28 interim, the legislative management shall study the feasibility and desirability of repealing the
29 workers' compensation retirement presumption, the additional benefits payable statutes, and
30 the three-year cap on benefits for individuals injured in their postretirement years. The study
31 must include an assessment of the impact of repealing the retirement presumption, the

Sixty-eighth
Legislative Assembly

1 additional benefits payable statutes, and the three-year cap on benefits without retroactive
2 application; an assessment of the potential fiscal impact of repealing the retirement presumption
3 with retroactive application; and an examination of the number of individuals impacted by
4 repealing the retirement presumption retroactively. The study may include input and the
5 assistance of workforce safety and insurance. The legislative management shall report its
6 findings and recommendations, together with any legislation necessary to implement the
7 recommendations, to the sixty-ninth legislative assembly.