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Valosta Rickford
Operator's Signature

10/2/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1096

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Operator's Signature

Yolanda Rickford

Date

10/2/03

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1096

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/20/03

Tape Number	Side A	Side B	Meter #
1	x		19.0-end
1		x	0.0-14.8
Committee Clerk Signature			

Minutes: **CHAIRMAN KEISER** opened the hearing on HB 1096

JOHN GRAHAM, (JOB SERVICE ND) appeared in support of this legislation and presented testimony and a proposed amendment. (see attached). The scenarios Graham explained using the board (see attached) were most helpful to committee members to understand this bill and the proposed amendments.

DAVID KEMNITZ (ND AFL-CIO) appeared after **CHAIRMAN KEISER** asked if anyone was present in opposition to HB 1096. He stated that he had reviewed the bill and the AFL-CIO is neutral towards this legislation..

CHAIRMAN KEISER closed the hearing on HB 1096.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1096

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 10, 2003

Tape Number	Side A	Side B	Meter #
1	X		1258-1697
Committee Clerk Signature <i>Elizabeth R. Finner</i>			

Minutes: **Chair Kelser:** Opened discussion on HB 1096.

Chair Kelser: Gave recap of bill.

Rep. Klein moved to adopt the amendments by Rep. Grande. Rep. Ekstrom seconded the motion.

Voice vote. Motion carries.

Rep. Nottestad moved to recommend DP as amended. Seconded by Rep. Severson.

Vote: 14 Yes 0 No 0 Absent and not voting Carrier: Severson

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Yalosta Rickford
Operator's Signature

10/2/03
Date

FISCAL NOTE
Requested by Legislative Council
02/13/2003

Amendment to: HB 1096

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This Bill will not have an additional fiscal impact on Job Service or any other state or local government agency. The impact of the bill is to ensure that Agency staff have access to business' records necessary to carry out appropriate audits.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	John Graham	Agency:	Job Service
Phone Number:	328-2843	Date Prepared:	02/14/2003

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Operator's Signature

Halima Rickford

10/2/03
Date

FISCAL NOTE
Requested by Legislative Council
01/03/2003

Bill/Resolution No.: HB 1096

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This Bill will not have an additional fiscal impact on Job Service or any other state or local government agency. The impact of the bill is to ensure that Agency staff have access to business' records necessary to carry out appropriate audits.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	John Graham	Agency:	Job Service
Phone Number:	328-2843	Date Prepared:	01/07/2003

38065.0101
Title.0200

Adopted by the Industry, Business and Labor
Committee

February 11, 2003

VR
2/11/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1096 IBL 2-12-03

Page 1, line 1, after "enact" insert "a new subdivision to subsection 31 of section 52-01-01 and"

Page 1, line 2, after "relating" insert "to the definition of wages and"

Page 1, after line 8, insert:

"SECTION 1. A new subdivision to subsection 31 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

Payments that qualify as supplemental unemployment compensation paid by an employer to former employees if those payments are paid pursuant to a plan that meets the following requirements:

- (1) Benefits are paid only to unemployed former employees who are laid off by the employer;
- (2) Eligibility for benefits depends on meeting prescribed conditions after termination;
- (3) The amount of weekly benefits payable is based upon state unemployment benefits, other compensation allowable under state law, and the amount of regular weekly pay of that former employee;
- (4) The duration of the benefits is affected by the fund level and employee seniority;
- (5) The right to benefits does not accrue until a prescribed period after termination;
- (6) Benefits are not attributable to the performance of particular services;
- (7) No employee has any right to the benefits until qualified and eligible to receive benefits; and
- (8) Benefits may not be paid in a lump sum."

Renumber accordingly

Date: 2/10/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1096

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

38065.0101
.0200

Action Taken

DP as Amended

Motion Made By

Nottestad

Seconded By

Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 14 No 0

Absent

Floor Assignment Severson

If the vote is on an amendment, briefly indicate intent:

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Yalostu Rickard
Operator's Signature

10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 8:24 a.m.

Module No: HR-27-2355
Carrier: Severson
Insert LC: 38065.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1096: Industry, Business and Labor Committee (Rep. Kelsor, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1096 was placed
on the Sixth order on the calendar.

