

WORKERS' COMPENSATION

CHAPTER 574

HOUSE BILL NO. 1152

(Representative Porter)

(Senator Klein)

(At the request of the Workers Compensation Bureau)

COMPENSABLE INJURY DEFINITION

AN ACT to amend and reenact subsection 11 of section 65-01-02 of the North Dakota Century Code, relating to the definition of compensable injury for workers' compensation purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁸ **SECTION 1. AMENDMENT.** Subsection 11 of section 65-01-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.
 - a. The term includes:
 - (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
 - (2) An injury to artificial members.
 - (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.

²⁸⁸ Section 65-01-02 was also amended by section 1 of House Bill No. 1153, chapter 575.

- (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.
- (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not preexist the work injury.

b. The term does not include:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the bureau may pay for preventive treatment for significant exposures documented by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3, and for exposure to rabies occurring in the course of employment.
- (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
- (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
- (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers, or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
- (5) An injury that arises out of an illegal act committed by the injured employee.
- (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
- (7) Injuries attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity.

- (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
- (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
- (10) A mental injury arising from mental stimulus.

SECTION 2. EFFECTIVE DATE. This Act is effective for all claims filed after July 31, 2001, regardless of the date of injury.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 575

HOUSE BILL NO. 1153

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

SICK AND ANNUAL LEAVE USE AND PREFERRED WORKER PROGRAM

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to establishing incentives for employers to hire workers who have previously sustained a work injury; to amend and reenact subsection 19 of section 65-01-02 and sections 65-05-08 and 65-05-32 of the North Dakota Century Code, relating to the definition of fee schedule for workers' compensation purposes, prohibiting employers from requiring injured workers to use sick or annual leave benefits, the confidentiality and use of workers' compensation claim file information; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁹ **SECTION 1. AMENDMENT.** Subsection 19 of section 65-01-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19. "Fee schedule" means the ~~relative value scale, conversion factors, fee schedules, and medical aid rules adopted by payment formulas~~ established in the bureau publication entitled "Medical and Hospital Fees".

SECTION 2. AMENDMENT. Section 65-05-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-08. Disability benefits - Not paid unless period of disability is of five days' duration or more - Application required - Suspended during confinement - Duty to report wages. No benefits may be paid for disability, the duration of which is less than five consecutive calendar days. An employer may not require an employee to use sick leave or annual leave, or other employer-paid time off work, before applying for benefits under this section, in lieu of receiving benefits under this section, or in conjunction with benefits provided under this section, but may allow an employee to use sick leave or annual leave to make up the difference between the employee's wage-loss benefits and the employee's regular pay. If the period of disability is five consecutive calendar days' duration or longer, benefits must be paid for the period of disability provided that:

1. When disability benefits are discontinued, the bureau may not begin payment again unless the injured employee files a reapplication for disability benefits on a form supplied by the bureau. In case of

²⁸⁹ Section 65-01-02 was also amended by section 1 of House Bill No. 1152, chapter 574.

reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon proof by the injured employee that:

- a. The employee has sustained a significant change in the compensable medical condition;
 - b. The employee has sustained an actual wage loss caused by the significant change in the compensable medical condition; and
 - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.
2. All payments of disability and rehabilitation benefits must be suspended during the period of confinement in excess of seventy-two consecutive hours of any employee who is eligible for, or receiving, benefits under this title who is confined in a penitentiary, jail, youth correctional facility, or any other penal institution. After discharge from the institution, the bureau shall pay subsequent disability or rehabilitation benefits as the employee otherwise would be entitled under this title.
 3. Any employee who is eligible for, or receiving disability or rehabilitation benefits under this title shall report any wages earned, from part-time or full-time work from any source. If an employee fails to report wages earned, the employee shall refund to the bureau any disability or vocational rehabilitation benefits overpaid by the bureau for that time period. To facilitate recovery of those benefits, the bureau may offset future benefits payable, under section 65-05-29. If the employee willfully fails to report wages earned, the employee is subject to the penalties in section 65-05-33. An employee shall report whether the employee has performed work or received wages. The bureau periodically shall provide a form to all injured employees receiving disability or rehabilitation benefits which the injured employee must complete to retain eligibility for further disability or rehabilitation benefits, regardless of the date of injury or claim filing. The form will advise the injured employee of the possible penalties for failure to report any work or activities as required by this section. An injured employee who is receiving disability or vocational rehabilitation benefits must report any work activities to the bureau whether or not the injured employee receives any wages. An injured employee who is receiving disability or vocational rehabilitation benefits also must report any other activity if the injured employee receives any money, including prize winnings, from undertaking that activity, regardless of expenses or whether there is a net profit. For purposes of this subsection, "work" does not include routine daily activities of self-care or family care, or routine maintenance of the home and yard, and "activities" does not include recreational gaming or passive investment endeavors.
 4. An employee shall request disability benefits on a claim form furnished by the bureau. Disability benefits may not commence more than one year prior to the date of filing of the initial claim for disability benefits.
 5. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, 1991, irrespective of injury date.

6. 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.
7. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, the employee is not entitled to any disability or vocational rehabilitation benefits during the limitation of income or refusal to accept employment unless the bureau determines the limitation or refusal is justified.
8. The bureau may not pay disability benefits unless the loss of earning capacity exceeds ten percent. The injured employee may earn up to ten percent of the employee's preinjury average gross weekly earnings with no reduction in total disability benefits. The employee must report any earnings to the bureau for a determination of whether the employee is within the limit set in this subsection.
9. 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. If the injured employee is receiving disability benefits, the injured employee shall notify the bureau whenever there is a change in work status or wages received.
10. The bureau shall pay to an employee receiving disability benefits a 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.
11. Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the bureau.

SECTION 3. AMENDMENT. Section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

65-05-32. Privacy of records and hearings - Penalty. Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to bureau employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the bureau.
2. Employers or their duly authorized representatives who are required to have access to an injured worker's claim file for the performance of their duties may review and have access to any files of their own injured workers. An employer or an employer's duly authorized representative who willfully communicates information contained in an employee's claim file to any person who does not need the information in the performance of that person's duties is guilty of a class B misdemeanor.

