

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

1442

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1442

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1442**

### House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **5 February 07**

Recorder Job Number: **2761**

Committee Clerk Signature

*Jan Prindle*

Minutes:

**Chairman Kaiser opened the hearing of HB 1442.**

**Representative Steve Zaiser, District 21, introduced the bill.** This bill makes benefits if you are disabled under SSI that would be the parameter for disability under Worker's Comp.

There are a number of individuals that could not hold a full time job. This bill addresses that issue and makes the feds, who have a very difficult process for disability—only 5% are approved are granted. This bill makes that situation a condition of disability under our Worker's Comp law.

**Vice Chairman Johnson:** If you apply at the federal level than you should qualify for Worker's Comp; is that what you are saying?

**Representative Zaiser:** That's correct.

**Representative Merle Boucher, District 9, bill sponsor, testified on behalf of the bill.**

**(Testimony Attached.)**

**Representative Kasper:** On this example you were citing, was the person able to go back to work full time, or only part time.

**Representative Boucher:** It was my understanding that their choice was to go back and become self sufficient.

**Representative Clark:** In your example, do you have any idea what the length of time was that the benefits were paid.

**Representative Boucher:** I can only guess that it was for a period of time prior to reaching 65 and then she worked until aged 67.

**Sebald Vetter, testified in favor of HB 1442.** It doesn't pay to argue much here, it's a one-sided deal.

**David Kemnitz, representing the ND AFL-CIO, testified in favor of the bill.** This particular group or class of individuals is in a notch that denies them the benefits they felt they were supposed to get. This is their way of addressing the issue. This would raise their standard of living.

**Chairman Kaiser:** I need clarification. This applies to permanent disability claimants from 1995 until when?

**Kemnitz:** Prior to 1995. 1989 to 1995—that window.

**Leroy Volk, testified that he was in favor of the bill.**

**Dan Finneman, testified that he was in favor of the bill.**

**Tim Wahlin, staff counsel, WSI, testified in opposition of the bill. (Testimony Attached.)**

**Representative Kasper:** Tell me what happened in your hypothetical to the person who was injured prior to August of 95. Did they go back to work full time? Part time? Did they receive benefits for a period of time? What happened after 95?

**Wahlin:** Any one of those could have happened. If injured earlier, after 95 the wage loss arose and if I had a worsening of my condition which took me off work, after 95 my income started going down. If they continued working at a lower level they would be paid the temporary partial benefits. Either way that wage loss would have had to arisen after 1995.

**Representative Kasper:** What happens then at retirement?

**Wahlin:** If I'm in that class of wage lost after 95, the retirement presumption statute affects me at the date of retirement and wage loss benefits cease and convert over to my ADP and that will take place for however long that wage loss was prior to it—plus social security benefits with no offset. That's what the current law does.

**Representative Kaiser:** I don't think that's correct. Let me take a run at it. I hurt my back prior to 1995. I'm at work and there's no question. I lifted something and I go down, there are witnesses and it's a clear case. I go to see the doctor and they say no doubt about it. I go home and put heat on it, take ibuprofen like crazy and over the weekend I feel better and go back to work the following Monday and continue to work. Then after 1995, I start to notice a tingling in my right foot and that's not a good sign. That means that the disc is ruptured and it's hitting the sciatic nerve and so we've got complications. I go back to the doctor after that and he says this is serious and this is what happened, your disc did rupture at this point and now it's continuing to get worse and we're going to have to do surgery. They then do the surgery and the damage is extensive enough that when I get done I might go on permanent total disability. Now salary comes in. I continue to work to social security age at which time there is an offset on social security. With this bill I get 100% of social security and 100% of disability.

**Wahlin:** With this particular bill there would be a social security offset. Under the current law as you convert to your ABP payment, you get 100% of social security. There is no offset.

**Chairman Kaiser:** Even if it's a pre 1995 injury, it goes into this category. Permanent total or permanent partial comes after 1995.

**Wahlin:** That's correct.

**Chairman Kaiser:** And this bill would say forget ABP and at social security time you get 100% of social security and the full benefit you were receiving prior to social security.

**Wahlin:** As I read this particular bill, you would get 100% of your wage loss. That would continue and you would be entitled to your supplementary benefit increases over time. Would we then assert a social security retirement offset? In that scenario I believe that we would because it's a pre 95.

**Representative Zaiser:** Representative Boucher talked about this woman working full time after an injury. How would that affect that situation?

