

**Industry, Business and Labor Committee Hearing****March 5&6, 2008****WSI Legislation as proposed by ND AFL-CIO in convention August 26, 2006****And submitted to the 2007 Legislative Session**

Bills introduced and their sponsors listed below including roll call votes.

**HB 1283-- Liberal Construction -- Item 12 in attached resolution.*****Introduced by******Representatives Amerman, DeKrey, Kretschmar******Senators Cook, Nelson, Nething***

HB 1283 lost in the House

**65-01-01. Purposes of workforce safety and insurance law - Police power.**

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety &amp; Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation eliminates the requirement that civil actions or claims subject to judicial review must be reviewed solely on the merits of the action or claim and not be construed liberally on behalf of any party. WSI anticipates that, if passed in its present form, the legislation will act to increase the uncertainty of outcomes for claims subject to judicial review as the courts will have greater latitude when issuing decisions.

This bill failed in House of origin—36 yeas to 58 nays

**SECOND READING OF HOUSE BILL —HB 1283: ROLL CALL—, HJ 548**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 36 YEAS, 58 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Boe; Boucher; Conrad; DeKrey; Delmore; Ekstrom; Froelich; Glassheim; Griffin; Gruchalla; Gulleon; Haas; Hanson; Hunsakor; Kaldor; Kelsh, S.; Kerzman; Kretschmar; Kroeber; Metcalf; Meyer, S.; Mueller; Myxter; Onstad; Pinkerton; Potter; Schmidt; Schneider; Solberg; Thorpe; Vig; Williams; Wolf; Zaiser**NAYS:** Bellew; Belter; Berg; Boehning; Brandenburg; Carlisle; Carlson; Charging; Clark; Dahl; Damschen; Dietrich; Dosch; Drovda; Froseth; Grande; Hatlestad; Hawken; Headland; Heller; Herbel; Hofstad; Johnson, D.; Johnson, N.; Karls; Kasper; Keiser; Kelsch, R.; Kempenich; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Martinson; Meier, L.; Monson; Nelson; Nottestad; Owens; Pietsch; Pollert; Porter; Price; Ruby; Skarphol; Sukut; Svedjan; Thoreson; Uglem; Vigesaa; Wald; Wall; Weiler; Weisz; Wieland; Ivranham; Speaker Delzer**HB 1283 lost.**

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**HB 1286—Conduct audits of WSI initiated IME's—Item 6 in attached Resolution.*****Introduced by Representatives Amerman, Boe,******Senator Heitkamp***

HB 1286 lost in the House.

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Audits of workforce safety and insurance independent medical examinations -**

1. The state department of health shall establish and implement a program to conduct

random audits of independent medical examinations performed for workforce safety and insurance under section 65-05-28.

**State fiscal effect detail:**

The department would contract with a medical facility for approximately \$160,000 per year or \$320,000 per biennium to provide this service. This would include a half time physician plus benefits, a full time support person plus benefits, and general operating supplies. The department would also need \$50,000 for over site or administrative costs to administer this program.

**This bill failed in the House of origin—31 yeas to 62 Nays. HJ 544**

**SECOND READING OF HOUSE BILL —HB 1286: —ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 31 YEAS, 62 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Boe; Boucher; Conrad; Delmore; Ekstrom; Froelich; Glassheim; Griffin; Gruchalla; Guleson; Hanson; Hunsakor; Kaldor; Kelsh, S.; Kerzman; Kroeber; Metcalf; Meyer, S.; Mueller; Onstad; Potter; Schmidt; Schneider; Solberg; Thorpe; Vig; Williams; Wolf; Zaiser

**NAYS:** Bellew; Belter; Berg; Boehning; Brandenburg; Carlisle; Carlson; Charging; Clark; Dahl; Damschen; DeKrey; Dietrich; Dosch; Drovda; Froseth; Grande; Haas; Hatlestad; Hawken; Headland; Heller; Herbel; Hofstad; Johnson, D.; Johnson, N.; Karls; Kasper; Keiser; Kelsch, R.; Kempenich; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Kretschmar; Martinson; Meier, L.; Monson; Myxter; Nelson; Nottestad; Owens; Pietsch; Pollert; Porter; Price; Ruby; Skarphol; Sukut; Svedjan; Thoreson; Uglem; Vigasaa; Wald; Wall; Weiler; Weisz; Wieland; Wrangham; Speaker Delzer

