

## LEGISLATION RELATING TO WORKERS' COMPENSATION - 1995 THROUGH 2007

### 1995 ADOPTED BILLS

**House Bill No. 1190** (Representatives Soukup, Skarphol, and Aarsvold; Senators Traynor, Kinnoin, and Robinson) required the Workers Compensation Bureau to establish a workers' compensation fraud unit. The bill also allowed the bureau to 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 misrepresentation of payroll to the bureau by an employer and to review any alleged case of willful filing of a false claim or false statement in relation to a claim.

**House Bill No. 1195** (Representatives Wald and Dalrymple; Senators Mutch and Nething) allowed the Workers Compensation Bureau to establish a pilot program to provide retrospective rating to an employer whose annual workers' compensation premium is \$250,000 or more.

**House Bill No. 1206** (Representatives Wald, Skarphol, Carlson, and Dobrinski; Senators Andrist and Kinnoin) provided that when an employee is involved in an accident while on the job, the employee must take steps to notify immediately the employer that the accident occurred and the general nature of the injury to the employee if apparent. The bill also required an employer to file a first report of notice of injury with the Workers Compensation Bureau within seven days from the date the employer receives the notice of the injury from the employee. The bill provided that if an employee fails to notify an employer of an accident and the general nature of the employee's injury, the Workers Compensation Bureau may consider that failure to notify in determining whether the employee's injury is compensable.

**House Bill No. 1207** (Representatives Wald, Skarphol, Kelsch, and Dobrinski; Senators Andrist and Robinson) required that interest on deferred premiums be charged at the prevailing base rate posted by the Bank of North Dakota plus 2.5 percent. The bill also provided that the interest charged on the deferred premiums must be at least 6 percent per annum.

**House Bill No. 1208** (Representatives Wald, Skarphol, and Bernstein; Senators Kinnoin, B. Stenehjem, and Traynor) provided that the Workers Compensation Bureau will pay attorney's fees only when the injured employee has prevailed in a dispute. The bill also provided that except for in an initial determination of compensability, workers' compensation attorney's fees may not exceed 20 percent of the amount awarded, subject to a maximum fee set by administrative rule. The bill further required that a dispute between the bureau and an injured employee must be resolved by arbitration when the dispute concerns an amount no

greater than \$3,000. The bill applied to a new request for arbitration, hearing, or appeal taken from an administrative order issued after August 1, 1995.

**House Bill No. 1217** (Representatives Wald, Kretschmar, and Carlson; Senators Christmann, Robinson, and Kinnoin) provided that a civil action or civil claim arising under the North Dakota workers' compensation law which is subject to judicial review must be reviewed solely on the merits of the action or claim. The bill also provided that the North Dakota workers' compensation law may not be construed liberally on behalf of any party to the action or claim.

**House Bill No. 1219** (Representative Keiser) provided that the Workers Compensation Bureau, upon recovery of its subrogation interest after a third-party lawsuit must give relief to the employer from the date of injury for the amount of the recovery up to the actual amount expended on a claim charged against the employer's account. The bill provided that if an employee's compensable injury is determined through civil action to have been sustained through the fault or negligence of a third person, or if a settlement has been entered between the employee and a third person through which the third person agrees to compensate the employee for the injury, the Workers Compensation Bureau, upon receipt of its subrogation interest, must credit the account of the employer to the extent of the payment made by the employer to the bureau. The bill became effective for all compensable injuries that occurred after July 31, 1995, and effective for all accounts affected by a third-party recovery received by the bureau after July 31, 1995.

**House Bill No. 1221** (Representatives Wald, Carlson, Delzer, and Froseth; Senators Kinnoin and Teneffos) allowed employers with an approved risk management program to select a preferred provider to treat injured employees. The bill also provided that during the first 60 days after a compensable injury, an employee of an employer who has selected a preferred provider may seek medical treatment only from the preferred provider for the injury.

**House Bill No. 1224** (Representatives Carlson, Koppelman, Kelsch, and Soukup; Senators Kinnoin and Wanzek) removed the provision that if an employee can prove by a preponderance of the evidence, within one year of the denial of benefits based upon impairment caused by the use of alcohol or the illegal use of a controlled substance, that the employee has successfully completed treatment with a licensed addiction facility, the employee's benefits must be reinstated.

**House Bill No. 1225** (Representatives Wald, Keiser, Kelsch, and Kempenich; Senators Mutch and Krebsbach) provided that for workers' compensation purposes, the term "compensable injury" includes

heart-related diseases. The bill also provided that the term "compensable injury" does not include a willfully self-inflicted injury caused by an employee's willful intention to commit suicide.

**House Bill No. 1226** (Representatives Wald, Skarphol, and Froseth; Senators Andrist, Grindberg, and Kelsh) provided an appropriation out of the workers' compensation fund to allow the Workers Compensation Bureau to establish a program of reinsurance. The bill allowed the Workers Compensation Bureau to execute a contract for reinsurance which is binding on the bureau and the reinsurer.

**House Bill No. 1227** (Representatives Wald, Nichols, and Keiser; Senators Mutch, Lee, and Watne) replaced the inactive claim presumption with a closed claim presumption and provided that a claim for workers' compensation benefits is presumed closed if the Workers Compensation Bureau has not paid any benefit or received a demand for the payment of any benefit for a period of four years.

**House Bill No. 1228** (Representatives Wald, Skarphol, and Carlson; Senators Andrist, Kinnoin, and Krebsbach) provided that 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 Workers Compensation Bureau is presumed retired from the labor market. The bill also provided that 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 65 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 bill provided that the Workers Compensation Bureau may not pay permanent total, temporary total, or temporary partial disability benefits, rehabilitation benefits, or supplemental benefits to an employee who is considered retired. The bill applied 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.

**House Bill No. 1250** (Representatives Skarphol, Keiser, Byerly, and Carlson; Senators Andrist and Mutch) required the Workers Compensation Bureau to establish a system of personnel administration for its employees based upon principles and methods to be determined by the bureau, and governing position classification, pay administration, transfer of employees, discipline of employees, and removal of employees.

**House Bill No. 1251** (Representatives Skarphol, Carlson, and Froseth; Senator Andrist) would have allowed the Workers Compensation Bureau to solicit persons to place advertisements within any published information of the Workers Compensation Bureau.

The Governor vetoed the bill and the House sustained the veto.

**House Bill No. 1252** (Representatives Skarphol, Monson, and Carlson; Senators Andrist, Mutch, and Krauter) provided that for workers' compensation purposes the term "compensable injury" does not include a mental injury arising from mental stimulus.

**House Bill No. 1253** (Representatives Wald, Tollefson, Carlson, and Kelsch; Senators Andrist and Kinnoin) provided that an employee who returns to work on a part-time basis must receive temporary partial disability benefits from the Workers Compensation Bureau until a doctor determines that the employee is medically capable of full-time employment.

**House Bill No. 1287** (Representatives Kelsch, Carlson, Mahoney, and Poolman; Senators Krebsbach and Traynor) required a hearing officer designated by the Workers Compensation Bureau to be an individual licensed to practice law in this state. The bill provided that a hearing officer designated by the Workers Compensation Bureau may not maintain an office within the bureau from which the hearing officer conducts daily business.

**House Bill No. 1329** (Representatives Skarphol, Wald, Oban, and Clark; Senators Kinnoin and Robinson) increased penalties for employers who are in default or refuse to comply with the provisions of the North Dakota workers' compensation law. The bill also provided that an officer or director of a corporation, or manager or governor of a limited liability company, or employee of a corporation or limited liability company having 20 percent stock ownership who has control of or supervision over the filing or the responsibility for filing of premium reports or making payments of premiums or reimbursements under the workers' compensation law and who fails to file the reports or to make payments as required is personally liable for premiums and reimbursement. The bill also authorized an injured employee to maintain a civil action against an uninsured employer for damages resulting from injury or death and provided that the bureau is subrogated to the recovery made in the action against the uninsured employer.

**House Bill No. 1366** (Representatives Skarphol, Soukup, and Shide; Senators Grindberg, Robinson, and Tallackson) provided that in seasonal employment, the average weekly wage for purposes of determining workers' compensation benefits is one-fiftieth of the total wages the employee has earned from all occupations during the 12 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.