Page 1, line 1, after "enact" Insert "a new subdivision to subsection 31 of section 52-01-01
and"

Page 1, line 2, after "relating" Insert "to the definition of wages and"

Page 1, after line 8, Insert:

"SECTION 1. A new subdivision to subsection 31 of section 52-01-01 of the
North Dakota Century Code is created and enacted as follows:

Payments that qualify as supplemental unemployment compensation
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pursuant to a plan that meets the following requirements:

- (1) Benefits are paid only to unemployed former employees who
are laid off by the employer;
- (2) Eligibility for benefits depends on meeting prescribed
conditions after termination;
- (3) The amount of weekly benefits payable is based upon state
unemployment benefits, other compensation allowable under
state law, and the amount of regular weekly pay of that former
employee;
- (4) The duration of the benefits is affected by the fund level and
employee seniority;
- (5) The right to benefits does not accrue until a prescribed period
after termination;
- (6) Benefits are not attributable to the performance of particular
services;
- (7) No employee has any right to the benefits until qualified and
eligible to receive benefits; and
- (8) Benefits may not be paid in a lump sum."

Renumber accordingly

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1096

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Yolanda Rickford
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1096

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-05-03

Tape Number	Side A	Side B	Meter #
1	xxx		0-3300
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Chairman Mutch opened the hearing on HB 1096. All Senators were present.

HB 1096 relates to unemployment compensation records and payment of and eligibility for unemployment compensation benefits.

Testimony in support of HB 1096

John Graham, Manager of the Unemployment Insurance program for Jcb Service North Dakota, introduced the bill. See attached testimony.

Senator Klein: In section 8, that involves owners instead of employee claims?

John: This is for a person with an ownership claim.

Senator Mutch: What if the business is still operating?

John: Then that is a totally different issue. This section only deals with "forcing out of business".

No opposition. Hearing closed.

Senator Nething moved a DO PASS. Senator Klein seconded.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1096

Hearing Date 03-05-03

Roll Call Vote: 6 yes. 0 no. 1 absent.

Carrier: Senator Nething.

The bill was later sent back to our committee for review. It was decided that the bill needs to be sent to Appropriations. The action will be reconsidered and rereferred at a later date.

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Yalosta Rickford

Date

10/2/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1096

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-12-03

Tape Number	Side A	Side B	Meter #
3	xxx		0-200
Committee Clerk Signature <i>Julian Berkon</i>			

Minutes: Chairman Mutch opened discussion on HB 1096. All Senators were present.

HB 1096 relates to unemployment compensation records and payment of and eligibility for unemployment compensation benefits.

The committee was presented with prepared amendments.

Senator Heitkamp moved to amend. Senator Every seconded.

Roll Call Vote: 2 yes. 5 no. 0 absent.

Motion failed.

Motion of DO PASS from 3-05-03 stayed the same.

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10/2/03
Date

Date: 03-05-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate SIBL 1096 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken D Pass

Motion Made By Nothing Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Sen. Mutch, Chairman	X				
Sen. Klein, Vice Chairman	X				
Sen. Krebsbach	X				
Sen. Nething	X				
Sen. Heltkamp	X	A			
Sen. Every	X				
Sen. Espegard	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Nothing

If the vote is on an amendment, briefly indicate intent:

Yalosta Rickford
Operator's Signature

10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 5, 2003 2:09 p.m.

Module No: SR-39-4009
Carrier: Nothing
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1096, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1096 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-39-4009

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Operator's Signature

10/2/03
Date

38065.0201
Title.

Prepared by the Legislative Council staff for
Senator O'Connell
March 4, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1096

Page 1, line 5, replace "subsection" with "subsections" and after "8" insert "and 15"

Page 5, line 10, replace "Subsection" with "Subsections" and after "8" insert "and 15"

Page 5, line 11, replace "is" with "are"

Page 5, after line 22, insert:

