

**JOURNAL OF THE SENATE**

**Fifty-ninth Legislative Assembly**

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**Bismarck, April 14, 2005**

The Senate convened at 8:00 a.m., with President Dalrymple presiding.

The prayer was offered by Pastor Irvin Bruenjes, Retired, Missouri Synod Lutheran Church.

The roll was called and all members were present except Senators Fairfield, Grindberg, Seymour, and Traynor.

A quorum was declared by the President.

**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. THANE MOVED** that the conference committee report on Engrossed SB 2010 as printed on SJ pages 1468-1469 be adopted, which motion prevailed on a voice vote.

Engrossed SB 2010, as amended, was placed on the Eleventh order.

**SECOND READING OF SENATE BILL**

**SB 2010:** A BILL for an Act to provide an appropriation for defraying the expenses of the council on the arts; to provide an appropriation from the cultural endowment fund; to amend and reenact sections 21-10-06, 54-54-04, and 54-54-08.2 of the North Dakota Century Code, relating to funds under the management of the state investment board, employees of the council on the arts, and to the cultural endowment fund; and to provide a statement of legislative intent.

**ROLL CALL**

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

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espgaard; Every; Fischer; Flakoll; Freborg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Fairfield; Grindberg; Seymour; Traynor

Reengrossed SB 2010 passed and the title was agreed to.

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**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. DEVER MOVED** that the conference committee report on Engrossed SB 2361 as printed on SJ pages 1469-1470 be adopted, which motion prevailed on a voice vote.

Engrossed SB 2361, as amended, was placed on the Eleventh order.

**SECOND READING OF SENATE BILL**

**SB 2361:** A BILL for an Act to amend and reenact section 14-03-22 of the North Dakota Century Code, relating to marriage license fees; and to provide for a legislative council study.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 35 YEAS, 8 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bowman; Brown; Christmann; Dever; Erbele; Espgaard; Every; Fischer; Flakoll; Freborg; Hacker; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nething; Robinson; Syverson; Tallackson; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

**NAYS:** Bercier; Cook; Heitkamp; Nelson; O'Connell; Schobinger; Stenehjem; Taylor

**ABSENT AND NOT VOTING:** Fairfield; Grindberg; Seymour; Traynor

Reengrossed SB 2361 passed and the title was agreed to.

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**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: SB 2010, SB 2361.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has passed and your favorable consideration is requested on: SB 2261.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House does not concur in the Senate amendments to HB 1252 and HB 1459 and the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

**HB 1252:** Reps. Price; Delzer; Sandvig

**HB 1459:** Reps. Price; Devlin; Sandvig

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has appointed Rep. Carlisle to replace Rep. Kempenich on the Conference Committee on HB 1008.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report and subsequently passed: HB 1074, HB 1324, HB 1332.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House has not adopted the conference committee report on: SB 2274.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has signed: SB 2047, SB 2111, SB 2174, SB 2187, SB 2200, SB 2251, SB 2266, SB 2302, SB 2372.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has signed: HB 1028, HB 1092, HB 1148, HB 1188, HB 1190, HB 1191, HB 1200, HB 1205, HB 1248, HB 1258, HB 1286, HB 1290, HB 1347, HB 1402, HB 1408, HB 1421, HB 1464, HB 1507, HB 1523.

**MOTION**

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

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

**CONSIDERATION OF VETOED MEASURE**

**SB 2278:** A BILL to create and enact five new sections to chapter 49-05 of the North Dakota Century Code, relating to public utility rate stability plans.

**MOTION**

**SEN. STENEHJEM MOVED** that Enrolled SB 2278 be laid on the table, which motion prevailed on a voice vote.

**CONSIDERATION OF MESSAGE FROM THE HOUSE**

**SEN. KRINGSTAD MOVED** that the Senate do concur in the House amendments to Engrossed SB 2015 as printed on SJ pages 1305-1308.

**REQUEST**

**SEN. KRAUTER REQUESTED** a recorded roll call vote on the motion to concur in the House amendments to Engrossed SB 2015, which request was granted.

**ROLL CALL**

The question being on the motion to concur in the House amendments to Engrossed SB 2015, the roll was called and there were 24 YEAS, 20 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bowman; Brown; Christmann; Cook; Erbele; Fischer; Flakoll; Freborg; Hacker; Holmberg; Kilzer; Klein; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lyson; Mutch; Schobinger; Stenehjem; Thane; Tollefson; Trenbeath

**NAYS:** Bercier; Dever; Espeguard; Every; Fairfield; Heitkamp; Krauter; Lindaas; Mathern; Nelson; Nething; O'Connell; Robinson; Syverson; Tallackson; Taylor; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Grindberg; Seymour; Traynor

The Senate concurred in the House amendments to Engrossed SB 2015.

