

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2307

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2307

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2307

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-25-05

Tape Number	Side A	Side B	Meter #
1		xx	1600-4100
Committee Clerk Signature			

Minutes: **Chairman Mutch** opened the hearing on SB 2307. All Senators were present.

**SB 2307** relates to **Workforce Safety and Insurance premium discount for smoke-free workplaces.**

**Senator Flakoll** introduced the bill. See attached hand out. Also, see proposed amendments.

**Senator Klein :** With these amendments, the bureau would more easily determine how this would work?

**Senator Flakoll:** The original thinking was that we don't want to impose a five percent mandatory incentive, if it's not applicable. We need to look at that data.

**Senator Heitkamp :** If we are going to talk legislation, allowing for discounts in relation to smoke free work places, don't you feel we as legislators should get rid of ours?

**Senator Flakoll:** You know as well as I do, that I'm not a big smoker.

**Kathleen Mangskau, Director of the Division of Tobacco Prevention and Control for the**

**North Dakota Department of Health**, stated a neutral position on the bill. See attached testimony.

**Chairman Mutch** : I think the bill is concerned with the discounting for WSI. We are all convinced of the dangers of smoking already.

**Senator Heitkamp** : Could you please provide this second hand smoke information to the Department of Labor in North Dakota.

**Kathleen**: I would be happy to.

**Chairman Mutch allowed opposition at this time.**

**Sandy Blunt, Executive Director and CEO of WSI**, spoke in opposition. See attached testimony.

**Senator Heitkamp** : Do you believe that if smoking wasn't allowed in the workplace, there would be less risk of harm in the workplace?

**Sandy**: Absolutely.

**Senator Heitkamp** : If that's the case, why is it wrong to give an incentive?

**Sandy**: You have to go to the next question. What is the harm? Is it work related claim, or health?

**Hearing was closed. No action was taken.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2307

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-26-05

Tape Number	Side A	Side B	Meter #
3	xxx		1095-1219
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: **Chairman Mutch** opened committee discussion on SB 2307. All Senators were present. SB 2307 relates to Workforce Safety and Insurance premium discount for smoke-free workplaces.

**Senator Klein:** I sense that there could be some major issues and with that,

**Senator Klein** moved a **DO NOT PASS**.

**Senator Espegard** seconded.

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

**Carrier:** Senator Klein

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/19/2005

Bill/Resolution No.: SB 2307

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: Premium Discount for Smoke-free workplace

BILL NO: SB 2307

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 provides for a workers compensation premium discount for employers that implement and maintain a smoke-free workplace.

Fiscal Impact: We do not have an appropriate database to use in quantifying the potential reduction in losses that may flow from the proposed change as smoke-related claims have been virtually non-existent. Assuming a 5% - 10% smoke-free discount program was implemented; statewide discounts could range between \$2 to \$4 million dollars. Lacking any actuarial justification, it may be prudent to adjust premium levels upward from 3% to 4% (\$3 to \$4 million) to pay for the premium discounts and any associated administrative expenses over the short term future. It is estimated that two additional staff would be needed to monitor employer compliance with such a program. Salary, benefits, and support services for the two FTEs would be approximately \$80,000 per year or \$160,000 for the biennium.

DATE: January 23, 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.*

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.*

see narrative

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-3760	<b>Date Prepared:</b>	01/24/2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2307

Page 1, line 3, after "workplaces" insert "; and to provide for an effective date"

Page 1, line 8, after "discount" insert ", if applicable based upon studies and actuarial data,"

Page 1, after line 14, insert:

**"SECTION 2. EFFECTIVE DATE.** This Act becomes effective on July 1, 2007.

Renumber accordingly



**REPORT OF STANDING COMMITTEE (410)**  
January 27, 2005 8:07 a.m.

**Module No: SR-18-1162**  
**Carrier: Klein**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2307: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2307 was placed on the Eleventh order on the calendar.**

**2005 TESTIMONY**

SB 2307

Flakoll intro

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## Tobacco-Related Workers' Compensation Cases (1910-2000)

**Smoker Accidents Background Data**

**Smoker Sickness Background Data**

*M'Lauchlan v Anderson*, 1 Scot Law Times 127; 48 Sc L Rep 349; 4 SWCC 376 (1 Feb 1910)  
(worker fell from work wagon attempting to pick up his fallen pipe, held compensable)

*Manson v Forth & Clyde Steamship Co*, [1913] SC 921; 50 Scot L R 475; [1913] WC & Ins Rep 399; 6 BWCC 830 (23 May 1913) (fire from cigarette in contact with worker's oil-covered trousers) [or 50 Scot L R 687?]