3. Physicians or health care providers treating or examining workers claiming benefits under this title, or physicians giving medical advice to the bureau regarding any claim may, at the discretion of the bureau, inspect the claim files and records of injured workers.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the bureau at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; ~~social security number~~; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the bureau for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.
6. At the request of a claimant, the bureau may close the medical portion of a hearing to the public.

SECTION 4. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Preferred worker program - Continuing appropriation. For purposes of this section, "preferred worker" means a worker who has incurred a compensable injury that resulted in a disability that poses a substantial obstacle to employment. The bureau may provide assistance as determined appropriate to employers who employ a preferred worker. In addition, employers who apply for and are approved as a preferred worker employer may not be assessed premiums on a preferred worker's salary for three years from the date of hiring. The bureau may not charge claims costs incurred as a result of an injury sustained by a preferred worker against the preferred worker's employer's account during the first three years after the worker is hired. The bureau shall charge those claims costs to the general fund. The bureau may adopt rules to regulate and manage the preferred worker program authorized by this section. An employer may not appeal a bureau decision not to provide assistance to that employer under this section. Money in the workers' compensation fund is appropriated on a continuing basis to provide the assistance authorized under this section.

SECTION 5. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective July 1, 2001, for all claims regardless of the date of injury.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 576

SENATE BILL NO. 2121

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION FRAUD

AN ACT to amend and reenact sections 65-01-05 and 65-05-33 of the North Dakota Century Code, relating to workers' compensation fraud; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹⁰ **SECTION 1. AMENDMENT.** Section 65-01-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-05. Employment of those unprotected by insurance unlawful - Effect of failure to secure compensation - Penalty - Injunction. It is unlawful for ~~any~~ an employer to employ anyone, or to receive the fruits of the labor of ~~any~~ a person, in a hazardous employment as defined in this title, without first ~~making application~~ applying for workers' compensation insurance coverage for the protection of ~~such~~ the employees by notice to the bureau of the intended employment, the nature thereof, and the estimated payroll expenditure for the coming twelve-month period. ~~Failure~~ Willful failure to secure workers' compensation coverage for employees by application for workers' compensation insurance constitutes a class A misdemeanor. If the premium due exceeds five hundred dollars, the penalty for willful failure to secure coverage is a class C felony. ~~Where~~ If the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workers' compensation coverage under this section. In addition to the penalties prescribed by this section the bureau may, by injunction proceedings as provided for in this title, enjoin ~~any~~ an employer from unlawfully employing uninsured workers.

SECTION 2. AMENDMENT. Section 65-05-33 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-33. Filing false claim or false statement - Penalty.

1. A person is ~~guilty of a class A misdemeanor if that person is claiming who claims~~ benefits or payment for services under this title; ~~and that or the employer of a person who claims benefits or payments for services is guilty of a class A misdemeanor if the person or employer does any one or more of the following:~~
 - a. Willfully files a false claim or makes a false statement in an attempt to secure payment of benefits or payment for services.

²⁹⁰ Section 65-01-05 was repealed by section 17 of Senate Bill No. 2157, chapter 578.

- b. Willfully misrepresents that person's physical condition, including deceptive conduct which misrepresents that person's physical ability.
- c. Has a claim for disability benefits that has been accepted by the bureau and willfully fails to notify the bureau of:
 - (1) Work or other activities as required under subsection 3 of section 65-05-08;
 - (2) The receipt of income from work; or
 - (3) An increase in income from work.
2. If any of the acts in subsection 1 are committed to obtain, or pursuant to a scheme to obtain, more than five hundred dollars in benefits or payment for services, the offense is a class C felony.
3. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall reimburse the bureau for any benefits paid based upon the false claim or false statement and, if applicable, under section 65-05-29 and shall forfeit any additional benefits relative to that injury.
4. For purposes of this section, "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.

SECTION 3. EFFECTIVE DATE. This Act is effective August 1, 2001, for all claims, regardless of the date of injury.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 577**HOUSE BILL NO. 1469**
(Representative Gulleson)
(Senator Kelsh)**CUSTOM AGRICULTURAL OPERATION
EMPLOYMENT EXEMPTION**

AN ACT to provide that certain custom agricultural operation employment is exempt from workers' compensation coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Agricultural employment exemption - Custom agricultural operations. For purposes of the agricultural service exception to hazardous employment under subsection 22 of section 65-01-02, an agricultural employer that engages in a custom agricultural operation, which is the planting, care, or harvesting of grain or field crops on a contract-for-hire basis, exclusive of hauling by special contractor, retains the exemption unless the employer's custom agricultural operations are based outside this state or require more than thirty actual working days of operation during the calendar year.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 578

SENATE BILL NO. 2157

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION PREMIUMS AND REPORTING

AN ACT to create and enact two new sections to chapter 65-04 of the North Dakota Century Code, relating to workers' compensation dispute resolution and penalties for employer's failure to secure coverage, submit payroll, or otherwise comply with chapter 65-04; to amend and reenact sections 65-02-23, 65-02-24, 65-04-04, 65-04-19, 65-04-20, 65-04-22, 65-04-24, 65-04-25, 65-04-26.1, 65-04-27.1, 65-08-01, 65-09-01, 65-09-02, and 65-10-01 of the North Dakota Century Code, relating to workers' compensation premium billing statements, determining date of default for premium, service of process on directors of nonresident corporations, procedure for notifying corporate officers of their liability for unpaid premium, reporting wages for extraterritorial coverage, appeals, and internal cross-references; to repeal sections 65-01-05, 65-04-05, 65-04-12, 65-04-14, 65-04-23, 65-09-03, and 65-09-04 of the North Dakota Century Code, relating to penalties for an employer's failure to secure workers' compensation coverage, submit payroll, or otherwise comply with chapter 65-04; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workers' compensation fraud unit - Continuing appropriation. The bureau shall establish a workers' compensation fraud unit. The bureau may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section ~~65-04-14~~ 12 of this Act or 65-05-33. The unit shall refer cases of fraud to the bureau for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workers' compensation fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. The biennial independent performance evaluation of the bureau must evaluate and report on the effectiveness of these expenditures. The bureau may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class.

