

JOURNAL OF THE SENATE

Sixty-first Legislative Assembly

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Bismarck, January 21, 2009

The Senate convened at 1:00 p.m., with President Dalrymple presiding.

The prayer was offered by Pastor Bill Bradley, Evangelical Congregational Church, Glen Ullin.

The roll was called and all members were present except Senators Grindberg, Holmberg, Krauter, Taylor, and Warner.

A quorum was declared by the President.

MOTION

SEN. CHRISTMANN MOVED that SB 2217 be returned to the Senate floor from the **Transportation Committee** and be rereferred to the **Education Committee**, which motion prevailed.

MOTION

SEN. CHRISTMANN MOVED that SB 2306 be returned to the Senate floor from the **Industry, Business and Labor Committee** and be rereferred to the **Judiciary Committee**, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2134: A BILL for an Act to amend and reenact sections 12-48-03.1 and 12-48-03.2 of the North Dakota Century Code, relating to prison industries.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

YEAS: Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Triplett; Wanzek; Wardner

ABSENT AND NOT VOTING: Grindberg; Krauter; Taylor; Warner

Engrossed SB 2134 passed and the title was agreed to.

SECOND READING OF SENATE BILL

SB 2135: A BILL for an Act to amend and reenact section 54-11-01 of the North Dakota Century Code, relating to the duties and powers of the state treasurer.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

YEAS: Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjem; Triplett; Wanzek; Wardner

ABSENT AND NOT VOTING: Grindberg; Krauter; Taylor; Warner

Engrossed SB 2135 passed and the title was agreed to.

SECOND READING OF SENATE BILL

SB 2207: A BILL for an Act to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to the assignment of dental insurance benefits to a dentist or oral surgeon.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 10 YEAS, 32 NAYS, 0 EXCUSED, 5 ABSENT AND NOT VOTING.

YEAS: Fiebigger; Hogue; Holmberg; Mathern; Nething; O'Connell; Olafson; Potter; Schneider; Seymour

NAYS: Anderson; Andrist; Bakke; Behm; Bowman; Cook; Dever; Dotzenrod; Erbele; Fischer; Flakoll; Freborg; Heckaman; Horne; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Miller; Nelson; Nodland; Oehlke; Pomeroy; Robinson; Stenehjerm; Triplett; Wanzek; Wardner

ABSENT AND NOT VOTING: Christmann; Grindberg; Krauter; Taylor; Warner

SB 2207 lost.

SECOND READING OF SENATE BILL

SB 2114: A BILL for an Act to create and enact a new subsection to section 12-44.1-21 of the North Dakota Century Code, relating to wireless electronic devices on or within correctional facilities; to amend and reenact section 12-44.1-06 and subsection 7 of section 12-44.1-21 of the North Dakota Century Code, relating to grades of correctional facilities and the definition of contraband; to provide a penalty; and to declare an emergency.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 43 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

YEAS: Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Dotzenrod; Erbele; Fiebigger; Fischer; Flakoll; Freborg; Heckaman; Hogue; Holmberg; Horne; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Miller; Nelson; Nething; Nodland; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Schneider; Seymour; Stenehjerm; Triplett; Wanzek; Wardner

ABSENT AND NOT VOTING: Grindberg; Krauter; Taylor; Warner

SB 2114 passed, the title was agreed to, and the emergency clause was declared carried.

MESSAGE TO THE HOUSE FROM THE SENATE (FRAN A. GRONBERG, SECRETARY)

MR. SPEAKER: The Senate has passed and your favorable consideration is requested on: SB 2026, SB 2079, SB 2081, SB 2104, SB 2120, SB 2146, SB 2156, SB 2159.

MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)

MR. PRESIDENT: The House has passed and your favorable consideration is requested on: HB 1099, HB 1136, HB 1143, HB 1166, HB 1168.

MOTION

SEN. CHRISTMANN MOVED that the absent members be excused, which motion prevailed.