*Chludzinski v Standard Oil Co*, 176 App Div 87; 162 NYS 225 (28 Dec 1916)

*Haller v City of Lansing*, 195 Mich 753; 162 NW 335; LRA 1917E, 324 (9 April 1917) (injury by fire)

*Dzikowska v Superior Steel Co*, 65 PLJ 502; 31 York 67 (23 April 1917)

*Dzikowska v Superior Steel Co*, 259 Pa 578; 103 A 351 (7 Jan 1918). SCB: 65 PLJ 502; 31 York 67 ("foreman testified . . . he did not allow smoking inside" "the building.")

*In re Betts*, 66 Ind App 484, 486; 118 NE 551, 552 (18 Jan 1918) ("an habitual and almost constant user of tobacco" was killed on the job when, "two or three steps" from his job site, walking toward to a store "to get some tobacco," apparently suffering withdrawal symptoms causing him to pay less attention than he ought, "he was struck by an automobile . . . and killed almost instantly.")

*Whiting-Mead Commercial Co v Industrial Accident Commission*, 178 Cal 505; 173 P 1105; 5 ALR 1518 (3 July 1918) (workers' compensation case)

*Rish v Iowa Portland Cement Co*, 186 Iowa 443; 170 NW 532 (23 Jan 1919)

*Taylor v Industrial Commission*, 31 OCA 390; 13 Ohio App 262 (19 June 1920)

*Storm v Industrial Accident Commission*, 191 Cal 4; 214 P 874 (12 April 1923)

*Tiralongo v Stanley Works*, 104 Conn 331; 133 A 98 (8 April 1926) (worker's compensation case, involving fire; "The rules of the factory forbid smoking during working hours, and notices were posted in the lavatory and toilets of the plant reading 'No smoking.'")

*Fischer v R. Hoe & Co, Inc*, 224 App Div 335; 230 NYS 755 (20 Sep 1928)

*Dattilo's Case*, 273 Mass 333; 173 NE 552 (28 Nov 1930) was by the widow of a smoker who had worked with gasoline and had gasoline on his clothing. She sought worker compensation when her husband died as follows: While his trousers were covered with gasoline, he "took a match from his pocket and scratched it on his trousers for the purpose of lighting a cigarette . . . in his mouth, and 'he became a human torch.' He never recovered from his burns and died." That is a lot of addiction!!

*Lovallo v American Brass Co*, 112 Conn 635; 153 A 783 (3 March 1931)

*McAfee v Travis Gas Corp*, 137 Tex 314; 153 SW2d 442 (4 June 1941). SCB: 131 SW2d 139 (employee smoked around gas pipe, which was leaking, resultant fire and explosion caused injury to another person)

*McDonough v Sears, Roebuck & Co*, 127 NJL 158; 21 A2d 314 (25 July 1941) (worker compensation case, employee injured self smoking despite employer ban on smoking)

*Western Pipe & Steel Co v Industrial Accident Commission*, 49 Cal 2d 108; 121 P2d 35 (13 Jan 1942)

*McDonough v Sears, Roebuck & Co*, 130 NJL 530; 33 A2d 861 (16 Sep 1943). SCB: 127 NJL 158; 21 A2d 314 ("the [person in charge] warned [the smoker] not to smoke, and went so far as to instruct the [staff] not to let him have cigarettes or matches.")

