

JOURNAL OF THE HOUSE

Fifty-third Legislative Assembly

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Bismarck, March 22, 1993

The House convened at 1:00 p.m., with Speaker R. Berg presiding.

The prayer was offered by the Rev. John Bushell, Methodist Church, Harvey.

The roll was called and all members were present except Representatives D. Olsen and Wanzek.

A quorum was declared by the Speaker.

HOUSE ENGROSSING AND ENROLLING REPORT

The following bills were enrolled: HB 1038, HB 1039, HB 1044, HB 1054, HB 1057, HB 1116, HB 1140, HB 1237, HB 1240, HB 1445.

CORRECTION AND REVISION OF THE JOURNAL

MR. SPEAKER: Your Committee on Correction and Revision of the Journal (Rep. DeWitz, Chairman) has carefully reexamined the Journal of the Fiftieth Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 1224, after line 17, insert:

"SECOND READING OF SENATE BILL

SB 2056: A BILL for an Act relating to the provision of health care for residents of this state; to create and enact a new subsection to section 23-01-03, a new subsection to section 23-17.2-02, a new subdivision to subsection 1 of section 23-17.2-03, a new subsection to section 23-17.2-03, a new subsection to section 26.1-04-03, two new sections to chapter 26.1-36, three new sections to chapter 50-24.1, a new subdivision to subsection 1 of section 57-38-01.2, a new subsection to section 57-38-30.3, and a new section to chapter 57-38 of the North Dakota Century Code, relating to the duties of the North Dakota health council, the definition of long-term care facility, the certificate of need program, unfair insurance practices, a health plan for children and pregnant women, and income tax deductions for long-term care insurance; to amend and reenact subsection 7 of section 23-17.2-02, sections 26.1-18-12, and 26.1-36-37.1 of the North Dakota Century Code, relating to the definition of health care facility, prohibiting copayments and deductibles for prenatal care and preventive services, and a standard health insurance proof of loss and claim form; and to provide an appropriation."

REP. KUNKEL MOVED that the report be adopted, which motion prevailed.

SIGNING OF BILLS AND RESOLUTIONS

The Speaker signed the following enrolled bills and resolutions: SB 2058, SB 2378, SB 2447, SCR 4040, SCR 4042, SCR 4044, SCR 4045, SCR 4049.

MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The President has signed and your signature is respectfully requested on: SB 2195, SB 2206, SB 2219, SB 2340, SB 2358, SB 2373, SB 2385, SB 2387, SB 2393, SB 2398, SB 2401, SB 2423, SB 2439, SB 2444, SB 2460, SCR 4033, SCR 4054, SCR 4059, SCR 4067.

MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The Senate does not concur in the House amendments to SB 2101, SB 2277, SB 2287, SB 2320, SB 2394, SB 2486, and SCR 4070 and the President

has appointed as a conference committee to act with a like committee from the House on:

SB 2101: Sens. Tomac; Scherber; Evanson
SB 2277: Sens. Scherber; Heinrich; W. Stenehjem
SB 2287: Sens. Graba; Dotzenrod; Andrist
SB 2320: Sens. Marks; Kelsh; Bowman
SB 2394: Sens. Jerome; Mathern; Nalewaja
SB 2486: Sens. Tomac; Heinrich; Sand
SCR 4070: Sens. Graba; Dotzenrod; Andrist

MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The Senate has amended and subsequently passed: HB 1023, HB 1091, HB 1138, HB 1163, HB 1165, HB 1208, HB 1349, HB 1357, HB 1374, HB 1376, HB 1393, HB 1394, HB 1400, HB 1436, HB 1463, HB 1474, HB 1475, HB 1485, HB 1491, HB 1497, HB 1498, HB 1504, HCR 3019, HCR 3039, HCR 3041, HCR 3043, HCR 3050.

SENATE AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1023

Page 1, line 6, replace "budget section of the legislative council" with "industrial commission"

Page 1, replace lines 11 through 14 with "assures that oil tax revenues plus the revenues from the sale of put options will be in excess of the oil tax revenues estimated for that level of production by the most recently adjourned legislative assembly. The office of management and budget shall report any purchases of put options to the budget section of the legislative council."

Renumber accordingly

SENATE AMENDMENTS TO HOUSE BILL NO. 1091

Page 1, line 2, remove "and"

Page 1, line 4, after "consumption" insert "; and to provide an effective date"

Page 1, line 14, after "from" insert "free"

Page 1, line 16, after the underscored period insert "A person who brings cattle into this state from other free states that reciprocate shall prove that the cattle were located in that state for a period of at least sixty days."

Page 2, after line 10, insert:

"SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on August 1, 1994."

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1138

Page 2, line 1, replace "and" with ". A dispute resolution decision under this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment" and after the underscored period insert "A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion by the dispute resolution panel."

Renumber accordingly

SENATE AMENDMENTS ENGROSSED TO HOUSE BILL NO. 1163

Page 1, line 20, overstrike ", or failure to act"

Page 1, line 21, overstrike "ninety" and insert immediately thereafter "sixty"

Page 2, line 8, after "2." insert "The dispute is referred to binding arbitration under section 65-02-17;

3."

Page 2, line 10, replace "3." with "4."

Page 2, line 12, replace "4." with "5."

Page 2, line 16, replace "5." with "6."

Renumber accordingly

SENATE AMENDMENTS TO HOUSE BILL NO. 1165

Page 1, line 1, replace "subsection" with "subsections 4 and"

Page 1, line 5, replace "Subsection" with "Subsections 4 and"

Page 1, line 6, replace "is" with "are"

Page 1, after line 7, insert:

"4. The bureau shall make its informal decision on the claim after filing of the claim and the physician's certificate. The bureau shall issue a notice of decision, including a short summary indicating the reason for decision, and shall serve the notice on the parties by mailing a copy to ~~them~~ the parties by regular mail. The bureau is not required to make findings of fact and conclusions of law when it makes an informal decision. Any party may, within thirty days of the date of mailing of notice of initial award, request reconsideration by filing a written request for reconsideration. The request may be accompanied by affidavits, medical records, or other evidence not previously submitted to the bureau. No later than ~~ninety~~ sixty days following filing of a request for reconsideration, the bureau shall issue an order conforming to the requirements of chapter 28-32. Following issuance of an order, any party may request rehearing or file an appeal in accordance with chapter 28-32. If a timely request for reconsideration is not filed, the decision of the bureau is final, subject only to reopening of the claim under section 65-05-04. The provisions of section 65-10-01, relating to appeals from decision of the bureau, apply only when the bureau issues an order following a timely request for reconsideration."

Page 1, line 10, remove the overstrike over "~~or denies~~"

Page 1, line 13, replace "may" with "shall"

Renumber accordingly

SENATE AMENDMENTS TO HOUSE BILL NO. 1208

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to repeal chapter 54-27.2 of the North Dakota Century Code, relating to the budget stabilization fund; and to provide for a transfer."

SECTION 1. REPEAL. Chapter 54-27.2 of the North Dakota Century Code is repealed.

SECTION 2. TRANSFER. On August 1, 1993, the state treasurer shall transfer the unobligated balance in the budget stabilization fund to the state general fund. Upon payment of all obligations, the state treasurer shall transfer any balance to the general fund in the state treasury. After July 31, 1993, the state treasurer shall deposit any moneys that would otherwise be deposited in the budget stabilization fund in the state general fund."

Renumber accordingly

SENATE AMENDMENTS TO HOUSE BILL NO. 1349

Page 1, line 3, replace "; and to" with a period

Page 1, remove lines 4 and 5

Page 1, line 10, remove the overstrike over "A" and remove "There is no limitation of time within which a"

Page 1, line 11, remove "must be commenced"

Page 1, line 13, remove the overstrike over "must be commenced in the"

Page 1, line 14, remove the overstrike over "proper court within seven years after the commission of the offense" and after "offense" insert "or, if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities. A victim shall report a violation of sections 12.1-20-03 through 12.1-20-08 or section 12.1-20-11 to law enforcement authorities within ten years of the date the victim knew or had reason to know of the violation"

Page 1, remove lines 15 and 16

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1357

Page 1, line 11, remove the overstrike over "two-year" and remove "three-year"

Page 1, line 20, remove "The reduction in premium charges may be applied"

Page 1, remove line 21

Page 2, remove lines 1 and 2

Page 2, line 3, remove "the delivery and transport is incidental to an operator's business."

Page 2, line 6, after the period insert "A driver fifty-five years of age or older who successfully completes an approved motor vehicle accident prevention course is entitled to a three-year insurance premium reduction. The reduction may be applied only to a private passenger motor vehicle or a pickup truck or van that has a gross vehicle weight of less than ten thousand pounds [4535.92 kilograms] and which is not used for delivering or transporting goods or materials unless the delivery and transport is incidental to an operator's business."