- "15. For any week with respect to which an individual is receiving a pension, ~~which shall include~~ including a governmental or pension other than federal social security retirement benefits, and any other pension, retirement or pay, retired pay, annuity, or and any other similar periodic payment, under a plan maintained or contributed to by a base-period or chargeable employer, as determined under applicable law, unless the weekly benefit amount payable to such individual for such week ~~shall be~~ is reduced, but not below zero:
- a. By the prorated weekly amount of the pension after deduction of three-fourths of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed ~~on or after July 1 June 30, 1985,~~ and by the prorated weekly amount of the pension after deduction of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed ~~on or after July 1 June 30, 1986;~~
 - b. By the entire prorated weekly amount of the pension if subdivision a or c does not apply; or
 - c. By one-fourth of the pension if the entire contributions to the plan were provided by such individual, ~~or by the individual and an employer, or by any other person or organization, who that~~ is not a base-period or chargeable employer, as determined under applicable law, for claims filed on or after July 1 June 30, 1985, and by no part of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer, or by any other person or organization, who that is not a base-period or chargeable employer, as determined under applicable law, for claims filed on or after July 1 June 30, 1986.

No A reduction may not be made under this subsection by reason of the receipt of a pension if the services performed by the individual during the base period, or remuneration received for such services, for the employer did not affect the individual's eligibility for, or increase the amount of, the pension, retirement pay, ~~or retired pay, annuity, or similar payment.~~ This limitation does not apply to pensions paid under the ~~Social Security Act or the Railroad Retirement Act of 1974,~~ or the corresponding provisions of prior law. Payments made under ~~these Acts~~ the Railroad Retirement Act of 1974 must be treated solely in the manner specified by subdivisions a, b,

and c. A reduction may not be made under this subsection by reason of receipt of federal social security retirement benefits.

Renumber accordingly

Page No. 2

38065.0201

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Yalosta Rickford
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10/2/03
Date

Date: 3/2-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1096 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38065.0201

Action Taken Move to Amend

Motion Made By Heitkamp Seconded By Every

Senators	Yes	No	Senators	Yes	No
Sen. Mutch, Chairman		X			
Sen. Klein, Vice Chairman		X			
Sen. Krebsbach		X			
Sen. Nething		X			
Sen. Heitkamp	X				
Sen. Every	X				
Sen. Espgaard		X			

Total (Yes) 2 No 5

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Yalosta Rickford
Operator's Signature

10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 13, 2003 8:09 a.m.

Module No: SR-45-4631
Carrier: Nothing
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1096, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1096 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-45-4631

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Yolanda Rickford
Operator's Signature

10/2/03
Date

2003 TESTIMONY

HB 1096

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Y. Costa Rickford
Operator's Signature

10/2/03
Date

Committee on Industry, Business, and Labor

Testimony on House Bill No. 1096

Presented by John Graham, Job Service North Dakota

January 20, 2003

Mr. Chairman, members of the House Committee on Industry, Business, & Labor, my name is John Graham and I manage the Unemployment Insurance program for Job Service North Dakota. I thank you for the opportunity to appear today in support of House Bill No. 1096 which Job Service caused to be prefiled.

House Bill No. 1096 is our composite bill addressing several issues which we believe need legislative modification. Because each section of the Bill addresses a different aspect of the Unemployment Insurance [UI] program, I will address each section individually and in order.

Section 1 amends current law (NDCC Section 52-01-02) to make clear that authorized Job Service staff (primarily field auditors) are to have access to those business records, including electronic records, which could show or reflect in any way "the amount of wage expenditure by or upon payments for services performed for" an employer. Job Service has had several employers resist opening records, beyond payroll records, to our auditors. Access to records beyond payroll records is critically necessary for auditors in order that they can determine if persons who are paid "off payroll" are in fact employees of the employer, or are independent contractors. The former, of course, may have rights to UI benefits if they, through no fault of their own, terminate their working relationship with that employer, the latter will not.

Our proposed amendment is based on the corresponding statute in Workers' Compensation law, NDCC Section 52-04-13. Like that statute, our proposal includes a civil penalty for failure to grant necessary access of up to \$500 which can be collected by Job Service in a civil action.

Section 2 of the Bill proposes to amend NDCC Section 52-04-07(2)(b) which is the subsection which sets out when contributing employers' tax accounts are not to be charged with benefits paid to former employee. The amendment is intended to restrict a base period employer to receiving the benefit of not having its account charged to only those instances where the claimed voluntary quit or discharge for misconduct happened to that base period employer during the base period. In other words, the amendment is intended to prevent a base period employer from arguing that its account should not be charged based on events that relate to a separation from employment with a separating employer which is not a base period employer, or based on events which took place beyond the base period. I have attached a diagram which attempts to illustrate the impact of this amendment.