*Richards v Creamer*, 267 App Div 928; 46 NYS2d 769 (15 March 1944)

*Richards v Creamer*, 267 App Div 1007; 48 NYS2d 685 (3 May 1944). SCB: 267 App Div 928; 46 NYS2d 769

*Fossum v George A. Fuller Co*, 70 RI 191; 38 A2d 148 (22 June 1944) (worker's compensation case)

*McLellan v International Paper Co*, 269 App Div 800; 55 NYS2d 56 (16 May 1945)

*Puffin v General Electric Co*, 132 Conn 279; 43 A2d 746 (12 July 1945) (worker compensation case)

*McLellan v International Paper Co*, 294 NY 967; 63 NE2d 597 (4 Oct 1945). SCB: 269 App Div 800; 55 NYS2d 56

*Bradford's Case*, 319 Mass 621; 67 NE2d 149 (29 May 1946) (worker's compensation case, where by employer rule, "smoking was not permitted inside the building")

*McLellan v International Paper Co*, 271 App Div 857; 66 NYS2d 3 (20 Nov 1946). SCB: 294 NY 967; 63 NE2d 597

*Waskevitz v Clifton Paper Board Co*, 7 NJ Super 1; 71 A2d 646 (1 March 1950) (worker's compensation job smoking case)

*Hill-Luthy Co v Industrial Commission*, 411 Ill 201; 103 NE 2d 605 (24 Jan 1952) (employee smoking case)

*Secor v Penn Service Garage*, 35 NJ Super 59; 113 A2d 177 (1 April 1955) (worker compensation case, employee smoked around gasoline)

*Secor v Penn Service Garage*, 19 NJ 315; 117 A2d 12 (27 Sep 1955). SCB: 35 NJ Super 59; 113 A2d 177

*Wiseman v Industrial Accident Commission*, 291 P2d 180 (Cal App, 14 Dec 1955)

*Wiseman v Industrial Accident Commission*, 46 Cal 2d 570; 297 P2d 649 (29 May 1956). SCB: 291 P2d 180

*Crotty v Driver Harris Co*, 45 NJ Super 75; 131 A2d 578 (22 April 1957) (worker compensation job smoking case)

*Crotty v Driver Harris Co*, 49 NJ Super 60; 139 A2d 126 (17 Feb 1958). SCB: 45 NJ Super 75; 131 A2d 578

*Tobin v W. T. Grant Co*, 17 Misc 2d 517; 191 NYS 2d 540 (23 Jan 1959) (worker's compensation case)

*Tobin v W. T. Grant Co*, 8 App Div 2d 723; 187 NYS2d 989 (4 May 1959). SCB: 17 Misc 2d 517; 191 NYS 2d 540

*Tobin v W. T. Grant Co*, 9 App Div 2d 691; 191 NYS2d 1010 (19 Oct 1959). SCB: 8 App Div 2d 723; 187 NYS2d 989

*Clarke v Coats & Clarke, Inc*, 97 RI 163; 196 A2d 423 (10 Jan 1964) (worker compensation employee smoking case)

*Bouillier v Samsan Co*, 100 RI 676; 219 A2d 133 (25 April 1966) (employee violating employer rule smoked on the job, injured self, filed workers' compensation claim; "no smoking was permitted in the area where the thinners and the lacquers were located")

*McGee v Adams Paper & Twine Co*, 26 App Div 2d 186; 271 NYS2d 698 (7 July 1966) motion gr 19 NY2d 673; 278 NYS2d 864; 225 NE2d 555 (16 Feb 1967) aff'd 20 NY2d 921; 286 NYS2d 274; 233 NE2d 289 (29 Nov 1967) (smoking-caused a building fire, fireman coming to fight the fire, death ensued, and widow's lawsuit for compensation) (Context)

*American Tobacco Co v Sallee*, 419 SW2d 160 (Ky App, 5 May 1967) (worker compensation case)

*McAlister v Workmen's Compensation Appeals Board*, 69 Cal 408; 71 Cal Rptr 697; 445 P2d 313 (4 Oct 1968) ("the more smoke . . . inhaled . . . the greater the danger")

*Bolger v Chris Anderson Roofing Co*, 112 NJ Super 383; 271 A2d 451 (23 Nov 1970)

*Stauffer v Bank of America*, No. 68 ANA 23916, 36 Cal Comp Cases 732 (WC Referee, 3 Aug 1971)

*Stauffer v Bank of America*, No. 68 ANA 23916, 36 Cal Comp Cases 732 (WCAB, 14 Oct 1971)

