

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1307

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1307

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1307

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-2-05

Tape Number	Side A	Side B	Meter #
1	x		0-22.3
2	x		0-5.4

Committee Clerk Signature



Minutes:

**Chairman Keiser:** Opened the hearing on HB 1307. All committee member were present except Representative Ekstrom.

**Representative Kaldor:** Appeared in support of HB 1307 and also was a sponsor of the bill. One of the concepts behind this bill today is important to touch on, and that is on social security and our later years in life that there is a security or safety net for our elderly people.

**Sebald Vetter, CARE:** Appeared in support of HB 1307 I'm speaking for all of our organizations 300 members not just one or two, we need all the help you can give us, you need to increase, we can't survive, this bill would eliminate the off set from retirement age on, its not that we are asking for back pay, this bill would go into effect in July like all other bills do. There are people out there that are losing money, I lost \$200.00 when I went on disability last year, this bill would

help us a little bit.

**Dave Kemnitz, President, AFL-CIO:** Appeared in support of HB 1307. Just want to make sure that we are on record in supporting Sebald Vetter. I'm fairly certain and clear on the requirement on WSI and social security disability as being a federal mandate offset, we are clear on that, and if one doesn't offset that the other will, so the bureau is saving money for the fund and for all offsets. But I'm not clear and I don't know that it is mandated that once an individual moves from social security disability to social security retirement that the offset is mandated, that is not clear to me.

**Tim Wahlin, Staff Counsel, Workforce Safety&Insurance:** Appeared in opposition of HB1307 and provided a written statement (SEE ATTACHED TESTIMONY).

**Representative Dosch:** Can you give us an example of what an injured worker would received when that injured worker retires?

**Tim Wahlin:** The social security retirement is off set in a similar fashion of social security disability, there is a provision in the law that says your net total payment will not go down, our payment may decrease, should your retirement benefits be greater then your social security disability benefits. But the net dollars paid out as it exists right now, will not decrease, they may go up.

**Chairman Keiser:** Social Security disability payments, WSI disability payments if they are both operative, there is an offset, but at the time that you convert from

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House Industry, Business and Labor Committee

Bill/Resolution Number 1307

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social security disability to social security retirement benefits, at that time there is no mandated offset. There is no federally mandated offset, but the state of ND has said they will continue the offset.

**Representative Froseth:** I move a **DO NOT PASS** on HB 1307.

**Representative Ruby:** **SECOND** the **DO NOT PASS** motion.

Motion carried     **VOTE: 10-YES   3-NO   1-Absent (EKSTROM).**

**Representative Vigesaa** will carry the bill on the floor.

Hearing closed.

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/24/2005

Bill/Resolution No.: HB 1307

**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.*

2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

WORKFORCE SAFETY & INSURANCE  
2005 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

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

**BILL NO:** HB 1307

**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 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 changes proposed under the legislation are similar to those presented as SB 2351 two years ago. At that time, we pointed out that ultimate costs associated with SB 2351 could be substantial - possibly exceeding \$4 million on an undiscounted basis. These reserve estimates didn'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.

In our 2003 evaluation of SB 2351 we also noted that the cost of the legislation would be higher if the social security retirement off-set is eliminated for all claims arising out of injuries occurring prior to August 1, 1995, regardless the date of retirement eligibility. At that time and under these circumstances, the indicated aggregate reserve adjustment for known claims would have exceeded \$29 million on an undiscounted basis.

**Rate Level Impact:** The proposed legislation should not increase future premium levels as it applies to pre-August 1,

1995 injuries. However, we will need to consider a prospective rate surcharge or develop an alternative funding plan to fund the reserve increase that will result from the retroactive benefit increase to prior year claims.