SECTION 2. AMENDMENT. Section 65-02-24 of the North Dakota Century Code is amended and reenacted as follows:

65-02-24. Immunity from civil liability. A person who notifies the bureau or who assists the bureau on any matter pertaining to the administration of this title of an alleged violation of section ~~65-04-14~~ 12 of this Act or 65-05-33, or who provides

information in the course of an investigation of an alleged violation of section ~~65-04-14~~ 12 of this Act or 65-05-33, is not subject to civil liability for that action if the action was in good faith and without malice. At the request of the person who notifies or assists the bureau or who provides information to the bureau, the bureau may not reveal the identity of that person or disclose any information that may reveal the identity of that person to any person other than a representative of or a person rendering assistance to the bureau.

SECTION 3. AMENDMENT. Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

65-04-04. Employers obligated to pay premiums - Premium receipts and certificates to be mailed. Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the bureau for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the bureau and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. ~~Immediately after payment is made, the~~ The bureau shall mail to the employer a ~~receipt or~~ certificate specifying that the payment has been made. The ~~receipt or~~ certificate, attested by the seal of the bureau, is prima facie evidence of the payment of the premium. If an employer defaults on premium payments after a certificate has been issued, the bureau may revoke that employer's certificate. The bureau shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates the bureau may carry new or current risks for a period of less than one year and not to exceed ~~fifteen~~ eighteen months, either by request of the employer or action of the bureau. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workers' compensation fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

SECTION 4. AMENDMENT. Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19. Bureau to determine premium due from employer - Mailing of ~~pay-in-order~~ premium billing statement as notice of amount due. The bureau shall determine the amount of premium due from every employer subject to this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the bureau received information that an employer is subject to the title. The bureau shall order the premium to be paid into the fund and shall mail a copy of the ~~pay-in-order~~ premium billing statement to the employer. Mailing of the ~~pay-in-order~~ premium billing statement constitutes notice to the employer of the amount due.

SECTION 5. AMENDMENT. Section 65-04-20 of the North Dakota Century Code is amended and reenacted as follows:

65-04-20. Installment payment of premiums - Interest required.

4. If the amount of premium billed to an employer on a ~~pay-in-order premium billing statement~~ is greater than ~~one hundred dollars~~ the minimum premium, the employer may pay the excess of the minimum premium in installments as follows:
 - a. ~~If the employer is the state of North Dakota, or any department, industrial association, or political subdivision of the state, the employer may pay the premium in two equal semiannual installments at the option of the employer and no bond or undertaking is required to secure the payment of deferred premiums.~~
 - b. ~~If the employer is other than one mentioned in subdivision a, the employer may pay the premium either in two equal semiannual installments or in four equal quarterly installments.~~
2. Interest must be charged at the prevailing base rate posted by the Bank of North Dakota plus two and one-half percent. The interest charged must be at least six percent per annum. Interest must be charged on all premiums deferred under this section. Upon default in payment of any installment, the penalties provided in this chapter apply.

SECTION 6. AMENDMENT. Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

65-04-22. Bureau may make premium due immediately - When premium ~~not covered by special order~~ is in default. The bureau, by its proper order, and by an endorsement and notification to that effect upon the ~~pay-in-order premium billing statement~~ sent to an employer, may require payment of a premium within any time less than one month which, in the judgment of the bureau, is reasonable and necessary to secure the payment of the premium by any employer whose employment within this state is likely to continue for less than one month, and in such case, default shall begin at the end of the time allowed by the bureau for the payment of the premium. In the absence of such order, endorsement, and notification, the premium, whether the same is to be paid in full or in installments, shall be in default as follows:

1. ~~The entire premium, or if the employer exercises the employer's option to pay the premium in installments, the first installment, shall be in default one month from the payment due date of specified in the pay-in-order premium billing statement.~~
2. ~~If the employer has elected to pay the employer's premium in semiannual installments, the final payment shall be in default six months from the date of the pay-in-order.~~
3. ~~If the employer has elected to pay the employer's premium in quarterly installments, the second installment shall be in default three months from the date of the pay-in-order, and the third and fourth installments shall be in default six months and nine months respectively from the date of the pay-in-order.~~

If the employer has elected to pay the employer's premium in installments, default Default of any installment payment will, at the option of the bureau, make the entire remaining balance of the premium due and payable. The bureau may declare an employer to be uninsured at any time after forty-five days has passed from the due date specified in the premium billing statement and the employer has failed to make a payment to the bureau.

SECTION 7. AMENDMENT. Section 65-04-24 of the North Dakota Century Code is amended and reenacted as follows:

65-04-24. Bureau to bring suit for premiums in default. ~~Within twenty days after~~ When an employer defaults on payment of premium, penalties, or interest, the bureau ~~shall certify the account in default to the attorney general~~ may bring suit for the collection of the premium, accrued penalties and interest, and any additional penalties and interest that may accrue. ~~After an account has been certified to the attorney general the~~ The bureau may adjust or compromise the account upon recommendation of the attorney general. The bureau, ~~upon the recommendation and approval of the attorney general,~~ may retain counsel on a contingent fee basis to represent the bureau in any proceeding relating to the collection of amounts due under this title. The bureau shall charge attorney fees and costs to the workers' compensation general fund of the workers compensation bureau. In any action for the collection of amounts due the bureau under this title, the court may not review or consider the action of the bureau regarding the acceptance or payment of any claim.