**House Bill No. 1439** (Representatives Carlson, Kelsch, and Clayburgh; Senators Nalewaja, W. Stenehjelm, and Traynor) allowed the Workers Compensation Bureau to employ attorneys to represent the bureau. The bill required the bureau to pay the salaries and expenses of the attorneys and

provided that the attorneys that represent the bureau must be special assistant attorney's general appointed by the Attorney General.

**Senate Bill No. 2015** (Governor) required that before November 1, 1995, every state agency, institution, and entity employing 25 or more full-time equivalent (FTE) employees must submit to the Workers Compensation Bureau for approval a written risk management program.

**Senate Bill No. 2027** (Governor) provided the appropriation for the Workers Compensation Bureau.

**Senate Bill No. 2085** (Senator Solberg) provided that the presumption that 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, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability, is presumed to have been suffered in the line of duty. The bill provided that 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 10 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 bill provided that 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 more than 10 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. The bill provided that a full-time paid firefighter or law enforcement officer who used tobacco is not eligible for benefits under the presumption unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician that indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years.

**Senate Bill No. 2202** (Workers Compensation Bureau) provided for a minimum eligibility requirement of a total body impairment of 16 percent in order for an injured employee to collect permanent partial impairment benefits. The bill provided that attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. The bill became effective on August 1, 1995, for all permanent impairment awards determined after July 31, 1995, irrespective of the date of injury.

**Senate Bill No. 2280** (Senators Krauter, O'Connell, and Sand; Representatives Aarsvold, Kerzman, and Kunkel) provided that for workers' compensation purposes, the term "employer" includes the clerk, assessor, or any member of the board of supervisors of an organized township, if the individual is not employed by the township in any other capacity.

**Senate Bill No. 2377** (Senators Nalewaja, Goetz, Krebsbach, and Lindaas; Representative Byerly) provided for the establishment of a workers' compensation advisory program to provide assistance to an injured employee, including acting on behalf of an injured employee who is aggrieved by a decision of the Workers Compensation 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.

**Senate Bill No. 2403** (Senators Solberg, Krauter, and Krebsbach; Representatives Austin, Christopherson, and Klein) provided that before the effective date of any premium rate change, the Workers Compensation Bureau must hold a public hearing on the rate change. The bill also prohibited the bureau from amending its experience rating of employers by emergency rulemaking.

**Senate Bill No. 2501** (Senators Andrist, Sand, and Solberg) provided that if an employee undertakes activities, whether or not in the course of employment, which exceed treatment recommendations of the employee's doctor regarding the work injury, and the doctor determines that employee's injury or condition has been aggravated or has worsened as a result of the employee's activities, the Workers Compensation Bureau may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer.

## 1995 FAILED BILLS

**House Bill No. 1028** (Interim Budget Committee on Government Finance; Representatives Carlisle, Boucher, and Gorman; Senators O'Connell, Nalewaja, and Streibel) would have authorized Roughrider Industries to secure workers' compensation coverage for Penitentiary inmates employed in the private sector prison industry enhancement certification program.

**House Bill No. 1414** (Representatives Christenson, Glassheim, Guleson, Mutzenberger, and Wilkie; Senator Holmberg) would have required that an independent medical examination of an injured employee be conducted by a doctor designated by the bureau and the employee's treating doctor.

**House Bill No. 1420** (Representatives Delzer and Grosz) would have required the Workers Compensation Bureau to reinstate a surviving spouse's right to workers' compensation death benefits if the individual to whom the remarried surviving spouse married dies within two years of the marriage.

**House Bill No. 1428** (Representatives Wald, Bernstein, and Carlson; Senators Kinnoin and Mutch) would have changed the Workers Compensation Bureau to the North Dakota Workers Compensation Fund and established a board of directors for the fund.

**House Bill No. 1444** (Representatives Christenson, Grumbo, Guleson, Mahoney, and Mutzenberger; Senator DeMers) would have provided

that for the purposes of temporary total or permanent total disability compensation, if an injured employee would exceed 100 percent of the average weekly wage in the state but for the 100 percent maximum limitation, the benefits must be increased to reflect each increase in the average weekly wage.

**House Bill No. 1445** (Representatives Delmore, Mahoney, and Maragos; Senators Heinrich and Mushik) would have specifically provided for the composition and appointment of the members of the Workers' Compensation Advisory Council.

**House Bill No. 1466** (Representative Oban) would have removed the limitation on civil actions against employers by injured workers.

**House Bill No. 1498** (Representatives Coats and Delmore; Senator Mathern) would have repealed the Social Security retirement benefit offset.

**Senate Bill No. 2387** (Senators O'Connell, Kelsh, and Schobinger; Representatives DeWitz, Gulleon, and Jacobs) would have required the Workers Compensation Bureau to conduct a comprehensive study of employment classifications to determine whether the classification system should be revised and report the results of the study to the Legislative Council at least once during each interim.

**Senate Bill No. 2432** (Senators Krebsbach and Solberg; Representative Austin) would have provided that the rule of construction of the North Dakota Century Code which provides that all provisions are to be construed liberally, with a view to effecting its objects and to promoting justice, does not apply to Title 65.

### 1997 ADOPTED BILLS

**House Bill No. 1026** (Governor) was the appropriation bill for the Workers Compensation Bureau. The bill also provided a continuing appropriation to the workers' compensation fund for loss adjustment expenses, attorney's fees and costs, administrative law judges, court reporters, and other legal expenses. The bill allowed the use of funds available under the Federal Employment Compensation Act liability coverage to satisfy excess workers' compensation liabilities for the Civil Air Patrol workers.

**House Bill No. 1116** (Representative Keiser) required the Workers Compensation Bureau to establish and administer a system of modified workers' compensation coverage for inmates employed with Roughrider Industries. The bill also required the bureau to perform a safety audit of the Roughrider Industries work programs and a performance audit of the program of modified workers' compensation coverage.

**House Bill No. 1227** (Representative Kilzer) allowed the director of the Workers Compensation Bureau to choose not to participate in a claimant's health care malpractice action, waiving the bureau's subrogation interest and obligation to pay attorney's fees or costs related to the action.

**House Bill No. 1260** (Representative Berg; Senator Mutch) changed the definition of "permanent impairment" by no longer considering whether disfigurement diminishes the ability of an employee to obtain employment.

**House Bill No. 1261** (Representative Berg; Senator Mutch) revised the workers' compensation aggravation award procedure followed when a non-work-related injury combines with a work-related injury.

**House Bill No. 1262** (Representative Berg; Senator Mutch) changed the due date of a vocational consultant's report, what constitutes failure to make a good-faith work trial or work search, and the method of calculating the amount of partial disability benefits.

**House Bill No. 1263** (Representative Berg) allowed the exchange of information between the workers' compensation fraud unit and the Attorney General's Bureau of Criminal Investigation and other fraud investigatory agencies. The bill also redefined what acts may lead to penalties and provided amnesty periods may not be offered more than once every 12 months.

**House Bill No. 1264** (Representative Berg; Senator Mutch) provided workers' compensation wage-loss benefits will be suspended if an injured employee is confined in a penal institution for more than 72 hours, broadened the wage-reporting requirement of injured employees to include any work activities regardless of whether wages were received, and increased the burden of proof for injured employees filing for reinstatement. The bill also allowed the bureau to pay preacceptance disability benefits and changed the information required from doctors by requiring a report on the extent of the injured employee's abilities and restrictions.

**House Bill No. 1265** (Representative Berg; Senator Mutch) increased the maximum amount of the workers' compensation remodeling and adaptation allowances available for the catastrophically injured and the circumstances under which those allowances may be paid.

**House Bill No. 1266** (Representative Berg; Senator Mutch) revised the starting point for the statute of limitations applicable to filing of workers' compensation claims and provided a penalty for an employer that willfully prevents an employee from filing a claim.

**House Bill No. 1268** (Representative Berg; Senator Mutch) required the Workers Compensation Bureau to adopt administrative rules setting the costs payable and the maximum allowed costs to compensate an injured employee's attorney. The bill also limited when an injured employee's attorney is eligible to have attorney's fees paid by the bureau and provided when attorney's fees may exceed the maximum set by law.

**House Bill No. 1269** (Representative Berg; Senator Mutch) created, amended, relocated, and deleted a variety of definitions applicable to the workers' compensation title. The bill provided failure

of an employee to take a drug or alcohol test may result in forfeiture of workers' compensation benefits and required the Workers Compensation Bureau to study the wage-loss benefits structure.

