

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1410

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1410

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7872

Committee Clerk Signature

Ellen LeTang

Chairman Keiser: Opened the hearing on HB 1410 relating to worker's compensation offset for social security retirement benefits.

Francis Wald~Representative from District 37 in Dickinson. Goes over the bill. It says that if you are totally disabled for more than 20 or more, there will be no social security offset. If you are disable from 15 to 20 years, there is a 25% offset. If you are totally disabled 15 years or less, the offset can't exceed 40%. The reason for introducing this bill, when these people are totally disabled, they haven't had the opportunity to participate in a 401K and suffered a loss of income, loss of income and probably did not set up their personal IRA or savings. I also believe a higher cost of personal maintenance.

Chairman Keiser: We are still waiting for the official fiscal note this morning.

Dave Kemnitz~North Dakota President of AFL-CIO. See testimony attachment. The support is in the right direction.

Sebald Vetter~C.A.R.E. I support this bill. I've been in the system for 20 years this coming year, does that mean I will get no more offset?

Chairman Keiser: I don't know.

Sylvan Loegering~North Dakota Injured Workers Support Group. I arise in support of HB 1410.

Just for clarification, as I understand, it changes nothing for people who have been on total disability less than 15 years.

Leroy Volk~Self. I support this bill but I feel it should be limited to less than 20 years.

Anyone here to testify in opposition of HB 1410?

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

Representative Ruby: I'm still confused about social security disability and social security retirement and one offsets and one doesn't. How could it not affect future premium adjustments.

Wahlin: It's not going to affect claim post 1995 is the answer to your second question. The only group you are dealing with is the 1989 to 1995 and you are altering social security retirement offsets that have been on the books for that time period.

Representative Ruby: This bill doesn't change the current policy of the initial benefits payable. It's just effecting that one window of people. I wonder if that Representative Wald intent.

Representative Amerman: In you testimony the group affected beneficiaries, this affects the group from 89-95?

Wahlin: That correct, the pre and post 89-95.

Vice Chairman Kasper: Explain on the first page, second paragraph at the bottom, that the workers convert to a additional benefits payable for a prescribe period of time.

Wahlin: There is a hierarchy. So if you've been on for 2-5 years you are going to receive benefits at 10%. So the longer you've been on, the higher the percentage and the longer the time period.

Vice Chairman Kasper: Would you do a chart for me that show what you are talking about.

Chairman Keiser: Somehow we need to understand this in the committee. We need to make a big distinction between salary replacement & disability. Prior to 1995, if we have a permanent total and then there was a salary replacement that came into play. In 1995, the legislature created a new policy that said, "at retirement age, you would lose the salary replacement from WSI and you would get your social security retirement". But because your social security retirement benefit would be reduced because you haven't remained in the work force prior to that. There was an additional benefit payment added to social security in an attempt to offset that difference. So after 1995, there isn't an offset, you went to a different payment plan. You went from WSI to social security. Prior to 1995, we didn't require people to go to social security. They stayed on WSI and could receive social security but then we said "hey wait a second, this was salary replacement" now you are not double dipping so we are going to offset. So we offset up to 40%. That was the adjustment prior to that.

Representative Wald's bill comes in and really addresses those people in 89-95 because they are only ones who have an offset from social security. The question is whether or not this is fair policy. One of the alternatives would be, could we retroactively give them an ABP or give them the option of an ABP?

Wahlin: I believe that you can retroactively go back and give them the ABP but I do not believe that you would be able to retroactively go back and take away an offset.

Chairman Keiser: That would be a logical extension but we really can't because that contract was set in law. So we do have the offset. Do people in the 89-95 come out comparable to the post 95 people?

Wahlin: No, substantially better.

Chairman Keiser: So they are doing better than the post 1995?

Wahlin: That's exactly correct and that's policy wise why we oppose this.

Vice Chairman Kasper: I still want some charts.

Chairman Keiser: Could you do a chart.

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

Anyone here to testify in neutral?

Closes the hearing and we will hold this bill.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1410

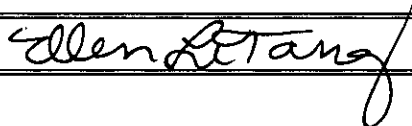
House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8422

Committee Clerk Signature



Chairman Keiser: Opened the committee working session on HB 1410.

