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Operator's Signature

*Dennis Waller*

Date

10/22/03

2002 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2351

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2351

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-05-03

Tape Number	Side A	Side B	Meter #
1	XXXX		1,260
Committee Clerk Signature <i>Lisa VanBeuren</i>			

Minutes: Chairman Mutch opened the hearing on SB 2351. All Senators were present.

SB 2351 relates to workers' compensation social security retirement offset.

Senator Linda Christenson introduced the bill.

**Testimony in support of SB 2351**

Sebold Vetter, C.A.R.E association, spoke in support of the bill. He states that this bill would help injured workers stay off of well fare and not have to draw social security. He feels that when he reaches retirement age, there should be no offset of social security.

David Kemnitz, President of the ND AFL-CIO, spoke in support of the bill. He wanted to go on the record. He stated that the federal requirement is no longer in place and it is hurting the citizens and people who have placed worker's compensation claims.

**Testimony in opposition of SB 2351.**

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*10/22/03*  
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Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2351

Hearing Date 02-05-03

**Brent Edison, Workers' Compensation**, spoke in opposition. The effect of the bill will retroactively eliminate the social security offset of the retirement for a very narrow group of injured workers. See attached written testimony.

**Senator Every**: What do you mean by a "narrow" group of workers? And if it is a "narrow" group, how can it jeopardize the stability of the fund?

**Brent**: There is a 4 million dollar impact per year and there are no reserves for this and it would effect prior year's claims by creating uncertainty.

**Senator Heitkamp**: If it is such a small group, why is it costing 4 million dollars?

**Brent**: There is a mathematical computation of the 20,000 claims per year.

**Senator Every**: Where are the numbers and statistics?

**Brent**: We will make it available. There is currently about 386 million dollars in the fund.

**Dale Anderson, GNDA**, also spoke in opposition to SB 2351.

See attached testimony. (meter no. 4750, tape 1, side A)

The hearing was closed. No action taken.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2351

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-11-03

Tape Number	Side A	Side B	Meter #
2	xxx		5,555
Committee Clerk Signature <i>Lisa Huber</i>			

Minutes: Chairman Mutch opened the discussion on SB 2351. All Senators were present.

SB 2351 relates to workers' compensation social security retirement offset.

The committee discussed and reviewed the purpose and impact of the bill briefly.

Senator Klein moved a DO NOT PASS. Senator Krebsbach seconded.

Roll Call Vote: 5 yes. 2 no. 0 absent.

Carrier: Senator Mutch

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**FISCAL NOTE**  
Requested by Legislative Council  
01/28/2003

Bill/Resolution No.: SB 2351

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

**NORTH DAKOTA WORKERS COMPENSATION  
2003 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

**BILL DESCRIPTION:** Eliminating Social Security Retirement Offset

**BILL NO:** SB 2351

**SUMMARY OF ACTUARIAL INFORMATION:** North Dakota Workers Compensation, 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 would eliminate the workers compensation social security retirement offset for pre- August 1, 1995 injured workers that became eligible for social security retirement benefits between June 30, 1989 and August 1, 1995.

**FISCAL IMPACT:**

**Reserve Level Impact:** The proposed legislation, as drafted, can be expected to increase reserves by more than \$4 million on an undiscounted basis or \$2.8 million on a discounted basis. These reserve estimates don't contemplate the elimination of social security offsets for pre-August 1, 1995 injured workers that achieve retirement eligibility on or after August 1, 1995.

**Rate Level Impact:** The proposed legislation should not increase future loss cost levels as it applies to pre-August 1, 1995 injuries. However, we will need to consider a prospective rate surcharge to fund the reserve increase that will result from the retroactive benefit increase to prior year claims. A reasonable funding plan would need to be developed.