**ABSENT AND NOT VOTING:** Pinkerton

**HB 1286 lost.**

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**HB 1287 Pilot programs to improve services to Voc. Rehab. Claimants—Item 15**

**Introduced by**

**Representatives Amerman, S. Kelsh,**

**Senator Horne**

**HB 1287 lost in the House.**

**SECTION 1.** A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

**Rehabilitation services - Pilot programs - Reports.**

1. The organization shall implement an ongoing system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services.

**-SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation requires WSI to implement an ongoing system of pilot programs relating to workers' compensation rehabilitation services.

**FISCAL IMPACT:** It is our understanding that the proposed legislation would require the implementation of pilot rehabilitation programs that would effectively duplicate rehabilitation programs that currently exist. To the extent the services contemplated under the proposed legislation already exist, no fiscal impact is anticipated. DATE: January 26, 2007

**This bill failed in the House of origin. 33 yeas to 61 nays. HJ 544 & 545**

**SECOND READING OF HOUSE BILL—ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 33 YEAS, 61 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Boe; Boucher; Conrad; Delmore; Ekstrom; Froelich; Glassheim; Griffin; Gruchalla; Guleson; Hanson; Hunsakor; Kaldor; Kelsh, S.; Kerzman; Kroeber; Metcalf; Meyer, S.; Mueller; Myxter; Onstad; Owens; Pinkerton; Potter; Schmidt;

Schneider; Solberg; Thorpe; Vig; Wolf; Zaiser

**NAYS:** Bellew; Belter; Berg; Boehning; Brandenburg; Carlisle; Carlson; Charging; Clark; Dahl; Damschen; DeKrey; Dietrich; Dosch; Drovdal; Froseth; Grande; Haas; Hatlestad; Hawken; Headland; Heller; Herbel; Hofstad; Johnson, D.; Johnson, N.; Karls; Kasper; Keiser; Kelsch, R.; Kempenich; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Kretschmar; Martinson; Meier, L.; Monson; Nelson; Nottestad; Pietsch; Pollert; Porter; Price; Ruby; Skarphol; Sukut; Svedjan; Thoreson; Uglem; Vigesaa; Wald; Wall; Weiler; Weisz; Wieland; Williams; Wrangham; Speaker Delzer  
**HB 1287 lost.**

**HB 1323-Executive Director appointed by Governor, Item 4 in attached resolution.  
Introduced by**

**Representatives Zaiser, Amerman, S. Kelsh, Schmidt**

**HB 1323 lost in the House.**

**65-02-01. Workforce safety and insurance Workers' compensation department - Director Executive director - Division directors.** The organization must be maintained for the administration of this title. The *board* governor shall appoint the executive director of the organization. The director is subject to the supervision and direction of the *board* governor and serves at the pleasure of the *board* governor. The appointment must be on a nonpartisan, merit basis, in accordance with chapter 54-42. The governor shall set the compensation and prescribe the duties of the director.

**SECTION 5.** A new section to chapter 65-02 of the North Dakota Century Code

**Workers' compensation department advisory board - Composition -**

**Compensation - Duties.** The director shall appoint a workers' compensation department advisory board composed of an equal number of employer representatives and employee representatives who may be regarded fairly as representative because of the representative's vocation, employment, or affiliations, and members representing the general public as the director may designate.

**Fiscal impact sections:** BILL NO: HB 1323

**BILL DESCRIPTION:** Dissolves WSI Board/Organization Name Change

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation eliminates the WSI Board of Directors and creates an advisory board consisting of an equal number of employer and employee representatives appointed by the Director; allows the Governor to appoint WSI's Executive Director; and changes the name of the organization from Workforce Safety & Insurance (WSI) to "Workers' Compensation Department".