We did not attempt to update our estimates for HB 1307 because of the tight timeframe associated with the current request for a cost estimate. Recent changes in the way permanent total disability (PTD) claims are identified and resolved would likely increase the anticipated maximum costs by a material amount from our prior estimates. We have increased our estimates regarding the number of PTD claims from the levels assumed in our prior law evaluation. Thus, the potential costs of the legislation will increase accordingly.

DATE: January 27, 2005

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, 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  
Phone Number: 328-3760

Agency: WSI  
Date Prepared: 01/28/2005

Roll Call Vote #: / Date: 2-2-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1307

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Not Pass

Motion Made By

Rep. Froseth

Seconded By

Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman		X
N. Johnson-Vice Chairman	X		Rep. T. Boe		X
Rep. D. Clark	X		Rep. M. Ekstrom		A
Rep. D. Dietrich	X		Rep. E. Thorpe		X
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes)

10

No

13

Absent

(1)

Rep. EKstrom  
Rep. Vigasaa

Floor Assignment

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



**REPORT OF STANDING COMMITTEE (410)**  
**February 2, 2005 12:37 p.m.**

**Module No: HR-22-1680**  
**Carrier: Vigesaa**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1307: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1307 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1307

**2005 House Bill No. 1307**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Presented by: Timothy J. Wahlin, Staff Counsel**  
**Workforce Safety and Insurance**  
**February 2, 2005**

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel with Workforce Safety and Insurance (WSI). I am here to testify in opposition to HB 1307 which would retroactively eliminate the social security retirement offset for a narrow group of injured workers. The WSI Board voted unanimously to oppose this bill.

Over the prior decades, numerous laws have been passed to better coordinate the issue of overlapping workers' compensation and social security benefits. In 1979, the Legislature enacted a provision requiring WSI to offset workers' compensation wage replacement benefits where social security *disability* benefits were being paid. In 1989, the Legislature added a second provision requiring WSI to offset social security *retirement* benefits in a similar fashion. The 1989 enactments were further amended in 1993 to clarify date of application as well benefit conversion issues. In 1995, the Legislature extended the coordination of benefits provisions 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 wage benefits. In 1997, the North Dakota Legislature unanimously supported the creation of the Additional Benefit Payable (ABP).

For injuries occurring after 1995, workers' compensation wage-loss benefits end at the time of retirement eligibility and convert to an ABP. Recognizing that an injured worker permanently disabled at a young age lost the opportunity to sufficiently build a retirement base, this statute was passed to help compensate for that shortfall. The duration of the payment is equal to the length of time the worker was disabled before retirement. Catastrophically injured workers are entitled to 100% of their original rate until the date of their death.

I would also like to note that WSI is supporting a bill before the current 59<sup>th</sup> Legislative Assembly that would redefine the weekly ABP calculation as the compensation rate before any applicable social security offset.

One of the main concerns WSI has with the bill is its attempt --on a retroactive basis-- to prohibit the offset of social security retirement benefits. 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 these cases is that benefits should neither be decreased nor increased on a retroactive basis --as this bill seeks to do.

In addition to concerns over the bill's retrospective application, there are substantial concerns regarding its violation of the basic tenets of insurance. Premiums for any given year are an actuarial calculation of the costs anticipated for that year. Rates are established and collected based on this anticipated stream of benefits. Retroactive changes such as this --for which no premium was collected and no reserve was established-- can threaten the stability of the fund. The fiscal note associated with this bill clearly demonstrates this fact.

According to WSI's actuary, this bill would require an increase in reserves of more than four million dollars. In order to meet this unanticipated financial obligation, WSI would be required to either seek payment from the reserve fund or increase future premium rates.

Another major concern with this bill is it confers a special benefit on a 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 who had their social security disability benefits converted to social security retirement benefits after June 30, 1989, but before August 1, 1995. This bill would give a 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.

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. Additionally, where applicable, WSI has supported appropriate and equitable retirement benefit calculations.

For the stated reasons, WSI asks for a "do not pass" recommendation on HB 1307. I would be glad to answer any questions that you may have.