**House Bill No. 1270** (Representative Berg; Senator Mutch) replaced the law addressing informal decisions of the Workers Compensation Bureau with a procedure to be followed in claims for benefits, including requests for reconsideration and rehearing.

**House Bill No. 1440** (Representatives Boucher, Dalrymple, and Skarphol; Senators Grindberg, Lips, and Robinson) established a board of directors to oversee the Workers Compensation Bureau and required an independent audit of the bureau.

**Senate Bill No. 2073** (Workers Compensation Bureau) repealed the workers' compensation statutory sections relating to the determination of weekly wage for premium purposes for veteran-on-the-job trainees, the requirement that county auditor's report employment of auditors and clerks to the bureau, and the requirement that all public contracts involving labor be reported to the bureau.

**Senate Bill No. 2074** (Workers Compensation Bureau) required the State Auditor to appoint on a biennial basis an independent audit firm, with extensive expertise in workers' compensation practices and standards, to complete a performance audit of the departments of the Workers Compensation Bureau. The bill required the report must be presented to the Legislative Council's Legislative Audit and Fiscal Review Committee and to the House and Senate Industry, Business and Labor Committees.

**Senate Bill No. 2110** (Workers Compensation Bureau) repealed all but one of the sections of North Dakota Century Code (NDCC) Chapter 65-11, relating to the appointment and duties of a safety engineer, and relocated the remaining section to Chapter 65-03, relating to loss prevention obligations of the Workers Compensation Bureau.

**Senate Bill No. 2114** (Central Personnel Division) removed the requirement that the director of the Workers Compensation Bureau be appointed in accordance with the Merit System Council, which was also repealed.

**Senate Bill No. 2116** (Workers Compensation Bureau) changed how workers' compensation death benefits are calculated, how the benefits are distributed to children, and how workers' compensation supplementary benefits are calculated. The bill also allowed the bureau to establish a scholarship fund for a spouse or dependent children of deceased employees, increased the amount of burial expenses paid by the bureau, and repealed the law that allowed the bureau to modify the compensation amounts of death benefits.

**Senate Bill No. 2125** (Workers Compensation Bureau) provided an additional benefit for injured employees when their wage-loss benefits end at the time of retirement. The bill provided that the benefit

be based on the length of time the employee was injured.

**Senate Bill No. 2334** (Senator Christmann; Representative Carlson) allowed the Workers Compensation Bureau to destroy claim files if the claimant has been deceased for at least 10 years. The bill also prohibited the bureau for destroying any claim file that had specifically been requested not to be destroyed.

**Senate Bill No. 2343** (Senators Sand and Thompson; Representatives Carlson and Jacobs) decreased the frequency for which full-time paid firefighters and law enforcement officers must have physical examinations for workers' compensation. The bill also created a new section regarding the presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.

**Senate Bill No. 2383** (Senators Yockim and Krebsbach; Representatives Berg, Carlson, and Glassheim) provided for using actual wages for computing workers' compensation premiums for townships that hire clerks, assessors, treasurers, or members of the board of supervisors.

## 1997 FAILED BILLS

**House Bill No. 1304** (Representatives Skarphol, Poolman, and Carlson; Senators Andrist, Robinson, and Kinnoin) would have provided that if an employer or a claimant testifies before a legislative committee or a Legislative Council interim committee regarding information contained in the employer's report to the bureau or the claimant's claim, a member of the committee may request the employer or claimant to present a written release to allow the committee to review that employer's or claimant's entire file.

**House Bill No. 1378** (Representatives Skarphol, Carlson, and Keiser; Senators Andrist, Kinnoin, and Mutch) would have provided that the executive director of the Workers Compensation Bureau or a designee of the executive director would serve as an initial member of an independent personnel systems board and would have provided that any state agency required to be covered by the central personnel system may remove itself from the state central personnel system upon certification by the board of a personnel project management plan.

**House Bill No. 1383** (Representatives Skarphol, Poolman, and Carlson; Senators Andrist and Kinnoin) would have provided that if an employer or a claimant testifies before a legislative committee or a Legislative Council interim committee regarding information contained in the employer's report to the bureau of the claimant's claim, a member of the committee may request the employer or claimant to present a written release to allow the committee to review that employer's or claimant's entire file.

**House Bill No. 1464** (Representatives Thorpe, Sveen, Maragos, and Coats; and Senators Fischer and Heitkamp) would have prohibited the Workers Compensation Bureau from limiting an injured

employee's right to choose a medical provider and would have provided that an employer or injured employee would have the right to appeal any bureau decision regarding what medical care is necessary and appropriate. The bill also would have required the bureau to immediately refer a petition for reconsideration to the Office of Administrative Hearings for the scheduling of a hearing and issuance of a final decision by an administrative law judge. The bill would have provided that a final decision would be appealable to the Office of Administrative Hearings or directly to the district court.

**Senate Bill No. 2284** (Senators Mutzenberger, Heitkamp, and LaFountain; Representatives Aarsvold, Boucher, and Oban) would have required the Workers Compensation Bureau to disclose to a requester the number of employees in each classification, the amount of the premium paid for each employee, and the expiration date of a premium paid by an employer.

**Senate Bill No. 2319** (Senators Solberg, Krauter, and B. Stenehjem; Representatives Brown, Murphy, and Tollefson) would have provided that the workers' compensation premium discount for implementing a preapproved risk management program would be 15 percent for the first \$5,000 of premium, 10 percent for the next \$15,000 of premium, and 5 percent of the amount of the premium in excess of \$20,000.

**Senate Bill No. 2381** (Senators DeMers and LaFountain; Representatives Christenson and Mahoney) would have provided that an employee of a contributing employer would be bound by the provisions of NDCC Title 65 unless the employee filed with the employer a written notice rejecting workers' compensation coverage.

### 1999 BILLS ADOPTED

**House Bill No. 1259** (Representatives Berg, Carlson, Keiser, and Wald) replaced the specific workers' compensation fund balance requirements with general balance requirements that require the bureau to maintain adequate fund reserves to ensure the solvency of the fund and the payment of future benefit obligations.

**House Bill No. 1266** (Representative Berg) provided the circumstances under which the Workers Compensation Bureau could contract to purchase a building and property to house bureau operations and provided a continuing appropriation to defray the purchase. The bill was vetoed by the Governor, but the veto was overridden by the Legislative Assembly.

**House Bill No. 1283** (Representatives Carlson, Boucher, and Poolman; Senators Kinnoin, Krebsbach, and G. Nelson) increased workers' compensation death benefits and burial benefits and authorized the bureau to grant scholarships to injured employees for whom the bureau determines a scholarship will be beneficial and appropriate because of exceptional circumstances.

**House Bill No. 1296** (Representatives Carlson, Boucher, and Berg; Senators G. Nelson and Solberg) allowed the bureau to execute a contract for

extraterritorial coverage and other states' insurance and provided a continuing appropriation to establish the program for extraterritorial coverage and other states' insurance; directed the bureau to create work safety and loss prevention programs and provided an appropriation for those programs; allowed the bureau to create and implement by emergency rulemaking employer premium calculation programs; and allowed the bureau to establish a program to provide retrospective rating.

**House Bill No. 1325** (Representatives Poolman, Berg, Martinson, and Porter; Senators Klein and Krebsbach) changed the name of the workers advisory program to the Office of Independent Review; removed the expiration date provision for the Office of Independent Review; required the Office of Independent Review to provide assistance to employees in cases of constructive denial and after a vocational consultant report is issued, and provided which information in a file established by the Office of Independent Review is privileged; removed certain independent performance evaluation requirements and provided the firm conducting the evaluation need not be a certified public accounting firm; removed the expiration date provision for the allowance of preacceptance of disability benefits; and addressed the effective date of certain bureau laws.

**House Bill No. 1330** (Representatives Keiser, Berg, Carlson, and Wald) would have provided the procedures to be followed by a party disputing a bureau decision; would have provided under what circumstances the bureau may reopen an issue decided as a result of a formal hearing; and would have repealed the effective date of Section 7 of Chapter 532 of the 1997 Session Laws of North Dakota. The Governor vetoed this bill and the Legislative Assembly sustained the veto.

**House Bill No. 1331** (Representatives Keiser, Berg, and Wald) provided the circumstances under which an employer could be civilly liable for injuries to an employee; increased the criminal penalty for an employer failing to secure workers' compensation coverage; and provided a continuing appropriation for the workers' compensation fraud unit.

