

INITIATED MEASURES DISAPPROVED

CHAPTER 561

LOTTERIES

An initiated measure to amend section 25 of article XI of the Constitution of North Dakota, relating to the conduct of a lottery.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

AMENDMENT. Section 25 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

Section 25. ~~The~~ Except as authorized by this section, the legislative assembly shall not authorize any game of chance, lottery, or gift enterprises, under any pretense, or for any purpose whatever. However, the legislative assembly may authorize by law bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, public safety organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses. Except for a state conducted lottery, a lottery must be conducted by either a licensed establishment or an organization operating a bingo site. "Licensed establishment" means any restaurant, bar, lounge, or lodging establishment owned or managed by a person licensed to sell alcoholic beverages for consumption upon the premises where the premises have been licensed for the two immediately preceding years in the state. A lottery must be conducted in accordance with subsections 1, 2, 3, 4, and 5 of this section.

1. A licensed establishment or an organization operating a bingo site shall distribute all adjusted gross revenue from the lottery, less the amount allocated for prizes as follows:
 - a. Twenty-five percent to be retained by the licensed establishment or the organization operating a bingo site.
 - b. Twenty-five percent to be paid to the vendor. "Vendor" means a distributor of amusement devices and associated equipment, a bona fide nonprofit veterans', charitable, educational, religious, or fraternal organization, public safety organization, civic or service club, or other public-spirited organization, a licensed establishment or a liquor or beer wholesaler. A vendor or its predecessors must have been licensed for the two immediately preceding years in the state.
 - c. Twenty-five percent to the bona fide nonprofit veterans, charitable, educational, religious, or fraternal organization, public safety organization, civic or service club, or other public-spirited organization which owns the premises or has a lease agreement with an organization operating a bingo site or a licensed establishment for gaming.

- d. Twenty-five percent to the state treasury.
 - e. Except for the same income tax as paid by similar persons in the state not conducting games of chance, the twenty-five percent to the state treasury is in lieu of all other state or local taxation or fees from all persons except manufacturers that would otherwise be based on the lottery.
2. "Lottery" means a game that offers preprinted tickets authorized by the attorney general that indicate immediately or in a grand prize drawing whether the player has won a prize or any electrical mechanical device that, upon insertion of currency is available to play or operate any game of chance allowable within the boundaries of the state of North Dakota including but not limited to Indian reservations. Twenty-five lottery devices may be operated per authorized site at one time.
3. The attorney general shall regulate and license lottery manufacturers and vendors and may adopt rules under the state Administrative Agencies Practice Act, as may be amended from time to time, to control the operation of a lottery. All contracts by manufacturers, manufacturers' distributors and distributors regarding lotteries prior to the enactment of this article are null and void.
4. The state legislature may adopt statutes, as may be amended from time to time, to control the operation of a lottery.
5.
 - a. No person under the age of twenty-one years may participate in a lottery.
 - b. If a person under the age of twenty-one years is permitted at an authorized site, the area reserved for a lottery must be separated from the other areas of the premises pursuant to rules the attorney general may adopt under the state Administrative Agencies Practice Act as may be amended from time to time.

Disapproved June 11, 1996

36,074 to 80,122

NOTE: This was measure No. 5 on the primary election ballot.

CHAPTER 562

WORKERS' COMPENSATION LAWS

An initiated measure for the creation of five new sections to title 65 of the North Dakota Century Code, for the amendment of section 65-01-01; subsections 4, 9, and 18 of section 65-01-02; subsection 7 of section 65-01-14; sections 65-02-08; 65-02-08.1; 65-02-15; 65-02-22; 65-02-23; 65-05-04; 65-05-07; and 65-05-09.3; subsection 7 of section 65-05-10; sections 65-05-28; 65-05-35; 65-05.1-01; 65-05.1-04; subsection 1 of section 65-05.1-06.1; sections 65-10-01; and 65-10-03 of the North Dakota Century Code and section 1 of 1995 Senate Bill No. 2377, and for the repeal of sections 65-01-15; 65-02-19; 65-02-20; 65-05-01.2; 65-05-01.3; 65-05-01.4; 65-05-01.5; 65-05-12.2; and subsection 5 of section 65-05-28 of the North Dakota Century Code, relating to the presumed retirement of injured employees, payment of attorney's fees only to prevailing injured employees, vocational rehabilitation of injured employees, permanent impairment, choice of health care provider, judicial review and jurisdiction, and the administration of the workers compensation bureau.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-01 of the North Dakota Century Code is amended and reenacted as follows:

65-01-01. Purposes of compensation law - Police power. The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wage workers, and, hence, for workers injured in hazardous employments, and for their families and dependents, reasonable, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for those personal injuries and all jurisdiction of the courts of the state over those causes are abolished except as is otherwise provided in this title. ~~A civil action or civil claim arising under this title which is subject to judicial review, must be reviewed solely on the merits of the action or claim. This title may not be construed liberally on behalf of any party to the action or claim.~~

SECTION 2. AMENDMENT. Subsections 4, 9, and 18 of section 65-01-02 of the North Dakota Century Code are amended and reenacted as follows:

4. "Average weekly wage" means the average weekly wages the employee was receiving from all employments at the time of injury. 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 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.
 - c. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - d. Biweekly rate divided by two.
 - e. ~~In seasonal employment, the average weekly wage is one fiftieth of the total wages the employee has earned from all occupations during the twelve calendar months immediately preceding the injury or one fiftieth of the average annual income for the three year period immediately preceding the injury, whichever is greater.~~
 - f. If the average weekly wage of an employee cannot be ascertained, the wage for the purposes of calculating compensation is the usual wage paid other employees engaged in similar occupations where the wages are fixed.
 - ~~g.~~ f. If there are special circumstances under which the average weekly wage cannot be reasonably and fairly determined by applying subdivisions a through ~~f~~ e, 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 if that number is less than fifty-two.
9. "Compensable injury" means an injury by accident arising out of and in the course of employment ~~which must be established by medical evidence supported by objective medical findings.~~
- a. The term "compensable injury", in addition to an injury by accident, includes:
 - (1) Any disease which can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed are not compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It does not have to be foreseen or expected, but after it is contracted, it must have had its origin in a risk connected with the employment and have flowed from that source as a rational consequence. Preventive treatment for communicable diseases is not compensable under this title.
 - (2) In injury to artificial members.
 - (3) Injuries due to heart attack or other heart-related disease, stroke, and mental or physical injury precipitated by mental stimulus, which must be causally related to the employee's employment, with reasonable medical certainty, and which must have been precipitated by unusual stress.

- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
 - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- b. The term does not include:
- (1) A willfully self-inflicted injury, an injury caused by the employee's willful intention to commit suicide or to injure or kill another, including injury or aggravation of an injury, which results from the employee's suicide or attempted suicide.
 - (2) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
 - (3) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor.
 - (4) An injury that arises out of an illegal act committed by the injured employee.
 - (5) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all the cost of the activity.
 - (6) Injuries attributable to a preexisting injury, disease, or condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. It is insufficient, however, to afford compensation under this title solely because the employment acted as a trigger to produce symptoms in a latent and underlying condition if the underlying condition would likely have progressed similarly in the absence of the employment trigger, unless the employment trigger is determined to be a substantial aggravating or accelerating factor. An underlying condition is a preexisting injury, disease, or infirmity.
 - (7) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.
 - (8) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment injury.
 - (9) A mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except an action that is the intentional infliction of emotional harm.

18. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease which:
- 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; ~~or~~
 - 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 ~~five~~ two years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition. ~~An employer shall require a physical examination upon employment, and annually thereafter, for any employee subject to this subdivision. Results of the examination must be used in rebuttal to a presumption afforded under this subdivision. For purposes of this subdivision, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full-time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.~~

SECTION 3. AMENDMENT. Subsection 7 of section 65-01-14 of the North Dakota Century Code is amended and reenacted as follows:

7. The bureau shall issue an administrative order under chapter 28-32 when it makes a permanent partial impairment award, vocational award, ~~or~~ when it terminates or denies disability or vocational services or has otherwise been requested to issue an administrative order by an aggrieved party by filing a request for reconsideration of an informal decision or has been requested to issue an administrative order following a constructive reduction or denial of benefits. The bureau shall issue an informal decision on an initial determination of disability benefits.

SECTION 4. AMENDMENT. Section 65-02-08 of the North Dakota Century Code is amended and reenacted as follows:

65-02-08. Rulemaking power of the bureau - Fees prescribed by the bureau.

The bureau shall adopt rules necessary to carry out this title. The bureau may not charge a fee for providing copies of claim files to an injured employee or employer or their attorney. All fees on claims for legal, medical, and hospital services rendered under this title to an injured employee must be in accordance with schedules of fees adopted by the bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee on administrative rules before submission to the legislative council for publication. The bureau shall establish, by administrative rule, a reasonable maximum hourly rate ~~and a maximum fee~~ to compensate an injured employee's attorney for legal services following constructive denial of a claim, notice of informal decision, or issuance of an administrative order under chapter 28-32 reducing or denying benefits. ~~The bureau shall~~ "Constructive denial" means failure to issue an administrative order within sixty days of the date when the elements of initial filing or notice or reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. Satisfaction of elements of filing must be defined by administrative rule. The bureau shall pay an injured employee's attorney's fees and costs from the bureau general fund. ~~Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule.~~ The bureau shall pay an attorney's fees when:

1. The employee has prevailed through settlement or otherwise in binding dispute resolution under section 65-02-20; ~~or~~
2. The employee has prevailed through settlement or otherwise after reconsideration of an informal decision under section 65-01-04;
3. The employee has prevailed through settlement or otherwise after an administrative hearing under chapter 28-32; or
4. If there has been constructive denial of a claim, the bureau shall only pay attorney's fees from the occurrence of the constructive denial until the bureau issues a notice of informal decision or administrative order.

This section does not prevent an injured employee or an employer from hiring or paying an attorney; however, the employee's attorney may not seek or obtain costs or attorney's fees from both the bureau and the employee relative to the same services. Nothing herein shall prevent an injured employee from paying attorney's fees for services to the extent that such services are not fully compensated by the bureau. The bureau shall be liable for payment of interest on legal, medical, and

hospital services in the manner provided for by sections 13-01.1-01 through 13-01.1-06. All disputes relating to payment or denial of an attorney's fee must be submitted to the hearing officer or arbitrator for decision. An attorney lien filed with the bureau must be accompanied by a written fee agreement between an injured employee and the attorney seeking enforcement of the lien.

SECTION 5. AMENDMENT. Section 65-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-08.1. State advisory council - Composition - Compensation - Duties.

~~The bureau shall appoint a state advisory council composed of an equal number of employer representatives and employee representatives who may be regarded fairly as representative because of their vocation, employment, or affiliations, and members representing the general public as the bureau may designate consisting of eleven members selected as follows: two persons from a list of four submitted by the American federation of labor and congress of industrial organizations, one person from a list of two submitted by the international brotherhood of teamsters, one person from a list of two submitted by the North Dakota trial lawyers association, one person from a list of two submitted by the state medical association, one person from a list of two submitted by the state chiropractic association, one person from a list of two submitted by the workers against inhumane treatment, two persons from a list of four submitted by the greater North Dakota association, one person from a list of two submitted by the North Dakota retail association, and one person from a list of two submitted by the associated general contractors of North Dakota. The council shall aid the bureau in formulating policies, discussing problems related to the administration of the bureau, and in assuring impartiality and freedom from political influence in the solution of these problems. The members of the council may be reimbursed for expenses in the amounts provided by law for state officials but must serve without further compensation except as may be authorized and fixed by the bureau by rule. The bureau shall provide staff services to the council. The council shall assist the bureau in formulating policies and discussing problems related to the administration of the bureau, including adoption of rules, establishment of fees, determination of employer premium rates, maintenance of the solvency of the workers compensation fund, and provision of rehabilitation services. The council may make recommendations and proposals for consideration by the bureau.~~

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

~~**65-02-15. Workers' compensation binding arbitration.** A dispute between the bureau and an injured employee must be resolved by arbitration when the dispute concerns an amount no greater than three thousand dollars. The bureau shall adopt rules to establish how the amount of the dispute is determined. Within thirty days following 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 in lieu of a formal administrative hearing or judicial remedy. Binding arbitration is permitted only with the consent of the nonrequesting party. The employee can request and the bureau shall allow a change of arbitrator upon a showing of just cause. The bureau may hire arbitrators based upon criteria the bureau determines relevant, including education, training, and experience. The bureau shall pay an injured employee's attorney's fee only when the employee prevails. The bureau shall adopt rules to establish a maximum fee for an injured employee's attorney. An attorney's fee may not exceed twenty percent of the amount awarded. Payment of a disputed amount pursuant to an arbitration award does not establish the bureau's liability for any issue not raised during the arbitration~~

~~proceeding and does not establish the bureau's liability for any underlying condition. The arbitration process may not be used for initial determinations of compensability. The bureau retains continuing jurisdiction over the arbitration proceeding under section 65-05-04. An arbitration decision that is not revoked or modified by the bureau under section 65-05-04 is final and not reviewable by any court or subject to modification by the bureau pursuant to the bureau's continuing jurisdiction.~~

SECTION 7. AMENDMENT. Section 65-02-22 of the North Dakota Century Code is amended and reenacted as follows:

65-02-22. Hearing officer - Qualifications - Location. ~~A hearing officer designated by the bureau under chapter 28-32 must be a person licensed to practice law in this state. A hearing officer designated by the bureau may not maintain an office within the bureau from which the hearing officer conducts daily business. This section does not preclude a hearing held pursuant to chapter 28-32 from being held within the bureau. All hearings of the bureau, except investigatory hearings under section 28-32-08 and rulemaking hearings held in accordance with section 28-32-02, must be conducted by the office of administrative hearings in accordance with the administrative hearings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. Orders issued by the presiding administrative law judge shall be final orders pursuant to section 28-23-13.~~

SECTION 8. AMENDMENT. Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workers' compensation fraud unit. The bureau shall establish a workers' compensation fraud unit. The bureau may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost effective, to investigate and review any alleged case of willful and material misrepresentation of payroll to the bureau by an employer as described under section 65-04-14 and to investigate and review any alleged case of willful and material filing of a false claim or false statement in relation to a claim as defined under section 65-05-33. The unit shall refer a case of willful and material misrepresentation of payroll to the bureau or of willful and material filing of a false claim or false statement for prosecution by the state's attorney in the county of the employee's residence. The administrative and civil penalties provided in section 65-05-33 may be imposed only after criminal conviction pursuant to that section.

