

JOURNAL OF THE SENATE

Fifty-second Legislative Assembly

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Bismarck, March 26, 1991

The Senate convened at 10:00 a.m., with President Omdahl presiding.

The prayer was offered by Rev. Cheryl Edmonds, First Presbyterian Church, Bismarck.

The roll was called and all members were present except Senator Bowman.

A quorum was declared by the President.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The President has signed: HB 1023, HB 1029, HB 1111, HB 1151, HB 1176, HB 1185, HB 1188, HB 1189, HB 1227, HB 1293, HB 1318, HB 1324, HB 1370, HCR 3037.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

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

HB 1127: Sens. Schoenwald; Krauter; Krebsbach
 HB 1381: Sens. Schoenwald; O'Connell; David
 HB 1424: Sens. Mathern; Jerome; Lindgren
 HB 1439: Sens. Langley; Schoenwald; David
 HB 1441: Sens. Langley; Krauter; Mutch
 HB 1450: Sens. Heinrich; Graba; Freborg

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MR. PRESIDENT: The House has failed to pass: SB 2267.

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

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

SB 2054: Reps. Martinson; Kelsch; Mutzenberger
 SB 2083: Reps. Bernstein; Price; Kroeber

APPOINTMENT OF CONFERENCE COMMITTEES

SEN. KELSH MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1135, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1135: Sens. Kinnoin, Langley, Bowman.

SEN. MATHERN MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1483, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1483. Sens. E. Hanson, Bowman, Mathern.

SEN. MAXSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1053, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1053: Sens. Meyer, Traynor, Marks.

SEN. MAXSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1051, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1051: Sens. Meyer, Traynor, Marks.

SEN. MAXSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1138, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1138: Sens. Meyer, DeKrey, Solberg.

MOTION

SEN. WOGSLAND MOVED that SB 2039, SB 2149, SB 2151, SB 4011, and SB 2188 be moved to the top of the Twelfth order, which motion prevailed.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. MEYER MOVED that the Senate do not concur in the House amendments to Engrossed SB 2039 as printed on SJ pages 1076-1077, and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE PRESIDENT APPOINTED as a Conference Committee on SB 2039: Sens. Krauter, Wogsland, Moore.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. KELSH MOVED that the Senate do not concur in the House amendments to Engrossed SB 2149 as printed on SJ pages 1107-1108 and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE PRESIDENT APPOINTED as a Conference Committee on SB 2149: Sens. Kinnoin, Langley, Vosper.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. KELSH MOVED that the Senate do not concur in the House amendments to Engrossed SB 2151 as printed on SJ pages 1037-1038, and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE PRESIDENT APPOINTED as a Conference Committee on SB 2151: Sens. Kelsh, Marks, Bowman.

MOTION

SEN. WOGSLAND MOVED that the rules be suspended and that SCR 4011 and SB 2188 be deemed properly engrossed and placed on the calendar, as amended, for second reading and final passage, which motion prevailed.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. MEYER MOVED that the Senate do concur in the House amendments to Engrossed SCR 4011 as printed on SJ page 1104, which motion prevailed.

SECOND READING OF SENATE CONCURRENT RESOLUTION

SCR 4011: A concurrent resolution urging the Garrison Diversion Conservancy District, with the cooperation of the State Water Commission, the Governor, the Garrison Diversion Overview Committee, and each member of the North Dakota Congressional Delegation, to attempt to negotiate promptly, with the appropriate federal officials, a greater role for the state in the development, construction, operation, and maintenance of the Garrison Diversion Project.

The question being on the final adoption of the amended resolution.

SCR 4011 was declared adopted.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. MEYER MOVED that the Senate do concur in the House amendments to Reengrossed SB 2188 as printed on SJ page 1238, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2188: A BILL for an Act to provide for the establishment of a program to carry out the provisions of the Emergency Planning and Community Right-to-Know Act of 1986, expanded duties of the division of emergency management, a facility fee system, a state and local hazardous chemicals fund or account, and the expenditure of special funds; and to provide a penalty.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 45 YEAS, 7 NAYS, 0 EXCUSSED, 1 ABSENT AND NOT VOTING.

YEAS: DeKrey; Dotzenrod; Evanson; Goetz; Graba; Hanson, E.; Heigaard; Heinrich; Holmberg; Ingstad; Jerome; Keller; Kelly; Kelsh; Kinnoin; Krauter; Krebsbach; Langley; Lindaas; Lindgren; Lips; Marks; Mathern; Maxson; Meyer; Mushik; Mutch; Naaden; Nalewaja; Nelson; Nething; O'Connell; Peterson; Redlin; Robinson; Satrom; Schoenwald; Stenehjem; Tallackson; Tennefos; Thane; Tomac; Traynor; Vosper; Yockim

NAYS: David; Freborg; Hanson, O.; Moore; Solberg; Streibel; Wogsland

ABSENT AND NOT VOTING: Bowman

SB 2188 passed and the title was agreed to.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. MAXSON MOVED that the Senate do concur in the House amendments to Reengrossed SB 2028 as printed on SJ pages 1033-1034, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2028: A BILL for an Act to amend and reenact section 27-05-05 of the North Dakota Century Code, relating to the election of presiding district judges; and to provide an effective date.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 52 YEAS, 0 NAYS, 0 EXCUSSED, 1 ABSENT AND NOT VOTING.

YEAS: David; DeKrey; Dotzenrod; Evanson; Freborg; Goetz; Graba; Hanson, E.; Hanson, O.; Heigaard; Heinrich; Holmberg; Ingstad; Jerome; Keller; Kelly; Kelsh; Kinnoin; Krauter; Krebsbach; Langley; Lindaas; Lindgren; Lips; Marks; Mathern; Maxson; Meyer; Moore; Mushik; Mutch; Naaden; Nalewaja; Nelson; Nething; O'Connell; Peterson; Redlin; Robinson; Satrom; Schoenwald; Solberg; Stenehjem; Streibel; Tallackson; Tennefos; Thane; Tomac; Traynor; Vosper; Wogsland; Yockim

ABSENT AND NOT VOTING: Bowman

SB 2028 passed and the title was agreed to.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. MAXSON MOVED that the Senate do concur in the House amendments to Reengrossed SB 2035 as printed on SJ page 831, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2035: A BILL for an Act to create and enact a new subsection to section 16.1-01-09 of the North Dakota Century Code, relating to the filing of initiative, referendum, and recall petitions.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 52 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

YEAS: David; DeKrey; Dotzenrod; Evanson; Freborg; Goetz; Graba; Hanson, E.; Hanson, O.; Heigaard; Heinrich; Holmberg; Ingstad; Jerome; Keller; Kelly; Kelsh; Kinnoin; Krauter; Krebsbach; Langley; Lindaas; Lindgren; Lips; Marks; Mathern; Maxson; Meyer; Moore; Mushik; Mutch; Naaden; Malewaja; Nelson; Nething; O'Connell; Peterson; Redlin; Robinson; Satrom; Schoenwald; Solberg; Stenehjem; Streibel; Tallackson; Tennefos; Thane; Tomac; Traynor; Vosper; Wogsland; Yockim

ABSENT AND NOT VOTING: Bowman

SB 2035 passed and the title was agreed to.

MOTION

SEN. WOGSLAND MOVED that the Senate stand in recess until 1:00 p.m., which motion prevailed.

THE SENATE RECONVENED pursuant to recess taken, with President Omdahl presiding.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

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

- HB 1051: Sens. Meyer; Traynor; Marks
- HB 1053: Sens. Meyer; Traynor; Marks
- HB 1135: Sens. Kinnoin; Langley; Bowman
- HB 1138: Sens. Meyer; DeKrey; Solberg
- HB 1483: Sens. Hanson, E.; Bowman; Mathern

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MR. PRESIDENT: The House has amended and subsequently passed: SB 2206.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 65-01, seven new sections to chapter 65-02, two new sections to chapter 65-04, three new sections to chapter 65-05, two new subsections to section 65-05-07, sections 65-05-08.1, 65-05-09.3, 65-05-34, and 65-05-35, and a new section to chapter 65-05.1 of the North Dakota Century Code, relating to workers' compensation administration, coverage, and benefits; and to amend and reenact sections 65-01-02, 65-01-10, 65-02-08, 65-04-13, 65-04-14, 65-04-15, 65-04-18, 65-04-20, 65-05-01, 65-05-08, 65-05-09, 65-05-09.2, 65-05-10, 65-05-25, 65-05-28, 65-05-33, 65-05.1-01, 65-05.1-02.1, 65-05.1-04, 65-05.1-06.1, 65-05.2-01, 65-05.2-02, and subsection 4 of section 65-06.2-02 of the North Dakota Century Code, relating to workers' compensation administration, coverage, and benefits; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions. ~~Whenever used in~~ In this title:

1. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
2. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body. ~~Eye~~glasses The term does not include eye glasses or contact lenses ~~are not artificial members~~ unless the eye is, or eyes are, injured as a result of a compensable injury, and such injury causes a change in sight which requires fitting of eyeglasses or contact lenses not previously worn by the injured worker, or requires a change in existing prescription.
3. "Artificial replacements" means mechanical aids including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury. The term does not include:
 - a. Personal items that are for the injured employee's personal use or hygiene, including hand massages, toothbrushes, slippers, shampoo, and soap;
 - b. Any product or item such as clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating doctor or health care provider;
 - c. All items of furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating doctor or health care provider;
 - d. Vitamins and food supplements except in those cases where the injury causes severe dietary problems, where the injury results in the employee's paraplegia or quadriplegia, or where the employee becomes wheelchair-bound due to the injury;
 - e. Eye exams unless there is a reasonable potential for injury to the employee's eyes as a result of the injury;
 - f. Home gym or exercise equipment unless the bureau otherwise orders;
 - g. Memberships or monthly dues to health clubs, unless the bureau orders otherwise;
 - h. Private hospital or nursing home rooms except in cases of extreme medical necessity, and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the difference in cost will be paid by the employee;
 - i. Serological tests (VDRL and RPR) for syphilis or any other venereal disease tests, pregnancy tests, or any other routine tests unless clearly necessitated by the injury; and
 - j. Aids or programs primarily intended to help the employee lose weight or stop smoking.
4. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.

5. "Brother" and "sister" includes a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption; ~~but such terms shall~~. The terms do not include a married brother or sister unless he or she actually is dependent.
6. "Bureau" means the North Dakota workers compensation bureau, or any director, department heads, assistants, ~~or employees,~~ or other entity designated by the ~~commissioners~~ director, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.
7. "Child" means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but shall not include a married child unless actually dependent.
8. "Compensable injury" means an injury by accident arising out of and in the course of employment.
 - a. The term "compensable injury", in addition to an injury by accident, includes:
 - (1) Any disease which can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed shall not be compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of his employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It need not have been foreseen or expected, but after it is contracted, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. However, preventative treatment for communicable diseases is not compensable under this title.
 - (2) An injury to artificial members.
 - (3) Injuries due to heart attack, stroke, and mental or physical injury precipitated by mental stimulus, which must be causally related to the ~~worker's~~ employee's employment, with reasonable medical certainty, and which must have been precipitated by unusual stress.
 - (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
 - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.