Engrossed SB 2015, as amended, was placed on the Eleventh order.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

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

**SB 2274:** Reps. Ruby; Vigesaa; S. Meyer

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report and subsequently passed: HB 1172, HB 1522.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report on: HB 1181.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House has concurred in the Senate amendments and subsequently passed: HB 1464.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** Your signature is respectfully requested on: HB 1531.

**MOTION**

**SEN. CHRISTMANN MOVED** that the Senate stand in recess until 4:30 p.m., which motion prevailed.

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

**MOTION**

**SEN. CHRISTMANN MOVED** that the President appoint a committee of three to act with a like committee from the House as a Conference Committee on HB 1252 and HB 1459, and that the President appoint a committee of three to act with a like committee from the House as a new Conference Committee on SB 2274, which motion prevailed.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT ANNOUNCED** the following appointments to a Conference Committee on Reengrossed HB 1252: Sens. J. Lee, Fischer, Mathern.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT ANNOUNCED** the following appointments to a Conference Committee on Reengrossed HB 1459: Sens. Brown, J. Lee, Warner.

**APPOINTMENT OF CONFERENCE COMMITTEE**

**THE PRESIDENT ANNOUNCED** the following appointments to a new Conference Committee on Engrossed SB 2274: Sens. Mutch, Espeguard, Bercier.

**MOTION**

**SEN. STENEHJEM MOVED** that the remarks of Senator Trenbeath from the morning session be printed in the Journal, which motion prevailed.

**REMARKS OF SENATOR TRENBEATH**

Mr. President. I rise this morning to pay homage to the 16th President of these United States on the 140th anniversary of the untimely death of the Great Emancipator. I'll do this with a little free verse from a couple of poets.

Walt Whitman, who referred to death as that "sweet hug of eternity", is the first of these. Mr. Whitman was a great admirer of the rail splitter from Illinois and wrote many passages with him as the subject. The following is a short part of a tribute by Uncle Walt to the fallen leader:

When lilacs last in the dooryard bloom'd  
 And the great star early drooped in the western sky in the night,  
 I mourned, and yet shall mourn with ever-returning spring.

The second poet's work is somewhat longer and the poet certainly of lesser renown.

A dream took me to Washington, on horseback, no less.  
 I inquired for him at home but was told he and the First Lady  
 were out for an evening's entertainment.  
 The theater was next, but too late, yet in time to see him  
 carried to the house across the street.

My strange attire and slightly different manner of speech allowed my  
 entrance,  
 And I made my way to the chamber where he lay dying.  
 I had but a few moments for the question, but his answer  
 found my ears over a century and a half of questions.

He said, "Charity to all, my son, Malice toward none."

#### MOTION

**SEN. CHRISTMANN MOVED** that SB 2300 be placed at the top of the calendar, which motion prevailed.

#### REPORT OF CONFERENCE COMMITTEE

**SB 2300, as engrossed:** Your conference committee (Sens. Krebsbach, Klein, Heitkamp and Reps. Kreidt, Pietsch, Kaldor) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1034-1035, adopt amendments as follows, and place SB 2300 on the Seventh order:

That the House recede from its amendments as printed on pages 1034 and 1035 of the Senate Journal and page 1268 of the House Journal and that Engrossed Senate Bill No. 2300 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 23-12 and a new section to chapter 34-06 of the North Dakota Century Code, relating to smoke-free exceptions and the authority of the labor commissioner; to"

Page 2, line 11, after the underscored period insert "The term includes a bar located within a hotel, bowling center, or restaurant that is not licensed primarily or exclusively to sell alcoholic beverages if the bar is in a separately enclosed area."

Page 2, line 26, replace "Health care services" with:

"7. Health care services"

Page 2, line 27, after the fifth underscored comma insert "and" and replace ", and" with an underscored period

Page 2, remove lines 28 and 29

Page 2, line 30, replace "7." with "8."

Page 3, line 3, after the first underscored comma insert "and" and remove ", and employer-owned vehicles"

Page 3, line 4, replace "8." with "9."

Page 3, line 22, replace "9." with "10."

Page 3, line 25, replace "10." with "11."

Page 4, line 1, replace "11." with "12."

Page 4, line 4, replace "12." with "13."

Page 4, line 6, replace "13." with "14."

Page 4, line 9, replace "14." with "15."

Page 4, after line 13, insert:

"16. "Truckstop" means a roadside service station and restaurant that caters to truckdrivers."