SECTION 9. AMENDMENT. Section 1 of 1995 Senate Bill No. 2377 is amended and reenacted as follows:

Workers' adviser program. A workers' adviser program is established. The program is independent of the claims department of the workers compensation bureau and activities administered through the program must be administered in accordance with this title. The program must provide assistance to an injured employee, including acting on behalf of an injured employee who is aggrieved by a decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and advising an injured employee of the effect of decisions made by the bureau, the employee, or an employer under this title. The bureau shall employ a director of the program, support staff for the program, and other personnel determined to be necessary for the administration of the program. Personnel employed to administer the program may not act as an attorney for an injured employee. ~~The bureau may not pay attorney fees to an attorney who represents an injured employee in a disputed claim before the bureau unless the injured employee has first attempted to resolve the dispute through the workers' adviser program. An injured employee who contacts the program for assistance within the appeal period~~

after an administrative order has been issued or a benefit has been constructively reduced or denied is deemed to have satisfied the requirement of requesting an administrative hearing or an arbitration hearing on that order or constructive reduction or denial. ~~The information contained in a file established by the workers' adviser program on an injured employee's disputed claim is not subject to discovery and may not be used as evidence in subsequent proceedings relative to that dispute.~~

SECTION 10. AMENDMENT. Section 65-05-04 of the North Dakota Century Code is amended and reenacted as follows:

65-05-04. Bureau has continuing jurisdiction over claims properly filed. If the original claim for compensation has been made within the time specified in section 65-05-01, the bureau at any time, on its own motion or on application, may review the award, and in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation. ~~There is no appeal from a bureau decision not to reopen a claim after the bureau's order on the claim has become final.~~ A bureau decision not to reopen a claim may be appealed to the district court. The district court shall direct the bureau to reopen a claim if the injured worker demonstrates by preponderance of the evidence that there is new evidence and there were reasonable grounds for the failure to offer the evidence prior to the bureau's decision affecting benefits.

SECTION 11. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Premium information rate classification - Duty to disclose. Notwithstanding the provisions of 65-04-14, the bureau shall publish on the first business day of each year the identity of each employer currently in arrears in premium payments required under section 65-04-04 and the amount of such arrearages.

SECTION 12. AMENDMENT. Section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

65-05-07. Injured employee given medical and hospital service required - Furnished artificial limbs and appliances for rehabilitation - Fee approval. Immediately after an injury sustained by an employee and during the resulting period of disability, the fund shall furnish to the employee such reasonable and appropriate medical, surgical, and hospital service and supplies as the nature of the injury may require. The bureau shall apply the same standards of reasonableness and appropriateness to both palliative and curative services and supplies. The fund may furnish such artificial members and replacements as in the judgment of the bureau may be necessary to rehabilitate such injured employee.

1. The health care provider or physician must be acting within the scope of the provider's or physician's license or fees will be denied.
2. Fees may not be approved for more than one health care provider or physician, or both, in a case where treatment is provided over the same period of time except for the service of a consulting physician, assistant surgeon, or anesthetist or in an emergency.
3. The bureau, in cooperation with professional organizations of doctors and health care providers, shall establish a system of peer review to determine reasonableness of fees and payment denials for unjustified treatments, hospitalization, or visits. The doctor ~~or~~, health care

provider, injured employee, or employer shall have the right to appeal adverse decisions of the bureau in accordance with the ~~medical aid rules adopted by the bureau~~ provisions of chapter 28-32.

4. Health care providers or doctors may not bill injured workers for any services rendered as a result of the compensable work injury. If a court in any jurisdiction finds an injured employee liable for medical, surgical, or hospital services or supplies occasioned by a compensable work injury, the bureau shall hold the injured employee harmless from any such liability.
5. If the bureau determines that it is necessary to provide permanent additions, remodeling, or adaptations to real estate to those workers who sustain catastrophic injury as defined in chapter 65-05.1, such improvements may be made, but may not exceed ten thousand dollars for the life of the claimant, regardless of any subsequent claim.
6. If a doctor or health care provider who has treated or provided services to an injured employee fails or refuses without just cause to file with the bureau a report required by section 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for such report made by the claimant, the claimant's representative, or the bureau, the bureau shall assess as a penalty a sum of one hundred dollars. Health care providers or doctors may not bill injured workers for any penalty assessed by the bureau as a result of failure or refusal without just cause to file a required report.
7. The filing of an accident report or the rendering of treatment to an injured worker who comes under the bureau's jurisdiction, as the case may be, constitutes acceptance of the bureau's medical aid rules and compliance with its rules and fees.

SECTION 13. AMENDMENT. Section 65-05-09.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05-09.3. Retirement presumption - ~~Termination of benefits upon retirement.~~

4. An employee who has retired or voluntarily withdrawn from the labor force ~~and who is not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits, or a rehabilitation allowance from the bureau~~ is presumed retired from the labor market and is ineligible for receipt of disability benefits under this title. The presumption may be rebutted by a preponderance of the evidence; ~~however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement that the worker:~~
 1. Is actively seeking employment;
 2. Is available for gainful employment;
 3. Has not rejected any job offer made by a former employer, or other bona fide offer by another employer; and

4. Has not provided the employer, upon written request, with written notice of a scheduled retirement date.

The presumption does not apply to any employee who is permanently and totally disabled as defined under this title.

2. ~~An injured employee who is receiving permanent total, temporary total, or temporary partial disability benefits, or rehabilitation benefits, and who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who is at least sixty five years old and is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, is considered to be retired. The bureau may not pay any permanent total, temporary total, or temporary partial disability benefits, rehabilitation benefits, or supplemental benefits to an employee who is considered retired, however, the bureau is liable for payment of medical benefits and permanent partial impairment benefits. An employee who is determined to be catastrophically injured as defined by subdivision e of subsection 2 of section 65-05.1-06.1 is not subject to this section.~~
3. ~~The bureau retains liability for disability benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security, who is gainfully employed, and who suffers an injury arising out of and in the course of that employment.~~
4. ~~This section applies to all persons who retire or become eligible for social security retirement benefits or other retirement benefits in lieu of social security retirement benefits after July 31, 1995.~~

SECTION 14. AMENDMENT. Subsection 7 of section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

7. ~~Benefits must be paid during the continuance of partial disability; not to exceed a period of five years. The bureau may waive the five year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1994.~~

SECTION 15. A new section to the North Dakota Century Code is created and enacted as follows:

Permanent impairment - Compensation - Time paid. The injured employee's doctor shall report to the bureau any rating of any permanent impairment of function as the result of the injury except for total losses claimed under section 18. If the injured employee's doctor does not perform evaluations to rate permanent impairment of function, the doctor may refer the employee to a doctor who does perform such evaluations, and the bureau shall pay all reasonable charges for such evaluation. 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 edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" used by the bureau on July 1, 1993, unless proven otherwise by clear and convincing medical evidence. An award for permanent partial impairment is not compensation for wage loss. 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:

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

SECTION 16. A new section to the North Dakota Century Code is created and enacted as follows:

Permanent impairment. When there is a dispute as to the percentage of an employee's permanent impairment, all medical evidence must be submitted to an independent physician who has not treated the employee or who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish a comprehensive list of physicians who are medical specialists within the state. The bureau and the claimant shall choose a physician to review a disputed permanent impairment rating by striking names from the list until a name is chosen. The decision of the independent physician is presumptive evidence of the degree of permanent impairment of the employee.