*Stauffer v Workmens Compensation Appeals Board*, Civil No. 11834 (Ct App, 6 Dec 1971). SCB: 36 Cal Comp Cases 732

*Stauffer v Bank of America*, No. 68 ANA 23916, 37 Cal Comp Cases 687 (App Bd, 7 June 1972). SCB: 36 Cal Comp Cases 732

*Stauffer v Workmen's Compensation Appeal Board*, Civil No. 12157, 37 Cal Comp Cases 687 (Ct App, 13 Oct 1972). SCB: 36 Cal Comp Cases 732

*Stauffer v Workmen's Compensation Appeal Board*, Cal (Sup Ct, 22 Nov 1972). SCB: 37 Cal Comp Cases 687; 36 Cal Comp Cases 732

*Riley v Avondale Shipyards*, 305 So 2d 742 (La App, 14 Dec 1974) (worker's compensation case)

*Buchanan v Allen Hay Motor Co*, 21 Or App 90; 553 P2d 824 (1975)

*Fuentes v Workmen's Compensation Appeals Board*, 40 Cal Comp Cases 40; 44 Cal App 3d 231; 18 Cal Rptr 530 (8 Jan 1975)

*Langlais v Superior Plating, Inc*, 303 Minn 213; 226 NW2d 891 (28 Feb 1975)

*Nelson v Industrial Commission*, 24 Arizona App 94; 536 P2d 215 (5 June 1975)

*Fuentes v Workmen's Compensation Appeals Board*, 16 Cal 3d 1; 128 Cal Rptr 673; 547 P2d 449 (2 Feb 1976). SCB: 40 Cal Comp Cases 40; 44 Cal App 3d 231; 18 Cal Rptr 530

*Matter of Melvin Draper*, J371536 (Wash, 7 May 1976)

*Matter of Werner Peterke*, ECAB Worker Comp Case (Baltimore, June 1977)

*Appeal of Melvin Draper*, J371536 (Wash, 7 Dec 1977)

*Newport News Shipbuilding and Dry Dock v Director, Office of Workers' Compensation Programs*, 6 BRBS 133 (1977)

*Matter of Evelyn Bertram*, Worker Comp Case A9-190131 (Mich, 29 Dec 1977) (nonsmoker injured on job by TTS)

*Appeal of Melvin Draper*, J371536 (Wash, 16 Jan 1978)

*Mueller v State Accident Insurance Fund*, 33 Or App 31; 575 P2d 673 (1 March 1978)

*Harrison v Industrial Commission of Utah*, 578 P2d 510 (Utah, 10 July 1978)

*Newport News Shipbuilding and Dry Dock v Director, OWCP*, 583 F2d 1273 (CA 4, 21 Sep 1978).  
SCB: 6 BRBS 133

*Newport News Shipbuilding and Dry Dock v Director, OWCP*, 440 US 915; 99 S Ct 1232; 59 L Ed 2d 465 (21 Feb 1979). SCB: 6 BRBS 133; 583 F2d 1273

*Pullman Kellogg v Workmens' Compensation Appeals Board*, 26 Cal 3d 450; 161 Cal Rptr 783; 605 P2d 422 (4 Feb 1980)

*Clark v Burlington Industries*, 49 NC App 269; 271 SE2d 101 (21 Oct 1980) (worker comp case)

*Morrison v Burlington Industries*, 301 NC 226; 271 SE2d 364 (23 Oct 1980). SCB: 47 NC App 50; 266 SE2d 741

*Moore v J. P. Stevens & Co, Inc*, 301 NC 401; 274 SE2d 226 (4 Nov 1980). SCB: 47 NC App 744; 269 SE2d 159

*Crucible Steel v Workmen's Compensation*, 59 Pa Cmnwlth 184; 429 A2d 123 (6 May 1981)

*Page v Prestressed Concrete Co*, 399 So 2d 657 (La App, 26 May 1981) (worker comp case)

*Humphries v Cone Mills Corp*, 279 SE2d 56 (NC App, 16 June 1981)

*Fraday v Groves Thread/General Accident Ins Co*, 56 NC App 61; 286 SE2d 844 (16 Feb 1982)

*Rutledge v Tultex Corp*, 56 NC App 345; 289 SE2d 72 (16 March 1982)