**DATE:** February 4, 2003

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10/22/03

Date

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.

see Narrative

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.

see Narrative

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	John Halvorson	Agency:	NDWC
Phone Number:	328-3760	Date Prepared:	02/04/2003

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Deanna Halvorson  
Operator's Signature

10/22/03  
Date

Date: 2-11-03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILI/RESOLUTION NO. 2351

Senate \_\_\_\_\_ Committee \_\_\_\_\_

☐ Check here for Conference Committee

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

Action Taken DO NOT Pass

Motion Made By Klein Seconded By Krebsbach

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman	X				
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp		X			
Sen. Mike Every		X			
Sen. Duane Espegard	X				
Sen. Duane Mutch, Chairman	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Mutch

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

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10/22/03  
Date



**REPORT OF STANDING COMMITTEE (410)**  
February 11, 2003 4:47 p.m.

Module No: SR-26-2342  
Carrier: Mutch  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2351: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2351 was placed on the Eleventh order on the calendar.**

2001 TESTIMONY

SB 2351

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Operator's Signature

10/22/03

Date



Greater North Dakota Association

Opposed

**STATEMENT BY DALE O. ANDERSON, PRESIDENT, GNDA, REGARDING  
SB 2351, THE NORTH DAKOTA SENATE BUSINESS INDUSTRY AND  
LABOR COMMITTEE, FEBRUARY 5, 2003.**

Chairman Mutch and members of the Senate Industry, Business and Labor Committee. I am Dale O. Anderson, President, GNDA, North Dakota State Chamber of Commerce. Thank you for this opportunity to provide testimony in opposition of SB 2351 regarding workers' compensation social security retirement offset.

The Greater North Dakota Association is the voice for business and principal advocate for positive change for North Dakota. The organization's membership is an economic and geographic cross section of North Dakota's private sector, including statewide associations and local chambers of commerce, development organizations and convention and visitors associations and public sector organizations. GNDA is governed by a Board of Directors elected by our membership. The GNDA Board Chairman is Dr. Jay Leitch, Dean, College of Business Administration, NDSU, Fargo.

The North Dakota business community has been an active partner with the North Dakota Legislature in making sound improvements to the North Dakota Workers' Compensation during the past decade. As a result, in 2002, North Dakota employers paid the lowest workers' compensation premium rates in the nation, according to new survey by the Oregon Department of Consumer & Business Services. Nationally, premium rates ranged from North Dakota's low of \$1.24 per \$100 of payroll to a high of \$5.23 per \$100 of payroll in California.

According to North Dakota Workers' Compensation, North Dakota employer premium rates have declined for 8 straight years. An emphasis on safety and "return-to-work" programs, which began in the mid-1990's, has helped to reduce the number of wage-loss claims, thereby reducing premiums. This is an example of what can be done when business and government work together.

Box 2639 • 2000 Schafer St. • Bismarck, ND 58502 • (701) 222-0929 • Fax: (701) 222-1611 • 1-800-382-1405 • gnda@gnda.com • web site: www.gnda.com

North Dakota's State Chamber of Commerce

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Dale O. Anderson  
Operator's Signature

10/22/03  
Date

**Any business person can attest to the difficulties created for employers by the current insurance market. We are pleased that the North Dakota Workers' Compensation has been able to reduce premium rates and increase benefits. As we meet with business groups across the state, North Dakota Workers' Compensation Bureau receives high grades for constituency service.**

**We are concerned about the economic impact of SB 2351. We believe it is a roll back of the 1995-97 reforms dealing with social security retirement offset.**

**Thank you Chairman Mutch and members of the Senate Industry, Business and Labor Committee for this opportunity to discuss the business community's position on SB 2351. We urge a do not pass on SB 2351. I welcome your questions.**

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10/22/03

Date

Opposition

2003 Senate Bill No. 2351  
Testimony before the Senate Industry, Business,  
And Labor Committee  
Presented by: Brent J. Edison  
Executive Director & CEO  
North Dakota Workers Compensation  
February 5, 2003

Mr. Chairman, Members of the Committee:

My name is Brent Edison and I am the Executive Director and CEO of North Dakota Workers Compensation. On behalf of the NDWC Board of Directors, I am here to testify in opposition to 2003 Senate Bill No. 2351. The effect of this bill is to retroactively eliminate the social security retirement offset for a very narrow group of injured workers. The NDWC Board is opposed to this bill.