- b. The term "~~compensable injury~~" does not include:
- (1) An injury caused by the employee's willful intention to injure or kill himself, herself, or another, which includes those instances where the injury or aggravation thereof results from the employee's suicide or attempted suicide.
 - (2) Any injury caused by the use of narcotics or intoxicants.
 - (3) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor.
 - (4) An injury that arises out of the commission of an illegal act by the injured employee.
 - (5) An injury that arises out of an employee's purely voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
 - (6) Injuries attributable to a preexisting injury, disease, or condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. However, it is insufficient to afford compensation under this title solely because the employment acted as a trigger to produce symptoms in a latent and underlying condition if the underlying condition would likely have progressed similarly in the absence of such employment trigger, unless the employment trigger is also deemed a substantial aggravating or accelerating factor. An underlying condition is preexisting injury, disease, or infirmity.
 - (7) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.
 - (8) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment injury.
 - (9) A mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except such action that is the intentional infliction of emotional harm.
9. "Date of first disability" and "loss of earnings date" mean the first full date the employee was unable to work in relation to a compensable injury. ~~This term does~~ These terms do not apply to recurrent disabilities.
 10. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no

longer reasonably be anticipated based upon reasonable medical probability.

11. "Director" means the director of the bureau.
12. "Disability" means that period of time an employee is totally or partially incapacitated from:
 - a. Performing employment at any suitable gainful employment or occupation for which the employee is reasonably suited by experience or training;
 - b. Earning in the same or any other employment the wages the employee was receiving at the time of injury loss of earnings capacity and may be permanent total, temporary total, or partial.
 - a. Permanent total disability is permanent in nature and total in character, and is paid to an employee who is not capable of rehabilitation of earnings capacity, which depend upon the following factors:
 - (1) Nature of injury;
 - (2) Degree of physical impairment;
 - (3) Age;
 - (4) Education;
 - (5) Work history; and
 - (6) Vocational rehabilitation potential.
 - b. Temporary total disability is total in character but temporary in nature and is paid to the employee until maximum medical recovery with work release to any occupation for which the employee is reasonably suited by aptitude, education, experience, or training.
 - c. Partial disability exists when the following are present and must be paid pursuant to section 65-05-10:
 - (1) The employee has a permanent physical inability to perform certain work;
 - (2) The employee is able to do some work subject to the disability;
 - (3) The employee has an actual loss of earning capacity that is causally related to the disability; and
 - (4) The employee has not undergone training under chapter 65-05.1.
13. "Doctor" means doctor of medicine, chiropractor, osteopathy, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.
14. "Employee" means every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:
 - a. The term includes:
 - (1) All elective and appointed officials of this state and its political subdivisions, including municipal

corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.

- (2) Aliens.
 - (3) Poor relief workers except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief.
 - (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person may have any claim for relief or right to compensation for any injury to such minor worker, but in the event of the award of a lump sum of compensation to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor.
- b. The term does not include:
- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
 - (2) Any person who is engaged in an illegal enterprise or occupation.
 - (3) The spouse or child of the employer dwelling in the household of the employer.
- c. Persons employed by subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium therefor. This subdivision does not impose any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a subcontractor or independent contractor.
15. "Employer" means:
- a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, association, or corporation, having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation.
16. "Employment" means employment by the state and all political subdivisions thereof, by all public and quasi-public corporations therein, and all private employments.

17. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease which:
- a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
 - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
 - c. Can be fairly traced to the employment;
 - d. However, any condition or impairment of health of a full-time paid ~~fireman~~ firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid ~~fireman~~ firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid ~~fireman~~ firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid ~~fireman~~ firefighter. A full-time paid ~~fireman~~ firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid ~~fireman~~ firefighter or law enforcement officer has completed two years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition.
18. "Fee schedule" means the relative value scale, conversion factors, fee schedules, and medical aid rules adopted by the bureau.
19. "Fund" means the North Dakota workers' compensation fund.
20. "Grandchild" and the terms defined in subsections 4 and 6 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.
21. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
- a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.

- d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
22. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.
23. "Orphan" means a child who has no lawful parent.
24. "Parent" includes a stepparent and a parent by adoption.
25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement or recovery, and includes disfigurement resulting from an injury if such disfigurement diminishes the ability of the employee to obtain employment. The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". ~~Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment", must be determined by clear and convincing medical evidence.~~
26. ~~"Premises" means that part of the employer's property upon or in which the employee is expected to perform services for his employer.~~
- ~~27-~~ "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. ~~Such services~~ The term may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.
- ~~28-~~ 27. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
- ~~29-~~ 28. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the bureau to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
- ~~30-~~ 29. "Wages" means all remuneration payable in money or a substitute for money for services rendered by an employee.
- a. The term ~~"wages"~~ includes:
- (1) The actual value of board, lodging, rent, or housing and per diem expenses to be included within the actual wage as remuneration, if such board, lodging, rent, or housing and per diem is lost as a result of the injury.
 - (2) Commissions and bonuses.

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

b. The term "wages" does not include:

- (1) Severance pay.
- (2) The cash value of health, medical, life, or other insurance benefits or retirement benefits.
- (3) Social security benefits.
- (4) Passive investment income such as income from stocks, bonds, trust accounts, or individual retirement accounts.

~~30-~~ 30. "Gross weekly wage" means the weekly wages the ~~worker~~ employee was receiving from all employments at the time of injury. The average weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the ~~worker's~~ employee's wages are not fixed by the week, they must be determined in the following manner:

- a. Hourly or daily rate multiplied by number of hours or days worked per seven day week;
- b. Monthly rate multiplied by twelve months and divided by fifty-two weeks;
- c. Biweekly rate divided by two;
- d. If the weekly earnings of an employee cannot be ascertained, the wage for the purposes of calculating compensation must be taken to be the usual wage paid other employees engaged in like or similar occupations where the wages are fixed; or
- e. If there are special circumstances under which the average weekly wages cannot be reasonably and fairly determined by applying subdivisions a through d, an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty-two weeks, or the number of weeks actually worked, whichever is less.

~~32. Any term includes the singular and plural and either or both sexes where the context so requires.~~

SECTION 2. AMENDMENT. Section 65-01-10 of the North Dakota Century Code is amended and reenacted as follows:

65-01-10. Waiver of rights to compensation void - Deduction of premium from employee prohibited - Penalty. No agreement by an employee to waive his rights to compensation under the provisions of this title shall be valid except as provided in section 65-05-25. No agreement by any employee to pay any portion of the premium paid or payable by his the employer into the fund shall be is valid, and any employer who deducts any portion of such premium from the wages or salary of any employee entitled to the benefits of this title is guilty of an infraction a class A misdemeanor.

SECTION 3. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Informal decision by bureau. Notwithstanding sections 28-32-05, 28-32-08, and 28-32-13, the following procedures must be followed when a claim for benefits or reapplication for benefits is made under this title:

1. All claims must be filed on forms furnished by the bureau for that purpose.
2. Upon filing of a claim, including the claimant's statement and physician's certificate, the bureau shall send a copy of the claim, along with a form provided for the employer's response by regular mail, to the employer, if the employer's response is not filed at the time the claim is filed.
3. The employer has fifteen days from the day a copy of the claim is mailed to the employer by the bureau to file or mail a response. Failure of the employer to file a response to the claim within fifteen days constitutes an admission by the employer that the allegations stated in the claim form are true. The bureau may reopen a determination made without an employer's report on its own motion, pursuant to section 65-05-04, on the grounds it deems sufficient.
4. The bureau shall make its informal decision on the claim after filing of the claim and the physician's certificate. The bureau shall issue a notice of decision, including a short summary indicating the reason for decision, and shall serve the notice on the parties by mailing a copy to them by regular mail. The bureau is not required to make findings of fact and conclusions of law when it makes an informal decision. Any party may, within thirty days of the date of mailing of notice of initial award, request reconsideration by filing a written request for reconsideration. The request may be accompanied by affidavits, medical records, or other evidence not previously submitted to the bureau. No later than ninety days following filing of a request for reconsideration, the bureau shall issue an order conforming to the requirements of chapter 28-32. Following issuance of an order, any party may request rehearing or file an appeal in accordance with chapter 28-32. If a timely request for reconsideration is not filed the decision of the bureau is final, subject only to reopening of the claim under section 65-05-04. The provisions of section 65-10-01, relating to appeals from decision of the bureau, apply only when the bureau issues an order following a timely request for reconsideration.

5. The bureau may hold informal proceedings to determine any matter subject to its jurisdiction. The bureau shall issue to the parties a notice of decision, including a short statement or summary indicating the reason for the decision, and notice of the right to request reconsideration as provided by this section. The bureau may convene a formal hearing prior to issuing an administrative order, if the bureau so desires.
6. After acceptance of a claim, the bureau may continue to pay medical charges, disability benefits, or a vocational award for time loss without issuing notice of award.
7. The bureau shall issue an administrative order under chapter 28-32 when it makes a permanent partial impairment award or a vocational award, terminates or denies disability or vocational services, or has otherwise been requested to issue an administrative order by an aggrieved party by filing a request for reconsideration of its informal decision.

SECTION 4. AMENDMENT. Section 65-02-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau. The bureau shall ~~make, promulgate, and enforce~~ adopt such rules, not inconsistent with the provisions of this title, as may be necessary to carry out the provisions of this title. All fees on claims for ~~legal, medical, and hospital services rendered under this title to any claimant must be in accordance with schedules of fees adopted or to be adopted by the bureau.~~ The bureau shall establish, by administrative rule, an hourly rate to compensate claimants' attorneys for legal services following constructive denial of a claim or issuance of an administrative order under chapter 28-32 reducing or denying benefits. "Constructive denial" means delay in payment, failure to issue an administrative order, or failure to act within ninety days of the date when all elements of filing or notice of reappliation of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. ~~The bureau shall establish, by administrative rule, a reasonable maximum fee for each stage of the proceedings, provided further that the maximum fee may be exceeded upon application of the claimant and approval of the bureau, which may not be unreasonably denied, upon a finding that the claim has clear and substantial merit and additional fees are warranted because the legal or factual issues involved in the dispute are unusually complex. The bureau may also provide, by administrative rule, an hourly fee for legal assistants or paraprofessionals, and fees for court reporters. The bureau may establish reasonable rules governing payment of fees, required fee statements, billing practices, reimbursement for costs, and other necessary rules governing payment for legal services not inconsistent with the provisions of this title.~~ All attorneys' fees and costs must be paid from the bureau general fund. Nothing provided herein may be construed to prevent a claimant or employer from hiring or paying his or her own attorney; however, the claimant's attorney may not seek or obtain costs or attorney's fees from both the bureau and the claimant relative to the same services. The bureau may deny attorneys' fees upon a finding that the claim is frivolous. ~~All disputes relating to payment or denial of attorneys' fees must be submitted to binding arbitration by a fee arbitration panel composed of one member selected by the claimant's attorney, one member selected by the bureau, and one member selected jointly by the claimant's attorney and the bureau. An attorney who agrees to accept compensation from the bureau for services pursuant to this section agrees to binding fee arbitration of all disputes relating to payment or denial of fees.~~

SECTION 5. Four new sections to chapter 65-02 of the North Dakota Century Code are created and enacted as follows:

Workers' compensation arbitration panel - Membership. The bureau shall establish four regional listings of persons who may serve as arbitrators for workers' compensation proceedings. Each regional listing must contain an equal number of names submitted to the director by an organization, statewide in scope, which, through its affiliates, embraces a cross section and a majority of the organized labor of the state; an equal number of names submitted to the director by a recognized statewide organization of employers, representing a majority of employers; and a similarly equal number of names selected by the bureau from applications by interested persons throughout the state who demonstrate the unique ability, experience, and qualifications to serve as arbitrators. Each list must be revised every three years. The people whose names appear on a regional listing must reside in that region. When a disputed claim is submitted for arbitration, the employee shall select a name from the appropriate regional list that was submitted by the labor organization; the employer shall select a name from the appropriate regional list that was submitted by the statewide organization of employers or shall designate the bureau to do so; and the selected employee and employer representatives shall select a name from the appropriate regional list of those individuals who have been selected to serve as arbitrators based upon their experience and ability. The appropriate region is the region in which the employee resides. If the employee resides out of state, the appropriate region is the region of the situs of employment. As an alternative selection procedure, by mutual agreement, the employee and the employer may designate themselves as the employee and employer representatives on the panel and together shall select the third panel member from the appropriate regional list of those individuals who have been selected to serve as arbitrators based upon their experience and ability. Panel members are entitled to remuneration for their services at a rate set by the bureau and to travel expenses at the rate in effect for state employees. The bureau shall provide staff services to the panel members. The salaries and expenses of the panel must be paid from money appropriated to the bureau for that purpose.