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1374

Page 1, line 2, after "Code" insert "or in the alternative to amend and

reenact section 10-06.1-10 of the North Dakota Century Code as created in section 2 of Senate Bill No. 2223, as approved by the fifty-third legislative assembly"

Page 1, line 5, replace "Section" with "If Senate Bill No. 2223 does not become effective, section"

Page 1, line 18, replace "farmland or" with "land from interest derived from state, federal, and private sources held in its trust fund"

Page 1, line 19, remove "ranchland"

Page 2, line 1, overstrike "solely"

Page 2, line 3, overstrike "incidental to and"

Page 2, line 5, overstrike "the" and after "use" insert ", and"

Page 3, after line 9, insert:

"SECTION 2. AMENDMENT. Section 10-06.1-10 of the North Dakota Century Code as created by Senate Bill No. 2223, as approved by the fifty-third legislative assembly, is amended and reenacted as follows:

10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law No. 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.
2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:
 - a. The land must be maintained and managed solely for the purpose of conserving natural area and habitat for biota.
 - b. Any agricultural use of the land is ~~incidental to and~~ in accordance with the management of the land for conservation and the agricultural use, and is by a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.
 - c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.
 - d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.
3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires

to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and outdoor recreation sites division, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall review hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within thirty forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.
5. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify."

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1376

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 40-55-01 of the North Dakota Century Code, relating to the power of a county commission to act on behalf of an unorganized township for a public recreation system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-55-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Governing body" as ~~herein~~ used in this chapter means city council, board of trustees or commissioners of any city or township, the board of county commissioners on behalf of any unorganized township, the trustees of any school district, and the commissioners of any park district in North Dakota.
2. "Municipality" as used in this chapter refers to and means any city or organized or unorganized township in North Dakota."

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1393

Page 3, line 11, after "violence" insert "unless those costs would place an undue financial hardship on that parent"

Renumber accordingly

SENATE AMENDMENTS TO HOUSE BILL NO. 1394

Page 1, line 2, after "signature" insert "and to the recording of medical records"

Page 1, after line 8, insert:

"SECTION 2. Medical records recording. The recording of hospital medical records by an electronic image system or reproduction process is considered a photographic process. The making or recording of hospital medical records by electronic data processing systems is considered an original written record, and printout or other types of retrieved information in written or printed form must be treated as original records in all courts or administrative agencies for the purpose of its admissibility into evidence."

Renumber accordingly

SENATE AMENDMENTS TO HOUSE BILL NO. 1400

Page 9, line 2, remove "of the"

Page 9, line 3, remove "tourism division"

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1436

Page 1, line 21, remove "farm labor," and remove the second underscored comma

Page 2, line 1, replace "or" with an underscored comma and after "guardian" insert ", or grandparent"

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1463

Page 2, line 2, replace "chapter" with "chapters 34-06 and"

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1474

Page 1, line 16, remove "If disciplinary"

Page 1, remove lines 17 through 19

Page 1, line 20, remove "44-04-18."

Renumber accordingly

SENATE AMENDMENTS TO HOUSE BILL NO. 1475

Page 1, line 9, after "No" insert "person while acting in an official capacity as an"

Page 1, line 11, after the period insert "This section does not apply to the distribution of a birth control device by an employee or agent to a child of that employee or agent."

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1485

Page 2, line 9, overstrike "between group policies"

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1491

Page 1, line 1, after "chapter" insert "34-05, a new section to chapter"

Page 1, line 3, after "to" insert "determining an independent contractor's status and to"

Page 1, after line 8, insert:

"SECTION 1. A new section to chapter 34-05 of the North Dakota Century Code is created and enacted as follows:

Independent contractors - Determination made by commissioner. A person beginning work or working as an independent contractor may apply to the commissioner to receive verification of independent contractor status. The commissioner, upon receiving an application, shall review the circumstances of the applicant's job and other relevant information. When the information supports a finding under the "common law" test that the applicant will be working or is working as an independent contractor, the commissioner shall issue a determination to verify the status of the applicant as an independent contractor and shall issue the independent contractor an identification number that will be invalid if the applicant's job changes. If the applicant's job changes, the applicant may reapply for a determination to verify independent contractor status."

Page 1, line 12, after "contractor" insert "who has a valid identification number issued under section 1 of this Act"

Page 2, line 6, after "contractor" insert "who has a valid identification number issued under section 1 of this Act"

Page 3, line 2, after "contractor" insert "who has a valid identification number issued under section 1 of this Act"

Re-number accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1497

Page 1, line 1, replace "section" with "sections 44-04-18 and"

Page 1, line 2, after "to" insert "copying of open records and"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 44-04-18 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18. Access to public records - Penalty.

1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.
2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. The entity may charge a reasonable fee for making the copy. Fees received under this subsection are public moneys and must be deposited as provided by law. An entity may require payment before making the copy. If the entity is not authorized to use the fees to cover the cost of providing the copy, the entity may make arrangements for the copy to be provided by another entity, public or private, and the requester shall pay the fee to that other entity.
3. Violations of this section shall be punishable as an infraction."

Re-number accordingly

SENATE AMENDMENTS TO HOUSE BILL NO. 1498

Page 1, line 22, remove the overstrike over "~~twenty-eight~~" and remove "thirty-three"

Page 2, line 27, replace "five-year" with "eight-year"

Renumber accordingly

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1504

Page 1, line 1, after "to" insert "group health care coverage and"

Page 1, line 2, replace "a" with "three" and replace "section" with "sections"

Page 1, line 3, after the first "to" insert "copayments and deductibles, children's preventive health services, and" and after the semicolon insert "to amend and reenact section 26.1-36-37.1 of the North Dakota Century Code, relating to a standard health insurance proof of loss form;"

Page 1, line 7, underscore "Definitions. As used in this Act, unless the context" and after "in" insert "sections 1 through 12 and section 17 of"

Page 1, underscore lines 8 through 20

Page 2, underscore lines 1 through 29

Page 3, underscore lines 1 through 28

Page 4, underscore lines 1 through 28

Page 5, underscore lines 1 through 28

Page 6, underscore lines 1 through 29

Page 7, underscore lines 1 through 10

Page 7, line 11, underscore "Applicability and scope."

Page 7, underscore lines 12 through 29

Page 7, line 12, replace "This" with "Sections 1 through 12 and section 17 of this" and replace "applies" with "apply"

Page 7, line 26, after "by" insert "sections 1 through 12 and section 17 of"

Page 8, underscore lines 1 through 26

Page 8, line 3, after "of" insert "sections 1 through 12 and section 17 of"

Page 8, line 27, underscore "Establishment of classes of business."

Page 9, underscore lines 1 through 22

Page 9, line 23, underscore "Restrictions relating to premium rates."

Page 9, underscore lines 24 through 28

Page 9, line 24, after "to" insert "sections 1 through 12 and section 17 of"

Page 10, underscore lines 1 through 28

Page 11, underscore lines 1 through 29

Page 12, underscore lines 1 through 29

Page 13, underscore lines 1 through 28

Page 14, underscore lines 1 through 28

Page 15, underscore lines 1 through 10

Page 15, line 6, after "of" insert "sections 1 through 12 and section 17 of"

Page 15, line 11, underscore "Renewability of coverage."

Page 15, underscore lines 12 through 28

Page 15, line 12, after "to" insert "sections 1 through 12 and section 17 of"

Page 16, underscore lines 1 through 21

Page 16, line 22, underscore "Availability of coverage."

Page 16, underscore lines 23 through 29

Page 17, underscore lines 1 through 29

Page 17, line 4, after "with" insert "sections 1 through 12 and section 17 of"

Page 18, underscore lines 1 through 29

Page 18, line 17, after "of" insert "sections 1 through 12 and section 17 of"

Page 19, underscore lines 1 through 29

Page 20, underscore lines 1 through 29

Page 21, underscore lines 1 through 29

Page 22, underscore lines 1 through 3

Page 22, line 4, underscore "Small employer carrier reinsurance program."

Page 22, underscore lines 5 through 29

Page 23, underscore lines 1 through 28

Page 24, underscore lines 1 through 29

Page 24, line 15, after "of" insert "sections 1 through 12 and section 17 of"

Page 24, line 26, after "under" insert "sections 1 through 12 and section 17 of"

Page 25, underscore lines 1 through 29

Page 26, underscore lines 1 through 29

Page 26, line 3, after "under" insert "sections 1 through 12 and section 17 of"

Page 27, underscore lines 1 through 28

Page 27, line 13, after "under" insert "sections 1 through 12 and section 17 of"

Page 28, underscore lines 1 through 28

Page 29, underscore lines 1 through 28

Page 30, underscore lines 1 through 28

Page 31, underscore lines 1 through 29

Page 31, line 23, after "by" insert "sections 1 through 12 and section 17 of"

Page 32, underscore lines 1 through 25

Page 32, line 8, after "in" insert "sections 1 through 12 and section 17 of"

Page 32, line 15, replace "the provisions" with "sections 1 through 12 and section 17"

Page 32, line 16, after "of" insert "sections 1 through 12 and section 17 of"

Page 32, line 25, replace "all provisions" with "sections 1 through 12 and section 17"

Page 32, line 26, underscore "Health benefit plan committee."