Section 3 proposes an amendment to subsection 2 of NDCC Section 52-04-07 to add a new subdivision (lines 27-31 of the Bill) which would allow non-charging of benefits paid to a base period employer's account when that employer is currently employing the claimant part-time, and the hiring agreement between that employer and employee has not changed since the claimant commenced work for that employer.

Section 4 is a housekeeping measure and would amend Section 52-04-09 to delete reference to a group of employers, those in Industry Group Number 161, Highway Construction. When the 1999 Legislature passed House Bill No. 1135, which substantially changed the UI tax rate structure, that legislation effectively negated that Industry Group Number in the determination of tax rates. However, House Bill No. 1135, surely through inadvertence, did not delete this obsolete reference.

Section 5. This section would amend NDCC Section 52-04-10 to change the current deadline by which Job Service must send out tax rate notices to employers setting out their tax rates for the ensuing calendar year. That deadline is presently December first of each year. In years where Thanksgiving falls close to the end of November it is extremely difficult to meet that deadline without having to involve staff in paid overtime hours. This proposed amendment would move the deadline to the "end of the first full week in December," but in any event, not later than the tenth of December. The proposed amendment would also make clear that an employer is not a party to a claim determination which may have resulted in charges to that employer's account if a notice of that determination was not hand delivered or mailed to that employer.

Section 6. This amendment deals with disqualification of a claimant for fraud. Under the current provision, a claimant who commits fraud with respect to his/her claim for a week of benefits is disqualified from that fraudulently claimed week through the date on which Job Service identifies the fraud, and for one year from that date. This leads to circumstances where, because of the timing of our Agency's cross matches of wage histories with reported earnings, a claimant could, and in many cases has, end a fraudulent claim and later have commenced a valid, non-fraudulent claim. Under the current language, payments made on that later claim would all result in overpayments which we will, when we discover the previous fraud, try to collect from the claimant.

Conversely, a claimant in the same situation, with one difference - he/she did not make a later valid claim, will have no overpayments, and will, in essence, suffer the disqualification from the date that we discover the fraud forward.

The proposed amendment would change the disqualification period to include the fraudulently claimed week(s) and then one-year from the point of discovery of the fraud by Job Service.

Section 7. The proposed amendment to NDCC Section 52-06-04(2)(d) is intended to establish a more flexible means of dealing with situations where the owner of a business has "ceded" the business and is making a claim for UI benefits based on his/her unemployment. Currently, we interpret the law to require that the former owner get a certificate of dissolution from the Secretary of State. We have had several situations in the current biennium where it was clear that the former owner was out of business, but, for valid reasons, could not get a certificate of dissolution. We have responded to those situations in various ways, trying to be responsive to the claimant's situation in a common sense way. This proposed amendment would set forth means by which our claimstakers could judge whether a former owner had "coded" her/his business.

The former owner could do this in one or more of four ways:

1. By filing articles of dissolution.
2. By showing a certificate of dissolution.
3. By selling "substantially all the assets" of the business to an uninvolved third party.
4. by demonstrating that substantially all the business assets have been seized by creditors.

Since the drafting of this Bill, we realized that there is another issue we should address if possible. In the recent past, we have had several employers who have offered their laid off employees what the employers call "supplemental unemployment compensation." Such payments to Unemployment Insurance [UI] claimants give rise to two issues which we are not prepared to deal with the backing of the law. The two issues are related. They are: 1. Is a payment of supplemental unemployment compensation by an employer to be considered wages subject to UI taxes; and 2. Is the payment to be considered earnings to the claimant which could reduce the amount of benefit received.

The Internal Revenue Service has addressed this issue, and provided that if an employer has a plan which outlines how and to whom such payments are to be made, and that plan meets eight stated criteria, then the

payments would not be subject to payroll taxes. We are proposing an amendment which would adopt that IRS policy, and, thus, when the payments are not subject to UI tax, they also would not be counted as earnings to be deducted from a claimant's benefits.

The amendment is attached to this testimony and would add a new subdivision to the definition of "wages" in Section 52-01-01 of the Century Code.