Removal of a panel member. The director may remove a member of the workers' compensation arbitration panel for cause.

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

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

SECTION 6. Three new sections to chapter 65-02 of the North Dakota Century Code are created and enacted as follows:

Bureau to contract for administrative services. The bureau shall contract for the services of a third-party administrator to monitor medical treatments of injured employees and to monitor the payment of medical expenses of all workers' compensation claims. The bureau shall solicit bids for administrative services within six months after the effective date of this Act and by May 1, 1992, shall award an administrative services contract to the bidder who will best serve the interests of the bureau and the employees under this title. The initial contract must begin July 1, 1992, and continue through June 30,

1993. Subsequent contracts must be for the period of a biennium. Subsequent solicitations must be made at least forty-five days before the expiration of an existing administrative services contract.

Bureau to establish managed care program. The bureau shall establish a managed care program with a third-party administrator to effect the best medical solution for an injured employee. The managed care system must allow for a third-party administrator to direct the program for medical care of the injured employee upon a finding by the bureau that the employee suffered a compensable injury. The managed care administrator shall operate according to guidelines adopted by the bureau to ensure that an injured employee receives appropriate medical treatment in a cost-effective manner. The managed care administrator shall assist the bureau in the medical management of claims within the bounds of workers' compensation law.

Contract for administration of managed care program. The bureau shall contract for the services of a third-party administrator to implement the managed care program. The bureau shall solicit bids for these administrative services within six months after the effective date of this Act. The solicitation must include a description of the program and the services expected of the managed care administrator. By May 1, 1992, the bureau shall award an administrative services contract to the bidder who will best serve the interests of the bureau and the employees under this title. The initial contract must begin July 1, 1992, and continue through June 30, 1993. Subsequent contracts must be for the period of a biennium. Subsequent solicitations must be made at least forty-five days before the expiration of an existing administrative services contract.

SECTION 7. AMENDMENT. Section 65-04-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-13. Books, records, and payrolls of employers subject to audit and inspection - Penalty for refusal to permit inspection. All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of the employers, must be open always for inspection by the bureau or any of its traveling auditors, inspectors, or assistants for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of ~~men~~ employed employees, and any other information as may be necessary for the uses and purposes of the bureau in its administration of this title. Refusal on the part of any employer to submit the employer's books, records, and payrolls for the inspection of the bureau, or of a traveling auditor, inspector, or assistant presenting written authority from the bureau, subjects the employer to a penalty of one hundred dollars for each offense, the same to be collected by civil action in the name of the state and paid into the fund to become a part thereof.

SECTION 8. AMENDMENT. Section 65-04-14 of the North Dakota Century Code is amended and reenacted as follows:

65-04-14. False payroll report - Liability of employer - Collection and disposition of penalty. Any employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based ~~shall be~~ is liable to the state in ten times the amount of the difference between the premium paid and the amount the employer should have paid. The liability to the state under this section ~~shall~~ must be enforced in a civil action in the name of the state, and all sums collected under the section ~~shall~~ must be paid into the fund. Any employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is guilty of a class A misdemeanor.

SECTION 9. AMENDMENT. Section 65-04-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-15. Information in employer's reports confidential - Penalty if employee of bureau divulges information. The information contained in an employer's report is for the exclusive use and information of the bureau in the discharge of its official duties and is not open to the public nor usable in any court in any action or proceeding pending therein unless the bureau is a party thereto. The information contained in an employer's report may be provided to a federal or state law enforcement agency pursuant to a lawful order of a court upon a showing of necessity and prior notice to the bureau of an application for the order. The information contained in the report, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Upon request, the bureau shall disclose the rate classification of an employer to the requester; however, the bureau may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the bureau.

The workers compensation bureau may, upon request of the state tax commissioner or the secretary of state, furnish to them a list or lists of employers showing only the names, addresses, and workers compensation bureau file identification numbers of such employers; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The bureau may provide the commissioner of labor or job service North Dakota with information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of the commissioner of labor or job service North Dakota. Whenever the bureau obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

SECTION 10. AMENDMENT. Section 65-04-18 of the North Dakota Century Code is amended and reenacted as follows:

65-04-18. Subsequent injury or aggravation of previous injury or condition of employee - Charge to employer's risk - Charge of part of claim to subsequent injury fund. Whenever a subsequent If an injured employee returns to work with an employer who is not the employer for whom the employee worked at the time of the injury, and suffers an aggravation or reoccurrence of injury or aggravation of a previous injury or preexisting condition occurs to an employee to the same body part within five years of the filing date of the original injury, the risk of the employer for whom such that person was working at the time of such subsequent injury or aggravation shall the original injury must be charged only with the amount of the awards resulting from such subsequent injury or expense of the aggravation or reoccurrence if the aggravation or reoccurrence is not the result of an identifiable injury suffered while working for the new employer. Whenever such subsequent injury or aggravation results in further disability or an aggravation of a preexisting injury or condition, the compensation which that is in excess of the amount to which the injured employee would have been entitled solely by reason of the subsequent injury or aggravation shall must be charged to the subsequent injury fund and not to the Classification or the risk to which the subsequent injury or aggravation is charged. The expense of an aggravation, reinjury, or degenerative condition of the same body part which manifests itself more than five years after the filing date of the original injury must

be charged to the employer for whom the employee was working at the time of the manifestation provided that the manifestation is causally related to the employee's work activities.

SECTION 11. AMENDMENT. Section 65-04-20 of the North Dakota Century Code is amended and reenacted as follows:

65-04-20. Installment payment of premiums - Bond required. If the amount of premium billed to an employer on a pay-in-order is in excess of one hundred dollars, such premium may be paid in installments as follows:

1. If the employer is the state of North Dakota, or any department, industrial association, or political subdivision thereof, such premium may be paid in two equal semiannual installments at the option of the state, department, industrial association, or political subdivision, and no bond or undertaking shall be required to secure the payment of deferred premiums.
2. If the employer is other than one mentioned in subsection 1, such premium may be paid, at the option of the employer, in two equal semiannual installments or in four equal quarterly installments. ~~An employer wishing to pay premiums in installments under the provisions of this subsection shall file, on or before the due date of the first payment, the first payment and a satisfactory bond guarantying the payment of all deferred installments in the event of default and guarantying the payment of penalties and court costs in the event of default. A bond may cover one or more annual premiums specified in the pay-in-order, but if more than one year's premium is covered, the bond shall be a surety bond.~~

~~Interest shall~~ must be charged at the same rate of ~~nine percent~~ per annum as earned by the investment of the fund based on the investment measurement review as of March thirty-first of each year and effective July first of each year. Such rate must be charged on all premiums deferred under the provisions of this section, and upon default in payment of any installment such installment shall carry penalties as provided in this chapter.

SECTION 12. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Corporate officer personal liability.

1. Any officer, director, or any employee having twenty percent ownership of a corporation that is an employer under this title who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums under this title, and who fails to file the reports or to make payments as required, is personally liable for premiums or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the bureau those amounts for which the employer is liable.
2. The personal liability of any person as provided in this section survives dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation must be considered earned from the person determined to be personally liable.
3. After notice and opportunity for hearing, the bureau shall make a determination as to the personal liability under this section. A hearing must be requested within twelve days from

the date of mailing of the notice. The determination is final unless the person found to be personally liable requests review by the bureau within fifteen days after mailing of the notice of determination to the person's last known address.

SECTION 13. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Liability in excess of collected premiums for full-time paid firefighters and law enforcement officers. Whenever claim liability against the fund credited to the classification for full-time paid firefighters or law enforcement officers exceeds the amount of premiums paid into the fund, the excess liability is an obligation of the employers who pay premiums on those employees and those employers shall reimburse the fund for the excess liabilities.

SECTION 14. AMENDMENT. Section 65-05-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-01. Claims for compensation - When and where filed. All original claims for compensation which result in medical costs greater than two hundred fifty dollars must be filed by the injured worker employee, or someone on the injured worker's employee's behalf, within one year after the injury or within two years after the death. The employer shall notify the bureau of all claims that result in medical costs of not more than two hundred fifty dollars which are paid by the employer. The date of injury for purposes of this section must be the actual date of injury when such can be determined with certainty by the claimant and bureau. When the actual date of injury cannot be determined with certainty the date of injury must be the first date that a reasonable person knew or should have known that the injury was related to employment. No compensation or benefits may be allowed under the provisions of this title to any person, except as provided in section 65-05-04, unless he or she that person, or someone on his or her that person's behalf, files a written claim therefor within the time specified in this section. Such The claim must be filed by:

1. Delivering it at the office of the bureau or to any person whom the bureau by regulation rule may designate; or
2. Depositing it in the mail properly stamped and addressed to the bureau or to any person whom the bureau by regulation rule may designate.

SECTION 15. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Employer required to pay certain claims. The employer shall pay all medical expenses related to a compensable injury to an employee if the expenses are not more than two hundred fifty dollars and shall pay the first two hundred fifty dollars of medical expenses when the expenses are more than two hundred fifty dollars. If the employer does not pay the medical expenses within ninety days of receipt of billing, the health care provider shall submit a claim within the time required by section 65-05-01 for the cost of the injured employee's treatment to the bureau for payment. The bureau shall review the claim and pay the medical expenses if the injury is determined to be compensable. The bureau may impose a penalty on an employer who fails to pay a health care provider as required in this section. The penalty may not exceed one hundred twenty-five percent of the medical expenses owed by the employer. The bureau shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for a claim paid by the employer. When the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the employee shall file a claim with the bureau pursuant to section 65-05-01. An employer shall

notify the bureau of an alleged injury within fifteen days after the employer has been notified of the alleged injury by the employee. An employer shall notify the bureau of all medical expenses paid by that employer for an injured employee within sixty days after payment.

SECTION 16. Two new subsections to section 65-05-07 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

If a doctor or health care provider who has treated or provided services to an injured employee fails or refuses to file with the bureau a report required by sections 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for such report made by the claimant, the claimant's representative, or the bureau, the bureau shall assess as a penalty a sum of one hundred dollars. Health care providers or doctors may not bill injured workers for any penalty assessed by the bureau as a result of failure or refusal to file a required report.

The filing of an accident report or the rendering of treatment to an injured worker who comes under the bureau's jurisdiction, as the case may be, constitutes acceptance of the bureau's medical aid rules and compliance with its rules and fees.