Page 5, line 5, replace "for" with "of"

Page 5, remove lines 17 and 18

Page 5, line 19, replace "g." with "f." and remove ", until August 1, 2007"

Page 5, replace lines 20 through 22 with:

"g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.

h. Separately enclosed areas in truckstops which are accessible only to adults."

Page 6, after line 24, insert:

**"SECTION 4.** A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

**Exceptions - Medical necessity.**

1. Notwithstanding the provisions of any other state or local law, a patient may smoke in a hospital licensed by the state or on the grounds of a hospital licensed by the state if the patient's attending physician authorizes the activity based on medical policies adopted by the hospital organized medical staff.

2. Notwithstanding the provisions of any other state or local law, a resident of a licensed basic care facility or a licensed nursing facility may smoke in the facility or on the grounds of the facility if approved by the board of the facility."

Page 6, line 27, after "~~proprietor~~" insert:

"1. An individual who smokes in an area in which smoking is prohibited under section 23-12-10 is guilty of an infraction.

2."

Page 6, line 30, after "who" insert "willfully"

Page 7, after line 2, insert:

**"SECTION 6.** A new section to chapter 34-06 of the North Dakota Century Code is created and enacted as follows:

**Authority of labor commissioner - Exception.** Notwithstanding section 34-06-03, the labor commissioner may not adopt rules relating to sections 23-12-09 through 23-12-11. If the labor commissioner is made aware of a possible violation of chapter 23-12, the commissioner may refer the violation to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11."

ReNUMBER accordingly

Engrossed SB 2300 was placed on the Seventh order of business on the calendar.

**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. KREBSBACH MOVED** that the conference committee report on Engrossed SB 2300 be adopted, which motion prevailed on a voice vote.

Engrossed SB 2300, as amended, was placed on the Eleventh order.

**SECOND READING OF SENATE BILL**

**SB 2300:** A BILL for an Act to create and enact a new section to chapter 23-12 and a new section to chapter 34-06 of the North Dakota Century Code, relating to smoke-free exceptions and the authority of the labor commissioner; to amend and reenact sections 23-12-09, 23-12-10, 23-12-10.2, and 23-12-11 of the North Dakota Century Code, relating to smoke-free environments; to repeal section 23-12-10.1 of the North Dakota Century Code, relating to smoking area signage; and to provide a penalty.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 33 YEAS, 11 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Brown; Dever; Erbele; Espgaard; Every; Fairfield; Fischer; Flakoll; Freborg; Hacker; Heitkamp; Holmberg; Kilzer; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Nelson; Nothing; Robinson; Syverson; Tallackson; Taylor; Thane; Tollefson; Triplett; Warner

**NAYS:** Bowman; Christmann; Cook; Klein; Mutch; O'Connell; Schobinger; Stenehjem; Trenbeath; Urlacher; Wardner

**ABSENT AND NOT VOTING:** Grindberg; Seymour; Traynor

Reengrossed SB 2300 passed and the title was agreed to.

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**REPORT OF CONFERENCE COMMITTEE**

**SB 2204, as engrossed:** Your conference committee (Sens. Krebsbach, Espgaard, Fairfield and Reps. Porter, Nelson, Kaldor) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 974, adopt amendments as follows, and place SB 2204 on the Seventh order:

That the House recede from its amendments as printed on page 974 of the Senate Journal and page 1221 of the House Journal and that Engrossed Senate Bill No. 2204 be amended as follows:

Page 1, line 19, remove ". Except for a creditor that is a"

Page 1, line 20, remove "licensed nursing facility or a basic care facility, a late payment", overstrike "charge", and after "~~cannot~~" insert ". A late payment charged by a hospital"

Renumber accordingly

Engrossed SB 2204 was placed on the Seventh order of business on the calendar.

**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. KREBSBACH MOVED** that the conference committee report on Engrossed SB 2204 be adopted, which motion prevailed on a voice vote.

Engrossed SB 2204, as amended, was placed on the Eleventh order.

**SECOND READING OF SENATE BILL**

**SB 2204:** A BILL for an Act to amend and reenact sections 13-01-14 and 51-14-01 of the North Dakota Century Code, relating to medical services provider late payment charges and credit service charges.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 39 YEAS, 5 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espgaard; Every; Fischer; Flakoll; Freborg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mutch; Nelson; Nothing; Robinson; Schobinger; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner

**NAYS:** Fairfield; Krauter; Mathern; O'Connell; Warner

**ABSENT AND NOT VOTING:** Grindberg; Seymour; Traynor

Reengrossed SB 2204 passed and the title was agreed to.