Mr. Chairman, I hope that the Committee will see fit to adopt our proposed amendment and give this Bill a "do pass as amended" recommendation. I would be happy to answer the Committee's questions.

Prepared by John Graham

For consideration by the House Committee on Industry, Business, & Labor

Representative George Keiser, Chairman

Proposed Amendment to House Bill No. 1096

On page 1, line 1, after the word "enact" insert the following: "a new subdivision to subsection 31 of section 52-01-01 and"

On page 1, line 2, after the word "relating" insert the following: "to the definition of wages and"

On page 1, after line 8, insert:

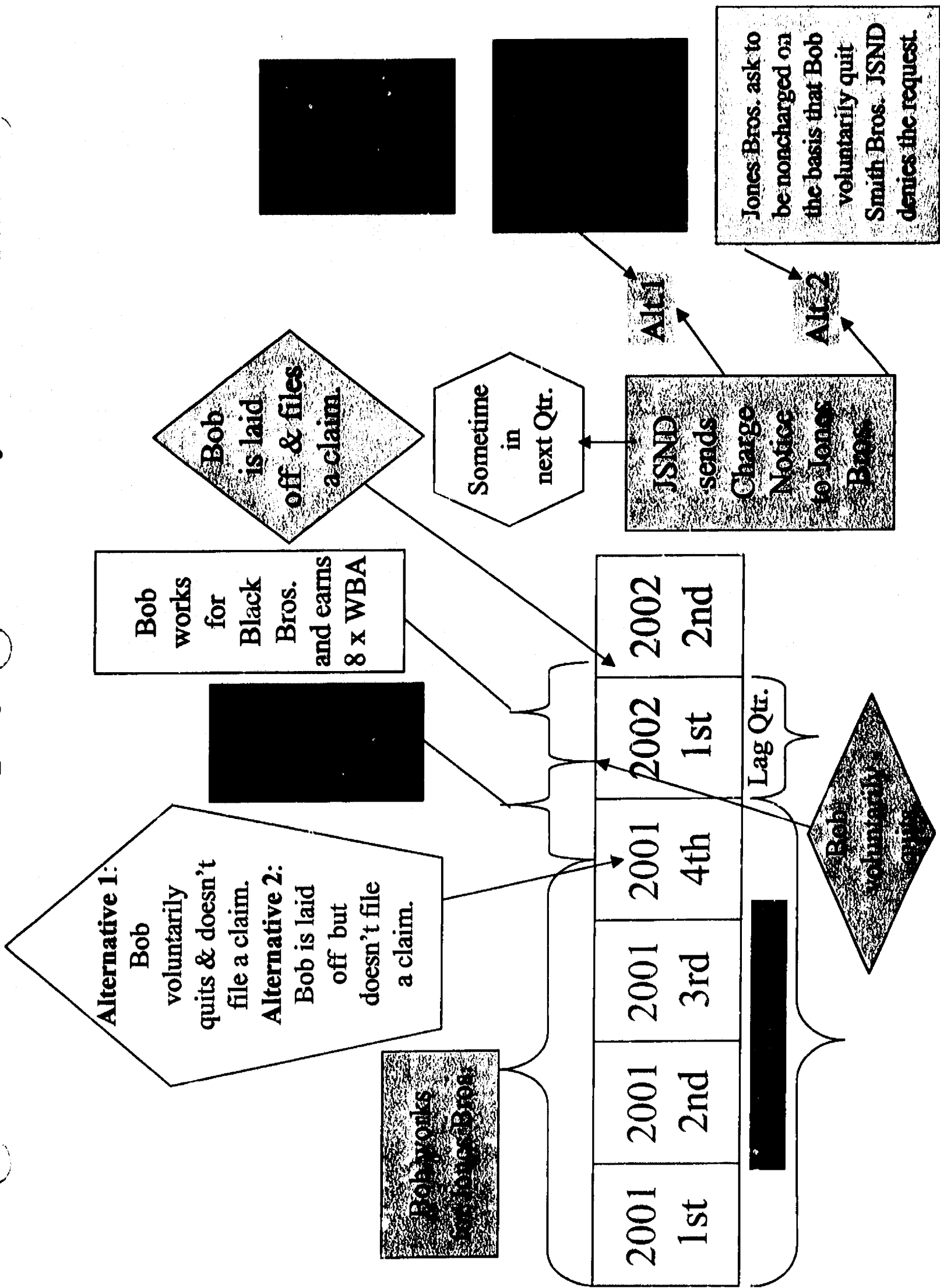
"SECTION 1. A new subdivision to subsection 31 of section 52-01-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Payments which qualify as supplemental unemployment compensation paid by an employer to former employees where those payments are paid pursuant to a plan which meets all of the following requirements:

- i. Benefits are paid only to unemployed former employees who are laid off by the employer.
- ii. Eligibility for benefits depends on meeting prescribed conditions after termination.
- iii. The amount of weekly benefits payable is based upon state unemployment benefits, other compensation allowable under state law, and the amount of regular weekly pay of that former employee.
- iv. The duration of the benefits is affected by the fund level and employee seniority.
- v. The right to benefits does not accrue until a prescribed period after termination.
- vi. Benefits are not attributable to the performance of particular services.
- vii. No employee has any right to the benefits until qualified and eligible to receive benefits.
- viii. Benefits may not be paid in a lump sum."

Renumber accordingly.

Hypothetical Employ. On History of Bob Brown



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Valista Rickford
Operator's Signature

10/2/03
Date

Committee on Industry, Business, and Labor

Testimony on House Bill No. 1096

Presented by John Graham, Job Service North Dakota

March 5, 2003

Mr. Chairman, members of the Senate Committee on Industry, Business, & Labor, my name is John Graham and I manage the Unemployment Insurance program for Job Service North Dakota. I thank you for the opportunity to appear today in support of Engrossed House Bill No. 1096 which Job Service caused to be prefiled.

House Bill No. 1096 is our composite bill addressing several issues which we believe need legislative modification. Because each section of the Bill addresses a different aspect of the Unemployment Insurance [UI] program, I will address each section individually and in order.

Section 1 of the Bill addresses issues raised when employers offer their laid off employees what the employers call "supplemental unemployment compensation." Such payments to Unemployment Insurance [UI] claimants give rise to two issues which we are not prepared to deal with given the current status of our law. The two issues are related. They are: 1. Is a payment of supplemental unemployment compensation by an employer to be considered wages subject to UI taxes; and 2. Is the payment to be considered earnings to the claimant which could reduce the amount of benefit received.

The Internal Revenue Service has addressed this issue with respect to federal unemployment taxes, and provided that if an employer has a plan which outlines how and to whom such payments are to be made, and that plan meets eight stated criteria, then the payments would not be subject to payroll taxes. Section 1 amends Section 52-01-01 of the Century Code to add a new subdivision which would adopt that IRS policy. Thus, when the payments are not subject to UI tax, they also would not be counted as earnings to be deducted from a claimant's benefits.

Section 2 amends current law (NDCC Section 52-01-02) to make clear that authorized Job Service staff (primarily field auditors) are to have access to those business records, including electronic records, which could show or reflect in any way "the amount of wage expenditure by or upon payments for services performed for" an employer. Job Service has had several employers resist opening records, beyond payroll records, to our auditors. Access to records beyond payroll records is critically necessary for auditors in order that they can determine if persons who are paid "off payroll" are in fact employees of the employer, or are independent contractors. The former, of course, may have rights to UI benefits if they, through no fault of their own, terminate their working relationship with that employer. The latter will not.

Our proposed amendment is based on the corresponding statute in Workers' Compensation law, NDCC Section 65-04-13. Like that statute, our proposal includes a civil penalty for failure to grant necessary access of up to \$500 which can be collected by Job Service in a civil action.

Section 3 of the Bill proposes to amend NDCC Section 52-04-07(2)(b) which is the subsection that sets out when contributing employers' tax accounts are not to be charged with benefits paid to former employee. The amendment is intended to restrict a base period employer to receiving the benefit of not having its account charged to only those instances where the alleged voluntary quit or discharge for misconduct happened to that base period employer during the base period. In other words, the amendment is intended to prevent a base period employer from arguing that its account should not be

charged based on events that relate to a separation from employment with a separating employer which is not a base period employer, or based on events which took place beyond the base period.

Section 4 proposes an amendment to subsection 2 of NDCC Section 52-04-07 to add a new subdivision which would allow non-charging of benefits paid to a base period employer's account when that employer is currently employing the claimant part-time, and the hiring agreement between that employer and employee has not changed since the claimant commenced work for that employer.