SECTION 8. AMENDMENT. Section 65-04-25 of the North Dakota Century Code is amended and reenacted as follows:

65-04-25. Service of nonresident employer in suit for premium or in suit against an uninsured employer. If the employer in an action to collect delinquent premiums or for injuries sustained in the employer's employment for which the employer did not carry the required insurance is a nonresident of this state, or a foreign corporation or limited liability company doing business in this state, service of the summons may be made upon any agent, representative, or foreman of said employer in this state, or in the case of a foreign corporation, its director, and where there is no agent, representative, or foreman, or in the case of a foreign corporation, director, upon whom service can be made in this state, service upon the secretary of state ~~shall constitute~~ constitutes personal service upon ~~such that~~ nonresident employer or corporation's director who has either failed to secure the necessary coverage or who is delinquent in the employer's premiums, or service may be made in any other manner designated by law. ~~In the event it is not possible or practical to proceed in this state, the~~ The bureau may, upon the recommendation and approval of the attorney general, retain counsel who is licensed in another state to represent the bureau on a contingent fee basis in any proceeding relating to the collection of amounts due the bureau under this title. All attorney fees and costs ~~shall be~~ incurred under this section are a charge to the general fund.

SECTION 9. AMENDMENT. Section 65-04-26.1 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26.1. Corporate officer personal liability.

1. An officer or director of a corporation, or manager or governor of a limited liability company, or employee of a corporation or limited liability company having twenty percent stock ownership who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums or reimbursements under this title and

who fails to file the reports or to make payments as required, is personally liable for premiums under this chapter and reimbursement under section 65-05-07.2, including interest, penalties, and costs if the corporation or limited liability company does not pay to the bureau those amounts for which the corporation or limited liability company 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 or limited liability company must be considered earned from any person determined to be personally liable.
3. After review of the evidence in the employer's file, the bureau shall determine personal liability under this section. The bureau shall provide, by registered mail, notice of liability to a person determined to be personally liable under this section. A person determined to be liable may request reconsideration or rehearing by the bureau of that determination. The bureau's determination of personal liability is final and is not reviewable in any court unless the person requests reconsideration or rehearing of the determination. The request must be in writing and must be served on the bureau within thirty days from the date of mailing of the notice. Thereafter, a hearing must be held pursuant to ~~chapter 28-32~~ issue a decision under this section pursuant to section 10 of this Act.

SECTION 10. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Decisions by bureau - Disputed decisions. Notwithstanding any provisions to the contrary in chapter 28-32, the following procedures apply when the bureau issues a decision under chapter 65-04 or section 65-05-07.2:

1. The bureau may issue a decision based on an informal internal review of the record and shall serve notice of the decision on the parties by regular mail. The bureau shall include with the decision a notice of the employer's right to reconsideration.
2. An employer has thirty days from the date of service to file a written petition for reconsideration. The request must state specifically the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the bureau. The bureau shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the administrative order is final and may not be reheard or appealed.
3. Within sixty days after receiving a petition for reconsideration, unless settlement negotiations are ongoing, the bureau shall serve on the parties by certified mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration.
4. A party has thirty days from the date of service of an administrative order to file a written request for rehearing. The request must state specifically each alleged error of fact and law to be reheard and the

relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.

5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that chapter does not conflict with this section. The bureau may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings of fact, conclusions of law, and orders. In reviewing recommended findings, conclusions, and orders, the bureau may consult with its legal counsel representing it in the proceeding.
6. Within sixty days after receiving the administrative law judge's recommended findings of fact, conclusions of law, and order, the bureau shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.
7. An employer may appeal a posthearing administrative order to district court in accordance with chapter 65-10.

SECTION 11. AMENDMENT. Section 65-04-27.1 of the North Dakota Century Code is amended and reenacted as follows:

65-04-27.1. Injunctive relief - Procedure.

1. a. To protect the lives, safety, and well-being of wage workers, to ensure fair and equitable contributions to the workers' compensation fund among all employers, and to protect the workers' compensation fund, the bureau may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title:
 - (1) When it has been brought to the attention of the bureau that the employer has unlawfully employed uninsured workers in violation of section ~~65-04-05~~ 12 of this Act;
 - (2) When the employer defaults in the payment of insurance premiums, reimbursements, penalties, or interest into the fund; or
 - (3) When the bureau, in exercise of the authority granted it by section 65-03-01, finds that it is necessary to enjoin and restrain certain employers and employments to protect the lives and safety of the employees because of the employer's failure or refusal to comply with necessary and proper safety rules.
- b. The courts of this state have jurisdiction to grant preventive relief under the circumstances described in subdivision a.
2. Chapter 32-06 as it relates to injunction applies to proceedings instituted under this section to the extent that chapter is applicable.
3. In addition to chapter 32-06, when the court has granted an immediate temporary injunction at the time of the commencement of the action the

defendant employer may have a hearing by the court on the merits of the case without delay. Upon three days' written notice to the bureau the court shall proceed to hearing on the merits and render its decision.

4. In addition to chapter 32-06, when the court has not granted an immediate temporary injunction at the time of the commencement of the action and the time for answer has expired, either party may have a hearing by the court on the merits of the case. Upon ten days' notice by either party to the other, the court shall proceed to hearing on the merits and render its decision.
5. Any court of competent jurisdiction in this state shall impose a fine of at least one thousand dollars against an employer who has violated an injunction granted under this section. The court shall impose a fine for each violation, in addition to any other penalty provided by law.

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

Failure to secure coverage - Noncompliance - Failure to submit necessary reports - Penalty.