**House Bill No. 1332** (Representatives Keiser, Berg, and Wald) provided a compensable injury may include a mental or emotional injury arising principally out of a bona fide personnel action; clarified the definition of child in various portions of the workers' compensation law; and provided under what circumstances an employer, self-employed individual, and volunteer may secure workers' compensation coverage.

**House Bill No. 1333** (Representatives Keiser and Berg) established the procedure that required the bureau to adopt schedules of fees for medical and hospital goods and services; removed the requirement that the bureau contract for the services of a third-party administrator in implementing a managed care program to monitor medical treatments of injured employees and in monitoring the payment of medical

expenses of all workers' compensation claims; required a managed care program to include utilization review and bill review; and provided certain information compiled and analysis performed pursuant to a managed care program is confidential.

**House Bill No. 1422** (Representative Berg) defined permanent impairment; provided the formula for establishing a permanent impairment lump sum benefit; provided the circumstances under which a permanent impairment evaluation may be performed and the requirements of an evaluation; provided how to rate a permanent impairment; and provided for a bureau study and report to the Legislative Council before the 2001 legislative session regarding the awards provided to injured employees with permanent impairments.

**Senate Bill No. 2024** (Governor) provided the appropriation for the Workers Compensation Bureau and required the appropriation for the bureau include funding for the bureau to develop an Internet web application with electronic commerce capability, including the ability for employers to file payroll reports for workers' compensation coverage electronically.

**Senate Bill No. 2214** (Senators Krebsbach, Klein, and Kinnoin; Representatives Boucher and Poolman) provided the circumstances under which a claimant is eligible for supplementary benefits; provided the maximum benefit rates for partial disability; increased the maximum benefit rate for temporary total and permanent total disability; and required the bureau to study the benefits available to individuals receiving long-term disability or death benefits and report the results of the study to an interim committee before the 2001 legislative session.

**Senate Bill No. 2272** (Senators Klein and Krebsbach; Representatives Berg and Poolman) extended employer liability immunity for employee workplace injuries to cover staffing services.

## 1999 FAILED BILLS

**House Bill No. 1232** (Representatives Rose and Hoffner; Senator Mutzenberger) would have provided that upon request, the Workers Compensation Bureau would be required to disclose to a requester the number of employees in each classification and the expiration date of the premium paid by an employer.

**House Bill No. 1261** (Representatives Hoffner and Cleary) would have reduced the number of employer members on the Workers Compensation Board of Directors by one and increased by one the number of employee members.

**House Bill No. 1262** (Representative Hoffner; Senator DeMers) would have provided that the presumption that an employee that has retired or voluntarily withdrawn from the labor market does not apply to any employee permanently and totally disabled. The bill also would have provided that the retirement presumption could be rebutted by a preponderance of the evidence if the injured employee is actively seeking employment, is available for gainful employment, has not rejected a job offer

made by any former employer or other bona fide job offer by another employer, and has not provided the employer with written notice of a scheduled retirement date.

**House Bill No. 1263** (Representative Mahoney; Senator Mutzenberger) would have required the Workers Compensation Bureau to establish, by rule, a reasonable maximum hourly rate and a maximum hourly fee to compensate an injured employee's attorney for legal services following constructive denial of a claim or notice of informal decision. The bill would have provided that in the case of constructive denial, the bureau would have been required to pay only the attorney's fees incurred from the occurrence of the constructive denial until the bureau issued a notice of informal decision or administrative order. The bill also would have removed the limitation on the payment of an employee's attorney's fees when a dispute was resolved by arbitration. The bill would have required the bureau to adopt an hourly rate to compensate an employee's attorney from the date the bureau notified an employee to be available for vocation consultation testing.

**House Bill No. 1264** (Representatives Guleson and Hoffner; Senator Kelsh) would have required the Workers Compensation Bureau to notify an employee that the employee may have a duly qualified doctor designated by the employee present at an independent medical examination and would have required the bureau to notify the employee that the employee may have a companion present at the examination and that the employee may make an audiotape and videotape of the examination.

**House Bill No. 1265** (Representatives Rose, Cleary, Delmore, and Fairfield) would have provided that an injured employee may receive a permanent impairment award for impairments of 1 percent to 15 percent.

**Senate Bill No. 2301** (Senators DeMers and Thompson; Representative Hoffner) would have provided that in the case of an injury occurring after July 31, 1999, which causes temporary total disability, the injured employee would be deemed permanently totally disabled if the injured employee would be unable to return to work within seven years after the date of injury.

**Senate Bill No. 2342** (Senator Thompson; Representative Ekstrom) would have reduced the impairment threshold required for permanent partial impairment award eligibility from 16 percent to 6 percent. The bill also would have revised the permanent partial impairment award schedule to increase the number of weeks awarded for impairments falling between the 6 percent and 33 percent impairment levels.

## 2001 ADOPTED BILLS

**House Bill No. 1015** (Governor) required the Workers Compensation Bureau to establish a single

workers' compensation account for state entities covered by the state risk management fund.

**House Bill No. 1024** (Governor) was the appropriation bill for the Workers Compensation Bureau. The bill also provided that if a new facility is built to house the operations of the Workers Compensation Bureau, the facility should be built to include rental space for other state agencies. The bill included a continuing appropriation from a building maintenance account within the workers' compensation fund to pay bond principal and interest payments, operating, maintenance, repair, and payments in lieu of taxes expenses of the workers' compensation building and grounds. The bill allowed the Workers Compensation Board of Directors to determine its own compensation. The bill also removed requirements that the bureau solicit bids from vocational rehabilitation vendors and contract with the lowest and best bidders on a biennial basis and removed the requirement that the request for bids must contain a detailed outline of services. The bill allowed the bureau to contract with vocational rehabilitation vendors.

**House Bill No. 1127** (Representative Keiser) removed the June 30, 2003, expiration date for the workers' compensation program covering inmates engaged in work programs through Roughrider Industries.

**House Bill No. 1129** (Representatives Drovdal, Kempenich, and Rennerfeldt; Senators Klein and Urlacher) provided the workers' compensation premium for coverage of a minor child of an employer must be based on the actual wages paid to the child.

**House Bill No. 1152** (Representatives Porter and Klein) expanded the definition of "compensable injury" for the purpose of workers' compensation by including the preventive treatment for emergency medical services providers in the case of significant exposure to infectious diseases, employees of facilities licensed to provide medical care in the case of significant exposure to infectious diseases, and employees exposed to rabies in the course of employment.

**House Bill No. 1153** (Workers Compensation Bureau) provided an employer may not require an employee to use sick leave, annual leave, or other paid time-off during the time the employee is receiving disability benefits; provided a claimant's Social Security number is no longer information available to the public; provided only employers required to have access to an employee's claim file for the performance of duties may access an injured employee's claim file and willful disclosure of that information by the employer is a Class B misdemeanor; and allowed for the creation of a preferred worker program that would create incentives for employers to employ workers who have disabilities from on-the-job injuries and who are not able to return to their previous work because of those injuries.

**House Bill No. 1161** (Workers Compensation Bureau) implemented use of the fifth edition of the American Medical Association's "Guides to the

Evaluation of Permanent Impairment" for evaluating permanent partial impairments and provided a schedule of impairment benefits for amputations and for loss of an eye.

**House Bill No. 1162** (Workers Compensation Bureau) changed the calculation formula for supplementary benefits for all claims for injuries occurring after July 31, 2001, and changed the effective date of 1999 Senate Bill No. 2214, relating to decreasing from 10 years to 7 years the waiting period for supplementary benefits, to provide the waiting would be effective for all claims as of August 1, 2006, regardless of the date of injury.

**House Bill No. 1260** (Representatives Wald, Kasper, and Skarphol) provided if an employer with a deductible policy brings a third-party action based on an injury incurred through the negligence of a third person, after the employee and bureau chose not to pursue the action, the employer may retain 100 percent of the recovery obtained.

**House Bill No. 1496** (Representative Gulleon; Senator Kelsh) provided that a farmer that engages in limited custom agricultural operations retains the agricultural service exemption to hazardous employment for purposes of workers' compensation.

**House Concurrent Resolution No. 3064** (Representatives Ekstrom, Fairfield, and Jensen; Senator Heitkamp) directed the Legislative Council to study workers' compensation fraud by employers, employees, attorneys, health care providers, and rehabilitation service providers in order to identify the financial impact of such fraud on the North Dakota workers' compensation fund, the most appropriate method of addressing such fraud, and the cost of addressing such fraud.