SECTION 17. A new section to the North Dakota Century Code is created and enacted as follows:

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 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:

<u>1. For loss of arm at shoulder</u>	<u>250 weeks.</u>
<u>2. For loss of arm at or above the elbow</u>	<u>220 weeks.</u>
<u>3. For loss of hand at or above wrist</u>	<u>200 weeks.</u>
<u>4. For loss of thumb</u>	<u>65 weeks.</u>
<u>5. For loss of second or distal phalanx of thumb</u>	<u>28 weeks.</u>
<u>6. For loss of first finger</u>	<u>40 weeks.</u>
<u>7. For loss of middle or second phalanx of first finger</u>	<u>28 weeks.</u>
<u>8. For loss of third or distal phalanx of first finger</u>	<u>22 weeks.</u>
<u>9. For loss of second finger</u>	<u>30 weeks.</u>
<u>10. For loss of middle or second phalanx of second finger</u>	<u>22 weeks.</u>
<u>11. For loss of third or distal phalanx of second finger</u>	<u>14 weeks.</u>
<u>12. For loss of third finger</u>	<u>20 weeks.</u>

<u>13. For loss of middle or second phalanx of third finger</u>	<u>16 weeks.</u>
<u>14. For loss of third or distal phalanx of third finger</u>	<u>10 weeks.</u>
<u>15. For loss of fourth finger</u>	<u>16 weeks.</u>
<u>16. For loss of middle or second phalanx of fourth finger</u>	<u>12 weeks.</u>
<u>17. For loss of third or distal phalanx of fourth finger</u>	<u>6 weeks.</u>
<u>18. For loss of leg at hip</u>	<u>234 weeks.</u>
<u>19. For loss of leg at or above knee</u>	<u>195 weeks.</u>
<u>20. For loss of foot at or above ankle</u>	<u>150 weeks.</u>
<u>21. For loss of great toe</u>	<u>30 weeks.</u>
<u>22. For loss of second or distal phalanx of great toe</u>	<u>18 weeks.</u>
<u>23. For loss of any other toe</u>	<u>12 weeks.</u>
<u>24. For loss of middle or second phalanx of any other toe</u>	<u>10 weeks.</u>
<u>25. For loss of third or distal phalanx of any other toe</u>	<u>7 weeks.</u>
<u>26. For loss of an eye</u>	<u>150 weeks.</u>
<u>27. For loss of hearing in one ear</u>	<u>50 weeks.</u>
<u>28. For loss of hearing in both ears</u>	<u>200 weeks.</u>

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 independent cause, the right of any compensation payable under section 16 or this section, unpaid at the date of his death, shall survive and pass to his dependent spouse, minor children, parents, or his 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 an additional award of permanent for the same injury, as elsewhere provided in this chapter. 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 16 if such award is not duplicative.

An impairment award made by the bureau in the past under this section or section 16 must be deducted from a subsequent impairment award for injury to the same part of the body.

SECTION 18. A new section to the North Dakota Century Code is created and enacted as follows:

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 18 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 an additional award of permanent impairment for the same injury, as elsewhere provided in this chapter.

SECTION 19. AMENDMENT. Section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate. Every employee who sustains an injury may select a doctor of that employee's choice to render initial treatment. Upon a determination that the employee's injury is compensable, the bureau may require the employee to begin treating with another doctor, ~~to better direct the medical aspects of the injured employee's claim~~ if the employee's care falls beneath community standards. ~~The~~ In that event, the bureau shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the bureau's request, the employee shall select a doctor from the list. An injured employee shall follow the directives of the doctor or health care provider who is treating the employee as chosen by the employee at the request of the bureau, and comply with all reasonable requests during the time the employee is under medical care. Providing further that:

1. No employee may change from one doctor to another while under treatment or after being released, without the prior written authorization of the bureau. Failure to obtain approval of the bureau renders the employee liable for the cost of treatment ~~and the new doctor will not be considered the attending doctor for purposes of certifying temporary disability.~~ The bureau may not unreasonably withhold approval.
 - a. Any employee requesting a change of doctor shall file a written request with the bureau stating all reasons for the change. Upon receipt of the request, the bureau will review the employee's case and approve or deny in writing the change of doctor within seven days, notifying the employee and the requested doctor.
 - b. Emergency care or treatment or referral by the attending doctor ~~does not constitute a change of doctor and~~ does not require prior approval of the bureau.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the bureau reimbursement rates in effect on the date of incurred travel or expense. Mileage calculations must be based upon the atlas or map mileage from city limit to city limit and do not include intracity mileage. Providing further that:
 - a. No payment for mileage or other travel expenses may be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
 - b. All travel reimbursements are payable at the rate at which state employees are paid per diem and mileage, except that the bureau may pay no more than actual cost of meals and lodging, if actual cost is less;
 - c. Reimbursements may not be paid for travel other than that necessary to obtain the closest available medical or hospital care

- needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
- d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and
 - e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.
3. The bureau may at any time require an employee to submit to an independent medical examination by a duly qualified doctor ~~or doctors designated or approved by the bureau~~ whose primary practice is in North Dakota, unless the employee and the bureau agree to an independent medical examination by an out-of-state physician. The independent medical examination must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. The employee may have a duly qualified doctor designated by that employee present at the examination if procured and paid for by that employee. ~~Providing further that:~~
 - a. ~~In case of any disagreement between doctors making an examination on the part of the bureau and the employee's doctor, the bureau shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the bureau.~~
 - b. ~~The employee, in the discretion of the bureau, may~~ shall be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the employee is working and loses gross wages from the employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
 4. If an employee, or the employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination, or refuses reasonably to participate in medical or other treatments, the employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the employee.

SECTION 20. AMENDMENT. Section 65-05-35 of the North Dakota Century Code is amended and reenacted as follows:

65-05-35. ~~Closed~~ Inactive claim - Presumption.

1. A claim for benefits under this title is presumed closed if:
 - a. A doctor's report has been filed indicating the employee has reached maximum medical recovery; and

- ~~b. The~~ The bureau has not paid any benefit or received a demand for payment of any benefits for a period of seven years.
2. A claim that is presumed ~~closed~~ inactive may not be reopened for payment of any further benefits unless the presumption is rebutted by ~~clear and convincing~~ a preponderance of the evidence that there is a causal relationship between the work injury is the primary cause of and the current symptoms.
3. With respect to a claim that has been presumed ~~closed~~ inactive, the employee shall provide the bureau written notice of reapplication for benefits under that claim. In case of award of lost-time benefits, the award may commence no more than thirty days before the date of reapplication. In case of award of medical benefits, the award may be for medical services incurred no more than thirty days before the date of reapplication.
4. This section applies to all claims for injury, irrespective of injury date.

SECTION 21. AMENDMENT. Section 65-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-01. Rehabilitation services.