Before I address the Board's objections to this bill, I would like to briefly review the background, in terms of legislation, to coordinate overlapping workers' compensation and social security benefits. In 1979, the Legislature enacted an offset provision, requiring NDWC to offset workers' compensation benefits against social security disability benefits. See, Section 65-05-09.1, N.D.C.C. In 1989, the Legislature added a second offset provision, requiring NDWC to offset social security retirement benefits in a similar fashion, although the amount of the retirement benefits offset was reduced from 50 percent to 40 percent. See, Section 65-05-09.2, N.D.C.C.

In 1995, the Legislature extended the coordination of benefits concept by enacting a statutory presumption that a disabled person eligible for social security retirement benefits is considered retired and no longer eligible for workers compensation disability benefits. See, Section 65-05-09.3, N.D.C.C. In 1997, following an interim study that explored ways to lessen the impact of the 1995 changes on long-term disability recipients, the Legislature created a new "additional benefit" for workers whose disability benefits were discontinued under the 1995 retirement presumption. The additional benefit is computed as a percentage of the former disability benefit, based on the length of time the worker

received disability payments. The exception would be for those injured workers who are catastrophically injured, in which case, the additional benefit payable would be 100 percent of the disability benefit for the rest of their lives. See, Section 65-04-09.4, N.D.C.C.

The public policy reason behind the offset provisions and the 1995 retirement presumption is the coordination of overlapping benefits: the worker is experiencing only one wage loss, be it from disability or having reached retirement, and benefits should be coordinated so there is only one wage loss benefit. Injured workers remain eligible for other benefits, including medical benefits, permanent partial impairment benefits, and the additional benefit created in 1997, as those benefits are not coordinated.

The main problem with this bill is its attempt to prohibit offset based on receipt of social security retirement benefits on a *retroactive* basis. When the 1995 retirement changes were interpreted in the courts, the North Dakota Supreme Court concluded it would be unconstitutional to apply the changes to workers injured before August 1, 1995. The court reasoned that to do so would violate the valid obligations and vested rights of workers injured before the effective date of the statute. See, Gregory v. N.D. Workers Compensation Bureau, 1998 ND 94, 578 N.W.2d 101 and Ash v. Traynor, 1998 ND 112, 579 N.W.2d 180. The lesson learned from the court cases involving the 1995 retirement changes is that benefits should neither be decreased nor increased on an impermissible retroactive basis, as this bill seeks to do.

In addition to the legal problems associated with retroactive changes, there are substantial problems from an insurance standpoint. Premiums and reserves are set based on an anticipated stream of benefits. Retroactive changes, for which no premiums were collected or reserves established, can threaten the stability of the fund, as the fiscal note for this bill illustrates. According to NDWC's actuary, this bill would require an increase in reserves of more than \$4 million dollars on an undiscounted basis or \$2.8 million dollars on a discounted basis. In order to meet this unanticipated financial obligation, NDWC would need to consider a prospective rate surcharge to fund

the reserve increase that would result from the bill's retroactive benefit increase to prior years' claims.

Another major problem with this bill is it confers a special benefit on a very narrow group of injured workers. The narrow group consists of those employees who either became entitled to and received social security retirement benefits after June 30, 1989 and before August 1, 1995, or had their social security disability benefits converted to security retirement benefits after June 30, 1989 but before August 1, 1995. This would give that narrow group of injured workers a substantially increased benefit over that of other workers injured during the same time periods, perhaps raising Equal Protection concerns. In addition, it could create an even greater disparity between workers with pre and post-1995 dates of injury. Also, as the bill is drafted, many workers whose disability has yet to be converted to social security retirement would continue to have the social security retirement offset apply.

Finally, it is simply impossible to reconcile this bill with the intent expressed by the Legislature in adopting coordination of benefits legislation in the form of offsets in 1979 and 1989, and retirement law changes in 1995 and 1997.

For all the reasons I have mentioned, NDWC urges the committee to vote do not pass on Senate Bill No. 2351. Thank you for your consideration. If you have any further questions, I will be glad to answer them at this time.