Section 5 is a housekeeping measure and would amend Section 52-04-09 to delete reference to a group of employers, those in Industry Group Number 161, Highway Construction. When the 1999 Legislature passed House Bill No. 1135, which substantially changed the UI tax rate structure, that legislation effectively negated use of that Industry Group Number in the determination of tax rates. However, House Bill No. 1135, surely through inadvertence, did not delete this obsolete reference.

Section 6. This section would amend NDCC Section 52-04-10 to change the current deadline by which Job Service must send out tax rate notices to employers setting out their tax rates for the ensuing calendar year. That deadline is presently December first of each year. In years where Thanksgiving falls close to the end of November it is extremely difficult to meet that deadline without having to involve staff in paid overtime hours. This proposed amendment would move the deadline to the "end of the first full week in December," but in any event, not later than the tenth of December. The proposed amendment would also make clear that an employer is not a party to a claim determination which may have resulted in charges to that employer's account if a notice of that determination was not hand delivered or mailed to that employer.

Section 7. This amendment deals with disqualification of a claimant for fraud. Under the current provision, a claimant who commits fraud with respect to his/her claim for a week of benefits is disqualified from that fraudulently claimed week through the date on which Job Service identifies the fraud, and for one year from that date. This leads to circumstances where, because of the timing of our Agency's cross matches of wage histories with reported earnings, a claimant could, and in many cases has, end a fraudulent claim and later have commenced a valid, non-fraudulent claim. Under the current language, payments made on that later claim would all result in overpayments which we will, when we discover the previous fraud, try to collect from the claimant.

Conversely, a claimant in the same situation, with one difference -- he/she did not make a later valid claim, will have no overpayments, and will, in essence, suffer the disqualification from the date that we discover the fraud forward.

The proposed amendment would change the disqualification period to include the fraudulently claimed week(s) and then one-year from the point of discovery of the fraud by Job Service.

Section 8. The proposed amendment to NDCC Section 52-06-04(2)(d) is intended to establish a more flexible means of dealing with situations where the owner of a business has "ceded" the business and is making a claim for UI benefits based on his/her unemployment. Currently, we interpret the law to require that the former owner get a certificate of dissolution from the Secretary of State. We have had several situations in the current biennium where it was clear that the former owner was out of business, but, for valid reasons, could not get a certificate of dissolution. We have responded to those situations in various ways, trying to be responsive to the claimant's situation in a common sense way. This proposed amendment would set forth means by which our claimstakers could judge whether a former owner had "ceded" her/his business.

The former owner could do this in one or more of four ways:

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1. By filing articles of dissolution.
 2. By showing a certificate of dissolution.
 3. By selling "substantially all the assets" of the business to an uninvolved third party.
 4. by demonstrating that substantially all the business assets have been seized by creditors.

Mr. Chairman, I hope that the Committee will give this Bill a "do pass" recommendation. I would be happy to answer the Committee's questions.

Yalosta Rickford
Operator's Signature

10/2/03
Date

Prepared by JSND/LMI

ETA 5159, CY 2002, line 302, column 14, UI Amount Compensated 42,381,238
ETA 5159, CY 2002, line 302, column 17, UCFE and UCX Amount Compensated 1,402,513
Total 43,783,751

	Paid	WBA
Paid matches WBA	40,826,792	40,826,792
Paid does not match WBA	121,974	288,958
No Pension or Earnings Reduction	40,948,766	41,115,750

	Paid	WBA
Only Pension Reduction (471 Claimants)	716,508	1,382,946

	Paid	WBA
Combined Pension & Earnings Reduction	2,118,477	2,523,051

	Paid	WBA
Pension Reduction Proportion	36,431	82,102

	Paid	WBA
Earnings Reduction Proportion	752,939	1,465,048
	2,082,046	2,440,949
	43,783,751	45,021,747
	1.63%	

Pension
Reduction
Amount
712,109

Exhaustion is not included in the above calculations. For a claimant who exhausts benefits with the pension reduction, if there is no pension reduction, exhaustion will still occur, only sooner, and there is no impact to the trust fund. This causes the above percentage to be overstated.