1. An employer may not employ any person, or receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first applying for workers' compensation insurance coverage for the protection of employees by notifying the bureau of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming twelve-month period.
2. An employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based, or who willfully fails to secure coverage for employees, is liable to the state in the amount of two thousand dollars plus three times the difference between the premium paid and the amount of premium the employer should have paid. The bureau shall collect a penalty imposed under this subsection in a civil action in the name of the state, and the bureau shall deposit a penalty collected under this subsection to the credit of the workers' compensation fund. An employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based, or who willfully fails to secure coverage for employees, is guilty of a class A misdemeanor. If the premium due exceeds five hundred dollars, the penalty for willful failure to secure coverage or willful misrepresentation to the bureau or its representative is a class C felony. If the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workers' compensation coverage under this subsection. In addition to the penalties prescribed by this subsection, the bureau may initiate injunction proceedings as provided for in this title to enjoin an employer from unlawfully employing uninsured workers. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.
3. An employer who is uninsured is liable for any premiums plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of

noncompliance. An additional five percent penalty is due for each year of noncompliance before the most recent year, not to exceed six years or fifty percent, beginning on the date the bureau became aware of the employer's uninsured status. The bureau may assess additional penalties, from the date the bureau became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. The penalties for employers are in addition to any other penalties provided by law. The bureau may reduce these penalties. However, the amount due from an employer may not be less than the actual cost and reserves of any claim attributable to the employer during the time the employer was uninsured. An employer may not appeal a bureau decision not to reduce a penalty under this subsection.

4. An employer who fails or refuses to furnish to the bureau the annual payroll report and estimate or who fails or refuses to furnish other information required by the bureau under this chapter is subject to a penalty established by the bureau of two thousand dollars. Upon the request of the bureau, the employer shall furnish the bureau any of that employer's payroll records, annual payroll reports, and other information required by the bureau under this chapter and an estimate of payroll for the advance premium year. If the employer fails or refuses to provide the records within thirty days of a written request from the bureau, the employer is subject to a penalty not to exceed one hundred dollars for each day until the bureau receives the records, in addition to the two thousand dollar penalty set forth above. The bureau may reduce penalties for employers under this subsection. However, an employer may not appeal a bureau decision not to reduce a penalty. The bureau shall notify an employer by regular mail of the amount of premium and penalty due the bureau from the employer. If the employer fails to pay that amount within thirty days, the bureau may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the bureau regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.
5. When an employer defaults in the payment of any premium, any installment of the premium, any penalty or interest, or in the filing of any bond required under this chapter, the employer at the time of default is subject to a penalty not to exceed two hundred fifty dollars plus two percent of the amount of premiums, penalties, and interest in default, and beginning one month after default, a penalty of two percent of the amount of premiums, penalties, and interest in default for each month or fraction of a month the premium, penalty, or interest remains unpaid.

SECTION 13. AMENDMENT. Section 65-08-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-08-01. Extraterritorial coverage - When and how furnished.

1. An employee who suffers an injury while working outside this state, on account of which the employee or the employee's dependents would have been entitled to workers' compensation benefits provided by this title had such injury occurred within this state, is entitled to benefits, or

that employee's dependents in the event of the employee's death are entitled to benefits if at the time of injury:

- a. The employment is principally localized in this state, as determined by the following:
 - (1) The employer has a place of business in this state;
 - (2) The employee regularly works at or from that place of business;
 - (3) The employment contract is entered in this state; and
 - (4) In the case of an employee leasing company, the company retains control over the employee and does not lease the employee to an out-of-state employer;
 - b. The employee is working under a contract of hire, made in this state in employment not principally localized in any state, if:
 - (1) The employer has a place of business in this state;
 - (2) The employment contract is entered in this state; and
 - (3) In the case of over-the-road trucking, the employer retains control over the driver, dispatches employees from this state, and does not lease the driver to out-of-state employers; but trip leasing does not end coverage;
 - c. The employee is working under a contract of hire made in this state in employment principally localized in another state and that state's workers' compensation law is not applicable to the employer, as provided by a reciprocal agreement;
 - d. The employee is working under a contract of hire made in this state for employment outside the United States and the workers' compensation law of that other jurisdiction is not applicable to the employer; or
 - e. The employee is a resident of another state, and is hired by a North Dakota employer or that employer's authorized agent for temporary employment, the situs of which is located in another state, and the temporary employment is necessary to the principal employment of the North Dakota employer, provided that the other state recognizes the coverage under this title as the sole remedy of the employee against the employer for the injury or death.
2. The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or the employee's dependents otherwise entitled on account of the injury or death to workers' compensation benefits of this state bars a claim for benefits under this title.
 3. An employment relationship that is principally localized outside of this state is exempt from this title while the employee is temporarily within this state unless the workers' compensation law of the state in which the

employment is principally localized provides that the workers' compensation remedy in this state is the exclusive remedy for the employee or the dependents of an employee who died as the result of an injury in this state.

4. An employer whose employment results in significant contacts with this state shall acquire workers' compensation coverage in this state unless a reciprocal agreement between the states is entered which provides that the other state will likewise recognize that an employment relationship entered into in this state is exempted from the application of the workers' compensation law of the other state. An employment has significant contacts with this state when (a) the employee earns or would have been expected to earn twenty-five percent or more of the employee's gross annual wage or income from that employer from services rendered in this state; or (b) if no employee earns twenty-five percent of the employee's gross annual income from that employment within this state, the employer's gross annual payroll in a calendar year in this state is at least one hundred thousand dollars. Under this subsection, an employee injured in this state may elect to file a claim in this state notwithstanding that the employee had another remedy in the state in which the employment was principally localized. A claim filed under this subsection is subject to section 65-05-05. The time limits within which the bureau shall issue a decision on a claim, as specified in sections 65-01-16 and 65-02-08, do not begin to run for claims filed under this section until the first date the bureau may begin to process the claim as set forth in section 65-05-05.
5. An employer who opens an employer account with the bureau under this section is obligated to report all wages paid in this state, regardless of whether the significant contacts factors set forth in subsection 4 have been met.

SECTION 14. AMENDMENT. Section 65-09-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-09-01. Liability of uninsured employer for injury to employees.