Page 32, underscore lines 27 through 29

Page 33, underscore lines 1 through 26

Page 33, line 27, underscore "Periodic market evaluation. In consultation with members"

Page 33, underscore lines 28 and 29

Page 33, line 28, after the second "of" insert "sections 1 through 12 and section 17 of"

Page 34, underscore lines 1 through 8

Page 34, line 1, after "of" insert "sections 1 through 12 and section 17 of"

Page 34, line 5, after "of" insert "sections 1 through 12 and section 17 of"

Page 34, line 9, underscore "Waiver of certain state laws. Any law requiring the"

Page 34, underscore lines 10 through 13

Page 34, line 13, after "under" insert "sections 1 through 12 and section 17 of"

Page 34, line 14, underscore "Standards to assure fair marketing."

Page 34, underscore lines 15 through 29

Page 35, underscore lines 1 through 28

Page 36, underscore lines 1 through 15

Page 36, line 16, underscore "Restoration of terminated coverage. The commissioner may"

Page 36, underscore lines 17 through 23

Page 36, after line 23, insert:

"SECTION 13. Group health care coverage - Cooperative agreement allowed. The commissioner of insurance shall adopt rules to enable groups to form a cooperative that would allow those groups to purchase group health insurance coverage as one entity.

SECTION 14. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Copayments and deductibles - When prohibited. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis which requires copayments or deductibles for prenatal care.

SECTION 15. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance policy and health service contract - Children's preventive health care coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage which provides coverage for a family member of the insured person on a group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides coverage for routine periodic physical examinations for the covered person from birth through the age of sixteen, unless specifically rejected in writing by the contractholder. The benefits for children's preventive health care services on a periodic basis must include eighteen visits from birth through the age of sixteen at approximately the following intervals: birth, two months, four months, six months, nine months, twelve months, fifteen months, eighteen months, two years, three years, four years, five years, six years, eight years, ten years, twelve years, fourteen years, and sixteen years. Services may be covered only to the extent they are provided by, or under the supervision of, one physician during a visit.
2. For purposes of this section:
 - a. "Children's preventive health care services" means physician-delivered or physician-supervised services for eligible dependents from birth through the age of sixteen, including medical history, physical examination, developmental assessment, anticipatory guidance, and appropriate immunizations and laboratory tests, in keeping with prevailing medical standards.
 - b. "Periodic physical examinations" means the routine tests and procedures for the purpose of detection of abnormalities or malfunctions of bodily systems and parts according to accepted medical practice.
3. Copayments and deductibles may not be imposed for visits under this section.

4. This section does not apply to a disability income, specified disease, medicare supplement, hospital indemnity, or accident only policy.

SECTION 16. AMENDMENT. Section 26.1-36-37.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-36-37.1. Standard health insurance proof of loss form - Claim payment time limits. The commissioner shall prescribe by rule a standard health insurance proof of loss and claim form for use in filing proof of loss and a claim for all health care services. For purposes of this section, "health care service" means any service included in providing an individual with medical, dental, or hospital care or any service incident to providing medical, dental, or hospital care as well as any service provided to prevent, alleviate, care, or heal human illness or injury. After receipt of a health insurance proof of loss form, the insurer shall, within fifteen business days, pay the claim or that portion of the claim that is not contested, deny the claim, or make an initial request for additional information. If a claim or a portion of a claim is contested, the insured or the insured's assignee must be notified in writing that the claim is contested and the reasons for the contest. Nothing in this notification precludes the insurer from denying the claim in whole or in part, for other reasons at a later date. Within fifteen business days of the receipt of the information initially requested, the insurer shall pay or deny the claim."

Page 36, underscore lines 26 through 29

Page 37, underscore lines 1 through 7

Renumber accordingly

SENATE AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3019

Page 1, line 14, replace "both" with "the public," and after "veterans" insert a comma

Renumber accordingly

SENATE AMENDMENTS TO HOUSE ENGROSSED CONCURRENT RESOLUTION NO. 3039

Page 1, line 10, replace the first "and" with "which" and after "inadequate" insert "and will continue to fall with the proposed federal BTU tax"

Renumber accordingly

SENATE AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3041

Page 1, line 12, after "may" insert "or may not"

Renumber accordingly

SENATE AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3043

Page 1, line 19, replace "number" with "ratio"

Renumber accordingly

SENATE AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3050

Page 1, line 2, remove "what" and after "changes" insert "that"

Page 1, line 3, replace "in the state" with ", including the issuance of gratis permits"

Page 1, line 20, after "landowners" insert ", including the issuance of gratis permits"

Renumber accordingly

MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The Senate has amended, subsequently passed, and the emergency clause carried: HB 1019.

SENATE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1019

Page 1, line 15, replace "600,000" with "593,000"

Page 1, line 17, replace "650,000" with "643,000"

Page 1, line 20, replace "1,000,000" with "900,000"

Page 1, line 21, replace "1,000,000" with "900,000"

Page 2, line 18, replace "294,050" with "294,050"

Page 2, after line 18, insert:

"Capital improvements 225,000"

Page 2, line 19, replace "490,450" with "715,450"

Page 2, line 20, replace "452,000" with "677,000"

Page 3, line 3, replace "562,000" with "787,000"

Page 3, line 4, replace "615,377" with "840,377"

Page 3, after line 11, insert:

"Operating expenses 25,338"

Page 3, line 13, replace "45,877" with "71,215"

Page 3, line 15, replace "37,392" with "62,730"

Page 3, after line 22, insert:

"Equipment \$13,534"

Page 3, line 23, replace "\$70,000" with "70,000"

Page 3, line 24, replace "70,000" with "83,534"

Page 3, after line 24, insert:

"Subdivision 11.

OFFICE OF ADMINISTRATIVE HEARINGS

Operating expenses \$31,575

Total general fund appropriation \$31,575"

Page 3, line 25, replace "2,310,516" with "2,260,429"

Page 3, line 26, replace "886,641" with "1,125,175"

Page 3, line 27, replace "3,197,157" with "3,385,604"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

DEPARTMENT 108 - SECRETARY OF STATE

SENATE - The information services line item is decreased by \$7,000, from \$600,000 to \$593,000, to provide the amount needed.

DEPARTMENT 405 - INDUSTRIAL COMMISSION

SENATE - The amount provided in operating expenses is reduced by \$100,000 from the general fund, from \$1,000,000 to \$900,000.

DEPARTMENT 534 - STATE PENITENTIARY

SENATE - This amendment adds \$225,000 from special funds for capital improvements at the State Penitentiary for a fencing project around the current minimum security unit located at the State Penitentiary. This request was not made of the House.

DEPARTMENT 313 - VETERANS HOME

SENATE - Operating expenses are increased by \$25,338 from the general fund, of the \$25,338, \$15,738 is for liability insurance premiums and \$9,600 is for increased water costs. The House deleted this funding.

DEPARTMENT 512 - DIVISION OF EMERGENCY MANAGEMENT

SENATE - Funding of \$13,534 from special funds from the hazardous chemical preparedness fund is appropriated to purchase a computer and related equipment for administering the program. The House deleted this funding.

DEPARTMENT 140 - OFFICE OF ADMINISTRATIVE HEARINGS

SENATE - Funding of \$31,575 from the general fund is provided for operations of the department for the 1991-93 biennium. The House deleted this funding.

In total, these amendments increase other funds of \$886,641 by \$238,534 and decrease the general fund appropriation of \$2,310,516 by \$50,087.

MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The Senate has passed unchanged: HCR 3008, HCR 3009, HCR 3022, HCR 3024, HCR 3028, HCR 3029, HCR 3042, HCR 3047, HCR 3049, HCR 3054, HCR 3055, HCR 3060, HCR 3063, HCR 3064.

MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The President has appointed as a conference committee to act with a like committee from the House on:

HB 1126: Sens. Dotzenrod; Tomac; Tennefos

HB 1267: Sens. Tomac; Kinnoin; Urlacher

MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The Senate does not concur in the House amendments to SB 2074 and SB 2328 and the President has appointed as a conference committee to act with a like committee from the House on:

SB 2074: Sens. Keller; Schoenwald; Streibel

SB 2328: Sens. Schoenwald; Krauter; Krebsbach

MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The Senate has passed unchanged: HCR 3065.

MESSAGE TO THE HOUSE FROM THE SENATE (CAROL SIEGERT, SECRETARY)

MR. SPEAKER: The Senate has amended and subsequently failed to pass: HB 1084, HB 1450, HCR 3048.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House has concurred in the Senate amendments and subsequently passed: HB 1027, HB 1061, HB 1172, HB 1175, HB 1183, HB 1229, HB 1246, HB 1264, HB 1291, HB 1302, HB 1307.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House has concurred in the Senate amendments and subsequently passed and the emergency clause carried: HB 1281.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The Speaker has signed: SB 2058, SB 2378, SB 2447, SCR 4040, SCR 4042, SCR 4044, SCR 4045, SCR 4049.

POINT OF PERSONAL PRIVILEGE

REP. KALDOR: Mr. Speaker: I rise on a point of personal privilege and request that my remarks be printed in the Journal.