**FISCAL IMPACT:** Under the assumption the organization's claims environment and operation practices do not change, **no significant fiscal impact is anticipated.** There would be some additional costs associated with the proposed name change; however, it is anticipated the costs would be nominal. DATE: January 26, 2007

**The bill failed in the House 33 yeas to 60 nays. HJ 545 & 546**

**SECOND READING OF HOUSE BILL—HB 1323: ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 33 YEAS, 60 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Boe; Boucher; Conrad; Delmore; Ekstrom; Froelich; Glassheim; Griffin; Gruchalla; Guleson; Hanson; Hunskor; Kaldor; Kelsh, S.; Kerzman; Kroeber; Metcalf; Meyer, S.; Mueller; Myxter; Onstad; Pinkerton; Potter; Schmidt; Schneider; Solberg; Thorpe; Vig; Williams; Wolf; Zaiser

**NAYS:** Bellew; Belter; Berg; Boehning; Brandenburg; Carlisle; Carlson; Charging; Clark; Dahl; Damschen; DeKrey; Dietrich; Dosch; Drovdal; Froseth; Grande; Haas; Hatlestad; Headland; Heller; Herbel; Hofstad; Johnson, D.; Johnson, N.; Karls; Kasper; Keiser; Kelsch, R.; Kempenich; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Kretschmar;

Martinson; Meier, L.; Monson; Nelson; Nottestad; Owens; Pietsch; Pollert; Porter; Price; Ruby; Skarphol; Sukut; Svedjan; Thoreson; Uglem; Vigesaa; Wald; Wall; Weiler; Weisz; Wieland; Wrangham; Speaker Delzer  
**ABSENT AND NOT VOTING:** Hawken HB 1323 lost.

**HB 1516—Preexisting Conditions—Item 12 in attached resolution.**

***Introduced by***

***Representatives Kaldor, Wall,  
Senator Fiebiger***

HB 1516 lost in the House.

**65-10-01. Appeal from decision of organization.** If a claimant is appealing an order of the organization for which the organization did not accept the administrative law judge's recommended findings of fact, conclusions of law, and order, the burden of proof shifts to the organization to prove by a preponderance of the evidence the claimant is not entitled to the benefits sought.

**Fiscal impact sections:** BILL NO: HB 1516

**BILL DESCRIPTION:** Appeals of WSI Decisions

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation shifts the burden of proof to the organization in the event a claimant appeals a WSI decision in which WSI did not accept the recommended findings of the administrative law judge.

**FISCAL IMPACT:** Although the proposed legislation may serve to increase litigation costs in a small number of cases, **based on current litigation levels we do not anticipate that the proposal will have a significant impact on statewide premium rate or reserve levels.** To the extent the levels of litigation would increase, costs would increase accordingly.

**DATE:** January 26, 2007

**This bill failed in House of origin 41 yeas to 53 nays. HJ 547**

**SECOND READING OF HOUSE BILL —HB 1516: ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 41 YEAS, 53 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Boe; Boucher; Conrad; Dahl; DeKrey; Delmore; Dietrich; Ekstrom; Froelich; Glassheim; Griffin; Gruchalla; Guleson; Hanson; Hunsakor; Kaldor; Kelsch, R.; Kelsch, S.; Kerzman; Kroeber; Metcalf; Meyer, S.; Mueller; Myxter; Nelson; Onstad;

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Pinkerton; Porter; Potter; Price; Schmidt; Schneider; Solberg; Thorpe; Vig; Wall; Williams; Wolf; Zaiser

**NAYS:** Bellew; Belter; Berg; Boehning; Brandenburg, Carlisle; Carlson; Charging; Clark; Damschen; Dosch; Drovdal; Froseth; Grande; Haas; Hatlestad; Hawken; Headland; Heller; Herbel; Hofstad; Johnson, D.; Johnson, N.; Karls; Kasper; Keiser; Kempenich; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Kretschmar; Martinson; Meier, L.; Monson; Nottestad; Owens; Pietsch; Pollert; Ruby; Skarphol; Sukut; Svedjan; Thoreson; Uglem; Vigesaa; Wald; Weiler; Weisz; Wieland; Wrangham; Speaker Delzer  
HB 1516 lost.