1. Any employer subject to this title who is in violation of subsection 1 or 2 of section ~~65-04-14~~ 12 of this Act or declared uninsured pursuant to section 65-04-22 is not protected by the immunity from civil liability granted to employers under this title for injuries to that employer's employees for damages suffered by reason of injuries sustained in the course of employment and to the dependents and legal representatives of an employee whose death results from injuries sustained in the course of employment. The employer is liable for the premiums, reimbursements, penalties, and interest provided for in this title.
2. The bureau shall establish a procedure by which a person may apply to the bureau for a determination of whether that person is an employer required to obtain workers' compensation coverage under this title. A determination under this section that a person is not required to be insured is effective for no more than one year from the date the person is notified of the determination. The bureau retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

SECTION 15. AMENDMENT. Section 65-09-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-09-02. Application for compensation - Common-law defenses not available - Fund subrogated to recovery - Hearing - Time for filing. An employee whose employer is in violation of section ~~65-04-14~~ 12 of this Act, who has been injured in the course of employment, or the employee's dependents or legal representatives in case death has ensued, may file an application with the bureau for an award of compensation under this title and in addition may maintain a civil action against the employer for damages resulting from the injury or death. In the action, the employer may not assert the common-law defenses of:

1. The fellow servant rule.
2. Assumption of risk.
3. Contributory negligence.

The bureau is subrogated to the recovery made in the action against the uninsured employer. The subrogation interest is determined according to section 65-01-09, with the uninsured employer being the person other than the fund with a legal liability to pay damages with respect to the employee's injury or death. An injured employee, or the dependents of an employee who died as a result of a work-related accident, shall file the original claim for compensation within one year after the injury or within two years after the death. The bureau shall notify the claimant and the employer that the matter is being processed under this chapter, and subsequently shall hear and determine the application for compensation as it would for other claims before the bureau. A determination by the bureau that a person is not an employer required to obtain workers' compensation coverage under this title is a defense to any claim that the person failed to obtain coverage for the time period during which the determination is effective.

SECTION 16. AMENDMENT. Section 65-10-01 of the North Dakota Century Code is amended and reenacted as follows:

65-10-01. Appeal from decision of bureau. If the final action of the bureau denies the right of the claimant to participate at all in the fund on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claim, or if the bureau allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted or of the county in which the claimant resides. An employer may also appeal a decision of the bureau in any injury case or a bureau decision issued under chapter 65-04, in the manner prescribed in this section. An appeal involving injuries allegedly covered by insurance provided under contracts with extraterritorial coverage shall be triable in the district court of Burleigh County. Any appeal under this section shall be taken in the manner provided in chapter 28-32. Any appeal to the district court shall be heard on the record, transmitted from the bureau, and, in the discretion of the court, additional evidence may be presented pertaining to the questions of law involved in the appeal.

²⁹¹ **SECTION 17. REPEAL.** Sections 65-01-05, 65-04-05, 65-04-12, 65-04-14, 65-04-23, 65-09-03, and 65-09-04 of the North Dakota Century Code are repealed.

Approved March 14, 2001
Filed March 14, 2001

²⁹¹ Section 65-01-05 was amended by section 1 of Senate Bill No. 2121, chapter 576.

CHAPTER 579**HOUSE BILL NO. 1260**

(Representatives Wald, Kasper, Skarphol)

**WORKERS' COMPENSATION THIRD-PARTY
RECOVERIES**

AN ACT to amend and reenact section 65-04-19.3 of the North Dakota Century Code, relating to third-party recovery on workers' compensation deductible accounts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-19.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-19.3. Premium calculation programs - Authority. Upon approval of its board of directors, the bureau may create and implement by emergency rulemaking actuarially sound employer premium calculation programs, including dividends, group insurance, premium deductibles, and reimbursement for medical expense assessments. Programs under this section may be created or modified by emergency rulemaking and must include requirements or incentives for the early reporting of injuries. An employer with a deductible policy under this section, who chooses to pursue a third-party action under section 65-01-09 after an injured worker and the bureau have chosen not to pursue the third-party action, may keep one hundred percent of the recovery obtained, regardless of the expense incurred in covering the injury and regardless of any contrary provision in section 65-01-09. If the employer pursues the third-party action pursuant to this section, neither the bureau nor the injured worker has any liability for sharing in the expense of bringing that action.

SECTION 2. EFFECTIVE DATE. This Act is effective for all claims filed after July 31, 2001.

Approved March 27, 2001
Filed March 27, 2001

CHAPTER 580

HOUSE BILL NO. 1161

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

PERMANENT IMPAIRMENT AWARDS

AN ACT to amend and reenact section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent impairment awards; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-12.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-12.2. Permanent impairment - Compensation - Time paid. When a compensable injury causes permanent impairment, the bureau shall determine a permanent impairment award on the following terms:

1. If the compensable injury causes permanent impairment and the permanent impairment award payable by the bureau is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the bureau under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the bureau. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The bureau shall adopt rules implementing any necessary procedures for award payments made under this subsection.
2. The bureau shall calculate the amount of the award by multiplying thirty-three and one-third percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the number of weeks specified in subsection 10.
3. The bureau shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the bureau has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.
4. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and which were caused by the compensable injury. The bureau may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions, even if these

conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.

5. An injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the bureau the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. If the report states that the employee is potentially eligible for a permanent impairment award, the bureau shall provide notice to the employee as provided by subsection 3. If the injured employee files a timely written request under subsection 3, the bureau shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.
6. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The bureau shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. ~~Until Subject to rules adopted under this subsection become effective, impairments must be evaluated under the fourth fifth edition, third printing,~~ of the guides.
7. The bureau shall deduct, on a whole body impairment basis, from an award for impairment under this section, any previous impairment award for that same member or body part under the workers' compensation laws of any jurisdiction.
8. An injured employee is not entitled to a permanent impairment award due solely to pain.
9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under subsection 3, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
10. If the injury causes permanent impairment, the award must be determined based on the percentage of whole body impairment in accordance with the following schedule:

| | |
|---------------------------------------|----------|
| For one to fifteen percent impairment | 0 weeks |
| For sixteen percent impairment | 10 weeks |
| For seventeen percent impairment | 10 weeks |
| For eighteen percent impairment | 15 weeks |