The members of the House of Representatives from District 20, Representative Aarsvold and Representative Kaldor, would like to congratulate the Central Valley Valiants basketball team of Buxton, Reynolds, and Cummings on winning the 1993 North Dakota Class "B" Boys' state basketball championship on March 20, 1993, here in Bismarck. The Central Valley team deserves special recognition for making its first trip ever to the state Class "B" tournament and earning the championship in such a competitive field. We want to congratulate Coach Borowicz and his team who also earned the sportsmanship award for the tournament and the cheerleaders and fans of the Valiants who won the spirit award. We are extremely proud of the coach, the fine athletes, and the cheerleaders and fans of the Central Valley Valiants whose demonstration of skill, effort, teamwork, sportsmanship, and enthusiasm is a testament to their school and their communities' commitment to being the best they can be. Please join us in congratulating the Central Valley Valiants and the players and fans of all of the teams for an exciting 1993 state Class "B" tournament.

SPECIAL ORDER OF BUSINESS

REP. FREIER MOVED that the House be on a Special Order of Business, which motion prevailed.

REP. FREIER MOVED that a committee of two be appointed to escort the Honorable Byron Dorgan, United States Senator, to the rostrum, which motion prevailed.

SPEAKER R. BERG APPOINTED Reps. Freier and Kerzman to such committee and which subsequently escorted the Honorable Byron Dorgan, United States Senator to the rostrum.

REMARKS OF THE HONORABLE BYRON DORGAN, UNITED STATES SENATOR

Thank you very much, Mr. Speaker and members of the State House. It is a pleasure to be here. I am pleased to be invited to say a few words to you today and you, I am sure, are well aware, as am I, that people frequently mistake our roles. I am sure you get criticized from time to time for things that we do, and I get letters in Washington, D.C., about things that you are working on.

I got a letter from a fellow north of Minot a few weeks ago and he said, "Dear Senator Dorgan: I should have listened to my wife. She said to me if you vote for Dorgan, he'll go down to Bismarck, and he'll vote for a seatbelt law." Well, I wrote him back and said we are not dealing with seatbelts these days in Washington, D.C.

A fourth grade class in Abercrombie, North Dakota, wrote to me as a class project recently, and one of the little fellows in the fourth grade at Abercrombie said, "Dear Senator Dorgan: My teacher tells me that you represent us in Washington, D.C. Boy, is that a scary thought!" I wrote back and said it is not quite so scary as he might think. We are, all of us, although we are mistaken for each other in our roles sometimes, in the same boat, facing the same issues required to make the same tough choices and I know that all of us want to do the best job we can.

We want to put things back on track and fix what is wrong in North Dakota and in this country. Our constituents want it done, and they want it done right, and they want it done right now. All of us understand that. We have a new President who said that he wants to put all the spotlights on the same spot - the economy - and fix the economy. As well intentioned as that is, someone plants a bomb in the basement of the World Trade Center in New York; or a hurricane swipes through Florida; or someone shows up in Texas and holds hostages, claiming to be Jesus; or Boris Yeltsin, this morning, is under attack and potential impeachment in Russia. All of those things should and must divert our attention from the central issue that affects the lives of us and our constituents.

Central facts about this country are both pretty sobering and also demonstrate some hope. Four million babies born this year, 1 million will be born without a father in this country - 800 thousand of those 1 million will never learn in their lifetime who their father is; 2.7 million cases of child abuse reported last year in this country; 10 million people out of work; 25 million people on food stamps; and 35 million people with no health insurance. Those are pretty sobering statistics about a country in which the economy is not as robust as we would like, not providing enough opportunity, in which a lot of families are struggling.

The question is, what do we do about that? What do the economic indicators indicate? These are numbers to tell us how things are going in our country. I have just described for many Americans how things are going. The economic indicators say last quarter was 4.8 percent real economic growth. Economists can do that in a trench. In a bunker never having to see daylight, they can read the charts and tell us what the indicators say. Of course, that is not much of an indicator: 4.8 percent real growth last quarter, one-half of one percent of that was a hurricane in Florida which contributed five-tenths of one percent of real economic growth. The indicators the economists use, of course, measure the repair of the damage as economic growth but do not measure the destruction by the hurricane as damage. Outside this building this afternoon there will be a car accident. The economists will measure that again as economic growth because there is a fender to fix, a patient to counsel at the hospital, and a lawyer to sue somebody, and so it goes. What are the economic indicators indicating? The indicators that all of us know from our constituents is that this country has had very significant economic difficulty; a lot of American families are in trouble; and they need hope and opportunity in economic growth.

The question is, how do we get that? Not do we want it - everyone wants exactly the same thing - the question is, how do we achieve it? There are three major battles that we are going to be fighting in the U.S. Congress this year, and I expect those three battles are the same three in many respects that you are dealing with right here in the State Legislature.

First, is the economy. How to promote recovery that is real, sustainable, and that creates new jobs. The Wall Street Journal, a publication that I try not to read as frequently as I can, said, "We have 4.8 percent economic growth. It's true we don't have as many jobs coming from this growth as we would like, but, gee, it's robust growth." And I would say to the editors of the Wall Street Journal, "What is economic growth without jobs? A meal without food?" Economic indicators that tell us there is growth do not mean much unless accompanied by new jobs and new opportunity in this country.

President Clinton has proposed three things: spending cuts that are real; tax increases that will be difficult and real; and investments. I think President Clinton's plan will likely be enacted or passed by the Congress and I think the plan will put the country on track towards a better economic future. I do not know that we have any choice at this point. We can keep doing what we have been doing or do nothing, but those are not in my judgment very viable economic choices. We have cut a lot of spending, I think at the federal level especially, but also at state and local levels, that people want us to cut. In the federal government we have four air forces - does not

make any sense - we do not need an air force in the air force, an air force in the navy, an air force in the army - we do not need four air forces. We do not need four or five intelligence agencies. We do not need duplication everywhere we turn in areas of government and we need to change a lot of that. The people are expecting us at the federal government level, and also here in the state government, to pare away government waste.

I think of one that affects us in a dramatic way. The U.S. Department of Agriculture is a prime candidate. It is a behemoth of 100 thousand people, a dinosaur of years past, with a program that does not work very well to help family farmers. I would like to restructure, cut in half, and change the mission of a federal agency that I think has become too large and does not serve the central function of trying to do things to keep family farmers about the business of working on the family farm.

The second battle is trade. Assuming we are successful in the economic battle, it is trade. We in North Dakota have a very direct relationship to the outcome of trade with Canada, NAFTA, with Mexico, and the GATT talks. Each and every one of them will have a significant impact on the economic fortunes of our constituents. What is happening with Canada, in the trade coming across the border in unfairly subsidized durum, in my judgment is just indefensible. We cannot compete against that kind of a subsidy and should not be expected to. We ought to take dramatic action, I mean dramatic action, to put an end to it until or unless the trade that comes across from Canada is fair trade. If it is fair, then we have to compete and no one has any complaints. The deal that has been struck with Mexico in my judgment should not be voted on by Congress, it ought to be renegotiated. It will set us up, in potatoes, beans, and grains in virtually every other area in rural America, for another loss. It, in my judgment, sells out agriculture to the benefit of investment bankers and many other institutions who proudly do support that trade agreement. Those are the challenges of trade.

Third, and finally, the challenge of health care. We will not solve our economic problems unless we solve the problems of health care. We cannot only solve it at the federal level. There is in my judgment a partnership responsibility. My hope is that when the solutions to health care are developed and voted on in the U.S. Congress, that there is an opportunity for states to opt for their own plans and manage their own plans within a framework because I think that state choices are more important and often more appropriate for their constituents. The only health care plan that can and will work is one that controls costs. If we do not succeed in controlling skyrocketing health care costs, we will not succeed under any condition in reforming the health care system. I know that you are considering provider taxes in this Congress and I know that you have a difficult, a devilishly difficult, time trying to figure out how you match resources with the needs for expenditures. It is not and will not and never has been my province to give advice on what to do or what not to do, as someone who works in the U.S. Congress. But I do want to say, with respect to the provider tax, that I have been publicly critical in years past, especially last year, of some thirty states who have concocted, in my judgment, shell games called provider taxes that do nothing to address health care costs but do increase the federal deficit. I think some of the thirty states, perhaps most of them, may have outfoxed themselves when health care reform comes, because the risk exists that health care reform will lock states into their contribution level - this year, next year, the year after - just when the health care bill kicks in. If that new level is included with a provider tax, it is not unlikely that those states that took advantage of a provider tax will find themselves paying a higher permanent contribution to the new health care reform proposal without compensating benefits to those states.

I know that in all of these areas these are tough choices. Whether it is the economy, the trade battles that we face, or health care initiatives, the American people and North Dakotans expect that we address these issues honestly and finally fix what is wrong in this country. There are a hundred

reasons for us to be negative and for us to look to the future with some concern and some angst, but there are many more reasons, and all of us see them every day on our main streets in North Dakota and across this country, for us to be optimistic about the wellspring of support in this country for radical economic change that fixes what is wrong in America.

If I did not have an almost quenchless hope as Thomas Wolfe said, or an indestructible belief, or a boundless optimism that things are going to be better in this country, I, and I think you, would hardly have the energy to do these jobs. But I am convinced, as I stand here, that tomorrow is going to be better than today and the future is going to be better than the past because all of us together, all over this country, are finally facing these issues head on saying here is the trouble, here are the range of options to fix it, now let us do it as hard as the solution might be, and put America back on track.