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#### REPORT OF CONFERENCE COMMITTEE

**SB 2190, as reengrossed:** Your conference committee (Sens. Espegard, Nething, Heitkamp and Reps. Nottestad, Clark, Amerman) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 927, adopt amendments as follows, and place SB 2190 on the Seventh order:

That the House recede from its amendments as printed on page 927 of the Senate Journal and page 1167 of the House Journal and that Reengrossed Senate Bill No. 2190 be amended as follows:

Page 1, line 19, replace the first underscored comma with "or an annuity in which a settlement option has been selected, is"

Page 2, line 5, remove the overstrike over "~~the~~" and replace "a standard" with "life expectancy tables published by the centers for medicare and medicaid services"

Page 2, line 6, remove "actuarial life expectancy table on the date of issuance of the annuity"

Page 2, line 9, overstrike "by the"

Page 2, line 10, overstrike "department pursuant to" and insert immediately thereafter "under"

Page 2, remove lines 11 through 17

Renumber accordingly

Reengrossed SB 2190 was placed on the Seventh order of business on the calendar.

#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. ESPEGARD MOVED** that the conference committee report on Reengrossed SB 2190 be adopted, which motion prevailed on a voice vote.

Reengrossed SB 2190, as amended, was placed on the Eleventh order.

#### SECOND READING OF SENATE BILL

**SB 2190:** A BILL for an Act to amend and reenact section 50-24.1-02.8 of the North Dakota Century Code, relating to transfers involving annuities.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 43 YEAS, 1 NAY, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espegard; Every; Fairfield; Fischer; Flakoll; Freborg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

**NAYS:** Andrist

**ABSENT AND NOT VOTING:** Grindberg; Seymour; Traynor

Reengrossed SB 2190 passed and the title was agreed to.

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#### REPORT OF CONFERENCE COMMITTEE

**HB 1074, as engrossed:** Your conference committee (Sens. Hacker, Cook, Triplett and Reps. Skarphol, Svedjan, Glassheim) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1001, adopt amendments as follows, and place HB 1074 on the Seventh order:

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 756 of the Senate Journal and that Engrossed House Bill No. 1074 be amended as follows:

Page 2, line 9, after "or" insert "the governing body of any"

Page 2, line 12, replace "designee of the" with "deputy", after the second "officer" insert "or a member of the governing body of a political subdivision", and replace the second "the" with "any"

Page 2, line 13, after "test" insert "during which confidential information may be accessed or controlled", replace "or designee of an" with ", a deputy", and after the second "officer" insert ", or a member of the governing body of a political subdivision"

Renumber accordingly

Engrossed HB 1074 was placed on the Seventh order of business on the calendar.

#### CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**SEN. HACKER MOVED** that the conference committee report on Engrossed HB 1074 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1074, as amended, was placed on the Fourteenth order.

#### SECOND READING OF HOUSE BILL

**HB 1074:** A BILL for an Act to create and enact a new section to chapter 54-10 of the North Dakota Century Code, relating to audits of computer systems by the state auditor; and to provide a penalty.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 44 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espgaard; Every; Fairfield; Fischer; Flakoll; Freborg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Grindberg; Seymour; Traynor

Engrossed HB 1074, as amended, passed and the title was agreed to.

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#### REPORT OF CONFERENCE COMMITTEE

**HB 1332, as engrossed:** Your conference committee (Sens. Nething, Mutch, Heitkamp and Reps. Kasper, Vigasaa, Ekstrom) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1420-1422, adopt amendments as follows, and place HB 1332 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1056-1058 of the Senate Journal and pages 1420-1422 of the House Journal and that Engrossed House Bill No. 1332 be amended as follows:

Page 1, line 2, after "management" insert "; and to provide for a legislative council study"

Page 2, after line 12, insert:

- "6. "Payment received by the pharmacy benefits manager" means the aggregate amount of the following types of payments:
  - a. A rebate collected by the pharmacy benefits manager which is allocated to a covered entity;
  - b. An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer;
  - c. A pharmacy network fee; and
  - d. Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or labeler for a drug switch program, formulary management program, mail service pharmacy, educational support,



data sales related to a covered individual, or any other administrative function."

Page 2, line 13, replace "6." with "7."

Page 2, remove line 18

Page 2, line 19, replace "b." with "a."

Page 2, line 21, replace "c." with "b."

Page 2, line 22, replace "d." with "c."

Page 2, line 23, replace "7." with "8."

Page 2, line 26, remove "and includes mail service pharmacy"

Page 2, line 30, replace "and does not include a" with a period

Page 3, replace lines 1 through 9 with:

"9. "Rebate" means a retrospective reimbursement of a monetary amount by a manufacturer under a manufacturer's discount program with a pharmacy benefits manager for drugs dispensed to a covered individual."