**Wahlin:** That was the struggle I was having as he was testifying because I don't believe this bill would affect that. She did have a pre 95 injury and a post 95 wage loss but then she went back to work and worked up to social security retirement. At that point she left work. If, leaving work was not a result of a worsening condition, we wouldn't pay. If it was, we would pay. We would pay for up to three full years for loss of wages in anybody's scenario. She was not permanently and totally disabled. She had already rolled past the retirement date and remember those are the qualifications for application of this bill. That's the conceptual problem I was having.

**Representative Zaiser:** Would this have been different if the individual instead of getting old age survivor under social security but was getting SSDI.

**Wahlin:** I don't believe it would make any impact on SSDI. That would convert to social security and go uninterrupted from the federal government.

**Representative Zaiser:** Who are the folks this bill will cover that are not now covered?

**Wahlin:** I'll go back to my testimony and continue and there are a couple of paragraphs that will cover that. **(Resumed reading from his testimony.)**

**Representative Amerman:** Is it with a majority vote that the Board of Directors decides to support this bill or is it unanimous?

**Wahlin:** As these proposals and amendments are presented to the board, we discuss the impact of them and then board will vote on a position on the position they will take. It is by quorum and majority.

**Representative Kasper:** Explain the 3<sup>rd</sup> paragraph: "... would further increase the inequities found in the pre and post 95 benefit recipients." Tell me how that would do that.

**Wahlin:** Because of the Supreme Court's ruling on the effective times of the retirement presumption statute, there was created a significant dislocation of benefit between people that could have been injured on any particular date prior to 1995. These will go for life; these will go for retirement presumption. Some of those pre 1995 post 1995 loss of earnings will then be kicked back up over here. Those who don't reach permanent disability prior to retirement, are going to remain down here as well. What will happen is the effect of the 1038 amendment which is intended to get this class of people is ineffective because this class of people is now rolling over to full life time benefits. It will increase inequity. It will push this significant dislocation forward into a whole other class of injured workers.

**Representative Zaiser:** You talked about how this bill might undo the situation in 1038. I understand you talked about changing the classification. I have the understanding that this bill might preclude some people and that would minimize the fiscal impact. Can you explain the cause of that fiscal impact.

**Wahlin:** The fiscal impact we derive by pricing and discounting those reserves to present dollar figures. We know that there are going to be 41 individuals on our system currently that are going to qualify in this area. Those individuals qualify from being retired and having an ABP payment. That is erased. They will receive the life time benefit with supplemental benefits for the remainder of their days. That ends up being fairly pricy.

**Representative Zaiser:** Why is WSI opposed to the bill?

**Wahlin:** The Board opposes this bill because we are changing a benefit retrospectively and altering a benefit in place as currently paid. The law is set, those people know what their expectations are. When we go back in time and alter a benefit it tends to create items that cannot be priced adequately, reserved for adequately and become unknown in the system. If the benefit goes forward, the Board's position is that we will come out neutral in that and will simply provide information.

**Representative Zaiser:** I would like to make a comment that you explain that in the recommendation you make as to either do not pass, neutral, etc., it would be helpful to the Committee.

**Representative Amerman:** Does this bill affect the bill we heard last week regarding social security offset?

**Wahlin:** It may to the extent we are creating a life time benefit in a population which is not entitled to the life time benefit. My guess is that the social security offset will affect that population. Remember that with the ABP there is no offset.

**Bill Shalhoob, representing the ND Chamber of Commerce testified in opposition to the bill. (Testimony Attached.)**

**John Emeter, (not certain of this name) testified neutral on the bill.** If we are dishonest we can get into the system. Once we get into the system we have stay there. If you get out of it, it's called a break in service. You're talking a really a broad field here. There's people down here passing laws that just really . . . I've been to committees down here too where they got like social services on handicapped people and stuff like that.

**Chairman Kaiser:** Let's talk about this bill. What is your neutral position on this bill not the general statement?

**Emeter:** That's what it is. A general statement. You are going to pass another law and then three years down the road you are going to have the same thing all over again. This is not

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Hearing Date: **5 Feb 07**

going to solve your problem, it's just going to cause problem. I know I'm not going to win.

Thank you for the opportunity.

**There being no further testimony, Chairman Kaiser closed the hearing of HB 1442.**

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1442**

## House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **6 February 2006**

Recorder Job Number: **2884**

Committee Clerk Signature



Minutes:

**Chairman Kaiser opened discussion of 1442.** This is worker's retirement resumption application to totally and permanently disabled injured workers. Currently, an employee receiving social security retirement benefits or they reach the age of where they will receive social security retirement benefits is by definition, retired. WSI may not pay disability benefits, rehab benefits, or supplementary benefits to persons considered retired. This bill takes out the category "permanently and totally disabled" from the above restriction so that when they reach social security retirement age, they would receive social security and continue to receive their WSI benefits. Right now we have the offset that goes on. This would be retro to 1989 to 1995. We have addressed this issue to some degree on HB 1038. The fiscal note is on the reverse level \$7.9 million and increase discount and reserve levels by \$4.9 million and it could range up to \$12.8 depending on the temporary disability claims that ultimately convert to permanent total.