Good luck to you, best wishes to you, and thank you for inviting me today.

MOTION

REP. KALDOR MOVED that the remarks of United States Senator Dorgan be printed in the Journal, which motion prevailed.

SIXTH ORDER OF BUSINESS

REP. FREIER MOVED that the rules be suspended and that the House consider and adopt all of the amendments on the Sixth order of business in one motion, with the exception of SB 2010, and the inclusion of SB 2002, SB 2008, SB 2017, SB 2214, SB 2473, and SB 2511, which motion prevailed.

SB 2002, SB 2008, SB 2017, SB 2214, SB 2473, and SB 2511, as amended, were placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

SIXTH ORDER OF BUSINESS

SB 2010: REP. DALRYMPLE (Appropriations Committee) MOVED that the amendments on HJ pages 1293-1304 be adopted and then be placed on the Fourteenth order with DO PASS, which motion prevailed on a verification vote.

MOTION

REP. MARTINSON MOVED that SB 2010, as amended, be placed on the Fourteenth order, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2010: A BILL for an Act to amend and reenact subsection 4 of section 6-01-04.3, sections 6-01-17, 6-01-17.1, 6-01-17.2, 6-03-11, 6-03-13.5, 6-03-70, 6-05-28, subsection 4 of section 6-06-08, subdivision a of subsection 2 of section 6-06-35, sections 6-06-36, 6-06.1-05, subsection 3 of section 6-08.3-02, sections 6-10-06, 7-05-01, 13-03-04, subsection 1 of section 13-03-09, section 13-03.1-05, subsection 1 of section 13-03.1-11, section 13-04.1-04, subdivision a of subsection 1 of section 13-04.1-11, section 13-05-04, subsection 2 of section 13-05-06, subsection 1 of section 51-17-07, and section 51-17-10 of the North Dakota Century Code, relating to the financial institutions regulatory fund; to provide an appropriation for defraying the expenses of the department of banking and financial institutions; to provide a transfer; and to repeal section 6-01-01.1 of the North Dakota Century Code, relating to the financial institutions regulatory fund.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 79 YEAS, 17 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Aarsvold; Austin; Bateman; Belter; Berg, J.; Bernstein; Boehm; Brown; Byerly; Carlisle; Carlson, A.; Carlson, C.; Christopherson; Clayburgh; Cleary; Dalrymple; DeWitz; Dobrinski; Dorso; Drovdal; Freier; Froseth;

Gates; Gerntholz; Glassheim; Gorder; Gorman; Grosz; Grumbo; Hagle; Hanson; Hausauer; Henegar; Hokana; Holm; Howard; Huether; Jacobs; Kaldor; Keiser; Kelsch; Kempenich; Klein; Kretschmar; Kroeber; Kunkel; Mahoney; Maragos; Martin; Martinson; Monson; Mutzenberger; Ness; Nicholas; Nichols; Oban; Olsen, D.; Olson, A.; Payne; Poolman; Porter; Price; Rennerfeldt; Rydell; Schindler; Shide; Skarphol; Soukup; St. Aubyn; Stenehjem; Svedjan; Sveen; Timm; Tollefson; Torgerson; Wald; Wardner; Wentz; Speaker R. Berg

NAYS: Allmaras; Bodine; Boucher; Brodshaug; Coats; Goffe; Gulleson; Johnson; Kerzman; Kilichowski; Laughlin; Pyle; Ring; Sitz; Stenson; Thorpe; Wilkie

ABSENT AND NOT VOTING: Nelson; Wanzek

SB 2010 passed and the title was agreed to.

MOTION

REP. FREIER MOVED that the House waive the reading of the titles to SB 2056 and SB 2017, which motion prevailed.

MOTION

REP. KRETSCHMAR MOVED that the House reconsider its action whereby SCR 4016 passed, which motion prevailed on a verification vote.

SECOND READING OF SENATE CONCURRENT RESOLUTION

SCR 4016: A concurrent resolution directing the Legislative Council to study the methods of distributing highway taxes and the effect the present highway tax distribution formula has on counties and cities.

REQUEST

REP. TIMM REQUESTED a recorded roll call vote on the final adoption of SCR 4016, which request was granted.

ROLL CALL

The question being on the final adoption of the resolution, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 20 YEAS, 77 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

YEAS: Berg, J.; Brodshaug; Carlson, C.; Clayburgh; Cleary; Dorso; Gates; Glassheim; Gorman; Holm; Keiser; Mutzenberger; Nelson; Oban; Pyle; Ring; Soukup; St. Aubyn; Svedjan; Thorpe

NAYS: Aarsvold; Allmaras; Austin; Bateman; Belter; Bernstein; Bodine; Boehm; Boucher; Brown; Byerly; Carlisle; Carlson, A.; Christopherson; Coats; Dalrymple; DeWitz; Dobrinski; Drovdal; Freier; Froseth; Gerntholz; Goffe; Gorder; Grosz; Grumbo; Gulleson; Hagle; Hanson; Hausauer; Henegar; Hokana; Howard; Huether; Jacobs; Johnson; Kaldor; Kelsch; Kempenich; Kerzman; Kilichowski; Klein; Kretschmar; Kroeber; Kunkel; Laughlin; Mahoney; Maragos; Martin; Martinson; Monson; Ness; Nicholas; Nichols; Olsen, D.; Olson, A.; Payne; Poolman; Porter; Price; Rennerfeldt; Rydell; Schindler; Shide; Sitz; Skarphol; Stenehjem; Stenson; Sveen; Timm; Tollefson; Torgerson; Wald; Wardner; Wentz; Wilkie; Speaker R. Berg

ABSENT AND NOT VOTING: Wanzek

SCR 4016 was declared lost.

MOTION

REP. MARTINSON MOVED that the House do not concur in the Senate amendments to

HB 1104, HB 1111, HB 1187, HB 1238, HB 1239, HB 1304, HB 1462, and HB 1479, and that the following conference committees be appointed to meet with like committees from the Senate, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER APPOINTED as a Conference Committee on HB 1104: Reps. Austin, Kelsch, Nelson.

APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER APPOINTED as a Conference Committee on HB 1111: Reps. Kelsch, Kretschmar, Mutzenberger.

APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER APPOINTED as a Conference Committee on Engrossed HB 1187: Reps. Bernstein, Price, J. Berg.

APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER APPOINTED as a Conference Committee on HB 1238: Reps. Kelsch, Skarphol, Sitz.

APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER APPOINTED as a Conference Committee on HB 1239: Reps. Kelsch, Skarphol, Sitz.

APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER APPOINTED as a Conference Committee on HB 1304: Reps. Rydell, Christopherson, Nelson.

APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER APPOINTED as a Conference Committee on Engrossed HB 1462: Reps. Drovdal, Wanzek, Allmaras.

APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER APPOINTED as a Conference Committee on HB 1479: Reps. Maragos, Hagle, Ring.

APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER APPOINTED as a Conference Committee on SB 2289: Reps. Poolman, Hagle, Grumbo.

MOTION

REP. FREIER MOVED that that portion of House Rule 507 pertaining to when bills must be out of committee in the second House be suspended until the fifty-fourth legislative day, which motion prevailed.

SIGNING OF BILLS AND RESOLUTIONS

The Speaker signed the following enrolled bills and resolutions: SB 2171, SB 2213, SB 2230, SB 2266, SB 2286, SB 2317, SCR 4005, SCR 4013, SCR 4015, SCR 4018, SCR 4025, SCR 4027, SCR 4037, SCR 4039, SCR 4046, SCR 4047, SCR 4050, SCR 4051, SCR 4053, SCR 4055, SCR 4056, SCR 4058, SCR 4061, SCR 4062, SCR 4063, SCR 4064, SCR 4066, SCR 4071.

SIGNING OF BILLS AND RESOLUTIONS

The Speaker signed the following enrolled bills and resolutions: SB 2195, SB 2206, SB 2219, SB 2340, SB 2358, SB 2373, SB 2385, SB 2387, SB 2393, SB 2398, SB 2401, SB 2423, SB 2439, SB 2444, SB 2460, SCR 4033, SCR 4054, SCR 4059, SCR 4067.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House does not concur in the Senate amendments to HB 1104, HB 1111, HB 1238, HB 1239, HB 1304, HB 1462, and HB 1479 and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

HB 1104: Reps. Austin; Kelsch; Nelson

HB 1111: Reps. Kelsch; Kretschmar; Mutzenberger

HB 1238: Reps. Kelsch; Skarphol; Sitz
HB 1239: Reps. Kelsch; Skarphol; Sitz
HB 1304: Reps. Rydell; Christopherson; Nelson
HB 1462: Reps. Drovda; Wanzek; Allmaras
HB 1479: Reps. Maragos; Hagle; Ring

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The House does not concur in the Senate amendments to HB 1187 and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

HB 1187: Reps. Bernstein; Price; J. Berg

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The Speaker has appointed as a conference committee to act with a like committee from the Senate on:

SB 2289: Reps. Poolman; Hagle; Grumbo

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The Speaker has signed: SB 2171, SB 2213, SB 2230, SB 2266, SB 2286, SB 2317, SCR 4005, SCR 4013, SCR 4015, SCR 4018, SCR 4025, SCR 4027, SCR 4037, SCR 4039, SCR 4046, SCR 4047, SCR 4050, SCR 4051, SCR 4053, SCR 4055, SCR 4056, SCR 4058, SCR 4061, SCR 4062, SCR 4063, SCR 4064, SCR 4066, SCR 4071.