Page 3, line 10, replace "9." with "10."

Page 3, line 29, replace "may not request a" with "shall comply with chapter 19-02.1 regarding the"

Page 3, line 30, replace "unless:" with a period

Page 4, remove lines 1 through 6

Page 4, line 10, replace "solely because the pharmacist or" with "if the pharmacist or pharmacy accepts the terms, conditions, and reimbursement rates of the pharmacy benefits manager's contract."

Page 4, remove lines 11 through 18

Page 4, line 23, replace "rebates and other retrospective" with "a payment received by the pharmacy benefits manager;"

Page 4, remove line 24

Page 4, line 25, replace "rebates and other" with "a payment received by the pharmacy benefits manager; or"

Page 4, remove line 26

Page 4, replace line 28 with "a payment received by the pharmacy benefits manager."

Page 4, line 30, replace "audit" with "have audited"

Page 5, line 1, replace "rebates and other" with "a payment received by the pharmacy benefits manager is"

Page 5, line 2, remove "retrospective utilization discounts are"

Page 5, line 4, replace "company" with "covered entity"

Page 5, line 5, replace "company" with "covered entity"

Page 5, replace line 7 with "payment received by the pharmacy benefits manager which the covered entity"

Page 5, line 8, replace "have" with "has"

Page 5, line 9, replace "company's" with "covered entity's" and replace "have" with "has"

Page 5, line 10, remove "of the company" and replace the second "company" with "covered entity"

Page 5, line 11, replace "rebates and other retrospective utilization" with "the payment received by the pharmacy benefits manager"

Page 5, line 12, remove "discounts"

Page 5, line 13, replace "rebates and other retrospective utilization" with "payment received by the pharmacy benefits manager is"

Page 5, line 14, remove "discounts are" and after "rates" insert "or is distributed to covered individuals"

Page 5, after line 18, insert:

**"SECTION 3. PHARMACY BENEFITS MANAGEMENT INDUSTRY - LEGISLATIVE COUNCIL STUDY.** The legislative council shall study, during the 2005-06 interim, the pharmacy benefits management industry, including the extent of competition in the marketplace for health insurance and prescription drugs; whether protecting the confidentiality of trade secret or proprietary information has a positive or negative impact on prescription drug prices; the ownership interest or affiliation between insurance companies and pharmacy benefits management companies and whether such relationships are good for the consumer; the impact of disclosure of information regarding relationships between pharmacy benefits management companies and their customers; the use of various cost-containment methods by pharmacy benefits managers, including the extent to which pharmacy benefits managers promote the use of generic drugs; the actual impact of the use of pharmacy benefits management techniques on community pharmacies; the impact of mail service pharmacies on consumers and community pharmacies; the impact of generic and brand name drugs in formulary development, drug switches and mail order operations, as well as spread pricing, data sales and manufacturers rebates and discounts; the price consumers actually pay for prescription drugs in North Dakota; and consideration of the legality of imposing statutory restrictions on pharmacy benefits managers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Renumber accordingly

Engrossed HB 1332 was placed on the Seventh order of business on the calendar.

#### **CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. NETHING MOVED** that the conference committee report on Engrossed HB 1332 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1332, as amended, was placed on the Fourteenth order.

#### **SECOND READING OF HOUSE BILL**

**HB 1332:** A BILL for an Act to create and enact a new section to chapter 26.1-27 and chapter 26.1-27.1 of the North Dakota Century Code, relating to regulation of pharmacy benefits management; and to provide for a legislative council study.

#### **ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 44 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espegard; Every; Fairfield; Fischer; Flakoll; Freborg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Grindberg; Seymour; Traynor

Engrossed HB 1332, as amended, passed and the title was agreed to.

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**REPORT OF CONFERENCE COMMITTEE**

**HB 1324, as engrossed:** Your conference committee (Sens. Mutch, Nething, Heitkamp and Reps. Kasper, Ruby, Boe) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1001, adopt amendments as follows, and place HB 1324 on the Seventh order:

That the Senate recede from its amendments as printed on page 1001 of the House Journal and page 756 of the Senate Journal and that Engrossed House Bill No. 1324 be amended as follows:

Page 1, remove lines 18 and 19

Page 1, line 20, replace "b." with "a."

Page 1, line 22, replace "c." with "b."

Page 2, line 1, replace "d." with "c."

Page 2, line 2, after the period insert "For facilities located or to be located in this state the commission, in determining whether the resource addition is reasonable and prudent, shall consider the benefits of having the energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased located in this state."