1. The state of North Dakota exercising its police and sovereign powers, declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. The purpose of this chapter is to ensure that injured employees covered by this title receive services, so far as possible, necessary to assist the employee and the employee's family in the adjustments required by the injury to the end that the employee receives comprehensive rehabilitation services including medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled employee to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, ~~functional capacities~~ medical limitations, age, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the employee as soon as practical and as nearly as possible to ~~ninety percent~~ sixty-six and two-thirds ~~of~~ ninety percent of average weekly earnings at the time of injury, or to ~~sixty-six and two-thirds~~ ninety percent of average weekly wage in this state on the date the rehabilitation consultant's report is issued under section 65-05.1-02.1, whichever is less. The purpose of defining substantial gainful employment in terms of earnings is to determine the first appropriate priority option under subsection 4 which meets this income test set out above.
4. The first appropriate option among the following, calculated to return the employee to substantial gainful employment, must be chosen for the employee:

- a. Return to the same position.
 - b. ~~Return to the same occupation, any employer.~~
 - e. Return to a modified position.
 - d. ~~Return to a modified or alternative occupation, any employer.~~
 - e. c. Return to ~~an~~ a related occupation in the local job pool which is suited to the employee's education, experience, and marketable skills.
 - f. d. Return to ~~an~~ a related occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
 - g. e. On-the-job training suited to return the employee to the statewide job pool.
 - h. f. Short-term retraining within North Dakota of fifty-two weeks or less suited to return the employee to the statewide job pool.
 - i. g. Long-term retraining within North Dakota of ~~one~~ two hundred ~~four~~ eight weeks or less suited to return the employee to the statewide job pool.
 - j. h. Self-employment.
5. ~~If an option listed in subdivision a, b, c, d, e, f, or g of subsection 4 has been identified as appropriate for an injured employee and the employee is initially released by the doctor to return to part-time employment with the reasonable expectation of attaining full-time employment, the bureau shall pay temporary partial disability benefits under section 65-05-10 until the doctor determines the employee is medically capable of full-time employment.~~
6. a. If the vocational consultant concludes that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and will not return the employee to the lesser of ~~sixty-six and two-thirds~~ ninety percent of the average weekly wage, or ~~ninety percent~~ of the employee's preinjury earnings, the employee shall continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:
- (1) a. That meets the employee's ~~functional capacities~~ medical limitations;
 - (2) b. For which the employee meets the qualifications to compete; and
 - (3) c. That will reasonably result in retained earnings capacity equivalent to the lesser of ~~ninety percent~~ of the employee's preinjury earnings or ~~the state's current hourly minimum wage~~ sixty-six and two-thirds percent of the average weekly wage in the state on the date the rehabilitation consultant's report is issued. ~~If an employee is initially released to part-time employment by the doctor, the income test defined under this paragraph must be waived provided there is a reasonable expectation that the employee will return to full-time~~

~~employment meeting the income test previously defined under this paragraph.~~

- ~~b.~~ Under section 65-05-10, the bureau shall award partial disability based on retained earnings capacity calculated under this section.
- ~~7.~~ 6. ~~The~~ By agreement between the bureau and the employee, the income test in subsection 3 ~~must~~ and the priority options in subsection 4 may be waived ~~when an employer offers the employee a return to work option at a wage lower than the income test as defined under subsection 3 or when the bureau and the employee agree to waive the income test and the priority options.~~
- ~~8.~~ 7. Vocational rehabilitation services may be initiated by:
- a. The bureau on its own motion; or
 - b. The bureau or the employer if proof exists:
 - (1) That the employee has reached maximum medical recovery;
 - (2) That the employee is not working and is not voluntarily retired or removed from the labor force; and
 - (3) That the employee has made good faith efforts to seek, obtain, and retain employment.
- ~~9.~~ 8. Chapter 50-06.1 does not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.

SECTION 22. AMENDMENT. Section 65-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-04. Injured employee responsibility.

1. The injured employee shall seek, obtain, and retain reasonable and substantial employment to reduce the period of temporary disability to a minimum. The employee has the burden of establishing that the employee has met this responsibility.
2. If the injured employee is unable to obtain substantial employment as a direct result of injury, the employee shall promptly notify the bureau under subdivision b of subsection 7 of section 65-05.1-01.
3. The injured employee shall be available for testing under subsection 6 or 7 of section 65-05.1-02, and for any further examinations and testing as may be prescribed by the bureau to determine whether or not a program of rehabilitation is necessary. ~~The injured employee also shall participate in remedial or other educational services when those services are determined to be necessary by the bureau or the vocational consultant. If the employee is noncompliant with this subsection, the bureau shall suspend benefits during the period of noncompliance.~~
4. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same; or modified; ~~or alternative occupation position,~~ or return to ~~an~~ related occupation that is suited to the

employee's education, experience, and marketable skills, or on-the-job training, the employee is responsible to make a good faith work trial or work search. If the employee fails to perform a good faith work trial or work search, the finding of nondisability or partial disability is res judicata, and the bureau may not reinstate temporary total disability benefits or recalculate an award of partial disability benefits in the absence of a significant change in medical condition attributable to the work injury. The bureau shall recalculate the partial disability award, however, if the employee returns, in good faith to gainful employment. If the employee meets the burden of proving that the employee made a good faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the bureau shall reevaluate the employee's vocational rehabilitation claim. ~~A good faith work search that does not result in placement is not, in itself, sufficient grounds to prove the work injury caused the inability to acquire gainful employment. The employee shall show that the injury significantly impacts the employee's ability to successfully compete for gainful employment in that the injury leads employers to favor those without limitations over the employee.~~

5. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is short-term or long-term training, the employee shall cooperate with the necessary testing to determine whether the proposed training program meets the employee's medical limitations and aptitudes. The employee shall attend a qualified rehabilitation training program when ordered by the bureau. A qualified training program is a rehabilitation plan that meets the criteria of this title, is the approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 6 of section 65-05.1-01, and commences within a reasonable period of time such as the next quarter or semester. The bureau and the employee, by agreement, may waive the income test applicable under this subsection.
6. If, without good cause, the injured employee fails to perform a good faith work trial in a return to the same; or modified; or alternative occupation position, or in an on-the-job training program, or fails to make a good faith work search in return to work utilizing the employee's transferable skills, the employee is in noncompliance with vocational rehabilitation. ~~If, without good cause, the injured employee fails to attend specific vocational testing, remedial, or other vocational services determined necessary by the bureau or the rehabilitation consultant, the employee is in noncompliance with vocational rehabilitation.~~ If, without good cause, the injured employee fails to attend a scheduled medical or vocational assessment, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee is in noncompliance with vocational rehabilitation. If, without good cause, the employee discontinues a job the employee is performing, or a training program in which the employee is enrolled, the employee is in noncompliance with vocational rehabilitation. ~~If at any time the employee is noncompliant without good cause the~~ employee establishes a pattern of noncooperation as heretofore described, involving two or more incidents of noncooperation, subsequent efforts by the employee to come into compliance with vocational rehabilitation are may not considered be deemed successful compliance until the employee has successfully returned to the job or training program for a period of sixty days. In all cases of

noncompliance by the employee, the bureau, by administrative order, shall discontinue lost-time benefits. If, after the bureau order becomes final, the period of noncompliance continues for sixty days, ~~or a second instance of noncompliance occurs without good cause~~, the bureau has no further jurisdiction in awarding any further temporary total disability, temporary partial disability, permanent total disability, or vocational rehabilitation benefits.

SECTION 23. AMENDMENT. Subsection 1 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Within sixty days of receipt of the final vocational consultant's report, the bureau shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to lost-time and vocational rehabilitation services. The bureau shall establish a reasonable hourly rate to compensate an employee's attorney for legal service in connection with vocational rehabilitation prior to the issuance of an administrative order.

In addition, the bureau shall establish a reasonable hourly rate to compensate an employee's vocational rehabilitation expert when the employee prevails in a dispute over the administrative order.