MESSAGE TO THE SENATE FROM THE HOUSE (ROY GILBREATH, CHIEF CLERK)

MADAM PRESIDENT: The Speaker has signed: SB 2195, SB 2206, SB 2219, SB 2340, SB 2358, SB 2373, SB 2385, SB 2387, SB 2393, SB 2398, SB 2401, SB 2423, SB 2439, SB 2444, SB 2460, SCR 4033, SCR 4054, SCR 4059, SCR 4067.

MOTION

REP. FREIER MOVED that the absent members be excused, which motion prevailed.

MOTION

REP. FREIER MOVED that the House be on the Fifth and Seventh orders of business and at the conclusion of those orders, the House stand adjourned until 9:00 a.m., Tuesday, March 23, 1993, which motion prevailed.

REPORT OF STANDING COMMITTEE

SB 2200, as engrossed: Industry, Business and Labor Committee (Rep. Dorso, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2200 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 65-01-02 of the North Dakota Century Code, relating to workers' compensation definitions; to amend and reenact paragraph 2 of subdivision b of subsection 8 of section 65-01-02, subsections 9, 17, 29, and 30 of section 65-01-02, sections 65-01-09, 65-01-11, 65-02-15, 65-02-17, 65-02-18, 65-04-04, subdivision a of subsection 2 of section 65-05-08.1, sections 65-05-09.2, 65-05-12, 65-05-13, 65-05-14, subsection 2 of section 65-05-25, and subsection 5 of section 65-05.1-01 of the North Dakota Century Code, relating to workers' compensation benefits and procedures; to repeal section 65-02-16 of the North Dakota Century Code, relating to removal of a workers' compensation binding arbitration panel member; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Paragraph 2 of subdivision b of subsection 8 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (2) Any injury caused by the use of narcotics controlled substances or intoxicants.

SECTION 2. A new subsection to section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

"Seasonal employment" includes an occupation that has periods of thirty consecutive days of unproductivity.

SECTION 3. AMENDMENT. Subsections 9, 17, 29, and 30 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

9. "Date of first disability" and "loss of earnings date" mean the first ~~full~~ date the employee ~~was unable to work in relation to a compensable injury meets the eligibility criteria set forth in section 65-05-08.~~ These terms do not apply to recurrent disabilities.
17. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease ~~which~~ that:
- a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
 - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
 - c. Can be fairly traced to the employment;
 - d. ~~However, any condition or impairment of health of a full time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full time paid firefighter. A full time paid firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full time paid firefighter or law enforcement officer has completed two years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition.~~
29. "Wages" means ~~all an employee's remuneration payable in money or a substitute for money for services rendered by an employee.~~
- a. The term includes:

- ~~(1) The actual value of board, lodging, rent, or housing and per diem expenses to be included within the actual wage as remuneration, if such board, lodging, rent, or housing and per diem is lost as a result of the injury.~~
- ~~(2) Commissions and bonuses.~~
- ~~(3) Extra wages for any and all overtime work.~~
- ~~(4) Wages or salary paid during holidays, vacations, or sickness periods.~~
- ~~(5) Gratuities received in the course of employment, from others than the employer, only when such gratuities are received with the knowledge of the employer and reported to the internal revenue service.~~
- ~~(6) Wages earned from employment at more than one occupation or employer other than the employer at the time of injury, if those wages are lost due to compensable injury.~~
- ~~(7) Unemployment insurance benefits and workers' compensation temporary total disability benefits paid to the injured employee during the twelve months preceding the month of injury will be taken into account when computing the average weekly gross earnings in cases where there are special circumstances under which the average gross weekly earnings cannot be determined.~~

b. ~~The term "wages" does not include:~~

- ~~(1) Severance pay.~~
- ~~(2) The cash value of health, medical, life, or other insurance benefits or retirement benefits.~~
- ~~(3) Social security benefits.~~
- ~~(4) Passive investment income such as income from stocks, bonds, trust accounts, or individual retirement accounts from all employments reportable by employers to the internal revenue service as earned income for federal income tax purposes and lost as a result of a compensable work injury.~~

30. "Gross Average weekly wage" means the weekly wages the employee was receiving from all employments at the time of injury on the date the employee meets the eligibility criteria under section 65-05-08. The average weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the employee's wages are not fixed by the week, they must be determined in the following manner by using the first applicable formula from the schedule below:

- a. The "average weekly wage" of a self-employed employee is determined by the following formula: net profits based on preceding tax year or preceding fifty-two weeks whichever is higher, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.

- b. Hourly or daily rate multiplied by number of hours or days worked per seven day week;
- b- c. Monthly rate multiplied by twelve months and divided by fifty-two weeks;
- e- d. Biweekly rate divided by two;
- e. In seasonal employment that cannot be carried on throughout the year, the average weekly wage is one-fiftieth of the total wage the employee has earned from all occupations during the twelve calendar months immediately preceding the injury;
- d- f. If the average weekly earnings wage of an employee cannot be ascertained, the wage for the purposes of calculating compensation must be taken to be the usual wage paid other employees engaged in like or similar occupations where the wages are fixed; or
- e- g. If there are special circumstances under which the average weekly wages cannot be reasonably and fairly determined by applying subdivisions a through d f, an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty-two weeks, or the number of weeks actually worked, whichever is less. Unemployment insurance benefits and workers' compensation temporary total disability benefits paid to the injured employee during the twelve consecutive months preceding the month of injury may be taken into account when determining the average weekly wage in cases where there are special circumstances under which the average weekly wage cannot otherwise be determined. In order to have overtime calculated as part of the average weekly wage, an employee must have a frequent and regular history of overtime starting at least eight weeks before the date the employee meets the eligibility requirements under section 65-05-08.

SECTION 4. AMENDMENT. Section 65-01-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-09. Injury through negligence of third person - Option of employee - Fund subrogated when claim filed. When an injury or death for which compensation is payable under provisions of this title ~~shall~~ have has been sustained under circumstances creating in some person other than the fund a legal liability to pay damages in respect thereto, the injured employee, or the employee's dependents, may claim compensation under this title and proceed at law to recover damages against such other person. The fund is subrogated to the rights of the injured employee or the employee's dependents to the extent of ~~fifty percent of the damages recovered up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits for the injured employee.~~ the amount of the damages recovered up to a maximum of the total amount of the claim when benefits paid for the claim are equal to the amount of the bureau's subrogation interest. The bureau's subrogation interest may not be reduced by settlement, compromise, or judgment. The action against ~~such the~~ other person may be brought by the injured employee, or the employee's dependents in the event of the employee's death. ~~Such The~~ The action ~~shall must~~ must be brought in the injured employee's or in the employee's dependents' own right and name and as trustee for the bureau for the subrogation interest of the bureau. If the injured employee or the

employee's dependents do not institute suit within sixty days after date of injury the bureau may bring the action in its own name and as trustee for the injured employee or the employee's dependents and retain as its subrogation interest the full amount ~~it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents of the damages recovered.~~ Within sixty days after both the injured employee and the bureau have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the employee, or both, and in trust for the bureau and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or the employee's dependents, or the employer as provided above, the bureau shall pay fifty percent of the costs of the action, exclusive of attorney fee, when ~~such~~ those costs are incurred. If there is no recovery of damages in the action, ~~this shall be payment of costs is a cost of the bureau to be paid from the bureau general fund.~~ When there is recovery of damages in the action, the bureau shall bear the costs of the action, exclusive of attorneys fees, must be prorated and adjusted on the percentage of the total subrogation interest of the bureau recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured employee's attorney from the bureau general fund as follows:

1. ~~Twenty percent of the subrogation interest recovered for the bureau when legal action is not commenced.~~
2. ~~Twenty five percent of the subrogation interest recovered for the bureau when action is commenced and settled before judgment.~~
3. ~~Thirty three and one third percent of the subrogation interest recovered for the bureau when recovered through judgment at a rate of twenty-eight percent of the total recovery.~~

~~The above~~ These provisions as to costs of the action and attorney fees ~~is~~ are effective only when the injured employee advises the bureau in writing of the name and address of the employee's attorney, and that the employee has employed ~~such~~ the attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If a claimant fails to pay the bureau's subrogation interest within thirty days of receipt of a recovery in a third party action, the bureau's subrogation interest is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents, and no bureau may not pay any costs or attorney fees will be paid from the bureau's subrogation interest. The bureau may bring an action against a third person on the bureau's behalf to recover as damages all amounts the bureau has paid or will pay in benefits to an employee. When an employee is injured as the result of a third person's operation of a motor vehicle, the bureau's action is not barred under sections 26.1-41-08 and 26.1-41-17. In this section, "action" includes settlement, mediation, arbitration, civil action, and any appeal. The bureau and its authorized representatives are exempt from civil liability to an injured employee or employee's dependents on account of any action the bureau may bring under this section.