SECTION 17. AMENDMENT. Section 65-05-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-08. Compensation not paid unless period of disability is of five days' duration or more - Application required. No compensation will be paid for total or partial disability, the duration of which is less than five consecutive calendar days. If the period of total or partial disability is of five consecutive calendar days' duration or more, compensation shall be paid during such disability providing that: beginning on the sixth day of disability.

1. Disability benefits may not be paid for the first five consecutive calendar days of disability.
2. When partial or total disability benefits are discontinued, the claimant shall provide the bureau written notice of reapplication for disability benefits. In case of reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon a finding that:
 - a. The employee has sustained a significant change in medical condition shown by a preponderance of the evidence;
 - b. The employee has provided evidence of actual wage loss attributable to the work injury; and
 - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.
- 2-. A health care provider or physician may not certify or verify past disability unless the health care provider or physician has examined the employee within the previous sixty days and filed those reports required by this title. A health care provider or physician certifying disability shall include in the report the basis for the certification of disability and

a professional opinion as to the expected length of, and reason for, the disability.

3. All payments of benefits must be suspended during the period of confinement of any worker employee who is eligible for, or receiving, benefits under this title who is confined in any institution under conviction and sentence unless the worker employee is receiving permanent total disability benefits or the bureau has determined that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and the employee has a spouse or child, in which case the benefits must be paid directly to such spouse or child. After discharge from the institution, payment of benefits thereafter due must be paid as the worker employee would, but for the provisions of this subsection, otherwise be entitled.
4. Any worker employee who is eligible for, or receiving, disability benefits under this title shall report any wages earned, from part-time or full-time employment, from the employer of injury or any other employer. Failure to report such wages earned requires the worker employee to refund to the bureau any partial or total disability benefits overpaid by the bureau for that time period. To facilitate recovery, the bureau may offset future benefits otherwise payable, under section 65-05-29. If the bureau determines that the failure to report wages earned was willful, the employee forfeits all further lost-time benefits otherwise payable under this title for that injury pursuant to section 65-05-33.
5. An employee shall request disability benefits on a lost-time claim form furnished by the bureau. In no case may lost-time benefits commence more than one year prior to filing of the initial lost-time claim form.
6. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, ~~1989~~ 1991, irrespective of injury date.

SECTION 18. Section 65-05-08.1 of the North Dakota Century Code is created and enacted as follows:

65-05-08.1. Verification of temporary total disability.

1. The claimant's doctor shall certify the period of temporary total disability upon request of the bureau.
2. A doctor certifying disability shall include in the report filed with the bureau:
 - a. The medical basis for the certification of disability;
 - b. Whether the employee is totally disabled, from any and all employment, or whether the employee is able to return to some employment, including light work or sedentary work;
 - c. If the employee is not totally disabled, a statement of the employee's restrictions and physical limitations; and
 - d. A professional opinion as to the expected length of, and reason for, the disability.
3. The report must be filed on a form furnished by the bureau, or on any other form acceptable to the bureau.

4. The claimant shall ensure that the required reports are filed.
5. Prior to expiration of a period of temporary total disability certified by a doctor, if a report certifying an additional period of disability has not been filed, the bureau shall send a notice to the claimant of intention to discontinue benefits, the reason therefor, and an explanation of the right to respond and the procedure for filing the required report or challenging the proposed action. A copy of the notice must be mailed to the claimant's doctor. Thereafter, if the required certification is not filed, the bureau shall discontinue temporary total disability benefits by formal order, effective no sooner than fourteen days after the date of notice of intention to discontinue benefits is mailed.
6. Upon receipt of a report or other evidence indicating a claimant who is receiving temporary total disability benefits has been or will be released to return to work, the bureau shall issue and mail to the claimant a notice of intention to discontinue benefits. Such benefits may thereafter be discontinued on the date of release to return to work or fourteen days following mailing of the notice, whichever is later. The notice must include a statement of the reason for the action, a brief summary of the evidence relied upon by the bureau, and an explanation of the right to respond and the procedure for challenging the action and submitting additional evidence to the bureau.

SECTION 19. AMENDMENT. Section 65-05-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-09. Temporary total or permanent total disability - Weekly and aggregate compensation. If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the gross weekly wage of the claimant, subject to a minimum of sixty percent and a maximum of one hundred percent of the average weekly wage in the state. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage and the bureau benefit rates in effect on the date of first disability.

1. If an employee suffers disability but is able to return to employment for a period of twelve consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher; and the bureau benefit rates shall be those in effect at the time of that recurrence.
2. In case of permanent total or temporary total disability, there must be paid to such disabled employee an additional dependency allowance for each child of the employee at the rate of ten dollars per week per child. Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.
3. Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the bureau.
4. In no case may the compensation or combined compensation and dependency award exceed the weekly wage of the employee after deductions for social security and federal income tax.
5. When an employee who is permanently and totally disabled and must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, part or all of

that employee's weekly compensation may be used by the bureau to help defray the cost of such care.

SECTION 20. AMENDMENT. Section 65-05-09.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-09.2. Retirement offset. If a claimant is entitled to permanent total disability benefits and social security retirement benefits under 42 U.S.C. sections 402 and 405, the aggregate wage-loss benefits payable under this title must be determined in accordance with this section. The employee's social security retirement offset must equal forty percent a percentage of the calculated ratio of the employee's average weekly wages, as calculated on the commencement of the first, or recurrent, disability under section 65-05-09, to the current state's average weekly wage. Any percentage offset calculated cannot exceed forty percent of the employee's weekly social security retirement benefit:

1. Forty percent of the employee's weekly social security retirement benefit if the employee's social security retirement benefits under 42 U.S.C. sections 402 and 405 commence after June 30, 1989; or
2. Fifty percent of the employee's weekly social security retirement benefit if the employee's social security retirement benefits under 42 U.S.C. sections 402 and 405 commence after June 30, 1991.

If a claim has been accepted on an aggravation basis and the worker employee is eligible for social security benefits, the bureau's offset must be proportionally calculated. An overpayment must be recouped in the same manner as set forth in section 65-05-09.1. The provisions of this section are not effective for workers who retire on or after whose social security retirement benefits under 42 U.S.C. sections 402 and 405 commenced before July 1, 1989.

SECTION 21. Section 65-05-09.3 of the North Dakota Century Code is created and enacted as follows:

65-05-09.3. Retirement presumption. An employee who has retired or voluntarily withdrawn from the labor force is presumed retired from the labor market and is ineligible for receipt of disability benefits under this title. The presumption may be rebutted by a preponderance of the evidence that the worker:

1. Is actively seeking employment;
2. Is available for gainful employment;
3. Has not rejected any job offer made by a former employer, or other bona fide job offer by another employer; and
4. Has not provided the employer, upon written request, with written notice of a scheduled retirement date.

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

SECTION 22. AMENDMENT. Section 65-05-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-10. Partial disability - Weekly compensation. If the injury causes temporary partial disability resulting in decrease of earning capacity, the compensation is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage earning capacity after the

injury in the same or another employment. However, the partial disability benefits may not exceed an amount equal to ~~sixty-six and two-thirds percent of the employee's average weekly wage at the time of the injury~~ benefit rates as defined in section 65-05-09.

1. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury, is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.
2. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, such employee is not entitled to any compensation at any time during the continuance of such refusal unless, at any time, such refusal is justified in the opinion of the bureau.
3. No compensation is payable unless the loss of earning ~~power~~ capacity exceeds ten percent. The claimant may earn up to ten percent of the claimant's average gross weekly earnings with no reduction in total disability benefits.
4. Upon securing suitable employment, the injured employee shall notify the bureau of the name and address of the employer, the date the employment began, and the amount of wages being received on an annual basis. The injured employee shall notify the bureau whenever there is a change in wages received.
5. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning ~~power~~ capacity occurs after July 1, 1989. Partial loss of earning ~~power~~ capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the bureau.
6. Dependency allowance must be paid under section 65-05-09 on claims receiving benefits under this section.
7. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The bureau may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
8. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity where the job employs the employee to full work capacity in terms of hours worked per week, and where the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

SECTION 23. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Permanent impairment. When there is a dispute as to the percentage of an employee's permanent impairment, all medical evidence must be submitted to an independent physician who has not treated the employee or who has not been consulted by the bureau in relation to the

injury upon which the impairment is based. The bureau shall establish a panel of physicians which reflects a cross section of medical specialists from different geographic regions within the state. The bureau and the claimant shall choose a physician to review a disputed permanent impairment rating by striking names from the panel until a name is chosen. The decision of the independent physician is presumptive evidence of the degree of permanent impairment of the employee.

SECTION 24. AMENDMENT. Section 65-05-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-25. Lump sum settlement - Granted in discretion of bureau - How computed. ~~The bureau, if it determines it is in the best interest of the claimant, may pay a lump sum equal to the present value of all future payments of compensation. The bureau and the claimant, after an opportunity to seek legal counsel, may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The probability of the beneficiary's or claimant's death before the expiration of the period during which he is entitled to compensation must be determined by reference to generally accepted mortality studies. In case of the spouse of a deceased employee, the lump sum may not exceed compensation for four hundred sixteen weeks and the probability of the happening of any other contingency affecting the amount or duration of the compensation must be disregarded. If at the expiration of a period for which lump sum settlement was made hereunder the claimant is still alive and has not remarried, the bureau, in its discretion, may again assume liability and resume pension payments. The bureau may also grant a partial lump sum settlement, based upon the same computations as the complete lump sum. Any decision of the bureau rendered under this section may be appealed to the district court as provided for in chapter 65-10, and the district court shall render its decision sustaining the decision of the bureau, reversing it, or remanding it back to the bureau with instructions.~~

1. If an employee is determined to be permanently and totally disabled, the bureau may pay the employee a lump sum equal to the present value of all future payments of compensation. The probability of the employee's death before the expiration of the period during which the employee is entitled to compensation must be determined by generally accepted mortality studies. The bureau may not pay the employee a lump sum unless it has first determined that there is clear and convincing evidence that the lump sum payment is in the best interest of the employee. Best interest of the employee may not be deemed to exist because the employee can invest the lump sum in another manner to realize a better yield. The employee must show a specific plan of rehabilitation which will enable the employee to return to work as a productive member of society.

2. The bureau and an employee may compromise to resolve a disputed claim. The contract of settlement, made is enforceable by the parties. The contract may provide that the employee shall utilize the funds to engage in certain rehabilitation programs. If the employee breaches the contract, the bureau may require the employee to repay the benefits received under the agreement. In cases in which the extent of disability is disputed and resolved by agreement, the concept of reopening a disability claim due to significant change in medical condition is applicable.

SECTION 25. AMENDMENT. Section 65-05-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate. Every

employee who sustains an injury may select a doctor of that employee's choice to render initial treatment. Upon a determination that the employee's injury is compensable, the bureau may require the employee to begin treating with another doctor, to better direct the medical aspects of the injured employee's claim. An injured employee shall follow the directives of ~~that employee's~~ the doctor or health care provider who is treating the employee whether chosen by the employee or the bureau, and comply with all reasonable requests during the time the employee is under medical care. Providing further that:

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

3. The bureau may at any time require an employee to submit to an independent medical examination by a duly qualified doctor or doctors designated or approved by the bureau. The independent medical examination must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. The employee may have a duly qualified doctor designated by that employee present at the examination if procured and paid for by that employee. Providing further that:
 - a. In case of any disagreement between doctors making an examination on the part of the bureau and the employee's doctor, the bureau shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the bureau.
 - b. The employee, in the discretion of the bureau, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the employee is working and loses gross wages from the employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
4. If an employee, or the employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination, or refuses reasonably to participate in medical or other treatments, the employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the employee.