**Representative Ruby:** Would they also receive their supplemental benefits in addition to that.

**Chairman Kaiser:** This is for that class of people between 1989 and 1995. Those people are not receiving supplemental benefits.

**Vice Chairman Johnson:** The woman that Representative Boucher spoke about, how would she qualify under this?

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House Industry, Business and Labor

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Hearing Date: **6 Feb 07**

**Chairman Kaiser:** She wouldn't.

**Representative Ruby:** I believe we cured that in that other bill where there was that gap that you talked about. I thought that pretty much took care of that.

**Chairman Kaiser:** Yes, we took it back to the date of injury.

**Representative Ruby:** I move **Do Not Pass**.

**Representative Vigesaa:** I second.

**Chairman Kaiser:** 1038 does not do as much as this bill would do, but it does take it back to the date of injury which gives them a one time lump sum payment each year. The question is does that do enough or do we want this one.

**A roll call vote was taken. Yes: 10, No: 4, Absent: 0**

**Representative Johnson will carry the bill.**

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/17/2007

Bill/Resolution No.: HB 1442

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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 eliminates the workers' compensation retirement presumption application for a group of injured workers that are designated permanently and totally disabled prior to retirement age and injured prior to August 1, 1995.

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  
 2007 LEGISLATION  
 SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1442

BILL DESCRIPTION: Retirement Presumption Application

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 eliminates the workers' compensation retirement presumption application for a group of injured workers that are designated permanently and totally disabled prior to retirement age and injured prior to August 1, 1995.

Reserve Level Impact: The proposed legislation will act to eliminate the retirement presumption for claims with an injury date prior to August 1, 1995 that had a recurrent disability after July 31, 1995 and a Permanent Total Disability (PTD) designation prior to retirement.

WSI identified 41 known PTD claims that would increase in cost under the proposed legislation. Discounted reserve levels on the 41 known PTD claims would increase by approximately \$4.9 million.

Additionally, there exist 64 temporary disability claims that were injured prior to August 1, 1995 with recurrent disability periods after July 31, 1995 that have not reached retirement age. Discounted reserve levels could increase by approximately \$7.9 million if all convert to PTD prior to retirement age. However, WSI does not presently anticipate that all of the temporary disability claims will convert to PTD status.

The proposed legislation can be expected to increase discounted reserve levels for the 41 known claims by \$4.9 million and could range up to \$12.8 million dependent upon the number of 64 temporary disability claims that ultimately convert to PTD in the future.

Furthermore, to the extent additional claims emerge for the period in question, cost estimates would increase accordingly.

Rate Level Impact: The proposed legislation does not apply to future claims and should not increase future premium rate levels as it applies to pre-August 1, 1995 injuries.

DATE: February 2, 2007

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>	328-3760	<b>Date Prepared:</b>	02/02/2007

Date: 2-6-07  
Roll Call Vote #: \_\_\_\_\_

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1442

House Industry Business & Labor Committee

Check here for Conference Committee

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

Action Taken Do Not Pass

Motion Made By Rep Ruby Seconded By Rep. Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla		X
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 10 No 4

Absent 0

Floor Assignment Rep. Johnson

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

**REPORT OF STANDING COMMITTEE (410)**  
February 6, 2007 11:04 a.m.

**Module No: HR-25-2238**  
**Carrier: N. Johnson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1442: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1442 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

HB 1442

TESTIMONY HB 1442  
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE  
CHAIRMAN, REPRESENTATIVE GEORGE KAISER

Good Morning Mr. Chairman and members of the House IBL Committee. For the record I am Representative Merle Boucher, a member of the House of Representatives from District Nine (9).

There are times when the Legislature attempts to make corrections in the law and with our end result, though good for the most part, we find we have unintended consequences. HB 1442's intent is to address such a situation.

We often hear about situations where some person's circumstances cause them to fall between the cracks, and thus find themselves excluded from a benefit.

The bill addresses (a) situation(s) where an employee who had been injured and was receiving benefits chose to return to work. During the time they returned to work they reached retirement age.

They worked for a time and complications to their pre-existing injury caused them to have to quit working. They re-applied for their WSI disability benefits and were denied.