SECTION 5. AMENDMENT. Section 65-01-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-11. Burden of proof in compensation matters - Death certificate. If the bureau or an employer claims that an employee is

not entitled to the benefits of the North Dakota Workers' Compensation Law by reason of the fact that the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary ~~intoxication~~ use of alcohol or a controlled substance of the employee, the burden of proving such exemption or forfeiture is upon the bureau or upon the person alleging the same; however, a blood alcohol concentration level at or above the legal ~~intoxication~~ limit as defined in subsection 3 of section 39-20-07 set by the United States secretary of transportation in 49 CFR 383.52 or an intoxicating level of a controlled substance found by a test required by a physician, qualified technician, chemist, or registered nurse and performed as required by the United States secretary of transportation under 49 CFR part 40, at or above the cutoff level in part 40, creates a rebuttable presumption that the injury was due to ~~intoxication~~ the use of alcohol or a controlled substance. An employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary use of alcohol or a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or a controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was intoxicated, the employee forfeits all entitlement to workers' compensation benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to participate in the same. In the event of a claim for death benefits the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

SECTION 6. AMENDMENT. Section 65-02-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-15. Workers' compensation binding arbitration panel—Membership - Regions. The bureau shall divide the state into four regions and for each region establish four regional listings a regional listing of persons who may serve as arbitrators for complex workers' compensation proceedings. Each regional listing must contain an equal number of names submitted to the director by an organization, statewide in scope, which, through its affiliates, embraces represent a cross section and a majority of the organized employers, labor of, and legal and medical professionals in the state; an equal number of names submitted to the director by a recognized statewide organization of employers, representing a majority of employers; and a similarly equal number of names selected by the bureau to serve as arbitrators. The legal and medical professionals must be selected from applications by interested persons throughout the state who demonstrate the unique submitted to the bureau and must be based on the applicant's ability, experience, and qualifications to serve as arbitrators an arbitrator. Each list must be revised every three years. The people whose names appear on a regional listing An employer and employee arbitrator must reside in that the region where the arbitrator serves. When a disputed complex workers' compensation proceeding claim is submitted for binding arbitration, the employee shall select a name from the appropriate regional list that was submitted by the labor organization; the employer shall select a name from the appropriate regional list that was submitted by the statewide organization of employers or shall designate the bureau to do so; and the selected employee and employer representatives bureau shall select a name from the appropriate regional list of those individuals medical and legal professionals who have been selected to serve as arbitrators based upon their experience and ability. The appropriate region is the region in which the employee resides. If the employee resides out of state, the appropriate region is the region of the situs of employment. As an

~~alternative selection procedure, by mutual agreement, the employee and the employer may designate themselves as the employee and employer representatives on the panel and together shall select the third panel member from the appropriate regional list of those individuals who have been selected to serve as arbitrators based upon their experience and ability. Panel members are entitled to remuneration for their services at a rate set by the bureau and to travel expenses at the rate in effect for state employees. The bureau shall provide staff services to the panel members. The salaries and expenses of the panel must be paid from money appropriated to the bureau for that purpose. A "complex workers' compensation proceeding" includes a proceeding involving fraud, unusual stress, toxic exposure, occupational disease, closed head injury, quadriplegia, paraplegia, hemiplegia, or any workers' compensation proceeding involving more than ten thousand dollars in controversy when a formal administrative order has been issued. The term includes any other proceeding as determined by rule. A workers' compensation proceeding submitted for binding arbitration, other than a complex workers' compensation proceeding, must be heard before a single arbitrator chosen from a list of qualified arbitrators. The process for choosing arbitrators and qualifications for arbitrators must be outlined by rule. The employee or employer can request and the bureau may allow a change of arbitrator upon a showing of just cause. A person providing binding arbitration services under this section is immune from civil liability relating to the binding arbitration process and decision.~~

SECTION 7. AMENDMENT. Section 65-02-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-17. Binding arbitration panel — Attorneys' fees. ~~Following constructive denial of a claim or issuance of an administrative order under chapter 28-32 reducing or denying benefits, an aggrieved employee or employer may request that the action be submitted to binding arbitration before the workers' compensation binding arbitration panel in lieu of a formal administrative hearing or judicial remedy. The bureau shall pay, at an hourly rate established by the bureau, a claimant's attorneys' fees on claims submitted for binding arbitration. If the aggrieved employee elects not to submit the action to binding arbitration, attorneys' fees may only be paid if the employee prevails. Binding arbitration is permitted only with the consent of the nonrequesting party.~~

SECTION 8. AMENDMENT. Section 65-02-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-18. Administrative orders - Decisions of binding arbitration panel ~~Binding arbitration decisions - Appeals.~~ An appeal of an administrative order is subject to section 28-32-14. A decision of the workers' compensation resulting from binding arbitration panel is final and nonreviewable by a district any court, except as provided in section 65-05-04.

SECTION 9. AMENDMENT. Section 65-04-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-04. Employers obligated to pay premiums - Premium receipts and certificates to be mailed. Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the bureau for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the bureau and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. A Immediately after payment is made, the bureau shall mail to the employer a receipt or certificate specifying that the payment has been made ~~must be mailed~~

~~to the employer by the bureau immediately after the payment is made, and the.~~ The receipt or certificate, attested by the seal of the bureau, is prima facie evidence of the payment of the premium. The bureau shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates the bureau may carry new or current risks for a period of less than one year and not to exceed fifteen months, either by request of the employer or action of the bureau. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report actual and suspected workers' compensation fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

SECTION 10. AMENDMENT. Subdivision a of subsection 2 of section 65-05-08.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The medical basis established by medical evidence supported by objective medical findings for the certification of disability;

SECTION 11. AMENDMENT. Section 65-05-09.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-09.2. Retirement offset. If a ~~claimant~~ an employee is entitled to permanent total disability benefits and social security retirement benefits under 42 U.S.C sections 402 and 405, the aggregate wage-loss benefits payable under this title must be determined in accordance with this section. The employee's social security retirement offset must equal forty percent of the calculated ratio of the employee's average weekly wages, as calculated on the commencement of the first, or recurrent, disability under section 65-05-09, to the current state's average weekly wage. Any offset calculated cannot exceed forty percent of the employee's weekly social security retirement benefit. If a claim has been accepted on an aggravation basis and the ~~worker~~ employee is eligible for social security benefits, the bureau's offset must be proportionally calculated. An overpayment must be recouped in the same manner as set forth in section 65-05-09.1. ~~The provisions of this section are effective for workers who retire on or after July 1, 1989~~ This section applies to an employee who becomes entitled to and receives social security retirement benefits after June 30, 1989, or who receives social security retirement benefits that have been converted from social security disability benefits by the social security administration after June 30, 1989. A conversion by the bureau from offsetting an employee's social security disability benefits to offsetting an employee's social security retirement benefits under this section may not result in a decrease in the aggregate amount of benefits the employee receives from both sources.

SECTION 12. AMENDMENT. Section 65-05-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-12. Permanent impairment - Compensation - Time paid. The catastrophically injured employee's doctor ~~employee~~ shall report to

~~the bureau any~~ be examined for a rating of any impairment of function as the result of the injury on the date of maximum medical improvement, except for total losses claimed under section 65-05-13. Any rating of the percentage of functional impairment should be in accordance with the standards for the evaluation of permanent impairment as published in the most recent edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" unless proven otherwise by clear and convincing medical evidence. The doctor's report must include a clinical report in sufficient detail to support the percentage ratings assigned. Any subsequent award for impairment must be made minus any previous award given on any earlier claim or the same claim for that same member or body part. If the injury causes permanent impairment, other than scheduled injuries, as elsewhere provided for in this chapter, the percentage which such impairment bears to total impairment must be determined, and the fund shall pay to the impaired employee a lump sum, calculated by multiplying thirty-three and one-third percent of the average weekly wage in this state rounded to the next highest dollar, on the date the impairment is determined, by the following number of weeks, depending upon the percentage of impairment:

For a one percent impairment	5 weeks.
For a ten percent impairment	50 weeks.
For a twenty percent impairment	100 weeks.
For a thirty percent impairment	150 weeks.
For a forty percent impairment	200 weeks.
For a fifty percent impairment	250 weeks.
For a sixty percent impairment	300 weeks.
For a seventy percent impairment	350 weeks.
For an eighty percent impairment	400 weeks.
For a ninety percent impairment	450 weeks.

SECTION 13. AMENDMENT. Section 65-05-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-13. Scheduled injuries - Permanent loss of member - Compensation - Time compensation payable. If the injury causes the loss of a member, the fund shall pay to the ~~impaired~~ injured catastrophically injured employee a lump sum, calculated by multiplying thirty-three and one-third percent of the average weekly wage in this state rounded to the next highest dollar, on the date the impairment is determined, by the following number of weeks, depending upon the percentage of impairment:

1. For loss of arm at shoulder 250 weeks.
2. For loss of arm at or above elbow 220 weeks.
3. For loss of hand at or above wrist 200 weeks.
4. For loss of thumb 65 weeks.
5. For loss of second or distal phalanx of thumb 28 weeks.
6. For loss of first finger 40 weeks.
7. For loss of middle or second phalanx of first finger 28 weeks.
8. For loss of third or distal phalanx of first finger 22 weeks.