SECTION 26. AMENDMENT. Section 65-05-33 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-33. Filing false claim or false statements - Penalty. Any person claiming benefits or payment for services under this title, who willfully files a false claim or makes a false statement, or willfully fails to notify the bureau as to the receipt of income, or an increase in income, from employment, after the issuance of an order awarding benefits, in connection with any claim or application under this title is guilty of a class B A misdemeanor. Provided further that:

1. For the purposes of this section, ~~the term~~ "statement" includes any testimony, claim form, notice, proof of injury, proof of return to work status, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test results, or other evidence of loss, injury, or expense.
2. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall:
 - a. Reimburse the bureau for any benefits paid based upon the false claim or false statement, and if applicable, under section 65-05-29.
 - b. Forfeit any additional benefits relative to that injury.

SECTION 27. Section 65-05-34 of the North Dakota Century Code is created and enacted as follows:

65-05-34. False statement on employment application. A false statement in an employment application made by an employee bars all benefits under this title if:

1. The employee knowingly made a false representation as to the employee's physical condition;
2. The employer relied upon the false representation and this reliance was a substantial factor in the hiring; and
3. There was a causal connection between the false representation and the injury.

SECTION 28. Section 65-05-35 of the North Dakota Century Code is created and enacted as follows:

65-05-35. Abandonment of claim - Presumption.

1. A claim for benefits under this title is presumed abandoned if:
 - a. A doctor's report has been filed indicating the employee has reached maximum medical recovery; and
 - b. The bureau has not paid any benefit or received a demand for payment of any benefit for a period of four years.
2. A claim that is presumed abandoned cannot be reopened for payment of any further benefits unless the presumption is rebutted by a preponderance of the evidence. At a minimum, the employee shall present expert medical opinion that there is a causal relationship between the work injury and the current symptoms.
3. When a claim has been presumed abandoned, the employee shall provide the bureau written notice of reapplication for benefits under that claim. In case of award of lost-time benefits, the award may commence no more than thirty days before the date of reapplication. In case of award of medical benefits, the award may be for medical services incurred no more than thirty days before the date of reapplication.

SECTION 29. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Bureau to adopt fee schedule. The bureau shall adopt a fee reimbursement schedule for medical and hospital services and supplies for claims for workers' compensation. The amount of the fees for a specific medical or hospital service or supply set forth in the schedule must be equal to one hundred ten percent of the amount allowed for that medical or hospital service or supply under the urban hospital fee schedule of the medicare prevailing profile in effect at the time the service or supply is provided. The bureau shall establish a supplemental schedule to include any medical or hospital service or supply that is provided to injured employees and is not covered by the medicare prevailing profile. Any fee for a medical or hospital service or supply which is in excess of the amount allowed for that medical or hospital service or supply by the appropriate schedule under this section may not be recovered by the health care provider from the injured employee, the employer, or the bureau. A health care provider may charge a fee for a medical or hospital service or supply that is less than the fee allowed by the appropriate schedule.

SECTION 30. AMENDMENT. Section 65-05.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-01. Rehabilitation services.

1. The state of North Dakota exercising its police and sovereign powers, declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. It is the purpose of this chapter to provide for the health and welfare by ensuring to workers' compensation claimants otherwise covered by this title, services, so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled ~~worker~~ employee to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, medical limitations, age, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the ~~worker~~ employee as soon as practical and as nearly as possible to the ~~worker's~~ employee's average weekly earnings at the time of injury, or to seventy-five percent of the average weekly wage in this state on the date the rehabilitation consultant's report is issued under section 65-05.1-02.1, whichever is less. The purpose of defining substantial gainful employment in terms of earnings is to determine the first appropriate priority option under subsection 4 of section 65-05.1-04 which meets this income test.
4. The first appropriate option among the following, calculated to return the ~~worker~~ employee to substantial gainful employment, must be chosen for the ~~worker~~ employee:
 - a. Return to the same position.
 - b. Return to a modified position.
 - c. Return to a related occupation in the local job pool which is suited to the ~~worker's~~ employee's education, experience, and marketable skills.
 - d. Return to a related occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
 - e. On the job training.
 - ~~e-~~ f. Short-term retraining of fifty-two weeks or less.
 - ~~f-~~ g. Long-term retraining of one hundred four weeks or less.
 - ~~g-~~ h. Self-employment.
5. If the vocational consultant concludes that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and will not return the employee to the lesser of seventy-five percent of the average weekly wage, or the employee's preinjury earnings, the employee shall continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:

- a. That meets the employee's medical limitations;
- b. In which the employee meets the qualifications to compete; and
- c. Which will reasonably result in retained earnings capacity equivalent to the lesser of the employee's preinjury earnings or fifty percent of the average weekly wage in the state on the date the rehabilitation consultant's report is issued.

An award of partial disability due to retained earnings capacity under this section must be made pursuant to section 65-05-10.

- ~~5-~~ 6. By agreement between the bureau and the worker employee, the income test in subsection 3 and the priority options in subsection 4 may be waived.
- ~~6-~~ 7. Vocational rehabilitation services may be initiated by:
 - a. The bureau on its own motion; or
 - b. The worker employee or the employer if proof exists:
 - (1) That the claimant has reached maximum medical recovery;
 - (2) That the claimant is not working and has not voluntarily retired or removed himself from the labor force; and
 - (3) That the worker employee has made good faith efforts to seek, obtain, and retain employment.
- ~~7-~~ 8. The provisions of chapter 50-06.1 do not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.

SECTION 31. AMENDMENT. Section 65-05.1-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-02.1. Vocational consultant's report. The vocational consultant shall review all records, statements, and other pertinent information and prepare a report to the bureau and worker employee.

- 1. The report must:
 - a. Identify the first appropriate rehabilitation option by following the priorities set forth in subsection 4 of section 65-05.1-01.
 - b. Contain findings of why a higher listed priority, if any, is not appropriate.
- 2. Depending on which option the consultant identifies as appropriate, the report also must contain findings that:
 - a. Identify jobs in the local or statewide job pool and the worker's employee's anticipated earnings from each job;
 - b. Describe an appropriate on-the-job training program, and the worker's employee's anticipated earnings;
 - c. Describe an appropriate short-term or long-term retraining program, the employment opportunities

anticipated upon the ~~worker's~~ employee's completion of the program, and the ~~worker's~~ employee's anticipated earnings; or

- d. Describe the ~~worker's~~ employee's potential for specific self-employment, limitations the ~~worker~~ employee might have in such a self-employment, any assistance necessary, and the ~~worker's~~ employee's anticipated earnings.
3. The vocational consultant's report is due within sixty days from the initial referral for rehabilitation assessment under this chapter. However, where the vocational consultant determines that short-term or long-term training options must be evaluated because higher priority options are not viable, the final report is due within ninety days of the initial assessment to allow the employee to assist in formulating the choice among the qualified training programs.

SECTION 32. AMENDMENT. Section 65-05.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-04. Injured ~~worker~~ employee responsibility.

1. ~~It shall be the responsibility of the~~ The injured worker to ~~employee shall seek, obtain, and retain reasonable and substantial employment in order to reduce the period of temporary disability to a minimum. The~~ employee ~~has the burden to establish that the~~ employee ~~has met this responsibility.~~
2. In the event that the injured ~~worker~~ employee is unable to obtain substantial employment as a direct result of ~~his~~ injury ~~he,~~ the employee shall promptly notify the bureau under subdivision b of subsection 6 of section 65-05.1-01.
3. ~~It is the responsibility of the~~ The injured worker to ~~employee shall be available for testing under subsection 6 or 7 of section 65-05.1-02, and for any further examinations and testing as may be prescribed by the bureau to determine whether or not a program of rehabilitation is necessary.~~
4. ~~If the bureau determines that a program of rehabilitation is necessary and feasible; the injured worker, upon having been so notified, shall be available for such a program. Upon notification, with the appropriate assistance and testing from a vocational coordinator appointed by the bureau, the worker shall identify a specific qualified rehabilitation program within sixty days. A qualified rehabilitation program is a rehabilitation plan that meets the criteria of this title, and which is an approved option of the rehabilitation consultant; or is a stipulated rehabilitation plan under subsection 5 of section 65-05.1-01. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same or modified position, or return to related occupation, or on-the-job training, the employee is responsible to make a good faith work trial or work search. If the employee fails to perform a good faith work trial or work search, the finding of nondisability or partial disability is res judicata, and the bureau may not reinstate total disability benefits or recalculate an award of partial disability benefits in the absence of a significant change in medical condition attributable to the work injury. However, the bureau shall recalculate the partial disability award if the employee returns, in good faith, to gainful employment. If the employee meets the burden of proving that the employee made a~~

good faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the bureau shall reevaluate the employee's vocational rehabilitation claim. A good faith work search that does not result in placement is not, in itself, sufficient grounds to prove the work injury caused the inability to acquire gainful employment. The employee shall show that the injury significantly impacts the employee's ability to successfully compete for gainful employment in that the injury leads employers to favor those without limitations over the employee.

5. If the injured worker shall fail to comply with this section without a reasonable cause, the bureau, by administrative order, shall discontinue all lost time benefits under this title during the period of noncompliance. If, upon the bureau order becoming final, the period of noncompliance shall continue for six months, the bureau shall have no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or rehabilitation benefits. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is short-term or long-term training, the employee shall cooperate with the necessary testing to determine whether the proposed training program meets the employee's medical limitations and aptitudes. The employee shall attend a qualified rehabilitation training program when ordered by the bureau. A qualified training program is a rehabilitation plan that meets the criteria of this title, which is the approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 6 of section 65-05.1-01, and commences within a reasonable period of time such as the next quarter or semester.
6. If, without good cause, the injured employee fails to perform a good faith work trial in a return to the same or modified position, or in an on-the-job training program, or fails to make a good faith work search in return to work utilizing the employee's transferable skills, the employee must be deemed to be in noncompliance with vocational rehabilitation. If, without good cause, the injured employee fails to attend a scheduled medical or vocational assessment, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee must be deemed to be in noncompliance with vocational rehabilitation. If without good cause, the employee discontinues a job the employee is performing, or a training program in which the employee is enrolled, the employee must be deemed to be in noncompliance with vocational rehabilitation. If the employee establishes a pattern of noncooperation as heretofore described, involving two or more incidents of noncooperation, subsequent efforts by the employee to come into compliance with vocational rehabilitation may not be deemed successful compliance until the employee has successfully returned to the job or training program for a period of sixty days. In all cases of noncompliance by the employee, the bureau, by administrative order, shall discontinue lost-time benefits. If, upon the bureau order becoming final, the period of noncompliance continues for sixty days, the bureau has no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or vocational rehabilitation benefits.

65-05.1-06.1. Rehabilitation award.