SECTION 24. AMENDMENT. Section 65-10-01 of the North Dakota Century Code is amended and reenacted as follows:

65-10-01. Appeal from decision of bureau. If the final action of the bureau denies the right of the claimant to participate at all in the fund on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claim, or if the bureau allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted or of the county in which the claimant resides. An employer may also appeal a decision of the bureau in any injury case in the manner prescribed in this section. An appeal involving injuries allegedly covered by insurance provided under contracts with extraterritorial coverage shall be triable in the district court of Burleigh County. Any appeal under this section shall be taken in the manner provided in chapter 28-32. Any appeal to the district court shall be heard on the record, transmitted from the bureau, and, in the discretion of the court, additional evidence may be presented pertaining to the questions of law involved in the appeal. The bureau shall prepare the certified record without charge to any other party to the appeal.

SECTION 25. AMENDMENT. Section 65-10-03 of the North Dakota Century Code is amended and reenacted as follows:

65-10-03. Cost of appeal and attorney's fees fixed by the bureau. The bureau shall pay the cost of the judicial appeal and the attorney's fee for an injured employee's attorney when the employee prevails. The employee is deemed to have prevailed when any part of the decision of the bureau is reversed or the claim is remanded to the bureau for further administrative proceedings.

In an appeal by the bureau or an employer to the district court or the North Dakota supreme court, the claimant shall recover costs and attorney's fees incurred in responding to the appeal. The bureau shall pay the attorney's fee from the

bureau general fund. The amount of the attorney's fee must be determined in the same manner as prescribed by the bureau for attorney fees, and the amount of attorney's fee already allowed in administrative proceedings before the bureau must be taken into consideration. ~~The bureau shall establish, pursuant to section 65-02-08, a maximum fee to be paid in an appeal. The maximum fee may be exceeded upon application of the injured employee and approval of the court, upon a finding that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex.~~ Notwithstanding the foregoing, the bureau is liable for its costs on appeal if the decision of the bureau is affirmed.

SECTION 26. REPEAL. Section 65-02-19 of the North Dakota Century Code, dealing with workers compensation administrative services, is repealed.

SECTION 27. REPEAL. Section 65-02-20 of the North Dakota Century Code, dealing with the workers compensation managed care program, is repealed.

SECTION 28. REPEAL. Section 65-05-12.2 of the North Dakota Century Code, dealing with permanent impairments, is repealed.

SECTION 29. REPEAL. Section 65-01-15 of the 1993 Supplement to the North Dakota Century Code, dealing with documentation of tobacco use, is repealed.

SECTION 30. REPEAL. Section 65-05-01.2 of the North Dakota Century Code, dealing with notice of work injuries, is repealed.

SECTION 31. REPEAL. Section 65-05-01.3 of the North Dakota Century Code, dealing with failure to notify, is repealed.

SECTION 32. REPEAL. Section 65-05-01.4 of the North Dakota Century Code, dealing with employer's report of injury, is repealed.

SECTION 33. REPEAL. Section 65-05-01.5 of the North Dakota Century Code, dealing with notice of claim filing requirements, is repealed.

SECTION 34. REPEAL. Subsection 5 of section 65-05-28 of the North Dakota Century Code, dealing with aggravation of work injuries, is repealed.

Disapproved June 11, 1996

28,071 to 79,543

NOTE: This was measure No. 7 on the primary election ballot.

CHAPTER 563

VETERANS' HOMES

An initiated measure to provide authority for the administrative committee on veterans' affairs to obtain loans from the veterans' postwar trust fund for a western veterans home and cedar grove veterans home and to control the cedar grove building module at the developmental center; to amend and reenact section 25-04-01 of the North Dakota Century Code, relating to the developmental center at westwood park, Grafton; and to provide for an exception to the moratorium on expansion of basic or long-term care bed capacity and funding for a veterans home at Stanley and a veterans home at Grafton.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AUTHORITY TO OBTAIN LOAN - WESTERN VETERANS HOME - CONDITIONS. The administrative committee on veterans' affairs may obtain a loan from the veterans' postwar trust fund to meet matching requirements for receiving federal, state or other funds, and use the proceeds to construct a basic or long-term care facility at Stanley, North Dakota, to be known as the western veterans home. State general funds may be used until federal funds are obtained under 38 U.S.C. 5033. These funds may not exceed three million dollars. The loan authorized by this section may not exceed one million five hundred thousand dollars. The loan obtained under this section must be repaid solely from room rate collections from residents of the western veterans home. The residency requirements for admission to the veterans' home in section 37-15-10 do not apply to admissions to the western veterans home. The term of a loan under this section may not exceed thirty years.

SECTION 2. AUTHORITY TO OBTAIN LOAN - CEDAR GROVE VETERANS HOME - CONDITIONS. The administrative committee on veterans' affairs may obtain a loan from the veterans' postwar trust fund to meet matching requirements for receiving federal funds, and may use the proceeds to renovate or make alterations to a basic or long-term care veterans' home, to be located in the cedar grove building at the developmental center at westwood park, Grafton. The loan authorized by this section may not exceed one hundred thousand dollars. The loan must be used solely to meet matching requirements for obtaining federal funds under 38 U.S.C. 5033, and the authority to apply for the loan is conditional upon receiving a grant of such federal funds for the use of the cedar grove veterans home. The loan obtained under this section must be repaid solely from room rate collections from residents of the cedar grove veterans home. Private funds and other funds may be used to renovate the cedar grove facility. The residency requirements for admission to the veterans' home in section 37-15-10 do not apply to admissions to the cedar grove veterans home. Any evidences of indebtedness issued under this section may not become a general obligation of the state of North Dakota. The term of a loan under this section may not exceed thirty years.

SECTION 3. AMENDMENT. Section 25-04-01 of the North Dakota Century Code is amended and reenacted as follows:

25-04-01. Developmental center at westwood park, Grafton - Name - Administration and control. A facility for developmentally disabled persons must be maintained at or near the city of Grafton in Walsh County. The facility must also

be available for a person who is determined to be a person who may benefit from the facility's services. The facility must be known and designated as the developmental center at westwood park, Grafton. The department of human services has administrative authority and control of the developmental center at westwood park, Grafton, and westwood park, except as otherwise provided in section 4 of this Act.

SECTION 4. CEDAR GROVE BUILDING MODULE AT DEVELOPMENTAL CENTER - ADMINISTRATION AND CONTROL. The administrative committee on veterans' affairs has administrative authority and control of the cedar grove building module located at the developmental center at westwood park, Grafton, to be used as a state basic or long-term care veterans' home. In administration of the cedar grove building module, the administrative committee on veterans' affairs may purchase services and personal property from the developmental center at westwood park, Grafton under contract with the department of human services.

SECTION 5. MORATORIUM ON EXPANSION OF BASIC OR LONG-TERM CARE BED CAPACITY - EXEMPTION. The moratorium on expansion of basic or long-term care bed capacity under sections 2 and 3 of chapter 254 of the 1995 Session Laws does not apply to the basic or long-term care facilities for veterans established under sections 1 and 2.

SECTION 6. OPERATING FUNDS FOR THE VETERANS HOME AT STANLEY AND THE VETERANS HOME AT GRAFTON. The North Dakota legislature shall provide funding for the operations of the veterans home at Stanley and the veterans home at Grafton. Funding shall be available upon approval of the veterans home by the United States veterans administration.

Disapproved June 11, 1996

46,528 to 64,284

NOTE: This was measure No. 8 on the primary election ballot.

CHAPTER 564

TERM LIMITS

An initiated measure to create and enact section 4.1 of article IV, a new section to article V, and sections 27, 28, 29, 30, 31, 32, and 33 of article XI of the Constitution of North Dakota, relating to state legislative, state executive branch, and congressional term limits; and to provide for transition.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. Sections 27 through 33 of article XI of the Constitution of North Dakota are created and enacted as follows:

Section 27. Preamble.