*Swink v Cone Mills, Inc*, 61 NC App 475; 300 SE2d 848 (5 April 1983)

*Rutledge v Tultex Corp./Kings Yarn*, 308 NC 85; 301 SE2d 359 (5 April 1983)

*Barrington v Dan River, Inc*, 225 Va 240; 302 SE2d 505 (29 April 1983)

*Caskey v Dan River Mills, Inc*, 225 Va 405; 302 SE2d 507 (29 April 1983)

*Sumner v Work Comp App Bd*, 33 Cal 3d 965; 191 Cal Rptr 811; 663 P2d 534 (2 June 1983)

*Director, Office of Workers' Comp Programs v Rowe*, 710 F2d 251 (CA 6, Ky, 17 June 1983)

*Palmer Coking Coal Co v Director, Office of Workers' Comp Programs*, 720 F2d 1054 (CA 9, 17 Nov 1983)

*Swink v Cone Mills, Inc*, 65 NC App 397; 309 SE2d 271 (6 Dec 1983). SCB: 61 NC App 475; 300

SE2d 848

*Calloway v Brown & Williamson Tobacco Co*, 675 SW2d 389 (Ky, 13 Feb 1984) (worker compensation case, witness fee issue)

*Marlene W. Ritchie*, WCB Case No. 84-07248, Claim No. D 69058, Van Natta (Oregon, 7 Oct 1984)

*Fraday v Groves Thread/General Accident Insurance Co*, 312 NC 316; 321 SE2d 835 (6 Nov 1984).  
SCB: 56 NC App 61; 286 SE2d 844

*Iandorio v Kriss & Senko Enterprises, Inc*, 329 Pa Super 624; 488 A2d 1169 (7 Dec 1984)

*Matter of Compensation of Downey*, 37 Van Natta 455 (23 April 1985)

*Ogg v Bill White Chevrolet Co*, 720 P2d 324 (Oklahoma, 3 June 1986) (smoker employee injured on-job, slip-and-fall case, going to car to retrieve cigarettes)

*Coleman v Cycle Transformer Corp*, 105 NJ 285; 520 A2d 1341 (14 Nov 1986)

*Iandorio v Kriss & Senko Enterprises, Inc*, 512 Pa 392; 517 A2d 530, 534 (Penn, 17 Nov 1986). A Pennsylvania court said "[the smoker] notwithstanding his actual knowledge of the [foreseeable harm] proceeded to light a cigarette while [the victim] was standing only a few feet away . . . the employer . . . not only knew that its employees smoked at work, but, in fact, dictated where . . . exhibited . . . control over its employees' smoking."

*Harper v Brown & Williamson Tobacco Co*, 717 SW2d 502 (Ky App, 27 June 1986) (worker compensation case, back injury)

*ATE Fixture Fab v Wagner*, 559 So 2d 635; 5.3 TPLR 2.110 (Fla App, 25 Jan 1990) (second-hand smoke injury)

*Philip Morris, Inc v Poynter*, 786 SW2d 124 (Ky App, 23 March 1990) (worker compensation case)

*Kufahl v Wisconsin Bell, Inc*, Claim 88-000676; 6.2 TPLR 8.23 (Wis Dep't of Industry, Labor and Human Relations, 21 May 1990) (second hand smoke injury)

*Avtar Ubhi v Marina's Bar and Grill*, WCAB No. SFO 0341691 (WCAB, 15 Dec 1990) (second-hand smoke injury case, as per bar workers disproportionate tobacco-caused disease)

*Witte v Dep't of Rehabilitative Services*, 88 WC 44629 (Illinois, 19 March 1991) (worker comp case)

*Bena v Massachusetts Turnpike Authority*, No. 03922088, 7.1 TPLR 8.1 (Mass Dept of Industrial Accidents, 5 Dec 1991) (second hand smoke injury case)

*Riddle v Ampex Corp*, 839 P2d 489; 7 BNA IER 525 (19 March 1992) (smoker filed for "stress" upon establishment of smoking restrictions, case denied, as such enforcement is common)