1. If the bureau determines that vocational rehabilitation is necessary and feasible, the bureau shall make an award of rehabilitation services by order, under chapter 20-32. Within sixty days of receipt of the final vocational consultant's report, the bureau shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to lost-time and vocational rehabilitation services. The bureau shall establish, by administrative rule, an hourly rate to compensate a worker's an employee's attorney from the date the bureau has notified the worker employee to identify a rehabilitation plan under section 65-05.1-04 be available for testing under subsection 7 of section 65-05.1-02. The bureau may establish, by administrative rule, absolute maximum fees for such representation.
2. The rehabilitation award must be within the following terms: If the appropriate priority option is short-term or long-term training, the vocational rehabilitation award must be within the following terms:
 - a. For the worker's employee's lost time, and in lieu of further temporary total, temporary partial, and permanent total disability benefits, the bureau shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the worker employee was receiving, or was entitled to receive, prior to the award.
 - b. The rehabilitation allowance must include an additional twenty-five percent while the worker employee maintains two domiciles, or meets other criteria established by the bureau by administrative rule.
 - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the bureau. Catastrophic injury includes:
 - (1) Paraplegia, quadraplegia, severe closed head injury, total blindness, or amputation of an arm or leg, which renders a worker an employee permanently and totally disabled without further vocational retraining assistance; or
 - (2) Those workers employees the bureau so designates, in its sole discretion, provided that the bureau finds the worker employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from a bureau decision to designate, or fail to designate, a worker an employee as catastrophically injured under this subsection.
 - d. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the worker employee resides, provided an equivalent program exists in the public college or university.

- e. The rehabilitation allowance may be paid only during such time as the worker employee faithfully pursues vocational retraining. The rehabilitation allowance may be suspended during such time as the worker employee is not faithfully pursuing the training program, or has failed academically. If the work injury itself precludes the worker employee from continuing training, the worker employee remains eligible to receive disability benefits.
- f. In the event the worker employee successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
- g. In the event the worker employee successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, an additional award, not to exceed two months disability benefit, to assist the worker employee with work search.
- h. If the worker employee successfully concludes the rehabilitation program, the worker employee is not eligible for further vocational retraining or total disability benefits unless the worker employee establishes a significant change in medical condition attributable to the work injury which precludes the worker employee from performing the work for which the worker employee was trained, or any other work for which the worker employee is suited. The bureau may waive the provisions of this section in cases of catastrophic injury defined by subdivision c of subsection 2.
- i. If the worker employee successfully concludes the rehabilitation program, the worker employee remains eligible to receive partial disability benefits, as follows:
- (1) Beginning the date at which the worker employee completes retraining, until the worker employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's employee's average weekly wages before the injury, and the worker's employee's wage-earning capacity after retraining, as measured by the average wage in the worker's employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the bureau, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the worker employee completes retraining. The benefit continues until the worker employee acquires substantial gainful employment, but in no case may exceed two years one year in duration.
 - (2) Beginning the date at which the worker employee acquires substantial gainful employment in the field for which the worker employee was trained, or in a related occupation, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's employee's average weekly wages before the injury, and the worker's employee's wage-earning capacity after retraining.

- (3) Beginning the date at which the worker employee acquires substantial gainful employment in an occupation unrelated to the worker's employee's training, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's employee's weekly wages before the injury, and the worker's employee's wage-earning capacity after retraining, as determined under paragraph 1 of this subdivision, or the worker's employee's actual postinjury wage earnings, whichever is higher.
 - (4) The partial disability benefit payable under paragraphs 1, 2, and 3 of this subdivision must be reduced so that the benefit and the worker's employee's earnings or calculated earnings capacity, together, do not exceed one hundred twenty-five percent of the average weekly wage in this state. For purposes of this subsection, the average weekly wage must be determined on the date the worker employee completes retraining or the date the worker employee acquires substantial gainful employment. The partial disability benefit so calculated is not subject to increase or decrease when the average weekly wage in this state changes.
 - (5) The partial disability benefits paid under paragraphs 1, 2, and 3 of this subdivision may not together exceed five years' one year's duration.
 - (6) For purposes of paragraph 1 of this subdivision, the date the worker employee completes retraining is defined as the date the worker employee is available for full-time work. ~~A worker~~ An employee cannot be deemed available for full-time work while the worker employee pursues education, unless such pursuit will in no way interfere with full-time work.
 - (7) For purposes of paragraphs 1, 2, and 3 of this subdivision, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
 - (8) The bureau may waive the five-year one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c of subsection 2.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the bureau shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the bureau, in its sole discretion, may make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.
4. If the appropriate priority option is on-the-job training, the bureau shall pay the employee a lost-time benefit throughout the duration of the on-the-job training program. Upon completion of the training program, the bureau shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the bureau, in its sole discretion, may make an additional award for actual relocation expenses to move the

household to the locale where the claimant has actually located work.

SECTION 34. A new section to chapter 65-05.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Bids for vocational rehabilitation services. The bureau shall solicit bids from vocational rehabilitation vendors to provide services relative to vocational rehabilitation of claimants. The bureau shall contract with the lowest and best bidders to provide these services on an annual basis. The bureau shall determine the criteria that render a vocational rehabilitation vendor qualified. The request for bids must contain a detailed outline of services each vendor will be expected to provide. The accepted bid is binding upon both the bureau and the rehabilitation vendor. If additional services are determined to be necessary as a result of failed or inappropriate rehabilitation of an injured employee through no fault of the employee, the bureau may contract with the vendor for additional services. If the failure or inappropriateness of the rehabilitation of the injured employee is due to the vendor's failure to provide the necessary services to fulfill the contract, the bureau is not obligated to use that vendor for additional services on that claim and the bureau may refuse payment for a service that the vendor failed to perform which was a material requirement of the contract.

SECTION 35. AMENDMENT. Section 65-05.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.2-01. Eligibility for supplementary benefits. A workers' compensation claimant who ~~was~~ is receiving ~~temporary total disability benefits~~ permanent total disability benefits, or death benefits ~~as of July 1, 1980, and is receiving such benefits as of July 1, 1985, and~~ who has been receiving disability or death benefits for a period of ten consecutive years or more as of June thirtieth of each year is eligible for supplementary benefits. Eligibility for supplementary benefits starts on July 1, ~~1985,~~ first of each year and lasts for as long as the claimant is entitled to ~~workers' compensation benefits permanent total disability benefits or death benefits.~~

SECTION 36. AMENDMENT. Section 65-05.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.2-02. Supplementary benefits - Amount. Claimants who are eligible for supplementary benefits and who are receiving ~~temporary total disability benefits~~ or permanent total disability benefits are entitled to receive a weekly supplementary benefit of such that, when added to their weekly permanent total disability benefit, at least ~~one hundred sixty dollars per week~~ sixty percent of the state's average weekly wage on July first of each year is their combined benefit. Claimants who are eligible for supplementary benefits and who are receiving death benefits are entitled to receive a weekly supplementary benefit of such that, when added to their weekly death benefit, at least ~~one hundred dollars per week~~ fifty percent of the maximum death benefit on July first of each year is their combined benefit. In no case may the annual recalculation of supplemental benefits result in a rate less than the previous rate, notwithstanding an error in calculation. If a claim has been accepted on an aggravation basis pursuant to section 65-05-15 and the injured employee is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

SECTION 37. AMENDMENT. Subsection 4 of section 65-06.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. If a former inmate receiving disability benefits under the provisions of this chapter is recommitted or sentenced by a court to imprisonment in a penal institution, the disability benefits shall be suspended or paid during any confinement exceeding thirty consecutive days in the following manner:

a: If the employee has no spouse or child, any right to claim disability benefits under this title during imprisonment shall cease and the term of confinement shall be deducted from the period for which disability benefits are payable to the employee.

b: If the employee has a spouse or child, payment of disability benefits during the employee's imprisonment shall be paid to the spouse or child of the employee in the manner and in the amount provided in subsection 4 of section 65-05-17 are payable pursuant to subsection 3 of section 65-05-03.

SECTION 38. APPLICATION - EFFECTIVE DATE. Sections 30, 31, 32, and 33 of this Act apply to any rehabilitation award made on or after the effective date of this Act, irrespective of the date of injury. This Act becomes effective on July 1, 1991."

Renumber accordingly

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MR. PRESIDENT: The House does not concur in the Senate amendments to HB 1333, HB 1378, and HCR 3038, and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

HB 1333: Reps. Byerly; Olson, A.; Williams

HB 1378: Reps. Dorso; Carlisle; Oban

HCR 3038: Reps. Urlacher; Brown; Nelson

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

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

SB 2211: Reps. Wardner; Grosz; Pyle

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate does not concur in the House amendments to SB 2039 and SB 2149, and the President has appointed as a conference committee to act with a like committee from the House on:

SB 2039: Sens. Krauter; Wogsland; Moore

SB 2149: Sens. Kinnoin; Langley; Vosper

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has passed unchanged: HB 1175, HB 1182, HB 1187, HB 1199, HB 1306, HB 1389, HB 1422, HB 1489, HB 1536, HB 1543, HB 1608, HCR 3001, HCR 3002, HCR 3010, HCR 3015, HCR 3019, HCR 3020, HCR 3021, HCR 3029, HCR 3033, HCR 3034, HCR 3040, HCR 3041, HCR 3047, HCR 3049, HCR 3050, HCR 3052, HCR 3054, HCR 3055, HCR 3058, HCR 3059, HCR 3060, HCR 3062, HCR 3065, HCR 3069.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has amended, subsequently passed, and the emergency clause carried: HB 1001.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has amended and subsequently passed. HB 1009, HB 1013, HB 1060, HB 1061, HB 1177, HB 1242, HB 1534, HB 1596, HB 1597, HB 1606, HCR 3035.

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MR. PRESIDENT: The Speaker has signed and your signature is respectfully requested on: HB 1322, HB 1328, HB 1382, HB 1409, HB 1410, HB 1434, HB 1451, HB 1497, HB 1504, HB 1513.

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MR. PRESIDENT: The Speaker has signed: SB 2489, SCR 4021.

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MR. PRESIDENT: The Speaker has signed: SCR 4007, SCR 4017, SCR 4019, SCR 4025, SCR 4029, SCR 4031, SCR 4032, SCR 4034, SCR 4035, SCR 4038, SCR 4039, SCR 4043, SCR 4047, SCR 4050, SCR 4051, SCR 4052.

APPOINTMENT OF CONFERENCE COMMITTEES

SEN. MAXSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1165, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1165: Sens. Meyer, Holmberg, Stenehjem.

SEN. MAXSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1145, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1145: Sens. Marks, Traynor, Stenehjem.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. DOTZENROD MOVED that the Senate do not concur in the House amendments to Reengrossed SB 2249 as printed on SJ page 1185, and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE PRESIDENT APPOINTED as a Conference Committee on SB 2249: Sens. Dotzenrod, Tomac, Moore.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. MAXSON MOVED that the Senate do not concur in the House amendments to SB 2335 as printed on SJ page 1034, and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE PRESIDENT APPOINTED as a Conference Committee on SB 2335: Sens. Meyer, DeKrey, Traynor.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. MAXSON MOVED that the Senate do not concur in the House amendments to Engrossed SB 2385 as printed on SJ page 1035, and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE PRESIDENT APPOINTED as a Conference Committee on SB 2385: Sens. Meyer, Stenehjem, Solberg.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. DOTZENROD MOVED that the Senate do not concur in the House amendments to Engrossed SB 2422 as printed on SJ page 954, and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE PRESIDENT APPOINTED as a Conference Committee on SB 2422: Sens. Dotzenrod, Kinnoin, Tennesos.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. HEINRICH MOVED that the Senate do not concur in the House amendments to Reengrossed SB 2542 as printed on SJ pages 1036-1037, and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE PRESIDENT APPOINTED as a Conference Committee on SB 2542: Sens. O'Connell, Heinrich, O. Hanson.