**Senate Bill No. 2121** (Workers Compensation Bureau) provided that in addition to the employee, an employer of an employee which falsely claims workers' compensation benefits or payments is guilty of a Class A misdemeanor and provided that failure of an employer to secure workers' compensation coverage for employees must be willful in order to result in a Class A misdemeanor.

**Senate Bill No. 2134** (Senator Krebsbach; Representative Boucher) removed the July 31, 2001, expiration date for the workers' compensation scholarship fund program.

**Senate Bill No. 2157** (Workers Compensation Bureau) provided for a new procedure under which the bureau may issue a decision relating to premium and charges due from employers; changed the circumstances under which an employer may pay workers' compensation premium in installments; changed the circumstances under which an employer's workers' compensation premium is in default and the procedure for bringing suit for the collection of premium in default; repealed several sections of law relating to employer duties to provide employee coverage, furnish information to the bureau, and pay premium and relating to the related penalties for failure to comply with those statutory duties and



created a new section of law addressing those matters; and replaced the "pay in order" document with a "premium billing statement."

**Senate Concurrent Resolution No. 4024** (Senators Mutch, Krebsbach, and T. Mathern; Representatives Berg and Thorpe) urged Congress to eliminate the Social Security disability insurance offset and supplemental security offset for recipients of workers' compensation benefits.

## 2001 FAILED BILLS

**House Bill No. 1163** (Workers Compensation Bureau) would have appropriated \$761,600 from the workers' compensation fund to the bureau for the purpose of expanding the safety grant program and adding one FTE position for that program.

**House Bill No. 1187** (Workers Compensation Bureau) would have appropriated \$2,572,647 from the workers' compensation fund to the bureau for the purpose of bringing contracted programs and services in-house and hiring 25 FTE positions for those programs and services.

**House Bill No. 1281** (Representatives Carlson, Hawken, Skarphol, and Wald; Senators Klein and Nichols) would have removed the Workers Compensation Bureau from the biennial appropriations process and required the bureau to file a report at a public hearing before the Appropriations Committee of each house of the Legislative Assembly which would contain a summary of the bureau's activities for the preceding biennium and include a financial statement summarizing the revenues and expenditures of the bureau for the current biennium and the expected revenues and expenditures for the next biennium.

**House Bill No. 1368** (Representatives Cleary, Ekstrom, and Meier; Senators Every and T. Mathern) would have required the bureau to make available to the public the rate classification of an employer, the number of employees in each classification, and the expiration date of the premium paid by an employer.

**House Bill No. 1402** (Representatives Severson, Pollert, and Weiler; Senator Klein) would have provided that a compensable injury would include a mental injury arising from a mental stimulus that occurs to an emergency medical services provider, a firefighter, or a law enforcement officer if the injury occurred in the course of employment and if the injury meets the criteria of critical incident.

**House Bill No. 1412** (Representatives S. Kelsh, Boucher, Guleson, and Severson; Senators Fischer and T. Mathern) would have provided a compensable injury would include preventive treatment for communicable diseases if exposure to the communicable disease results from performing an employer-related emergency medical procedure.

**House Bill No. 1419** (Representatives Berg, Dosch, Ruby, and Severson; Senators Cook and Klein) would have required the Insurance Commissioner to perform an independent study of the effects of competition on workers' compensation

premiums; services provided to injured employees; and coverage of small, medium, and large employers and of the feasibility and desirability of allowing employers to obtain private insurance or be self-insured for the purpose of workers' compensation.

**House Bill No. 1420** (Representatives Severson, Berg, and Svedjan; Senators Klein and Lyson) would have required the Workers Compensation Bureau to submit a performance incentive pilot program for review and approval by the Budget Section of the Legislative Council.

**House Bill No. 1429** (Representatives Ruby, Berg, and Nelson; Senators Krebsbach and Schobinger) would have changed the method for the basis of calculating premiums to provide that the amount of an employee's wages subject to premium calculation would be the employee's gross annual wage not to exceed 400 percent of the statewide average annual wage rounded to the nearest \$100. The bill also would have provided that the premium for an employer may not be based on less than 100 percent of the statewide average annual wage determined by the bureau on or before July 1 of each year as calculated by Job Service North Dakota and rounded to the nearest \$100.

**House Bill No. 1436** (Representatives Dosch and Ruby; Senator Stenehjem) would have provided that the workers' compensation experience rating system may not consider claims of \$250 or less in a manner that negatively affects an employer experience rating.

**Senate Bill No. 2416** (Senator Kelsh) would have attempted to provide that an employer may discharge workers' compensation premium obligations in bankruptcy.

**Senate Bill No. 2432** (Senators Christenson, Kelsh, and O'Connell; Representatives Aarsvold, Ekstrom, and Winrich) would have provided that information concerning claimants' names and addresses may be released in aggregate form to claimant interests groups approved by the Workers Compensation Board of Directors. The bill also would have provided that the Social Security number of a claimant is not open to the public.

**Senate Bill No. 2433** (Senators Christenson, Kelsh, and O'Connell; Representatives Aarsvold and Fairfield) would have provided that in the case of any injury occurring after July 31, 2001, which causes temporary total disability, the injured employee would be deemed permanently totally disabled if the injured employee was unable to return to work within seven years of the date of injury.

## 2003 ADOPTED BILLS

**House Bill No. 1060** (Representative Wald; Senator J. Klein) made several changes to the law relating to Workforce Safety and Insurance. The bill changed the formula for determining average weekly wage by considering net earnings instead of net profits; modified the definition of "seasonal employment"; clarified the procedure for enforcing a subpoena; increased from \$20,000 to \$50,000 the real

estate adaptation allowance for catastrophically injured employees; clarified that partial disability benefits are subject to a maximum benefit rate and that combined partial disability benefits, dependency allowance, and postinjury wage-earning capacity of an injured employee may not exceed the preinjury net wage of the employee; increased the death benefit from \$197,000 to \$250,000; removed the "remarriage penalty" that applies when a surviving spouse remarries; allowed for an award of a lump sum settlement to recipients of death benefits; extends the preferred worker program to employees; prohibited an employer from retaliation against an employee for seeking benefits; and repealed the binding arbitration laws.

**House Bill No. 1065** (Representative Ruby; Senator Mutch) changed the name of the North Dakota Workers Compensation Bureau to Workforce Safety and Insurance and the name of the North Dakota Workers Compensation Board of Directors to the Workforce Safety and Insurance Board of Directors.

**House Bill No. 1106** (Tax Commissioner) provided that real property of Workforce Safety and Insurance which would be subject to valuation for payments in lieu of taxes is assessed in the same manner as other real property in this state is assessed for tax purposes.

**House Bill No. 1149** (Representative Froseth; Senator Mutch) broadened the types of actions from which Workforce Safety and Insurance may choose to not participate, the previous option had been limited to health care malpractice actions; removed the June 30, 2003, sunset provision for the law providing for the single Workforce Safety and Insurance account for the state; clarified the types of information Workforce Safety and Insurance may include on a certificate of premium payment; broadened the types of employer information Workforce Safety and Insurance may disclose, including whether an employer's file is active, canceled, closed, pending, or delinquent and broadened the scope of whom may be provided employer file information to include state or federal agencies; addressed the liability of partners of limited liability partnerships; provided for a monthly billing cycle of claim loss assessments; extended coverage for volunteer firefighters, emergency or disaster volunteers, and community response team members to include coverage for service in the event of an enemy attack; and repealed the law regarding the employee information program on hazardous substances.

**House Bill No. 1150** (Representative M. Klein; Senator J. Klein) increased from 10 to 11 the number of members of the Workforce Safety and Insurance Board of Directors, adding a member at large; provided the board member representing the North Dakota Medical Association is a voting member; decreased the terms of board members from six-year terms to four-year terms; and modified the biennial performance evaluation of Workforce Safety and

Insurance, giving the State Auditor discretion regarding the breadth of the evaluation.

**House Bill No. 1334** (Representatives Eckre, Skarphol, and Thoreson; Senators Grindberg, Heitkamp, and Wardner) required Workforce Safety and Insurance to collect and employers to provide zip code information of employees; required Workforce Safety and Insurance to provide this zip code information to the Department of Commerce; and updated the law relating to confidentiality of information in employer reports to Workforce Safety and Insurance.

**House Concurrent Resolution No. 3050** (Representatives Ekstrom, N. Johnson, and M. Klein; Senators Cook, Espeguard, and Heitkamp) directed the Legislative Council to study the equity of the current system for awarding workers' compensation death benefits and the feasibility and desirability of creating a death benefit investment system.