Representative Ruby: This is Representative Wald's bill that deals with Social Security offset.

Chairman Keiser: There is a new fiscal note, see attachment.

Representative Ruby: This really only affected a small percentage of people that were getting a better benefit prior to the change.

Chairman Keiser: As I understand this issue prior to 1989, an injured worker kept everything they had at the point of retirement. From 1989 to 1995, the workers may not have kept everything they had but they came out relatively whole. Its post 1995 is the period when the offset positively impact some injured workers but negatively impacts injured workers.

Representative Wald's bill just because of the 15 to 20, only impacts those people in that middle group. In such they are already in good shape. What are the wishes of the committee?

Representative Ruby: Moves a Do Not Pass.

Representative Vigesaa: Second.

Voting roll was taken on HB1410 for a Do Not Pass with 9 ayes, 3 nay's, 1 absent with

Representative Ruby as the carrier.

FISCAL NOTE
Requested by Legislative Council
01/16/2009

Bill/Resolution No.: HB 1410

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 would modify the workers compensation Social Security Retirement (SSR) offset calculations for permanent total disability claims.

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: HB 1410

BILL DESCRIPTION: Modification of Social Security Retirement (SSR) Offset Calculation

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 modify the workers compensation Social Security Retirement (SSR) offset calculations for permanent total disability claims with an incurred disability or recurrent disability date between July 1, 1989 and August 1, 1995. It is our understanding that the proposal would apply to future offset calculations conducted after the effective date of this Act.

The amount of SSR Offset would be based on the duration of permanent total disability prior to SSR eligibility. Durations greater than 20 years would require no offset; durations between 15 and 20 years would require an offset based on a 25% ratio; and durations less than 15 years would require an offset based on a 40% ratio or no change from the offset levels that exist today.

Reserve Level Impact: We estimate the discounted value of SSR offsets on future benefit payments for known claims to be approximately \$4.0 million. To the extent additional claims emerge the cost estimates would be higher.

Rate Level Impact: The proposed legislation does not apply to future claims and should not increase future premium rate levels as it applies to 1989 through 1995 disability periods.

DATE: January 26, 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:	01/26/2009

Date: Feb 2-2009
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1410

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 _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman		7
Vice Chairman <u>Kasper</u>	7		Representative Boe		
Representative Clark	7		Representative Gruchalla		7
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe		7
Representative Ruby	7				
Representative Sukut	7				
Representative Vigasaa	7				

Total (Yes) 9 No 3

Absent 1

Floor Assignment Ruby

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

REPORT OF STANDING COMMITTEE (410)
February 3, 2009 1:46 p.m.

Module No: HR-21-1516
Carrier: Ruby
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1410: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING).
HB 1410 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1410

January 27, 2009—House I B & L Committee Testimony on WSI bills.

ND AFL-CIO

David L. Kemnitz; President

HB 1410

Introduced by; Representatives Wald, Grande, Klein; Senator Wardner
A BILL for an Act to amend and reenact section 65-05-09.2 of the North Dakota Century Code, relating to workers' compensation offset for social security retirement benefits.

The ND AFL-CIO supports HB 1410 and feels it is an earnest attempt to rectify some of the 1995 Legislative Session changes that adversely affected claimants.

HB 1427

Introduced by; Representatives Thorpe, Onstad, Zaiser; Senators Bakke, Taylor.
A BILL for an Act to amend and reenact section 65-05-04 of the North Dakota Century Code, relating to an injured worker's request for workers' compensation to exercise continuing jurisdiction.

The ND AFL-CIO supports HB 1427. The over struck language on lines 12 thru 14 point to the essence of problems claimants with newly acquired or additional medical information have with getting WSI to review their denied claim. WSI has the ability to review claims but more often than not WSI refuses to review and adjust these claims.

Because of this experience with WSI refusal to review newly acquired or additional medical information HB 1427 has been introduced.

The new language in lines 15 thru 21 would provide guidance and form for WSI to follow when the question of review comes up. The changes in our opinion are very appropriate in answering WSI claimant pleas for relief under the act.