CONSIDERATION OF AMENDMENTS

HB 1017: SEN. TALLACKSON (Committee on Appropriations) MOVED that the amendments on SJ pages 1246-1247 be adopted with DO PASS, which motion prevailed.

MOTION

SEN. WOGSLAND MOVED that the rules be suspended and that HB 1017, HB 1020, and HB 1043 be deemed properly engrossed and placed on the calendar, as amended, for second reading and final passage, which motion prevailed.

SECOND READING OF HOUSE BILL

HB 1017: A BILL for an Act making an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for an appropriation of funds from the oil and gas impact grant fund.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 39 YEAS, 13 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

YEAS: Dotzenrod; Evanson; Freborg; Goetz; Graba; Hanson, E.; Heigaard; Heinrich; Holmberg; Ingstad; Jerome; Keller; Kelly; Kelsh; Kinnoin; Krauter; Krebsbach; Langley; Lindaas; Lindgren; Lips; Mathern; Maxson; Meyer; Mushik; Nalewaja; O'Connell; Peterson; Redlin; Robinson; Satrom; Schoenwald; Stenehjelm; Tallackson; Thane; Tomac; Traynor; Wogsland; Yockim

NAYS: Bowman; David; DeKrey; Hanson, O.; Marks; Moore; Mutch; Naaden; Nelson; Nething; Solberg; Streibel; Tennefos

ABSENT AND NOT VOTING: Vosper

HB 1017 passed and the title was agreed to.

CONSIDERATION OF AMENDMENTS

HB 1020: SEN. TALLACKSON (Committee on Appropriations) MOVED that the amendments on SJ page 1247 be adopted with DO PASS, which motion prevailed.

SECOND READING OF HOUSE BILL

HB 1020: A BILL for an Act making an appropriation for defraying the expenses of the international peace garden; and to declare an emergency.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 52 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

YEAS: Bowman; David; DeKrey; Dotzenrod; Evanson; Freborg; Goetz; Graba; Hanson, E.; Hanson, O.; Heigaard; Heinrich; Holmberg; Ingstad; Jerome; Keller; Kelly; Kelsh; Kinnoin; Krauter; Krebsbach; Langley; Lindaas; Lindgren; Lips; Marks; Mathern; Maxson; Meyer; Moore; Mushik; Mutch; Naaden; Nalewaja; Nelson; Nething; O'Connell; Peterson; Redlin;

Robinson; Satrom; Schoenwald; Solberg; Stenehjem; Streibel; Tallackson; Teneffos; Thane; Tomac; Traynor; Wogsland; Yockim

ABSENT AND NOT VOTING: Vosper

HB 1020 passed, the title was agreed to, and the emergency clause carried.

MOTION

SEN. WOGSLAND MOVED that the Senate stand in recess until 3:00 p.m., which motion prevailed.

THE SENATE RECONVENED pursuant to recess taken, with President Omdahl presiding.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has passed and your favorable consideration is requested on: SB 2596.

CORRECTION and REVISION of the JOURNAL (Sen. Robinson, Chairman)

MR. PRESIDENT: Your Committee on Correction and Revision of the Journal has carefully examined the Journal of the Fifty-fourth Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 1227, line 27, replace "1226", with "1266"

SEN. ROBINSON MOVED that the report be adopted, which motion prevailed.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

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

HB 1145: Sens. Marks; Traynor; Stenehjem
HB 1165: Sens. Meyer; Holmberg; Stenehjem

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate does not concur in the House amendments to SB 2205, SB 2249, SB 2335, SB 2385, SB 2422, SB 2425, and SB 2542, and the President has appointed as a conference committee to act with a like committee from the House on:

SB 2205: Sens. Heinrich; Evanson; Jerome
SB 2249: Sens. Dotzenrod; Tomac; Moore
SB 2335: Sens. Meyer; DeKrey; Traynor
SB 2385: Sens. Meyer; Stenehjem; Solberg
SB 2422: Sens. Dotzenrod; Kinnoin; Teneffos
SB 2425: Sens. Krauter; Keller; Mutch
SB 2542: Sens. O'Connell; Heinrich; Hanson, D.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has amended and subsequently failed to pass: HB 1387.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has failed to pass: HB 1428, HB 1572.

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MR. PRESIDENT: The House does not concur in the Senate amendments to HB 1132, HB 1262, HB 1300, and HB 1571, and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

HB 1132: Reps. Carlisle; Boehm; Boucher
HB 1262: Reps. Clayburgh; Kretschmar; Jacobson
HB 1300: Reps. Freier; Gorman; Hokana
HB 1571: Reps. Miller; Shide; Kerzman

COMMUNICATION FROM GOVERNOR GEORGE A. SINNER

March 26, 1991

This is to inform you that on March 25, 1991, I signed the following: SB 2092, SB 2132, SB 2136, SB 2145, SB 2147, SB 2159, SB 2170, SB 2191, SB 2209, SB 2232, SB 2244, SB 2298, SB 2345, SB 2349, SB 2350, SB 2359, SB 2363, SB 2388, SB 2391, SB 2424, SB 2460, SB 2495, SB 2511, SB 2517, SB 2521, SB 2558.

On March 26, 1991, I signed the following: SB 2400.

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MR. PRESIDENT: The House has dissolved its Conference Committee on HB 1073 and has appointed a new committee to act with a like committee from the Senate on:

HB 1073: Reps. Price, Delzer, Boucher

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has concurred in the House amendments to SB 2038, SB 2040, SB 2057, SB 2076, SB 2096, SB 2106, and SB 2108 and subsequently passed the same.

DELIVERY OF ENROLLED BILLS AND RESOLUTIONS

The following bill was delivered to the Governor for his approval at the hour of 3:12 p.m., March 26, 1991: SB 2489.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has concurred in the House amendments to SB 2134, SB 2158, SB 2173, SB 2180, SB 2181, SB 2212, and SB 2213 and subsequently passed the same.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The President has signed: HB 1322, HB 1328, HB 1382, HB 1409, HB 1410, HB 1434, HB 1451, HB 1497, HB 1504, HB 1513.

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

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

SB 2039: Reps. Timm; Carlisle; Huether
 SB 2149: Reps. Bateman; Miller; Jacobson
 SB 2205: Reps. Clayburgh; Freier; Mutzenberger
 SB 2542: Reps. Muhs; Schimke; Huether
 SB 2335: Reps. Byerly; Kelsch; Grumbo
 SB 2385: Reps. Brown; DeWitz; Snyder

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

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

SB 2425: Reps. Martinson, Shide; Mahoney

CONSIDERATION OF AMENDMENTS

HB 1043: SEN. TALLACKSON (Committee on Appropriations) MOVED that the amendments on SJ pages 1247-1248 be adopted with DO PASS, which motion prevailed.

SECOND READING OF HOUSE BILL

HB 1043: A BILL for an Act relating to proposed legislation mandating health insurance coverage; and to provide an appropriation.

MOTION

SEN. WOGSLAND MOVED the previous question, which motion prevailed.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 36 YEAS, 17 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Bowman; David; DeKrey; Evanson; Freborg; Goetz; Hanson, O.; Holmberg; Ingstad; Jerome; Keller; Kinnoin; Krauter; Krebsbach; Lindaas; Lindgren; Lips; Marks; Maxson; Mutch; Nalewaja; Nelson; Nething; Peterson; Redlin; Robinson; Satrom; Solberg; Stenehjem; Tallackson; Tennefos; Thane; Tomac; Traynor; Vosper; Yockim

NAYS: Dotzenrod; Graba; Hanson, E.; Heigaard; Heinrich; Kelly; Kelsh; Langley; Mathern; Meyer; Moore; Mushik; Naaden; O'Connell; Schoenwald; Streibel; Wogsland

HB 1043 passed and the title was agreed to.

POINT OF PERSONAL PRIVILEGE

SEN. DAVID: Mr. President: I rise on a point of personal privilege and request that my remarks be printed in the Journal.

Just before we recessed at 1:15 p.m. for committee conferences, we voted on HB 1017, which has to do with appropriating funds for an oil and gas impact grant. Mr. President, I was distracted at that time and inadvertently voted "NAY" when my intent was to vote "YEA". I would like to emphasize for the record, Mr. President, that I certainly am in favor of this appropriation bill in view of the fact that the state is and has been the recipient of hundreds of millions of dollars from the oil and gas industry. Thank you.

MOTIONS

SEN. NAADEN MOVED that the Senate reconsider its action whereby HB 1428 failed to pass, which motion lost on a verification vote.

SEN. WOGSLAND MOVED that the Senate stand in recess until 5.00 p.m., which motion prevailed.

THE SENATE RECONVENED pursuant to recess taken, with President Omdahl presiding.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has concurred in the House amendments to SB 2266, SB 2279, SB 2333, SB 2357, SB 2378, SB 2416, and SB 2472 and subsequently passed the same.

DELIVERY OF ENROLLED BILLS AND RESOLUTIONS

The following resolutions were delivered to the Secretary of State for his filing at the hour of 3:46 p.m., March 26, 1991: SCR 4007, SCR 4017, SCR 4019, SCR 4021, SCR 4025, SCR 4029, SCR 4031, SCR 4032, SCR 4034, SCR 4035, SCR 4038, SCR 4039, SCR 4043, SCR 4047, SCR 4050, SCR 4051, SCR 4052.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The Senate has concurred in the House amendments to SB 2492, SB 2493, SB 2494, SB 2498, SB 2506, SB 2508, and SB 2520 and subsequently passed the same.

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MR. PRESIDENT: The Speaker has signed and your signature is respectfully requested on: HB 1004, HB 1005, HB 1011, HB 1050, HB 1186, HB 1201, HB 1271, HB 1282, HB 1285, HB 1327, HB 1336, HB 1391, HB 1392, HB 1395, HB 1400, HB 1408, HB 1416, HB 1425, HB 1446, HB 1454, HB 1467, HB 1472, HB 1486, HB 1487, HB 1492, HB 1499, HB 1500, HB 1511, HB 1519, HB 1522, HB 1523, HB 1530, HB 1567, HB 1568, HB 1581, HB 1584, HB 1590, HCR 3027, HCR 3031.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)
MR. SPEAKER: The Senate has concurred in the House amendments to SB 2526, SB 2530, SB 2539, SB 2556, and SB 2559 and subsequently passed the same.

APPOINTMENT OF CONFERENCE COMMITTEES

SEN. MAXSON MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1262, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1262: Sens. Marks, Solberg, Traynor.

SEN. DOTZENROD MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1300, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1300: Sens. Dotzenrod, Wogsland, Tennesfos.

SEN. KELSH MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1571, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1571: Sens. Marks, Kelsh, Freborg.

SEN. SCHOENWALD MOVED that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1132, which motion prevailed.

THE PRESIDENT APPOINTED as a Conference Committee on HB 1132: Sens. O'Connell, Mathern, Streibel.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. KELLER MOVED that the Senate do not concur in the House amendments to Reengrossed SB 2324 as printed on SJ page 1186, and that a conference committee be appointed to meet with a like committee from the House, which motion prevailed.

APPOINTMENT OF CONFERENCE COMMITTEE

THE PRESIDENT APPOINTED as a Conference Committee on SB 2324: Sens. Stenehjem, Jerome, Heinrich.

MOTIONS

SEN. EVANSON MOVED that Engrossed HB 1380 be amended as follows:

In addition to the amendments printed on pages 1027 and 1115 of the Senate Journal, Engrossed House Bill No. 1380 is further amended as follows:

Page 1, line 19, after the period insert "The property sold under the authority of this Act must be used for fairgrounds."