MOTION

SEN. CHRISTMANN MOVED that the Senate be on the Fourth, Fifth, Ninth, and Thirteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 1:00 p.m., Thursday, January 22, 2009, which motion prevailed.

REPORT OF STANDING COMMITTEE

SB 2029: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2029 was placed on the Sixth order on the calendar.

Page 1, line 7, overstrike "June 30" and insert immediately thereafter "August 1"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2036: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2036 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2055: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2055 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2058: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2058 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2071: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2071 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 65-01-03 of the North Dakota Century Code, relating to the workers' compensation presumption of employment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

65-01-03. ~~Person~~ Individual performing service for remuneration presumed an employee.

1. Each ~~person~~ individual who performs services for another for remuneration is presumed to be an employee of the person for ~~whom~~ which the services are performed, unless it is proven that the ~~person~~ individual is an independent contractor under the "common law" test. The person ~~who~~ that asserts that ~~a person~~ an individual is an independent contractor under the "common law" test, rather than an employee, has the burden of proving that fact.
2. In the case of commercial motor vehicles whose gross vehicle weight rating is more than twenty-six thousand pounds [11793.40 kilograms], with an individual operating a licensed truck or licensed tractor for a motor carrier of property, the presumption in subsection 1 is successfully rebutted if all of the following factors are present:
 - a. The individual owns, leases, or enters a purchase agreement to purchase a truck or tractor. The lease or purchase agreement must represent reasonably the value of the lease or purchase of the truck or tractor. The lease or purchase agreement may be with the carrier of property. An unreasonable lease or purchase agreement with a third party, unaffiliated with the carrier, does not affect this factor.
 - b. The individual is responsible for the maintenance and repair of the truck or tractor.
 - c. The individual bears the principal burden of operating costs, including fuel, supplies, vehicle insurance, and personal expenses.
 - d. The individual is responsible for supplying the necessary personal services to operate the truck or tractor.

- e. Income taxes are not withheld from the individual's compensation.
- f. The individual generally determines the details and means of performing the services, in conformance with statutory or regulatory requirements, operating procedures of the carrier, and specifications of the shipper.
- g. The individual enters a written agreement with the motor carrier outlining the nature of the relationship."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2087: Education Committee (Sen. Freborg, Chairman) recommends **DO PASS** (4 YEAS, 1 NAY, ABSENT AND NOT VOTING). SB 2087 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2110: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2110 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2169: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2169 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2172: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2172 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2181: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2181 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2190: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2190 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2213: Education Committee (Sen. Freborg, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2213 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2215: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2215 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2220: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2220 was placed on the Eleventh order on the calendar.

FIRST READING OF SENATE BILLS

Sens. Robinson, Heckaman, Oehlke and Rep. Metcalf introduced:

SB 2361: A BILL for an Act to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to property tax exemptions for property renovation costs; and to provide an effective date.

Was read the first time and referred to the **Finance and Taxation Committee**.

Sens. Mathern, Heckaman, Potter and Reps. Conrad, Kaldor, Schneider introduced:

SB 2362: A BILL for an Act to create and enact two new sections to chapter 50-29 of the North Dakota Century Code, relating to a children's health insurance buy-in program to be established by the department of human services and the creation of a children's health insurance program advisory committee; and to amend and reenact section 50-29-04 of

the North Dakota Century Code, relating to eligibility for the children's health insurance program.

Was read the first time and referred to the **Human Services Committee**.

Sens. Behm, Miller, Potter, Wardner and Reps. Griffin, Gruchalla, Uglem introduced:

SB 2364: A BILL for an Act to provide an appropriation to the department of emergency services for providing grants for eligible school districts that have experienced damage or destruction due to a tornado; and to declare an emergency.

Was read the first time and referred to the **Education Committee**.

The Senate stood adjourned pursuant to Senator Christmann's motion.

Fran A. Gronberg, Secretary