**SB 2257 Executive Director appointed by Governor—Item 4 in attached resolution.**

***Introduced by***

***Senators Heitkamp, Nething,  
Representatives Amerman, DeKrey***

Engrossed SB 2257 Hoghoused in the Senate and lost in the House.



The *board* governor shall appoint the executive director of the organization. The director is subject to the supervision and direction of the *board* governor and serves at the pleasure of the *board* governor. The appointment must be on a nonpartisan, merit basis, in accordance with chapter 54-42. The governor shall set the compensation and prescribe the duties of the director.

**Workforce safety and insurance advisory board - Composition - Compensation - Duties.** The director shall appoint a workforce safety and insurance advisory board composed of an equal number of employer representatives and employee representatives who may be regarded fairly as representative because of the representative's vocation, employment, or affiliations, and members representing the general public as the director may designate.

This bill was amended extensively in the Senate and changed the bills intent completely.

**CONSIDERATION OF AMENDMENTS SJ 238**

**SB 2257: SEN. HACKER (Industry, Business and Labor Committee) MOVED** that the amendments on SJ pages 229-230 be adopted and then be placed on the Eleventh order with **DO PASS**.

**REQUEST**

**SEN. HEITKAMP REQUESTED** a recorded roll call vote on the motion to adopt the proposed amendments to SB 2257, which request was granted.

**ROLL CALL**

The question being the motion to adopt the amendments to SB 2257, the roll was called and there were 24 YEAS, 22 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Bowman; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Grindberg; Hacker; Holmberg; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lyson; Oehlke; Olafson; Stenehjerm; Tollefson; Urlacher; Wanzek; Wardner

**NAYS:** Anderson; Bakke; Behm; Fiebiger; Heckaman; Heitkamp; Horne; Krauter; Lindaas; Marcellais; Mathern; Nelson; Nething; O'Connell; Pomeroy; Potter; Robinson; Seymour; Tallackson; Taylor; Triplett; Warner

**ABSENT AND NOT VOTING:** Andrist

The motion to adopt the amendments to SB 2257 passed.

Engrossed SB 2257 was placed on the Eleventh order for immediate second reading and final passage.

**SECOND READING OF SENATE BILL SB 2257: ———ROLL CALL**

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 25 YEAS, 21 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Bowman; Christmann; Cook; Dever; Erbele; Fischer; Flakoll; Freborg; Grindberg; Hacker; Holmberg; Kilzer; Klein; Krebsbach; Lee, G.; Lee, J.; Lyson; Oehlke; Olafson; Potter; Stenehjerm; Tollefson; Urlacher; Wanzek; Wardner

**NAYS:** Anderson; Bakke; Behm; Fiebiger; Heckaman; Heitkamp; Horne; Krauter; Lindaas; Marcellais; Mathern; Nelson; Nething; O'Connell; Pomeroy; Robinson; Seymour; Tallackson; Taylor; Triplett; Warner

**ABSENT AND NOT VOTING:** Andrist

Engrossed SB 2257 passed and the title was agreed to.

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**In the House——SECOND READING OF SENATE BILL—— HJ 839-840**

**SB 2257:** A BILL for an Act to amend and reenact section 65-02-03.1 of the North Dakota Century Code, relating to membership of the workforce safety and insurance board;

**840 JOURNAL OF THE HOUSE 40th DAY——ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 6 YEAS, 81 NAYS, 0 EXCUSED, 7 ABSENT AND NOT VOTING.