The explanation to the claimant was that the law didn't allow them to receive benefits. HB1442 addresses this situation.

The bill would acknowledge that an employee who is permanently and totally disabled due to an injury that occurred before August 1, 1995 if that permanent and total disability occurred before the employee was considered retired, would be considered eligible for WSI benefits.

I would urge this committee to carefully consider supporting HB 1442 and give it a DO PASS recommendation.

Thank you for your kind consideration.

Respectfully submitted:

Representative Merle Boucher House Minority Leader  
North Dakota House of Representatives

**2007 House Bill No. 1442**  
**Testimony before the House Industry, Business and Labor Committee**  
**Presented by: Tim Wahlin, Staff Counsel**  
**Workforce Safety and Insurance**  
**February 5, 2007**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel with Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am here to testify in opposition to HB 1442. This bill proposes to amend NDCC §65-05-9.3 entitled "Retirement Presumption." In essence, the bill seeks to eliminate the retirement presumption for a select group of claims occurring prior to August 1, 1995, with a wage loss after that date so long as those individuals are permanently and totally disabled due to the injury, and the permanent and total disability occurs prior to being considered retired.

In 1995, the Legislature established the current retirement presumption law which clearly delineates the difference between a *wage replacement* benefit and a *retirement* benefit. It was the conclusion of the Legislature that North Dakota workers' compensation system was designed to provide wage-replacement benefits, not retirement benefits.

Following litigation with respect to the application of the retirement presumption, the North Dakota Supreme Court determined the law was inapplicable to injured employees on continuous benefits prior to August 1, 1995. As a result, those workers who were injured prior to August 1, 1995, and remained on continuous benefits since their injury were granted full, life-time disability benefits. This determination created a benefit differential between injured employees on the system prior to 1995, and those on the system after 1995.

Section 2 of 2007 HB 1038 proposes to provide an alternate calculation for those employees injured prior to August 1, 1995, but suffering a wage loss after that date. 2007 HB 1038's proposed adjustment is intended to address in part the differential between the pre-1995 and post-1995 benefit recipients. If enacted, HB 1442 would further increase the inequities found in the pre and post-1995 benefit recipients by undoing most of what HB 1038 seeks to equitably address.

The fiscal impact of HB 1442 would be an increase in discounted reserves of between \$4.9 to \$12.8 million dependent on the number of claims that will convert to permanent total disability prior to their retirement age. (There are currently 41 known claims that would be affected.)

For these reasons, WSI requests a "do not pass" on the HB 1442. I would be glad to answer any questions you might have.

**Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1442  
February 5, 2007**



Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic 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 specifically representing sixteen local chambers with a total membership of 7,236 and eleven employer associations. Lists of the specific members and associations are attached to my testimony. As a group we stand in opposition to HB 1442 and urge a do not pass vote from the committee on this bill.

This bill creates a dislocation for workers who were permanently and totally disabled prior to August 1, 1995. This committee addressed this problem in HB 1038 last week by providing for funds for an alternative Additional Benefit Payable for this group of claimants. The NDCC supported HB 1038 and we believe that bill properly addressed this issue.

Thank you for the opportunity to appear before you today in opposition to HB 1442. I would be happy to answer any questions.



**The following chambers are members of a coalition that support our 2007  
Legislative Policy Statements:**

- Beulah Chamber of Commerce - 107**
- Bismarck - Mandan Chamber of Commerce - 1080**
- Cando Area Chamber of Commerce - 51**
- Chamber of Commerce Fargo Moorhead - 1800**
- Crosby Area Chamber of Commerce - 50**
- Devils Lake Area Chamber of Commerce - 276**
- Dickinson Chamber of Commerce - 527**
- Greater Bottineau Area Chamber of Commerce - 153**
- Hettinger Area Chamber of Commerce - 144**
- Langdon Chamber of Commerce - 112**
- Minot Chamber of Commerce - 700**
- North Dakota Chamber of Commerce - 1058**
- Wahpeton Breckenridge Area Chamber of Commerce - 293**
- Watford City Area Chamber of Commerce - 84**
- Williston Chamber of Commerce - 401**
- West Fargo Chamber of Commerce - 400**

**Total Businesses Represented = 7236 members**

Associated General Contractors of North Dakota

Independent Community Banks of ND

Johnsen Trailer Sales Inc.

North American Coal

North Dakota Auto/Implement Dealers Association

North Dakota Bankers Association

North Dakota Healthcare Association

North Dakota Motor Carriers Association

North Dakota Petroleum Council

North Dakota Retail/Petroleum Marketers Association

Utility Shareholders of North Dakota

North Dakota Hospitality Association