Page 2, line 8, remove "Before commercial operation of the resource addition, the public utility shall make"

Page 2, remove line 9

Page 2, line 10, remove "addition in accordance with section 49-05-05."

Page 2, after line 19, insert:

"6. There is a rebuttable presumption that an energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased which is located in the state is prudent."

ReNUMBER accordingly

Engrossed HB 1324 was placed on the Seventh order of business on the calendar.

**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. MUTCH MOVED** that the conference committee report on Engrossed HB 1324 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1324, as amended, was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1324:** A BILL for an Act to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to advance determination of prudence for a public utility's proposed new construction, lease, or improvement of an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract.

**ROLL CALL**

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 44 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espgaard; Every; Fairfield; Fischer; Flakoll; Freborg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Grindberg; Seymour; Traynor

Engrossed HB 1324, as amended, passed and the title was agreed to.

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**REPORT OF CONFERENCE COMMITTEE**

**HB 1181, as reengrossed:** Your conference committee (Sens. Lyson, Brown, Warner and Reps. Bellew, Pollert, Kerzman) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1526 and place HB 1181 on the Seventh order.

Reengrossed HB 1181 was placed on the Seventh order of business on the calendar.

**CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**SEN. LYSON MOVED** that the conference committee report on Reengrossed HB 1181 be adopted, which motion prevailed on a voice vote.

Reengrossed HB 1181 was placed on the Fourteenth order.

**SECOND READING OF HOUSE BILL**

**HB 1181:** A BILL for an Act to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to funds designated for funeral expenses and eligibility for medical assistance; and to direct the department of human services to seek a waiver.

**ROLL CALL**

The question being on the final passage of the bill, which has been read, the roll was called and there were 44 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espgaard; Every; Fairfield; Fischer; Flakoll; Freborg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

**ABSENT AND NOT VOTING:** Grindberg; Seymour; Traynor

Reengrossed HB 1181 passed and the title was agreed to.

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**MOTION**

**SEN. CHRISTMANN MOVED** that Senate Rule 338 be further amended to read "seventy-first" in place of "sixty-ninth", thereby extending the deadline for reporting bills out of committee, which motion prevailed.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

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

**SB 2274:** Sens. Mutch; Espgaard; Bercier

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

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

**HB 1252:** Sens. J. Lee; Fischer; Mathern

**HB 1459:** Sens. Brown; J. Lee; Warner

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: HB 1074, HB 1181, HB 1324, HB 1332.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: SB 2190, SB 2204, SB 2300.

**MOTION**

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

**MOTION**

**SEN. CHRISTMANN MOVED** that the Senate be on the Fourth, Fifth, Seventh, Thirteenth, and Sixteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 8:00 a.m., Friday, April 15, 2005, which motion prevailed.

**REPORT OF STANDING COMMITTEE**

**HB 1035, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO NOT PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed HB 1035 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1282, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO NOT PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed HB 1282 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1301, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1301 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1304, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1304 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1334, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO NOT PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed HB 1334 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1394, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1394 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1514, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO NOT PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed HB 1514 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HCR 3036: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO PASS** (8 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HCR 3036 was placed on the Fourteenth order on the calendar.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1172, as reengrossed:** Your conference committee (Sens. J. Lee, Lyson, Warner and Reps. Porter, Nelson, Kaldor) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1344, adopt amendments as follows, and place HB 1172 on the Seventh order:

That the Senate recede from its amendments as printed on page 1344 of the House Journal and page 847 of the Senate Journal and that Reengrossed House Bill No. 1172 be amended as follows:

Page 1, line 3, after the first comma insert "three new sections to chapter 50-09,"

Page 1, line 6, replace "subsection 5 of section 14-09-25" with "section 14-09-09.10, subsections 1 and 2 of section 28-21-05.2" and remove "and"

Page 1, line 7, after the first comma insert "35-34-02, 35-34-05, 35-34-09, and", after the second comma insert "subsection 2 of section 50-09-08.6, subsection 1 of section 50-09-32,", and after "and" insert "section"

Page 1, line 8, after the first comma insert "account liens,"

Page 3, replace lines 13 through 29 with:

**"SECTION 5. AMENDMENT.** Section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.10. Definitions.** For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. Arrears registry" means the registry maintained under section 16 of this Act.
2. "Business day" means every day that is not a Saturday or legal holiday.
- ~~2.~~ 3. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
- ~~3.~~ 4. "Child support agency" means the county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards, in execution of the county social service board's duties under subsection 5 of section 50-09-03.
4. 5. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
- ~~5.~~ 6. "Disposable income" means gross income less deductions required by law for taxes and social security.
- ~~6.~~ 7. "Employer" means income payer.
- ~~7.~~ 8. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.
- ~~8.~~ 9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
- ~~9.~~ 10. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.
- ~~10.~~ 12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
- ~~14.~~ 13. "Obligor" means any person owing a duty of support.
- ~~12.~~ 14. "Past-due support" means child support that is not paid by the earlier of:
  - a. The date a court order or an order of an administrative process established under state law requires payment to be made; or
  - b. The last day of the month or other period the payment was intended to cover.
- ~~13.~~ 15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.