1. The people of the state of North Dakota want to amend the United States Constitution to establish term limits on Congress that will ensure representation in Congress by true citizen lawmakers. The President of the United States is limited by the twenty-second amendment to two terms in office. The governors in forty states are limited to two or fewer terms in office. Voters have established term limits for over two thousand state legislators as well as over seventeen thousand local officials across the country.
2. Nevertheless, Congress has ignored our desire for term limits, not only by proposing excessively long terms for its own members, but also by utterly refusing to pass an amendment for genuine congressional term limits. Congress has a clear conflict of interest in considering a term limits amendment to the United States Constitution. A majority of both republicans and democrats in the one hundred fourth Congress voted against a constitutional amendment containing the term limits passed by the people of North Dakota by a wide margin in 1992.
3. The people, not Congress, should set term limits. Therefore, by this initiated amendment, we establish as the official position of the people of North Dakota that our elected officials should enact by constitutional amendment congressional term limits of three terms in the United States house of representatives and two terms in the United States senate.
4. The career politicians dominating Congress have a conflict of interest that prevents Congress from being what the founders intended -- the branch of government closest to the people. They have voted to dramatically raise their own pay. They have provided lavish million-dollar pensions for themselves. They have granted themselves numerous other privileges at the expense of the people. Most importantly, members of Congress have enriched themselves while running up huge deficits to support their spending. They have put the government nearly five trillion dollars in debt, gravely threatening the future of our children and grandchildren.
5. The corruption and appearance of corruption brought about by political careerism is destructive to the proper functioning of the first branch of our representative government. Congress has grown increasingly distant

from the people of the states. The people have the sovereign right and a compelling interest in creating a citizen Congress that will more effectively protect our freedom and prosperity. This interest and right may not effectively be served in any way other than that proposed by this initiative.

6. Therefore, we state our intention on behalf of the people of North Dakota, that this amendment lead to the adoption of the following amendment to the Constitution of the United States:

CONGRESSIONAL TERM LIMITS AMENDMENT

Section A. No person shall serve in the office of United States representative for more than three terms, but upon ratification no person who has held the office or who then holds the office shall serve for more than two additional terms.

Section B. No person shall serve in the office of United States senator for more than two terms, but upon ratification no person who has held the office or who then holds the office shall serve for more than one additional terms.

Section C. This article shall have no time limit within which it must be ratified to become operative upon the ratification by the legislatures of three-fourths of the several states.

7. Therefore, we, the people of North Dakota, have chosen to amend the state constitution to inform voters about incumbent and nonincumbent federal candidates' support for the congressional terms limits amendment described in subsection 6.

Section 28. Voter instruction on term limits for members of Congress.

1. We, the people of North Dakota, instruct each member of our congressional delegation to use all of that member's delegated powers to pass the congressional term limits amendment described in section 27(6) of this article.
2. Each primary and general election ballot must have displayed the information "DISREGARDED VOTER INSTRUCTION ON TERM LIMITS", in type at least as large and prominent as the name, next to the name of each United States senator and each United States representative who did any of the following acts:
 - a. Failed to vote in favor of the proposed congressional term limits amendment, described in section 27(6) of this article, when brought to a vote.
 - b. Failed to second the proposed congressional term limits amendment, described in section 27(6) of this article, if it lacks for a second before any proceeding of the legislative body.
 - c. Failed to proposed, or otherwise bring to a vote of the full legislative body, the proposed congressional term limits amendment, described in section 27(6) of this article, if it otherwise lacks a

- legislator who so proposes or brings it to a vote of the full legislative body.
- d. Failed to vote in favor of all votes bringing the proposed congressional term limits amendment, described in section 27(6) of this article, before any committee or subcommittee of the legislative body on which the member serves.
 - e. Failed to reject any attempt to delay, table, or otherwise prevent a vote by the full legislative body, of the proposed congressional term limits amendment, as described in section 27(6) of this article.
 - f. Failed to vote against any proposed constitutional amendment that would establish term limits longer than those in the proposed congressional term limits amendment, described in section 27(6) of this article.
 - g. Sponsored or cosponsored any proposed constitutional amendment that would establish term limits longer than those in the proposed congressional term limits amendment, described in section 27(6) of this article.
 - h. Failed to ensure that all votes on the proposed congressional term limits amendment, described in section 27(6) of this article, are recorded and made available to the public.
3. Publication of the ballot information described in subsection 2 is not required if the proposed congressional term limits amendment, described in section 27(6) of this article, is before the states for ratification or has become part of the United States Constitution.

Section 29. Voter instruction on term limits for nonincumbent candidates for Congress.

1. Each nonincumbent candidate for United States senator or United States representative may take the "term limits" pledge described in subsection 3 each time the individual is a candidate for either office. If such a candidate declines to the pledge, there must be displayed, on each primary and general election ballot, the information "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS", in type at least as large and prominent as the name, next to the name of candidate who declined to take the pledge.
2. The "term limits" pledge must be offered to each nonincumbent candidate for United States senator or United States representative at each primary and general election until the congressional term limits amendment described in section 27(6) of this article becomes part of the United States Constitution.
3. The "term limits" pledge to be offered to each nonincumbent candidate for United States senator or United States representative is as follows:

I support term limits and pledge to use all my legislative powers to enact the proposed constitutional amendment described in section 27(6) of this article. If enacted, I pledge to vote in such a way that the information

"DISREGARDED VOTER INSTRUCTION ON TERM LIMITS" will not appear next to my name.

Signature of candidate

Section 30. Duties of secretary of state.

1. The secretary of state shall make an accurate determination as to whether each candidate for the federal legislature is required to have displayed next to the candidates name the information "DISREGARDED VOTER INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS."
2. In making the determination required under subsection 1, the secretary of state shall consider timely submitted public comments before doing so. The secretary may rely on comments and information submitted by the candidates in making the determination.
3. With respect to incumbent members of Congress, the secretary of state shall make the determination in a fashion necessary to ensure the orderly printing of primary and general election ballots, with allowance made for all legal action provided in this section, and must be based on the action each member of Congress took during the member's current term of office and any action taken in any concluded term, if that action was taken after the determination and declaration by the secretary of state for a previous election.
4. With respect to nonincumbent candidates for Congress, the secretary of state shall make the determination required in subsection 1 no later than five business days after the deadline for filing for the office.
5. A party aggrieved by the determination of the secretary of state under subsection 1 may appeal that determination to the North Dakota supreme court as a matter of original jurisdiction. The appeal must be filed with the supreme court within five business days of the secretary's designation or is deemed waived.
6. If the determination of the secretary of state was to not include beside the candidate's name the information described in subsection 1, the aggrieved party is any elector of this state and the burden of persuasion is on the secretary of state by a standard of clear and convincing evidence.
7. If the determination of the secretary of state was to include beside the candidate's name the information described in subsection 1, the aggrieved party is the candidate and the burden of persuasion is on the candidate by a standard of clear and convincing evidence.
8. The supreme court shall give prompt attention to each appeal filed under subsection 6 and issue a decision within sixty days. The supreme court shall give prompt attention to each appeal filed under subsection 7 and issue a decision at least sixty-one days before the election.

Section 31. Exclusive jurisdiction of supreme court. Any legal challenge to this section of this initiated amendment must be filed as a matter of exclusive original jurisdiction with the supreme court of North Dakota.