Renumber accordingly

SEN. WOGSLAND MOVED that the rules be suspended and that HB 1380 be deemed properly engrossed and placed on the calendar, as amended, for second reading and final passage, which motion prevailed.

SECOND READING OF HOUSE BILL

HB 1380: A BILL for an Act to authorize the director of institutions to sell and convey certain land belonging to the state of North Dakota to Burleigh County for use as fairgrounds.

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 47 YEAS, 6 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Bowman; David; DeKrey; Dotzenrod; Evanson; Freborg; Goetz; Graba; Hanson, E.; Hanson, O.; Heigaard; Heinrich; Holmberg; Ingstad; Jerome; Keller; Kelly; Kelsh; Kinnoin; Krauter; Krebsbach; Langley; Lindaas; Lindgren; Lips; Marks; Mathern; Moore; Mushik; Mutch; Naaden; Nalewaja; Nelson; Nething; Peterson; Redlin; Robinson; Satrom; Solberg; Stenehjem; Streibel; Tallackson; Tennefos; Thane; Traynor; Vosper; Wogsland

NAYS: Maxson; Meyer; O'Connell; Schoenwald; Tomac; Yockim

HB 1380 passed and the title was agreed to.

MOTIONS

SEN. KELLER MOVED that HB 1613 be amended as follows:

In lieu of the amendments adopted by the Senate as printed on pages 1072-1073 of the Senate Journal, House Bill No. 1613 is amended as follows:

Page 1, line 4, remove "and"

Page 1, line 6, after "taxation" insert "; and to provide for application of this Act"

Page 2, after line 23, insert:

"SECTION 5. APPLICATION. This Act must not be construed as committing this state in any manner to a policy of permitting interstate branch banking."

Renumber accordingly

SEN. KELLER MOVED that the rules be suspended and that HB 1613 be deemed properly engrossed and placed on the calendar, as amended, for second reading and final passage, which motion prevailed.

SECOND READING OF HOUSE BILL

HB 1613: A BILL for an Act to create and enact a new section to chapter 57-35 and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to the taxation of the branch offices of a banking subsidiary of any out-of-state bank holding company; to amend and reenact subsection 1 of section 57-35-01 and subsection 1 of section 57-35.2-01 of the North Dakota Century Code, relating to definitions for purposes of bank taxation; and to provide for application of this Act.

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 53 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

YEAS: Bowman; David; DeKrey; Dotzenrod; Evanson; Freborg; Goetz; Graba; Hanson, E.; Hanson, O.; Heigaard; Heinrich; Holmberg; Ingstad; Jerome; Keller; Kelly; Kelsh; Kinnoin; Krauter; Krebsbach; Langley; Lindaas; Lindgren; Lips; Marks; Mathern; Maxson; Meyer; Moore; Mushik; Mutch; Naaden; Nalewaja; Nelson; Nething; O'Connell; Peterson; Redlin; Robinson; Satrom; Schoenwald; Solberg; Stenehjem; Streibel; Tallackson; Tennefos; Thane; Tomac; Traynor; Vosper; Wogsland; Yockim

HB 1613 passed and the title was agreed to.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

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

HB 1132: Sens. O'Connell; Mathern; Streibel
 HB 1262: Sens. Marks; Solberg; Traynor
 HB 1300: Sens. Dotzenrod; Wogsland; Tennesfos
 HB 1571: Sens. Marks; Kelsh; Freborg

MOTIONS

SEN. HEIGAARD MOVED that HCR 3026 be amended as follows:

In addition to the amendments printed on page 1073 of the Senate Journal, House Concurrent Resolution No. 3026 is further amended as follows:

Page 1, line 18, replace "The" with "Except as is necessary to preserve county lines or city boundaries, the"

Renumber accordingly

SEN. WOGSLAND MOVED that the rules be suspended and that HCR 3026 be deemed properly engrossed and placed on the calendar, as amended, for second reading and final passage, which motion prevailed.

SEN. MOORE MOVED that HCR 3026 be further amended as follows:

In addition to the amendments printed on page 1073 of the Senate Journal and the floor amendment adopted by the Senate, House Concurrent Resolution No. 3026 is further amended as follows:

Page 2, line 2, replace "10" with "20"

Renumber accordingly

SEN. WOGSLAND MOVED that the rules be suspended and that HCR 3026 be deemed properly engrossed and placed on the calendar, as amended, for second reading and final passage, which motion prevailed.

SECOND READING OF HOUSE CONCURRENT RESOLUTION

HCR 3026: A concurrent resolution directing the Legislative Council to study and develop a legislative reapportionment plan or plans.

The question being on the final adoption of the amended resolution, which has been read and has committee recommendation of DO PASS.

HCR 3026 was declared adopted.

MOTIONS

SEN. WOGSLAND MOVED that Sen. Bowman be excused, as he was in a conference committee meeting, which motion prevailed.

SEN. WOGSLAND MOVED that the Senate be on the Fifth order of business, and at the conclusion of the Fifth order, the Senate be on the Sixteenth order of business, and at the conclusion of the Sixteenth order, the Senate stand adjourned until 8:00 a.m., Wednesday, March 27, 1991, which motion prevailed.

REPORTS OF CONFERENCE COMMITTEES

SB 2083: Your conference committee (Sens. Mathern, O'Connell, Mutch and Reps. Bernstein, Price, Kroeber) recommends that the SENATE ACCEDE to the House amendments on SJ page 1101 and then place it on the Seventh order.

SEN. MATHERN MOVED that the report be adopted, which motion prevailed.

SB 2067: Your conference committee (Sens. Kelsh, O'Connell, O. Hanson and Reps. Schindler, Muhs, Kroeber) recommends that the SENATE ACCEDE to the House amendments on SJ page 1034 and then place it on the Seventh order.

SEN. KELSH MOVED that the report be adopted, which motion prevailed.

SB 2118, as engrossed: Your conference committee (Sens. Mathern, Hanson, Nalewaja and Reps. Trautman, St. Aubyn, Scherber) recommends that the SENATE ACCEDE to the House amendments on SJ page 1107 and then place it on the Seventh order.

SEN. MATHERN MOVED that the report be adopted, which motion prevailed.

REPORTS OF STANDING COMMITTEES

HB 1079, as engrossed: Committee on Judiciary (Sen. Maxson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). The proposed amendment was placed on the Sixth order on the calendar.

Page 3, line 22, after "subdivision" insert "except for a person who delivers one hundred pounds [45.36 kilograms] or more of marijuana,"

Page 4, line 3, replace "first" with "second"

Page 4, line 5, replace "second" with "third"

Page 4, line 7, replace "third" with "fourth"

Page 5, line 1, after "person" insert "eighteen years of age or older,"

Renumber accordingly

HB 1194, as engrossed: Committee on Judiciary (Sen. Maxson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). The proposed amendment was placed on the Sixth order on the calendar.

Page 1, line 4, remove "section 15-38.1-05,"

Page 1, line 5, replace "7" with "5" and replace "15-47-38.1" with "28-32-03"

Page 2, remove lines 1 through 11

Page 4, remove lines 5 through 18

Page 5, after line 13, insert:

"SECTION 4. AMENDMENT. Subsection 5 of section 28-32-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A rule is invalid unless adopted in substantial compliance with section 28-32-02. However, inadvertent failure to supply any person with a notice required by section 28-32-02 does not invalidate a rule. An action to contest the validity of a rule on the grounds of noncompliance with section 28-32-02 must be commenced within two years of the effective date of the rule."

Page 7, line 20, replace "17" with "16"

Page 12, line 5, replace "7" with "6"

Page 33, line 7, after "been" insert "substantially"

Page 34, line 11, replace "28" with "27"

Page 40, line 21, after "~~4.~~" insert "3."

Page 40, line 26, remove the overstrike over "~~Orders of the commission must be~~"

Page 40, line 27, remove the overstrike over "~~sustained~~" and insert immediately thereafter "by the district court" and remove the overstrike over "~~if the commission has regularly pursued its authority and~~"

Page 40, remove the overstrike over lines 28 and 29

Renumber accordingly

HB 1517: Committee on Judiciary (Sen. Maxson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (8 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). The proposed amendment was placed on the Sixth order on the calendar.

Page 1, line 4, replace the fourth comma with "and" and remove ", and 7"

Page 1, line 18, remove "27-01-04,"

Page 11, line 5, replace the first comma with "and" and remove ", and 7"

Page 12, remove lines 10 through 26

Page 46, remove lines 27 and 28

Page 47, remove lines 1 through 10

Page 50, line 11, overstrike "board of county"

Page 50, line 12, overstrike "commissioners" and insert immediately thereafter "presiding judge of the judicial district", overstrike "authorize a judge of", remove "the district", overstrike "court", and remove "servng"

Page 50, line 13, remove "the county" and overstrike "to"

Page 50, line 20, overstrike "board of"

Page 50, line 21, overstrike "county commissioners" and insert immediately thereafter "presiding judge" and after "referee" insert ", within the limits of legislative appropriations"

Page 54, line 12, overstrike "may" and insert immediately thereafter "must"

Page 55, line 22, remove the overstrike over "~~municipal~~"

Page 55, line 24, overstrike "county commissioners" and insert immediately thereafter "presiding judge of the judicial district"

Renumber accordingly

HB 1526, as engrossed: Committee on Judiciary (Sen. Maxson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). The proposed amendment was placed on the Sixth order on the calendar.

Page 1, line 14, replace "five" with "two" and after "thousand" insert "five hundred"

Page 1, line 15, replace "fifty" with "twenty-five"

Page 2, line 8, after "purposes" insert "within one hundred twenty days,"

Page 3, line 4, after "purposes" insert "within one hundred twenty days,"

Page 3, line 19, replace "five" with "two"

Page 3, line 20, after "thousand" insert "five hundred" and replace "fifty" with "twenty-five"

Renumber accordingly

HB 1611, as engrossed: Committee on Political Subdivisions (Sen. Graba, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (8 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). The proposed amendment was placed on the Sixth order on the calendar.

Page 1, line 9, remove "to"

Page 1, line 10, remove "fifty-three"

Page 1, line 11, remove "ninety-eight", overstrike "to one hundred", and replace "six" with "ninety-eight"

Renumber accordingly

HCR 3067: Committee on Political Subdivisions (Sen. Graba, Chairman) recommends DO PASS (8 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3067 was placed on the Fourteenth order on the calendar.

SIGNING of BILLS and RESOLUTIONS

The President signed the following enrolled bills: SB 2011, SB 2013, SB 2014, SB 2066, SB 2103, SB 2117, SB 2119, SB 2121, SB 2142, SB 2146, SB 2161, SB 2163, SB 2166, SB 2167, SB 2171, SB 2172, SB 2177, SB 2183, SB 2184, SB 2197, SB 2200, SB 2221.

MESSAGE to the HOUSE from the SENATE (Marion Houn, Secretary)

MR. SPEAKER: The President has signed and your signature is respectfully requested on: SB 2011, SB 2013, SB 2014, SB 2066, SB 2103, SB 2117, SB 2119, SB 2121, SB 2142, SB 2146, SB 2161, SB 2163, SB 2166, SB 2167, SB 2171, SB 2172, SB 2177, SB 2183, SB 2184, SB 2197, SB 2200, SB 2221.

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

MARION HOUN, Secretary