**Senate Bill No. 2023** (Governor) was the appropriation bill for Workforce Safety and Insurance.

**Senate Bill No. 2298** (Senators J. Lee, Fischer, and Grindberg; Representatives Koppelman and Wieland) provided the details of coverage for staffing services, which include professional employer organizations' staff leasing companies, employee leasing organizations, and temporary staffing companies.

**Senate Bill No. 2309** (Senators O'Connell, Andrist, and J. Lee; Representatives Eckre, N. Johnson, and Severson) placed a limit of \$150 on the penalty that may be assessed by Workforce Safety and Insurance against organized townships for failure to provide required reports.

## 2003 FAILED BILLS

**House Bill No. 1302** (Representative DeKrey) would have allowed a party to appeal an administrative order or a decision of the Office of Independent Review to the district court. The bill also would have required Workforce Safety and Insurance to pay the employee's attorney's fees when the employee has prevailed in district court. The bill also would have provided that absent fraud, Workforce Safety and Insurance may not deny at a later date an occurrence of an earlier determined compensable injury. The bill would have allowed an injured employee to select the doctor of the employee's choice to render all treatment and would have required Workforce Safety and Insurance to choose a medical specialist for an independent medical examination from the employee's state of residence if such a specialist is available. The bill would have provided that if an employee objects to health care determined by Workforce Safety and Insurance to be necessary and appropriate, the employee could file a written request for an administrative hearing on the matter.

**House Bill No. 1304** (Representative DeKrey) would have allowed an employer to obtain workers'

compensation insurance through a private insurer or through self-insurance.

**House Bill No. 1317** (Representatives Severson and Delmore; Senators Erbele and Klein) would have provided that a compensable injury would include a mental injury arising from a mental stimulus occurring to an emergency services provider if the mental injury was incurred in the course of employment and met the benefits criteria and the definition of critical incident. The bill would have limited the benefits for a mental injury incurred by an emergency services provider to medical benefits.

**House Bill No. 1370** (Representatives Ruby, Iverson, and M. Klein) would have provided that the amount of an employee's wages subject to premium calculations would be the employee's gross annual wage not to exceed 400 percent of the statewide average annual wage. The bill also would have provided the amount of premium derived on an annual basis from a business of an employer or self-employed person for purposes of determining the premium for coverage of an employer, an employer's spouse, an employer's child over 17 years of age, or a self-employed person may not be less than 100 percent of the statewide average annual wage, rounded to the nearest \$100.

**House Bill No. 1455** (Representatives Sandvig, Maragos, and Thorpe; Senators Mathern and Seymour) would have removed the limitation regarding the payment of death benefits paid in the case of the death of an employee as the direct result of an injury sustained in the course of the employee's employment when there has been a disability continuing to the time of death.

**Senate Bill No. 2167** (Senator Lyson) would have required Workforce Safety and Insurance to reopen a claim and reassess compensability upon the request of an injured employee based on after-acquired medical evidence if the agency had denied a claim for benefits on the grounds that the injured employee had not provided medical evidence substantiating a compensable injury.

**Senate Bill No. 2351** (Senators Christenson and Every; Representative S. Kelsh) would have prohibited Workforce Safety and Insurance from offsetting an employee's benefits based on receipt of Social Security retirement benefits.

**Senate Bill No. 2397** (Senator O'Connell) would have changed the culpability standard with respect to an employee failing to report wages earned for the purpose of receiving benefits for which the employee would not otherwise be eligible from willfully to intentionally and would have changed the culpability standard with respect to the filing of false claims or false statements from willfully to intentionally.

## 2005 ADOPTED BILLS

**House Bill No. 1022** (Governor) was the appropriation bill for Workforce Safety and Insurance.

**House Bill No. 1120** (Representatives Wald and Kasper; Senator Dever) for purposes of workers'

compensation, clarified and modified how the average weekly wage is determined and modified who is a child or sibling for purposes of determining eligibility of benefits, expanded the workers' compensation scholarship fund, authorized Workforce Safety and Insurance to disclose certain medical information to the employer, and clarified that Workforce Safety and Insurance may release to a health care provider the Social Security number of an employee filing a claim for benefits.

**House Bill No. 1122** (Representative Ruby; Senator Klein) created a lien for Workforce Safety and Insurance on damages recovered in certain cases in which there is an injury through the negligence of a third person, modified the method of calculating the attorney's fees the organization is required to pay to an injured employee's attorney in a case of injury through the negligence of a third person, and clarified that an injured employee may not receive a double recovery by receiving benefits from two states on the same injury.

**House Bill No. 1123** (Representatives Bernstein, Wald, and Kasper) addressed employer premium payments. The bill expanded the option to make installment payments of premiums, clarified the possible repercussions if an employer does not timely pay premiums, modified some penalty and payment provisions if an employer does not pay premiums, and addressed coverage requirements for out-of-state employers or employees.

**House Bill No. 1125** (Representatives Carlson and Vigesaa; Senator Krebsbach) provided a continuing appropriation for the funds deposited in the Workforce Safety and Insurance fund for the purpose of funding safety programs; clarified Workforce Safety and Insurance is required to hold a public hearing on a change in the minimum premium rate; clarified the rules adopted relating to the employer premium calculation programs are not subject to the Administrative Agencies Practice Act; removed the specified amount of 5 percent for the risk management premium discount program; provided for incentives to employers for prompt filing of claims for benefits; and modified how an employer's coverage is calculated based on the weekly wage, specifically addressing the wages paid to the employer's child.

**House Bill No. 1171** (Representative N. Johnson; Senator Klein) modified the definition of "permanent total disability," provided a definition of "temporary total disability," modified the options for rehabilitation services, modified the required elements of a vocational consultant's report, and modified rehabilitation awards.

**House Bill No. 1182** (Representatives Delmore and Wieland; Senator J. Lee) allowed a political subdivision, excluding a school district or park district, to use funds from the political subdivision's insurance reserve fund levy for payment of Workforce Safety and Insurance contributions, premiums, judgments, and claims.

**House Bill No. 1199** (Representative Keiser) addressed the Workforce Safety and Insurance Board of Directors. The bill provided that of the six employer representatives of the 11-member board, at least one must be an employer at large representative; provided that except for the employer at large representative, each employer representative on the board must be a principal owner, chief executive officer, or chief financial officer of the employer; and required the board to interview an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the Governor.

**House Bill No. 1336** (Representatives Kasper, Clark, Keiser, and Koppelman; Senators Espgaard and Klein) removed the requirement that Workforce Safety and Insurance collect and distribute to the Department of Commerce all employer and employee zip codes.

**House Bill No. 1491** (Representatives Berg, Boucher, Ekstrom, and Keiser; Senators O'Connell and Stenehjem) established a Workforce Safety and Insurance educational revolving loan fund to provide low-interest loans to individuals who have suffered compensable injuries.

**House Bill No. 1506** (Representatives Charging and Maragos; Senators Hacker, Kringstad, and Warner) modified the method of calculating the nondependency payments in certain cases of death of an injured employee. This bill had a retroactive application to November 29, 2004.

**House Bill No. 1523** (Representatives Berg and N. Johnson; Senators Stenehjem, Klein, and Mutch) established the Legislative Council Workers' Compensation Review Committee.

**House Bill No. 1531** (Representatives Keiser, Berg, Carlson, N. Johnson, and Wald) provided that the discount rate used in evaluating the financial reserves of Workforce Safety and Insurance may not exceed 6 percent. The bill also provided that the level of financial reserves plus surplus must be at least 120 percent but may not exceed 140 percent of the actuarially established discounted reserve.

**Senate Bill No. 2351** (Senators Robinson, Cook, and Kringstad; Representatives Amerman, N. Johnson, and Porter) modified the formula for determining the additional benefit payable to certain claimants who have been presumed retired.

## 2005 FAILED BILLS

**House Bill No. 1119** (Representative Dosch; Senator Kilzer) would have allowed Workforce Safety and Insurance to include within an independent medical examination a test to determine the presence or absence of substances in the employee's system. The bill would have provided that if the employee tested positive for the presence of an unprescribed substance or tested negative for the presence of a prescribed substance, Workforce Safety and Insurance may discontinue all disability benefits for a period of 30 days. The bill also would have provided

that for a second negative test, Workforce Safety and Insurance may discontinue the payment of any further disability or vocational rehabilitation benefits.