9.	For loss of second finger	30 weeks.
10.	For loss of middle or second phalanx of second finger	22 weeks.
11.	For loss of third or distal phalanx of second finger	14 weeks.
12.	For loss of third finger	20 weeks.
13.	For loss of middle or second phalanx of third finger	16 weeks.
14.	For loss of third or distal phalanx of third finger	10 weeks.
15.	For loss of fourth finger	16 weeks.
16.	For loss of middle or second phalanx of fourth finger	12 weeks.
17.	For loss of third or distal phalanx of fourth finger	6 weeks.
18.	For loss of leg at hip	234 weeks.
19.	For loss of leg at or above knee	195 weeks.
20.	For loss of foot at or above ankle	150 weeks.
21.	For loss of great toe	30 weeks.
22.	For loss of second or distal phalanx of great toe	18 weeks.
23.	For loss of any other toe	12 weeks.
24.	For loss of middle or second phalanx of any other toe	10 weeks.
25.	For loss of third or distal phalanx of any other toe	7 weeks.
26.	For loss of an eye	150 weeks.
27.	For loss of hearing in one ear	50 weeks.
28.	For loss of hearing in both ears	200 weeks.
29.	<u>For spinal cord injury (paraplegia, quadriplegia, hemiplegia)</u>	
a.	<u>Sixty-five percent</u>	<u>950 weeks.</u>
b.	<u>Seventy percent</u>	<u>1,040 weeks.</u>
c.	<u>Seventy-five percent</u>	<u>1,130 weeks.</u>
d.	<u>Eighty percent</u>	<u>1,220 weeks.</u>
e.	<u>Eighty-five percent</u>	<u>1,310 weeks.</u>

- f. Ninety percent 1,400 weeks.
- g. Ninety-one percent or above 1,500 weeks.
30. For cervical, thoracic, or lumbar spine injury per one percent diagnostic rating 7 weeks.

The amount paid for the loss of more than one finger of one hand may not exceed the amount provided in this schedule for the loss of a hand. For the loss of the metacarpal bone, of the palm, together with the corresponding thumb or finger, ten weeks must be added to the number of weeks of payment. The permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg, or eye must be considered as the equivalent of the loss of such thumb, finger, toe, arm, hand, foot, leg, or eye, and compensation for partial loss of use of said parts must be allowed on a percentage basis. Twenty-five percent additional must be allowed as compensation for the loss of use of the master hand or any member or members thereof. The loss of any part of a phalanx must be considered equal to the loss of the entire phalanx. If any employee dies from some independent cause, the right of any compensation payable under section 65-05-12 or this section, unpaid at the date of ~~his~~ the employee's death, ~~shall survive~~ survives and ~~pass~~ passes to ~~his~~ the employee's dependent spouse, minor children, parents, or ~~his~~ the employee's estate and in that order named. Wherever possible, an impairment award must be made under the terms of this section.

Recovery under this section ~~shall bar~~ bars an additional award of permanent impairment for the same injury, as elsewhere provided in this chapter.

Any rating for impairment of function resulting from injury to the spinal cord must be calculated based solely on the percentage that the impairment of function bears to total impairment of function of the whole body. Any rating for impairment of function of the back must be calculated according to the employee's diagnosis, and may not include any rating for other factors, including loss of range of motion, radiculopathy, pain, and loss of strength and sensation.

Any rating for impairment of function resulting from injuries other than amputations, injuries to the back, and injuries to the spinal cord must be based on diagnosis directly related to the work injury. Any rating for impairment of function for loss or strength and sensation resulting from injuries other than amputations, injuries to the back, and injuries to the spinal cord must be based on objective medical evidence of nerve damage. Any rating for impairment of function due to loss of range of motion must be based on objective medical evidence of structural damage to a joint or loss of motor function. An employee is not entitled to any award for impairment of function due to pain. Any rating for impairment of function may not include any impairment attributable to a preexisting condition. Any rating for impairment of function under this section must be made according to the most recent edition of the American medical association's "Guides to the Evaluation of Permanent Impairment".

If a compensable injury causes an impairment under this section, and also causes impairment to a part of the body which cannot be compensated under the terms of this section, a whole body award may be made under section 65-05-12 if ~~such~~ the award is not duplicative.

An impairment award made by the bureau in the past under this section or section 65-05-12 must be deducted from a subsequent impairment award for injury to the same part of the body.

In addition to a catastrophically injured employee, an employee who has suffered amputation is eligible for an award under this section if permanent partial disability benefits were not payable under section 65-05.1-01.

SECTION 14. AMENDMENT. Section 65-05-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-14. Scheduled injuries - Partial loss of use of member - Weekly compensation time - Compensation payable. If an injury causes permanent impairment of a member, the sight of an eye, or the hearing in an ear, the fund shall pay to the impaired employee a weekly compensation for that proportion of the number of weeks specified in the schedule in section 65-05-13 for the loss of such member, the sight of an eye, or the hearing in an ear, which the partial loss of the use thereof bears to the total loss of the use of such member, eye, or ear.

Recovery under this section ~~shall bar~~ bars an additional award of permanent impairment for the same injury, as elsewhere provided in this chapter. In addition, recovery under this section is barred if the employee has received permanent partial disability benefits under section 65-05.1-01.

SECTION 15. AMENDMENT. Subsection 2 of section 65-05-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The bureau and an employee may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The contract may provide that the employee shall utilize the funds to engage in certain rehabilitation programs. If the employee breaches the contract, the bureau may require the employee to repay the benefits received under the agreement. In cases in which the extent of disability is disputed and resolved by agreement, ~~the concept of reopening a disability claim due to significant change in medical condition is applicable or in final settlement of an entire claim, the claim may not be reopened if there is any change in the employee's medical condition.~~

SECTION 16. AMENDMENT. Subsection 5 of section 65-05.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. If the vocational consultant concludes that none of the priority options under subsection 4 of section 65-05.1-01 ~~are~~ is viable, and will not return the employee to the lesser of seventy-five percent of the average weekly wage, or the employee's preinjury earnings, and the employee shall ~~continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:~~
 - a. ~~That meets the employee's medical limitations;~~
 - b. ~~In which the employee meets the qualifications to compete; and~~
 - c. ~~Which will reasonably result in retained earnings capacity equivalent to the lesser of the employee's preinjury earnings or fifty percent of the average weekly wage in the state on the date the rehabilitation consultant's report is issued.~~

An award of partial disability due to retained earnings capacity under this section must be made pursuant to section 65-05-10 has attained maximum medical improvement and is not catastrophically injured as defined under paragraph 1 of subdivision c of subsection 2 of section 65-05.1-06.1, the employee must undergo an examination to determine a permanent partial disability rating. The permanent partial disability rating must be determined and paid in accordance with rules adopted by the bureau. The benefit amount must be determined using the following factors:

- a. The employee's earnings at the time of injury;
- b. The state's average weekly wage;
- c. The permanent partial disability rating; and
- d. Other relevant factors as set forth by rule.

Upon receipt of the permanent partial disability benefits, the employee is not entitled to any further disability or rehabilitation benefits in connection with the injury unless the bureau in its sole discretion reopens the award due to a significant change in medical condition. Any previous permanent partial impairment award issued under sections 65-05-12, 65-05-13, and 65-05-14 must be deducted from any permanent partial disability award issued pursuant to this section.

SECTION 17. REPEAL. Section 65-02-16 of the 1991 Supplement to the North Dakota Century Code is repealed.

SECTION 18. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective for all claims after July 31, 1993, irrespective of injury date. Section 4 of this Act is effective for any recovery received or legal action commenced, whichever first occurs, after July 31, 1993, irrespective of injury date. Sections 6, 7, 8, and 17 of this Act are effective for requests for binding arbitration filed after July 31, 1993, irrespective of injury date. Section 15 of this Act becomes effective August 1, 1993, for all claims irrespective of injury date. Sections 12, 13, 14, and 16 of this Act become effective August 1, 1995, irrespective of injury date."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE

HB 1344, as engrossed: Your conference committee (Sens. Graba, Jerome, Nalewaja and Reps. Svedjan, Stenehjelm, Kerzman) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 994, adopt amendments as follows, and place HB 1344 on the Seventh order:

That the Senate recede from its amendments as printed on page 994 of the House Journal and page 808 of the Senate Journal and that Engrossed House Bill No. 1344 be amended as follows:

Page 1, line 11, overstrike "Before"

Page 1, line 12, overstrike "authorizing the", remove "oral", overstrike "transmittal of the", and overstrike "prescription, the" and insert immediately thereafter "The"

Page 1, line 13, overstrike "place a written copy of" and insert immediately thereafter "document" and overstrike "prescription" and insert immediately thereafter "order for oral transmission"

Renumber accordingly

Engrossed HB 1344 was placed on the Seventh order of business on the calendar.

The House stood adjourned pursuant to Representative Freier's motion.

ROY GILBREATH, Chief Clerk