| | |
|--------------------------------------|-----------|
| For nineteen percent impairment | 15 weeks |
| For twenty percent impairment | 20 weeks |
| For twenty-one percent impairment | 20 weeks |
| For twenty-two percent impairment | 25 weeks |
| For twenty-three percent impairment | 25 weeks |
| For twenty-four percent impairment | 30 weeks |
| For twenty-five percent impairment | 30 weeks |
| For twenty-six percent impairment | 35 weeks |
| For twenty-seven percent impairment | 35 weeks |
| For twenty-eight percent impairment | 40 weeks |
| For twenty-nine percent impairment | 45 weeks |
| For thirty percent impairment | 50 weeks |
| For thirty-one percent impairment | 60 weeks |
| For thirty-two percent impairment | 70 weeks |
| For thirty-three percent impairment | 80 weeks |
| For thirty-four percent impairment | 90 weeks |
| For thirty-five percent impairment | 100 weeks |
| For thirty-six percent impairment | 110 weeks |
| For thirty-seven percent impairment | 120 weeks |
| For thirty-eight percent impairment | 130 weeks |
| For thirty-nine percent impairment | 140 weeks |
| For forty percent impairment | 150 weeks |
| For forty-one percent impairment | 160 weeks |
| For forty-two percent impairment | 170 weeks |
| For forty-three percent impairment | 180 weeks |
| For forty-four percent impairment | 190 weeks |
| For forty-five percent impairment | 200 weeks |
| For forty-six percent impairment | 210 weeks |
| For forty-seven percent impairment | 220 weeks |
| For forty-eight percent impairment | 230 weeks |
| For forty-nine percent impairment | 240 weeks |
| For fifty percent impairment | 260 weeks |
| For fifty-one percent impairment | 280 weeks |
| For fifty-two percent impairment | 300 weeks |
| For fifty-three percent impairment | 320 weeks |
| For fifty-four percent impairment | 340 weeks |
| For fifty-five percent impairment | 360 weeks |
| For fifty-six percent impairment | 380 weeks |
| For fifty-seven percent impairment | 400 weeks |
| For fifty-eight percent impairment | 420 weeks |
| For fifty-nine percent impairment | 440 weeks |
| For sixty percent impairment | 465 weeks |
| For sixty-one percent impairment | 490 weeks |
| For sixty-two percent impairment | 515 weeks |
| For sixty-three percent impairment | 540 weeks |
| For sixty-four percent impairment | 565 weeks |
| For sixty-five percent impairment | 590 weeks |
| For sixty-six percent impairment | 615 weeks |
| For sixty-seven percent impairment | 640 weeks |
| For sixty-eight percent impairment | 665 weeks |
| For sixty-nine percent impairment | 690 weeks |
| For seventy percent impairment | 715 weeks |
| For seventy-one percent impairment | 740 weeks |
| For seventy-two percent impairment | 765 weeks |
| For seventy-three percent impairment | 790 weeks |
| For seventy-four percent impairment | 815 weeks |

| | |
|--------------------------------------|------------|
| For seventy-five percent impairment | 840 weeks |
| For seventy-six percent impairment | 865 weeks |
| For seventy-seven percent impairment | 890 weeks |
| For seventy-eight percent impairment | 915 weeks |
| For seventy-nine percent impairment | 940 weeks |
| For eighty percent impairment | 965 weeks |
| For eighty-one percent impairment | 990 weeks |
| For eighty-two percent impairment | 1015 weeks |
| For eighty-three percent impairment | 1040 weeks |
| For eighty-four percent impairment | 1065 weeks |
| For eighty-five percent impairment | 1090 weeks |
| For eighty-six percent impairment | 1115 weeks |
| For eighty-seven percent impairment | 1140 weeks |
| For eighty-eight percent impairment | 1165 weeks |
| For eighty-nine percent impairment | 1190 weeks |
| For ninety percent impairment | 1215 weeks |
| For ninety-one percent impairment | 1240 weeks |
| For ninety-two percent impairment | 1265 weeks |
| For ninety-three percent impairment | 1290 weeks |
| For ninety-four percent impairment | 1320 weeks |
| For ninety-five percent impairment | 1350 weeks |
| For ninety-six percent impairment | 1380 weeks |
| For ninety-seven percent impairment | 1410 weeks |
| For ninety-eight percent impairment | 1440 weeks |
| For ninety-nine percent impairment | 1470 weeks |
| For one hundred percent impairment | 1500 weeks |

11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the number of weeks identified in the following schedule, the bureau shall pay an award equal to the number of weeks set out in the following schedule:

| | |
|--|-----------------|
| <u>For amputation of a thumb</u> | <u>65 weeks</u> |
| <u>For amputation of the second or distal phalanx of the thumb</u> | <u>28 weeks</u> |
| <u>For amputation of the first finger</u> | <u>40 weeks</u> |
| <u>For amputation of the middle or second phalanx of the first finger</u> | <u>28 weeks</u> |
| <u>For amputation of the third or distal phalanx of the first finger</u> | <u>22 weeks</u> |
| <u>For amputation of the second finger</u> | <u>30 weeks</u> |
| <u>For amputation of the middle or second phalanx of the second finger</u> | <u>22 weeks</u> |
| <u>For amputation of the third or distal phalanx of the second finger</u> | <u>14 weeks</u> |
| <u>For amputation of the third finger</u> | <u>20 weeks</u> |
| <u>For amputation of the middle or second phalanx of the third finger</u> | <u>16 weeks</u> |
| <u>For amputation of the fourth finger</u> | <u>16 weeks</u> |
| <u>For amputation of the middle or second phalanx of the fourth finger</u> | <u>12 weeks</u> |

| | |
|--|------------------|
| <u>For amputation of the leg at the hip</u> | <u>234 weeks</u> |
| <u>For amputation of the leg at or above the knee</u> | <u>195 weeks</u> |
| <u>For amputation of the leg at or above the ankle</u> | <u>150 weeks</u> |
| <u>For amputation of a great toe</u> | <u>30 weeks</u> |
| <u>For amputation of the second or distal phalanx of the great toe</u> | <u>18 weeks</u> |
| <u>For amputation of any other toe</u> | <u>12 weeks</u> |
| <u>For loss of an eye</u> | <u>150 weeks</u> |

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the bureau shall issue an impairment award based on the greater of the number of weeks allowed for the combined rating established under the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the number of weeks set forth in this subsection.