**House Bill No. 1307** (Representatives Kaldor, Kroeber, and Solberg) would have prohibited Workforce Safety and Insurance from offsetting an employee's benefits based on receipt of Social Security retirement benefits.

**House Bill No. 1372** (Representatives Kaldor, Delmore, and Solberg; Senators Mathern and Robinson) would have provided that in addition to an injured employee's duties to seek, obtain, and retain reasonable and substantial employment, the vocational services provided to the employee must include job search and placement assistance. The bill would have allowed an injured employee to remain eligible for benefits while the organization reevaluated the employee's vocational rehabilitation claim if the good-faith work trial or work search efforts of the injured employee and the organization are unsuccessful.

**House Bill No. 1406** (Representatives Zaiser, Conrad, Damschen, and Wall; Senators Krauter and Seymour) would have required Workforce Safety and Insurance to study the perceived inequity of the workers' compensation law treatment of retirement age injured workers.

**House Bill No. 1411** (Representatives Zaiser, S. Kelsh, and Solberg; Senators Krauter, Mathern, and Seymour) would have required Workforce Safety and Insurance to pay death benefits for the death of an employee which is a direct result of injury sustained in the course of employment even if the disability continued to the time of death regardless of whether the death occurred within six years after the date of injury.

**House Bill No. 1495** (Representatives Amerman and Zaiser; Senator Fairfield) would have prohibited Workforce Safety and Insurance from exercising any civil penalties for the filing of a false claim or a false statement unless Workforce Safety and Insurance established by clear and convincing evidence that Workforce Safety and Insurance incurred actual harm as a result of the false claim or false statement.

**House Bill No. 1504** (Representatives Charging, Maragos, L. Meier, and Zaiser; Senators Kringstad and Warner) would have included marriage counseling within the definition of "rehabilitation services."

**House Bill No. 1510** (Representatives Potter, Ekstrom, and Glassheim; Senator Nelson) would have removed the exemption from mandatory workers' compensation coverage for agricultural workers.

**Senate Bill No. 2063** (Senators Lyson and G. Lee) would have provided that if Workforce Safety and Insurance denies a claim for benefits on the grounds that the injured employee has not provided medical evidence substantiating a compensable injury, Workforce Safety and Insurance would be required to reopen the claim and reassess compensability if, within four years of the filing of the claim at issue, the

injured employee requests in writing that the organization reopen the claim and reassess compensability based on after-acquired medical evidence.

**Senate Bill No. 2230** (Senators Mathern, Christmann, and Heitkamp; Representatives Drovdal, Kaldor, and S. Kelsh) would have increased the membership of the Workforce Safety and Insurance Board of Directors from 11 to 14 members by adding 3 members of the Legislative Assembly.

**Senate Bill No. 2291** (Senator Heitkamp; Representative Amerman) would have allowed a claimant to dispute a decision of Workforce Safety and Insurance by complying with the administrative hearing process or appealing a decision of Workforce Safety and Insurance directly to the district court.

**Senate Bill No. 2292** (Senators Heitkamp, Fairfield, and Nelson; Representatives Amerman, Glasheim, and Gulleson) would have required that the executive director of Workforce Safety and Insurance be appointed by the Governor on a nonpartisan, merit basis. The bill also would have replaced the Workforce Safety and Insurance Board of Directors with an advisory board composed of an equal number of employer representatives and employee representatives.

**Senate Bill No. 2307** (Senators Flakoll, Espgaard, Grindberg, and Klein; Representatives Dosch and Keiser) would have provided for a Workforce Safety and Insurance premium discount for smoke-free workplaces.

**Senate Bill No. 2381** (Senator Fairfield) would have changed the law with respect to the filing of false claims for workers' compensation benefits or payments to require that the false claim be willfully committed with the purpose to obtain benefits. The bill also would have provided that the amount of benefits forfeited or reimbursed to Workforce Safety and Insurance by an individual falsely claiming benefits is limited to the difference between the amount of benefits erroneously awarded and the amount of any benefits to which the individual would have been eligible had the claim or statement been accurate. The bill would have prohibited Workforce Safety and Insurance from terminating an individual's medical benefits unless the individual willfully misrepresented the individual's physical condition or ability with the purpose of obtaining medical benefits to which the individual knew the individual was not entitled.

## 2007 ADOPTED BILLS

**House Bill No. 1038** (Legislative Council Workers' Compensation Review Committee) increased the workers' compensation benefits available to catastrophically injured employees for adaptations to real estate, specially equipped motor vehicles, and vehicle adaptations; created an alternative calculation for additional benefits payable applicable to employees injured before August 1, 2005, who were determined to be permanently and totally disabled

after July 30, 2005; expanded the qualification for death benefits for catastrophically injured employees; expanded who may qualify for a student loan under the educational revolving loan fund; and shortened the time requirements to be eligible for supplementary benefits for employees injured after December 31, 2005.

**House Bill No. 1140** (Representative Keiser; Senator Klein) provided for an inflation adjustment for injured employees receiving long-term temporary partial disability benefits.

**House Bill No. 1156** (Representatives Keiser, N. Johnson, and Porter; Senators Klein and Stenehjem) removed the July 31, 2007, expiration date of the Workers' Compensation Review Committee.

**House Bill No. 1411** (Representative N. Johnson) allowed Workforce Safety and Insurance to provide benefits for adaptations to real estate, specially equipped motor vehicles, or vehicle adaptations for injured employees who are not catastrophically injured.

**House Bill No. 1460** (Representatives Skarphol, Carlson, and Dosch; Senator Christmann) modified the membership of the Workforce Safety and Insurance Board of Directors, transferring the employer member representing the risk management program to be an employer at large representative, providing qualifying premium levels for employer representatives are determined at the time of initial appointment, providing the employee member who received Workforce Safety and Insurance benefits must have received wage-loss benefits at some time during the 10 years before initial appointment, providing that board members whose initial appointments were after July 31, 2007, may not serve more than two consecutive terms, providing for a coordinating committee to submit to the Governor a list of three employer members for appointment, providing the Governor selects the employee board members who do not represent organized labor, providing the Governor selects the North Dakota Medical Association member from a list of three names submitted by the North Dakota Medical Association, allowing the Governor to reject the list of names submitted, and providing the new membership provisions apply to board member appointments occurring after July 31, 2007. Additionally, the bill provided spending authority limitations for education, training, and awards.

**House Bill No. 1517** (Representatives Schneider and Wall; Senator Holmberg) allowed Workforce Safety and Insurance to provide an injured employee's insurer information regarding the injured employee's claim.

**Senate Bill No. 2021** (Governor) allowed Workforce Safety and Insurance to establish programs to advance occupational health and preventive medicine, including education, consultation, grants, scholarships, and incentives that

promote superior care and treatment of the workforce in this state.

**Senate Bill No. 2028** (Legislative Council Budget Section) removed the requirement that Workforce Safety and Insurance make biennial reports to the Budget Section on all revenues deposited in and expenditures made from the building maintenance account within the Workforce Safety and Insurance fund.

**Senate Bill No. 2042** (Legislative Council Workers' Compensation Review Committee) provided that under the presumption of compensability for full-time paid firefighters and law enforcement officers, if a medical examination produces a false positive result for a condition covered under the presumption, the condition is a compensable injury.

**Senate Bill No. 2092** (Office of Management and Budget) corrected the statutory reference to the workers' compensation fund and provided the money in the fund may be used to pay costs associated with workers' compensation loss control programs.

**Senate Bill No. 2123** (Workforce Safety and Insurance) made several changes to the workers' compensation law, including permitted Workforce Safety and Insurance to print a certificate that identifies an account as one that has no employees; permitted Workforce Safety and Insurance to disclose information pertaining to whether an employer is delinquent or uninsured; eliminated the workers' compensation experience rating surcharge cap for employer premiums; and changed the workers' compensation risk management program from a document-based program to a results-based program.

**Senate Bill No. 2294** (Senators Nething, Robinson, and Triplett; Representatives Amerman, DeKrey, and Kasper) changed the injured employee's burden of proof in reopening a claim that was presumed closed from having to prove the work injury was the sole cause of the current symptoms to having to prove the work injury was the primary cause of the current symptoms.