HB 1455

Introduced by; Representatives Thorpe, Boucher, Ekstrom, Zaiser; Senator Bakke
A BILL for an Act to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation benefits for surviving spouse of permanently and totally disabled injured employee; and to provide for application.

The ND AFL-CIO supports HB 1455. The surviving spouse of a WSI claimant is more often than not the primary caregiver of the seriously and permanently injured worker. WSI does not provide compensation to these spouses, in addition the wage loss over the period of disability is substantial and resultantly the Social Security benefits for the surviving spouse are drastically reduced. This bill seeks to recognize the support of a surviving spouse/caregiver by awarding a small but measured monthly income stabilizer. This we feel is not only appropriate but also sincerely needed in these instances.

HB 1524

Introduced by; Representatives Amerman, J. Kelsh, Wolf;
Senators Dotzenrod, Fiebiger, Nething;
A BILL for an Act to amend and reenact section 65-05-33 of the North Dakota Century Code, relating to workers' compensation fraud; and to provide a penalty.

2009 House Bill No. 1410
Testimony before the House Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
January 27, 2009

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services with WSI. I am here on behalf of WSI to provide information in order to assist in making your determination on HB 1410. WSI's Board of Directors has reviewed and opposes this bill.

North Dakota Law provides offsets for both Social Security Disability (SSD) and Social Security Retirement (SSR) under certain circumstances. Neither provides for a full offset, but rather, in both instances create partial offsets. This bill does not affect SSD offsets. It will only affect SSR offsets.

The class of affected injured employees is, likewise, a closed group because of North Dakota's retirement presumption law.

This body passed the retirement presumption in 1995 and later amended it in 1997. The presumption provides, in essence, that when an injured employee reaches their presumed retirement age, they will no longer receive disability benefits, and instead convert to an additional benefits payable (ABP) for a proscribed period of time. Even though the SSR offset would be applicable to them, it cannot because the benefit type has converted to ABP.

As a result, the proposed bill applies only to post-1989 and pre-1995 injuries. This is because the pre-1995 benefit structure allowed disability payments to extend until death with annual cost of living adjustments (COLAs) for the life of the injured worker.

This bill retroactively adjusts the amount of that offset for injured employees within this window period. And then, only for those injured employees determined to be receiving permanent total disability benefits (PTD). The bill creates a "ladder" of applicability based upon an injured employee's time they have received PTD benefits prior to SSR eligibility.

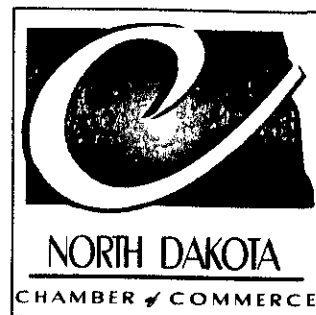
The bill would completely waive the offset for those who have received PTD benefits for 20 years prior to SSR eligibility. For those receiving the PTD between 15 and 20 years, the offset cannot exceed twenty-five percent of the SSR benefit, and for those receiving PTD for less than fifteen years prior to their SSR eligibility, the offset would remain unchanged.

The organization has concerns with the bill to the extent it retroactively augments a benefit structure for which the premium rates have been established and charged based upon a system that is now being enhanced. Additionally, there already exists disparity between those recipients on the system prior to 1995 and those entering after 1995 when the retirement presumption came into effect. This group of affected beneficiaries has the ability to receive workers' compensation benefits for life. This bill would further increase the benefits to that class.

The fiscal impact of this proposal estimates an increase in the discounted value on future benefit payments for known claims to be approximately \$4.0 million. To the extent additional claims emerge; the cost estimates would be higher.

For these reasons, WSI requests a "do not pass" on HB 1410.

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



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1410
January 27, 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 HB 1410 and urge a do not pass from the committee on this bill.

The social security retirement offset proposed in HB 1410 moves our benefits in the wrong direction. Aside from the fiscal note the bill creates additional disparity between pre and post 1995 claimants.

Thank you for the opportunity to appear before you today in opposition to HB 1410. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS

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