12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment, all relevant medical evidence must be submitted to an independent doctor who has not treated the employee and who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish lists of doctors who are qualified by ~~their~~ the doctor's training, experience, and area of practice to rate permanent impairments caused by various types of injuries. The bureau shall define, by rule, the process by which the bureau and the injured employee choose an independent doctor or doctors to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor or doctors chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the bureau for an impairment award for a rating of impairment for a body part or condition the bureau has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor or doctors if the employee disputes the findings of the independent doctor or doctors.
13. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.
14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

SECTION 2. EFFECTIVE DATE. This Act is effective for impairment evaluations performed after July 31, 2001.

Approved March 27, 2001

Filed March 27, 2001

CHAPTER 581

SENATE BILL NO. 2134

(Senator Krebsbach)

(Representative Boucher)

(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION SCHOLARSHIP FUND

AN ACT to amend and reenact section 65-05-20.1 of the North Dakota Century Code, relating to removing the expiration date of the workers' compensation scholarship fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-20.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-20.1. (~~Effective through July 31, 2001~~) Scholarship fund - Rules.

The bureau may establish a scholarship fund to provide scholarships for the spouse and dependent children of a worker who dies as a result of a compensable work-related injury, if the spouse and children have received benefits under section 65-05-17. The bureau may also grant scholarships to injured workers for whom the bureau determines a scholarship would be beneficial and appropriate because of exceptional circumstances as determined by the bureau. Scholarships are payable to an accredited institution of higher education or an institution of technical education on behalf of a student attending that institution. The total amount awarded annually in scholarships may not exceed one hundred fifty thousand dollars. The maximum amount payable on behalf of an applicant is three thousand dollars per year for no more than five years. Scholarships must be awarded by a panel chosen by the bureau. The bureau shall adopt rules establishing selection criteria and obligations associated with the program and identifying information an applicant is required to submit to determine an appropriate scholarship award. There is no right to reconsideration, rehearing, or appeal from any decision regarding the award, denial, or amount of a scholarship.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 582

HOUSE BILL NO. 1162

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION SUPPLEMENTARY BENEFITS

AN ACT to amend and reenact section 65-05.2-02 of the North Dakota Century Code and section 6 of chapter 556 of the 1999 Session Laws, relating to payment of supplementary benefits for certain workers' compensation benefit recipients; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05.2-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.2-02. Supplementary benefits - Amount.

1. A claimant whose weekly benefit rate is less than sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit that, when added to the weekly permanent total disability benefit or death benefit, results in a combined benefit of at least sixty percent of the state's average weekly wage on July first of each year. equals the ratio of that claimant's weekly benefit to the state's average weekly wage on the date of the claimant's first disability, times the state's average weekly wage in effect at the date eligibility for supplementary benefits is achieved. The bureau shall determine on an annual basis, for a claimant who receives a supplementary benefit under this subsection, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. For purposes of this section, combined weekly benefit means the weekly benefit for which the claimant is eligible before any applicable social security offset plus the amount of weekly supplementary benefits for which the claimant is eligible.
2. A claimant whose weekly benefit rate is greater than or equal to sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit equal to a percentage of that claimant's weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. The bureau shall determine on an annual basis, for that claimant, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage.

3. An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

SECTION 2. AMENDMENT. Section 6 of chapter 556 of the 1999 Session Laws is amended and reenacted as follows:

SECTION 6. EFFECTIVE DATE. Sections 2 and 3 ~~and the reduction in the waiting period in section 4~~ of this Act are effective for all claims for injuries occurring after July 31, 1999. The reduction in the waiting period in section 4 of this Act is effective August 1, 2006, for all claims, regardless of the date of injury. The remainder of section 4 of this Act is effective August 1, 1999, for all claims regardless of the date of injury.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for all claims for injuries occurring after July 31, 2001.

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 583**HOUSE BILL NO. 1127**

(Representative Keiser)

**ROUGH RIDER INDUSTRIES WORKERS'
COMPENSATION COVERAGE**

AN ACT to repeal section 9 of chapter 541 of the 1997 Session Laws, relating to elimination of the expiration date of laws relating to workers' compensation coverage for inmates engaged in work programs through roughrider industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 9 of chapter 541 of the 1997 Session Laws is repealed.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 584**HOUSE BILL NO. 1129**

(Representatives Drovdal, Kempenich, Rennerfeldt)
(Senators Klein, Urlacher)

**EMPLOYER'S CHILDREN WORKERS'
COMPENSATION COVERAGE**

AN ACT to amend and reenact section 65-07-03 of the North Dakota Century Code, relating to workers' compensation coverage for children of employers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-07-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-07-03. Determination of weekly wage for premium purposes. If the bureau enters into a contract for insurance under this chapter, the premium for such protection ~~shall~~ must be based on:

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as outlined in subdivision b of subsection 5 of section 65-01-02 for purposes of determining the premium for coverage of an employer, an employer's spouse, an employer's child over the age of seventeen, or a self-employed person. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.
2. A reasonable wage as determined by the bureau for ~~said~~ employees in the same class of industry that the volunteer organization is engaged.
3. Actual wages paid to a clerk, an assessor, a treasurer, or a member of the board of supervisors of an organized township, if the contract for insurance is to provide protection for a person mentioned in this subsection and that person is not employed by the township in any other capacity.
4. Actual wages paid to an employer's child if that child is under the age of eighteen.

Approved March 12, 2001
Filed March 12, 2001