**Senate Bill No. 2389** (Senators Nething, Klein, and Robinson; Representatives Amerman and Kasper) clarified that a permanent impairment is not intended to be a periodic payment and is not intended to reimburse the employee for specific expenses related to the injury or to wage loss and changed the permanent impairment award schedule from a calculation based on a period of weeks to a schedule that uses a corresponding multiplier.

## 2007 FAILED BILLS

**House Bill No. 1132** (State Department of Health) would have required the State Forensic Examiner to disclose a copy of final autopsy report to Workforce Safety and Insurance if the death of the autopsied individual is related to the individual's work.

**House Bill No. 1204** (Representatives Kempenich and S. Meyer) would have extended the presumption of compensability for certain conditions such as lung

or respiratory disease, hypertension, and heart disease to volunteer firefighters.

**House Bill No. 1239** (Representatives Amerman and Solberg; Senator Krauter) would have prohibited Workforce Safety and Insurance from decreasing an employee's aggregate wage-loss benefits by offsetting the employee's Social Security retirement benefits.

**House Bill No. 1283** (Representatives Amerman, DeKrey, and Kretschmar; Senators Cook, Nelson, and Nething) would have repealed the statutory provisions that provide that a civil action or claim arising under the workers' compensation law, which is subject to judicial review, must be reviewed solely on the merits of the action or claim and that provide the workers' compensation law may not be construed liberally on behalf of any party to the action or claim.

**House Bill No. 1285** (Representatives Amerman, Solberg, and Thorpe; Senators Heitkamp and Mathern) would have provided that in the case of the death of a claimant who was receiving permanent total disability benefits, supplementary benefits, or additional benefits payable, the claimant's surviving spouse would be eligible to receive the claimant's benefits payable in the same manner as the deceased claimant would have been entitled to receive the benefits.

**House Bill No. 1286** (Representatives Amerman and Boe; Senator Heitkamp) would have required the State Department of Health to establish and implement a program to conduct random audits of independent medical examinations performed for Workforce Safety and Insurance.

**House Bill No. 1287** (Representatives Amerman and S. Kelsh; Senator Horne) would have required Workforce Safety and Insurance to implement an ongoing system of pilot programs to allow Workforce Safety and Insurance to assess alternative methods of providing rehabilitation services.

**House Bill No. 1288** (Representatives Amerman and Solberg) would have reduced the eligibility threshold from seven years to three years with respect to receipt of supplementary benefits for claimants receiving permanent total disability benefits or death benefits.

**House Bill No. 1307** (Representatives Keiser, Dosch, and Ruby; Senator Klein) would have provided that if a claimant successfully rebutted the presumption that an injury was caused by an employee's voluntary impairment by use of alcohol or an illegal controlled substance, no more than 50 percent of the chargeable costs of that claim may be assessed against the employer for the purposes of experience rating if the employer had preemployment testing for alcohol and illegal use of a controlled substance, postaccident testing for alcohol and illegal use of a controlled substance, and random testing programs for alcohol and illegal use of a controlled substance which were previously registered with Workforce Safety and Insurance.

**House Bill No. 1323** (Representatives Zaiser, Amerman, S. Kelsh, and Schmidt) would have

required the Governor to appoint the executive director of Workforce Safety and Insurance on a nonpartisan, merit basis and would have replaced the Workforce Safety and Insurance Board of Directors with a workers' compensation department advisory board. The bill also would have changed the name of Workforce Safety and Insurance to the Workers' Compensation Department.

**House Bill No. 1345** (Representatives Amerman, Boucher, and Thorpe; Senators Heitkamp, O'Connell, and Potter) would have changed the workers' compensation additional benefits payable rates to provide that the percentage of the final payment payable as an additional benefit would be 30 percent of the employee's compensation rate if the total length of disability is at least one year and less than 10 years and would be 60 percent of the employee's compensation rate if the total length of disability is at least 10 years.

**House Bill No. 1424** (Representative Boe; Senator Christmann) would have required Workforce Safety and Insurance to establish a pilot program for coverage of out-of-state employers with the rate classification of building construction or concrete work.

**House Bill No. 1442** (Representatives Boucher and Zaiser; Senators Heitkamp and Potter) would have provided the termination of benefits upon retirement for a permanently and totally disabled employee does not apply to an employee who is permanently and totally disabled due to an injury that occurred before August 1, 1995, if the permanent and total disability occurred before the employee was considered retired.

**House Bill No. 1443** (Representative Boucher; Senators Heitkamp and Potter) would have provided that if an employee was determined to be disabled for the purpose of the supplemental security income program under the federal Social Security Act or for purposes of Social Security disability, Workforce Safety and Insurance would be required to accept medical reports related to those determinations and consider the determination as a relevant factor in determining disability under the workers' compensation law.

**House Bill No. 1493** (Representatives N. Johnson, Berg, Clark, Froseth, and Ruby; Senator Klein) would have provided that for injuries occurring after June 30, 2007, if a claimant successfully rebuts the presumption that the injury was caused by reason of voluntary impairment by the use of alcohol or an illegal controlled substance, no more than 50 percent of the chargeable costs of that claim could be assessed against the employer for the purposes of experience rating if the employer has preemployment testing for illegal use of a controlled substance, postaccident testing for alcohol and the illegal use of a controlled substance, and random testing programs for alcohol and the illegal use of a controlled substance which were previously registered with Workforce Safety and Insurance. The bill also would

have provided that for injuries occurring before July 1, 2007, if the claimant were to successfully rebut the presumption, no more than 50 percent of the chargeable costs of that claim could be assessed against the employer for purposes of experience rating if the employer provided sufficient documentation the testing programs were in place at the time of the injury.

**House Bill No. 1516** (Representatives Kaldor and Wall; Senator Fiebiger) would have provided that if a claimant appealing an order of Workforce Safety and Insurance for which Workforce Safety and Insurance did not accept the administrative law judge's recommended finding of fact, conclusion of law, and order, the burden of proof would shift to Workforce Safety and Insurance to prove by a preponderance of the evidence the claimant is not entitled to the benefits sought.

**Senate Bill No. 2043** (Legislative Council Workers' Compensation Review Committee) would have provided that for purposes of workers' compensation claims brought under the presumption of compensability of the full-time paid firefighters and law enforcement officers, the period to appeal would be extended from 30 days to 45 days.

**Senate Bill No. 2072** (Workforce Safety and Insurance) would have specifically exempted Workforce Safety and Insurance from Administrative Agencies Practice Act provisions relating to payment of attorney's fees; would have allowed the Workforce Safety and Insurance special investigations unit to operate vehicles without state decals and State Fleet license plates; would have allowed Workforce Safety and Insurance to destroy claim files in which there had been no benefits paid for at least 30 years; would have increased the dependency allowance payments to injured employees; would have allowed Workforce Safety and Insurance to notify employees regarding rehabilitation awards through a notice of decision rather than an administrative order; and would have removed Workforce Safety and Insurance's discretion with respect to exceeding limits for attorney's fees in an appeal of an injured employee to the district court.

**Senate Bill No. 2073** (Workforce Safety and Insurance) would have removed the requirement that one of the employer members on the Workforce Safety and Insurance Board of Directors be a participant in the risk management program and would have clarified that one of the three employee members must have received Workforce Safety and Insurance benefits.

**Senate Bill No. 2257** (Senators Heitkamp and Nething; Representatives Amerman and DeKrey) would have required that the executive director of Workforce Safety and Insurance be appointed by the Governor on a nonpartisan, merit basis. The bill also would have replaced the Workforce Safety and Insurance Board of Directors with a Workforce Safety and Insurance Advisory Board.

**Senate Bill No. 2292** (Senators Nething, Dever, and Robinson; Representatives Amerman, DeKrey,

and Delmore) would have transferred the Workforce Safety and Insurance Office of Independent Review to the Department of Labor.

**Senate Bill No. 2297** (Senators Nething, Cook, and Robinson; Representatives DeKrey, R. Kelsch, and Skarphol) would have required Workforce Safety and Insurance to select a doctor for the independent medical examination of a claimant from a list of three doctors provided by the State Board of Medical Examiners. The bill also would have required Workforce Safety and Insurance to designate and pay

for a registered nurse to be present at an independent medical examination, upon the request of the injured employee.

**Senate Bill No. 2342** (Senators Andrist, Heitkamp, Klein, and Nething) would have provided that if a claimant files an original claim for benefits with Workforce Safety and Insurance within 60 days following an injury or within six months following a death and if the original claim for benefits is still pending in the 61<sup>st</sup> day following the claim, the claim would be deemed approved.