Section 32. Severability. If any portion, clause, or phrase of sections 27 through 33 of this article is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses, and phrases are not affected, but remain in full force and effect.

Section 33. Contingent automatic repeal. If the United States Constitution is amended to include a term limits amendment such as described in section 27(6) of this article, sections 28 through 33 of this article are repealed, effective ninety days after the amendment to the United States Constitution is certified to have taken effect in accordance with federal law.

SECTION 2. Section 4.1 of article IV of the Constitution of North Dakota is created and enacted as follows:

Section 4.1. Number of terms of members. If the term of office of a member is two years, a person may not serve for more than three terms in that office. If the term of office of a member is four years, a person may not serve for more than two terms in that office. Service as a representative does not disqualify a person from serving as a senator, and service as a senator does not disqualify a person from serving as a representative.

SECTION 3. A new section to article V (as it existed on January 1, 1996, or as it was amended in 1996, if that case applies) of the Constitution of North Dakota is created and enacted as follows:

Term limits on executive officers - Retention of elected status.

1. A person may not serve in any office established in this article for more than the following number of terms:
 - a. If the term of office is more than four years, one term.
 - b. If the term of office is not more than four years, two terms.
2. Service in another office established in this article does not disqualify a person from serving in another office so established.
3. If an office established in this article was an elective office on January 1, 1996, that status may not be changed except by a further amendment to this constitution voted on by the people after December 31, 1996. Any contrary amendment to this constitution approved in 1996 is expressly repealed to that extent.

SECTION 4. Transitional provisions.

1. Sections 2 and 3 of this measure do not affect the right of any person, holding an elected office when this term limits measure was submitted to the secretary of state for his approval, from serving out the rest of the term to which the person had been elected. Past service in an office does not disqualify a person from running for that office at the election at which this measure is submitted to the people and from serving out the term to which the person is then elected. Service in an office in any

term that began before this term limits measure was submitted to the secretary of state for his approval is not included in determining eligibility to run for future terms.

2. This section is repealed, without further action of the people, at the expiration of the term of office during which occurs the death of the last surviving person who, when this measure was submitted to the secretary of state for his approval, had at any time held an office described in this measure.

Disapproved November 5, 1996

116,241 to 129,187

NOTE: This was measure No. 5 on the general election ballot.

CHAPTER 565

CONSTITUTIONAL CONVENTION

An initiated measure to create and enact sections 11 through 14 of article III of the Constitution of North Dakota, relating to a petition to the Congress of the United States to call a constitutional convention, in accordance with article V of the Constitution of the United States, to establish term limits for members of Congress; and to amend and reenact section 7 of article III of the Constitution of the state of North Dakota, relating to jurisdiction of the North Dakota Supreme Court.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. Section 7 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 7. Judicial proceedings.

1. All decisions of the ~~secretary~~ Secretary of state State in the petition process are subject to review by the ~~supreme court~~ Supreme Court in the exercise of its original jurisdiction. If his decision is being reviewed at the time the ballot is prepared, he shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon.
2. The Supreme Court has original and exclusive jurisdiction over any challenge to this initiative or its enactments. However, it has no jurisdiction to find that this initiative is in conflict with the constitution of this state.

SECTION 2. Section 11 to article III of the Constitution of North Dakota is created and enacted as follows:

11. Statement of people's purpose for section 11 through 14.

1. The people of this state desire to amend the United States Constitution to establish term limits on Congress, thereby ensuring representation in Congress by true citizen lawmakers. The President of the United States is limited by the twenty-second amendment to two terms in office. Governors in forty states are limited to two terms or less. Voters have established term limits for over two thousand state legislators as well as over seventeen thousand local officials across the country.
2. Nevertheless, Congress has ignored our desire for term limits, not only by proposing excessively long terms for its own members, but also by utterly refusing to pass an amendment for genuine congressional term limits. Congress has a clear conflict of interest in proposing a term limits amendment to the United States Constitution.
3. The people, not Congress, should set term limits. We establish as the official position of the people of this state that congressional term limits shall be no longer than three terms in the United States house of representatives, nor longer than two terms in the United States senate.

4. The career politicians dominating Congress have a conflict of interest that prevents Congress from being what the founders intended - the branch of government closest to the people. The politicians have refused to heed the will of the people for term limits. They have voted to dramatically raise their own pay, provided lavish million-dollar pensions for themselves, and granted themselves numerous other privileges at the expense of the people. Most importantly, members of Congress have enriched themselves while running up huge deficits to support their spending. They have put the government nearly five trillion dollars in debt, gravely threatening the future of our children and grandchildren.
5. The abuse of power, corruption, and appearance of corruption, brought about by political careerism is destructive to the proper functioning of the first branch of our representative government. Congress has grown increasingly distant from the people of the states. We have the sovereign right and a compelling interest in creating a citizen Congress that will more effectively protect our freedom and prosperity. This interest and right may not effectively be served in any way other than that proposed by this initiative.
6. The foresight of our founders provided a path around congressional self-interest under article V of the United States Constitution. Under article V, the people may seek a convention to amend the Constitution when the legislatures of two-thirds, or thirty-four, states apply for such a convention. Amendments proposed by that convention become part of the Constitution upon the ratification of three-fourths, or thirty-eight states. Therefore, exercising the powers we reserved to ourselves under section 1 of this article, we amend our state constitution to state our desire that this application on behalf of the people and legislative assembly of North Dakota, leads to the adoption of the following constitutional amendment:

CONGRESSIONAL TERM LIMITS AMENDMENT

Section A. No person shall serve in the office of United States representative for more than three terms, but upon ratification no person who has held the office of United States representative or who then holds office shall serve in the office for more than two additional terms.

Section B. No person shall serve in the office of United States senator for more than two terms, but upon ratification no person who has held the office of United States senator or who holds office shall serve in the office for more than on additional term.

Section C. This article shall have no time limit within which it must be ratified to become operative upon the ratification by the legislatures of three-fourths of the several states.

SECTION 3. Section 12 to article III of the Constitution of North Dakota is created and enacted as follows:

12. Application to Congress. In the exercise of the power we reserved to ourselves under section 1 of this article, and for this purpose serving as the legislature of this state, as described in article IV of this Constitution and in article V of the Constitution of the United States, we the people submit the following application to the Congress of the United States:

Application: We, the people of North Dakota, due to our desire to establish term limits on the Congress of the United States, acting as the legislature of the state of North Dakota, exercising our power under our constitution and under article V of the Constitution of the United States, apply to Congress to call an article V convention.

SECTION 4. Section 13 to article III of the Constitution of North Dakota is created and enacted as follows:

13. Duty of the Secretary of State. Upon approval of this initiative, the Secretary of State shall transmit an official copy of this initiative, and the application contained in it, to the Secretary of State of the United States, the clerk of the United States house of representatives, the speaker of the house, the clerk of the United States senate, the president pro tempore of the senate, and to the legislatures of the other forty-nine states.

SECTION 5. Section 14 to article III of the Constitution of North Dakota is created and enacted to read as follows:

14. Dissolution. Having applied to Congress in the exercise of our power under the constitutions of this state and of the United States, we dissolve the legislature composed of the voters, continuing to reserve to ourselves the power we reserved under section 1 of this article. The action of the people of North Dakota in acting as the legislature does not otherwise affect any other law or part of this constitution.

Disapproved November 5, 1996

105,878 to 132,348

NOTE: This was measure No. 6 on the general election ballot.