*Eastern Airlines, Inc and GAB v Crittenden and Travelers Ins Co*, 17 Fla W D 724; 596 So 2d 112 (11 March 1992) (second hand smoke injury case)



***Palmer v Del Webb's High Sierra*, 108 Nev 673; 838 P2d 435; 8.1 TPLR 2.174 (1 Sep 1992) (worker comp case, nonsmoker gambling establishment employee acquired lung cancer from disproportionate number of smokers gambling—gambling pursuant to their acalculia, a medical disorder taken advantage of by gambling establishments encouraging smoking as a matter of business practice—in essence discriminating against the mentally handicapped as per pertinent medical analyses, which activists oppose.)**

***Magaw v Middletown Bd of Education*, 323 N J Super 1; 731 A2d 1196 (2 July 1999) cert den 1999 NJ LEXIS 1522 (5 Nov 1999) (worker compensation case, nonsmoker got throat cancer from Toxic Tobacco Smoke (TTS) from smoker coworker, due to exposure to 46,800 cigarettes from sharing office with smoker teacher, another evidence for ending negligent hiring practices). Note that after getting this dread condition, the school fought him all the way to the state Supreme Court, trying to deprive him of even paying his medical and life expenses caused by its negligent and unlawful hiring and safety practices. Educators should know better.**

***Duncan v Northwest Airlines*, Case No. 98-35617 (CA 9, Wash, 6 April 2000) (flight attendant second-hand smoke injury case)**

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### For Further Reading

Smoking On The Job

Avoidance of Negligent Hiring

Fire Prevention

Toxic Chemicals From Tobacco

Pertinent Legal Definitions

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**2005 Senate Bill No. 2307**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Presented by: Sandy Blunt, Executive Director/CEO**  
**Workforce Safety & Insurance**  
**January 25, 2005**

Mr. Chairman, Members of the Committee:

My name is Sandy Blunt and I am the Executive Director and CEO of Workforce Safety & Insurance (WSI). I am here to testify in opposition to Senate Bill 2307. This bill proposes to mandate premium discounts to employers who maintain a smoke-free workplace. The Workforce Safety & Insurance Board of Directors opposes this bill.

At first blush, the members of this committee and the public at large must be asking themselves: "Why in the world would an entity that purports to dedicate itself to the protection of North Dakotans be opposed to something as simple and positive as a smoke-free workplace? I thought you cared about the health of others?" To answer these questions we say: "We do care . . . We do support smoke-free workplaces . . . And nothing is as simple as it appears."

While we support the concept of smoke-free workplace, it is neither appropriate nor fair to place WSI and its employer customers as the police and payors for such an initiative. If it truly is the will of the people that North Dakota have smoke-free workplaces, then WSI respectfully suggests that the legislature should propose a law to directly address that topic.

To better understand our position, it is helpful to first understand the legal duty of WSI. The Board of Directors is charged with the authority and responsibility to assist in the administration and management of WSI and the fund dollars. As part of that responsibility, the Board is charged with the authority of appointing a director to discharge those duties. (N.D.C.C. section 65-02-03.3)

Together, it is the Board's and the Director's responsibility to ensure the funds accumulated from the collection of premiums, are available at adequate levels to ensure payments to North Dakota workers who are injured on the job. Consequently, discounts within the premium structure must have a discernable link to injury reduction and an actuarial correlation to the fiscal health of the fund.

Consistent with this charge, only discounts that entice a behavior to protect our customers and protect the financial health of the fund should be offered. Premium discounts have historically been an incentive-based monetary reward encouraging safety-related employment practices based upon actuarially-sound principles. They are economic incentives that encourage employers to adopt employment practices which lower injury risks.

The difficulties we see in this bill are actuarially based. We are unable to demonstrate any meaningful link between workplace smoking and workplace injuries. In the past decade, we have only seen two tangentially-related smoking claims. Consequently, granting an annual premium discount fails --at the most basic level-- to accomplish the requirements WSI uses in reviewing the appropriateness of such incentive-based proposals.

WSI has recently proposed legislation in HB 1125 to seek the removal of a mandatory "five percent" reference for annual discounts. This change is being sought to permit WSI to expand risk management programs without being locked into providing only a fixed percentage discount. In HB 1125, WSI is seeking the authority to target premium discounts to those practices which truly reduce workplace injuries rather than to those just specifically directed by law. The essence of HB 1125 runs contrary to the requirements of SB 2307.