14. 16. "Public authority" means the department of human services in execution of its duties pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
15. 17. "System implementation date" means the date the public authority certifies to the secretary of state and the legislative council that the statewide automated data processing system, established under section 50-09-02.1, is operating."

Page 4, line 2, after "program" insert an underscored comma

Page 4, line 3, after "plan" insert a underscored comma

Page 4, line 18, replace "are" with "is"

Page 4, after line 23, insert:

**"SECTION 8. AMENDMENT.** Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is not current in a court established plan to repay the unpaid child support judgment is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.~~
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may omit:
  - a. ~~The seal of the court;~~
  - b. ~~The subscription of the clerk of that court;~~
  - c. ~~The attestation in the name of the judge of the court that entered the judgment;~~
  - d. ~~A statement of the courts and counties to which the judgment has been transcribed; and~~
  - e. ~~If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 which has been certified under section 14-08.1-08."~~

Page 5, after line 15, insert:

**"SECTION 11. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-02. Lien for past-due child support.** ~~When a past-due child support obligation is at least six times the monthly child support obligation and the an obligor is not current in a court established plan to repay the past-due support listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.~~

**SECTION 12. AMENDMENT.** Section 35-34-05 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-05. Account lien.**

1. In the case of an account maintained in a financial institution, the public authority may establish a lien on the account by serving a notice of lien upon the financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the financial institution. The notice must be in a form prescribed by the public authority and contain the name, social security number, or other taxpayer identification number and last-known address of the obligor, the amount of past-due support for which a lien is claimed, and any other information required by the public authority. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon service of the notice of lien on a financial institution in accordance with this section, the lien attaches to accounts of the obligor maintained in the financial institution, ~~except to the extent necessary to~~ and freezes all subsequent withdrawals from the account except for funds in excess of the amount of past-due support for which a lien is claimed under this section and as provided in subsection 3.
3. Notwithstanding a freeze on an account under subsection 2, the financial institution may satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with notice of lien, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with notice of lien.
- ~~3.~~ 4. A lien under this section is perfected when the financial institution is served with notice of the lien.

**SECTION 13. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-09. Immunity from liability.** A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property ~~or discharges the obligation to the public authority, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter,~~ is immune from suit or any liability ~~to the obligor or other person arising from the surrender or payment under any federal or state law.~~ The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section."

Page 6, after line 4, insert:

**"SECTION 16.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support arrears registry. The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrears registry" means the registry maintained under this section.

**SECTION 17. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
  - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
  - b. An obligor who is ~~in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support~~



~~obligation of five thousand dollars, whichever is less listed on the arrears registry; or~~

- c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.

**SECTION 18.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support deduction order.

1. The state agency, directly or through agents or child support agencies, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.
2. The state agency, directly or through agents or child support agencies, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.
4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.
5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with the order.
6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.
7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section.

**SECTION 19.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Protest period. Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 or section 18 of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

**SECTION 20. AMENDMENT.** Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who is listed on the arrears registry and owes past-due child support in an amount greater than ~~twenty-five~~ ten thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person."

Renumber accordingly

Reengrossed HB 1172 was placed on the Seventh order of business on the calendar.

#### REPORT OF CONFERENCE COMMITTEE

**HB 1522, as engrossed:** Your conference committee (Sens. Cook, Urlacher, Bercier and Reps. Weisz, Price, Sandvig) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1260-1262, adopt amendments as follows, and place HB 1522 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1260-1262 of the House Journal and pages 953-955 of the Senate Journal and that Engrossed House Bill No. 1522 be amended as follows:

Page 1, line 1, after "to" insert "create and enact chapter 51-30 of the North Dakota Century Code, relating to regulation of sale and delivery of tobacco products; to"

Page 1, line 2, after "tax" insert "; to provide a penalty; and to declare an emergency"

Page 1, after line 3, insert:

**"SECTION 1.** Chapter 51-30 of the North Dakota Century Code is created and enacted as follows:

51-30-01. Prohibited acts regarding sale of tobacco products to minors. It is unlawful for any person in the business of selling tobacco products to take an order for a tobacco product, other than from a person who is in the business of selling tobacco products, through the mail or through any telecommunications means, including by telephone, facsimile, or the internet, if in providing for the sale or delivery of the product pursuant to the order, the person mails the product or ships the product by carrier, and the person fails to comply with each of the following procedures:

1. Before mailing or shipping the product, the person receives from the individual who places the order the following:
  - a. A copy of a valid government-issued document that provides the name, address, and date of birth of the individual; and
  - b. A signed statement from the individual providing a certification that the individual:
    - (1) Is a smoker of legal minimum purchase age in the state;
    - (2) Has selected an option on the statement as to whether the individual wants to receive mailings from a tobacco company; and
    - (3) Understands that providing false information may constitute a violation of law.
2. Before mailing or shipping the product, the person:
  - a. Verifies the date of birth or age of the individual against a commercially available data base; or
  - b. Obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order.

3. Before mailing or shipping the product, the person provides to the prospective purchaser, by electronic mail or other means, a notice that meets the requirements of section 51-30-04.
4. In the case of an order for a product pursuant to an advertisement on the internet, the person receives payment by credit card, debit card, or check for the order before mailing or shipping the product.
5.
  - a. The person employs a method of mailing or shipping the product requiring that the individual purchasing the product:
    - (1) Be the addressee;
    - (2) Have an individual of legal minimum purchase age sign for delivery of the package; and
    - (3) If the individual appears to the carrier making the delivery to be under twenty-seven years of age, take delivery of the package only after producing valid government-issued identification that bears a photograph of the individual, indicates that the individual is not under the legal age to purchase cigarettes, and indicates that the individual is not younger than the age indicated on the government-issued document.
  - b. The bill of lading clearly states the requirements in subdivision a and specifies that state law requires compliance with the requirements.
6. The person notifies the carrier for the mailing or shipping, in writing, of the age of the addressee as indicated by the government-issued document.

51-30-02. Rule of construction regarding common carriers. This chapter may not be construed as imposing liability upon any common carrier, or officer or employee of the carrier when acting within the scope of business of the common carrier.

51-30-03. E-mail addresses. A person taking a delivery sale order may request that a prospective purchaser provide an e-mail address for the purchaser.

51-30-04. Disclosure requirements. The notice required under subsection 3 of section 51-30-01 must include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum age are illegal;
2. A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the federal Cigarette Labeling and Advertising Act [15 U.S.C. 1333(a)(1)] rotated on a quarterly basis;
3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with section 51-30-01; and
4. A prominent and clearly legible statement that cigarette sales are subject to tax under sections 57-36-06 and 57-36-32, and an explanation of how the tax has been, or is to be, paid with respect to the delivery sale.

51-30-05. Registration and reporting requirements.

1. Before making a delivery sale or shipping cigarettes in connection with a sale, a person shall file with the tax commissioner a statement setting forth the person's name, trade name, and the address of the person's principal place of business and any other place of business.
2. Not later than the tenth day of each month, each person that has made a delivery sale or shipped or delivered cigarettes in connection with any sale during the previous calendar month shall file with the tax commissioner a memorandum or a copy of the invoice, which provides for each delivery sale:

- a. The name and address of the individual to whom the delivery sale was made;
- b. The brand of the cigarettes that were sold in the delivery sale; and
- c. The quantity of cigarettes that were sold in the delivery sale.

51-30-06. Taxes. Each person accepting a purchase order for a delivery sale of any tobacco product shall remit to the tax commissioner any taxes due under chapter 57-36 with respect to the delivery sale. This section does not apply if the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes already have been paid to this state.

51-30-07. Penalties.

1. Except as otherwise provided in this section, a person that violates this chapter is subject to a fine of not more than one thousand dollars. In the case of a second or subsequent violation of this chapter, the person is subject to a fine of not less than one thousand dollars nor more than five thousand dollars.
2. Any person who knowingly violates any provision of this chapter is guilty of a class C felony.
3. Any individual who knowingly and falsely submits a certification under subdivision a of subsection 5 of section 51-30-01 in another individual's name is guilty of a noncriminal offense and is subject to the penalty provided under subsection 1.
4. Any person that fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of fifty percent of the tax due but unpaid.
5. Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this chapter are forfeited to the state and must be destroyed.

51-30-08. Enforcement. The attorney general or any person who holds a permit under 26 U.S.C. 5712 may bring an action in the appropriate court in the state to prevent or restrain a violation of this chapter by any person."

Page 2, after line 11, insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Engrossed HB 1522 was placed on the Seventh order of business on the calendar.

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

**William R. Horton, Secretary**