Additionally, there would be unintended consequences as a result of the passage of this bill. Currently, government organizations and healthcare facilities are among the largest employers in the fund and today are "smoke free." It could be predicted that these and other preexisting smoke-free employers would readily apply for and receive the rate reduction proposed in this bill. The result would be a cost shift to North Dakota's employers --which is akin to writing checks with somebody else's checkbook.

Assuming a five to ten percent smoke-free discount program was implemented, statewide discounts could conservatively range between two to four million dollars. Lacking any actuarial justification, premium levels would have to be adjusted upward by approximately three to four percent annually (three to four million dollars) to pay for the premium discounts and any associated administrative expenses. It is estimated that at a minimum two additional staff would be required to monitor employer compliance with such a program. Salary, benefits, and support services for the two full time employees would be approximately eighty thousand dollars per year.

To create such an incentive --which is not supported by actuarially sound assumptions-- does nothing more than create a "tax" which penalizes those employers who wish not to adhere to this mandate. While WSI opposes the proposed legislation, we do think there may be an alternative solution.

Last fall, WSI, Dr. Terry Dwelle (North Dakota's State Health Officer), and Patrick Traynor (President of the Dakota Medical Foundation) began discussing the concept of conducting a pilot grant program to review if there is a link to worker's compensation costs and the tenets espoused in the *Healthy North Dakota* program. The *Healthy North Dakota* program is a framework supporting North Dakotans in their efforts to make healthy choices by focusing on wellness and prevention – in schools, workplaces, senior centers, homes and anywhere people live, work and play. The concept of the grant program would be to match the most likely claims WSI sees as a result of personal health choices with various solutions in order to analyze if there is a corresponding drop in claim and system costs.

If HB 1125 is enacted, WSI will have the authority to propose discounts that are actuarially justified. If the grant study data demonstrates both a clear link and actuarial savings, then WSI would have the authority to create premium discounts designed to encourage similar actions. The advantage of this approach is that it takes into consideration a much wider array of health related issues and would not define a solution without first defining the problem.

In closing, I would again like to note that while it sounds irresponsible of WSI to oppose SB 2307, it is the fiduciary obligation of WSI to do so. We are charged with simultaneously protecting both the workforce of North Dakota and the solvency of the fund. In this case, there is no correlation between the two and we feel there is a better solution.

Thank you Mr. Chairman and Members of the Committee for your time. I will be glad to answer any questions.

Flakou-

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## Second-Hand-Smoke Injury Yields Workers' Comp Award

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August 10, 1998

Sharing an office with a chain smoker caused a Middletown physical education teacher's tonsillar cancer, entitling him to disability benefits, a **worker's compensation** judge has ruled.

The ruling by Judge James Boyle appears to be the first in New Jersey to extend compensation for second-hand-smoke exposure beyond lung cancer. Boyle, citing recent litigation involving flight attendants and custody and visitation issues concerning a child's exposure to a parent's second-hand smoke, said the extension was justified.

"I am satisfied ... that the next logical step in the evolution of the known effects of second hand smoke has been reached," Boyle wrote. "That is, I am satisfied that [the petitioner] has proven even beyond the preponderance of credible evidence that [his] tonsillar cancer was caused by his exposure to second-hand smoke during the twenty-six years that he shared an office with a co-employee who was a chain-smoker."

Boyle awarded Donald Magaw \$45,000 in temporary disability benefits and also ordered the Middletown Board of Education to pay outstanding medical bills, provide future treatment and restore sick time that Magaw had used up.

Magaw's attorney Michael McGann, a partner with Oakhurst's Amdur, Boyle, Maggs & McGann, says the ruling expands the already accepted fact that **cigarettes** are dangerous to non-smokers in the workplace. "What this decision illustrates is that the full danger of **cigarettes** has barely been scratched," McGann says.

Middletown's attorney, John Geaney a partner with Mount Laurel's Capehart, Scatchard, & Geaney, says he plans to appeal the decision.

The case began in October 1994 when Magaw was diagnosed with cancer of the tonsils.