**YEAS:** Conrad; Gruchalla; Kelsh, S.; Schneider; Thorpe; Wolf

**NAYS:** Aarsvold; Amerman; Bellew; Belter; Berg; Boe; Boehning; Boucher; Brandenburg; Carlisle; Carlson; Clark; Dahl; Damschen; DeKrey; Delmore; Dietrich; Dosch; Ekstrom; Froelich; Froseth; Glassheim; Grande; Griffin; Guleson; Haas; Hanson; Hatlestad; Hawken; Headland; Heller; Herbel; Hofstad; Hunskor; Johnson, D.; Johnson, N.; Kaldor;

Karls; Kasper; Kerzman; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Kretschmar; Kroeber; Martinson; Meier, L.; Metcalf; Meyer, S.; Monson; Mueller; Myxter; Nelson; Nottestad; Onstad; Owens; Pietsch; Pinkerton; Pollert; Porter; Potter; Price; Ruby; Schmidt; Skarphol; Sukut; Svedjan; Thoreson; Uglem; Vig; Vigasaa; Wald; Wall; Weiler; Weisz; Wieland; Williams; Zaiser; Speaker Delzer  
**ABSENT AND NOT VOTING:** Charging; Drovdal; Keiser; Kelsch, R.; Kempenich; Solberg; Wrangham  
Engrossed SB 2257 lost.

**SB 2292 Place Office of Independent Review under Governor—Item 5 attached.**

**Introduced by---**

**Senators Nething, Dever, Robinson---**

**Representatives Amerman, DeKrey, Delmore**

Engrossed SB 2292 lost in the House.

A BILL for an Act to amend and reenact section 65-02-27 and subsection 4 of section 65-05-32 of the North Dakota Century Code, relating to changing the administration of the workforce safety and insurance's office of independent review to the department of labor; and to provide for transition.

**Bill and fiscal impact summary:** SB 2292 would transfer OIR from WSI to the Dept of Labor (DOL). The legislative intent is to grant the labor commissioner supervisory and fiscal authority over OIR, with WSI to provide the funding. It is presumed employees of OIR would become classified employees.

**B. Fiscal impact sections—**It is presumed that Section 2 necessitates adding an attorney to OIR's staff and providing on-going desktop support to replace that advice and support which would no longer be provided by WSI.

Detailed expenditure estimates are provided below in Question 3B. Assumptions include:

- \* OIR staff would continue to be located in their present leased space. Funding for the lease costs is currently included in the OIR budget from WSI and would continue in the future.

- \* An attorney would need to be added to the OIR staff.

- \* WSI would continue to provide OIR staff with any needed support for and access to their claims system at no cost, but would discontinue the "regular" (non-claims system) IT desktop support services it currently provides through its internal IT personnel.

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

**Revenues:** This bill would have no effect on revenues.

**B. Expenditures:**

Attorney salary and benefits – \$228,600 (per biennium). Additional IT desktop support costs to replace those that WSI currently provides to OIR through their own IT personnel – \$2,880 (per biennium). Transfer of OIR 4 FTE from WSI to the DOL at current salary & benefits plus 4% increase for each year of the biennium for classified employees. \$737,799 in salaries and benefits for 2007-09 and \$767,311 for 2009-11. Current operational budget for OIR for two years: \$103,040. Anticipated operational budget for 2009-11: \$107,162. These costs are not currently in DOL's appropriation. Costs for 2009-11 biennium include the addition of \$235 for 4% annual inflationary increases on IT costs + \$7,344 for 4% annual pay increases for attorney position + \$2,000 in associated fringe.

**C. Appropriations:**

SB 2292 indicates WSI shall fund OIR in accordance with legislative appropriation. This fiscal note identifies those items not included in current funding of the OIR and estimates the projected salaries, benefits and operational expenses that would be transferred from WSI to DOL to fund the operations of OIR. The DOL's appropriation in the Executive Budget does not include funding for the costs associated with SB 2292.

**Name:** Lisa K. Fair McEvers **Agency:** ND Department of Labor **Date Prepared:** 02/12/2007

**SECOND READING OF SENATE BILL SB 2292— SJ 494— ROLL CALL**

: A BILL for an Act to amend and reenact section 65-02-27 and subsection 4 of section 65-05-32 of the North Dakota Century Code, relating to changing the

administration of the workforce safety and insurance's office of independent review to the department of labor; and to provide for transition. The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were **39 YEAS, 7 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.**

**YEAS:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Holmberg; Horne; Krauter; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wardner; Warner

**NAYS:** Andrist; Dever; Kilzer; Klein; Krebsbach; Stenehjem; Wanzek

**ABSENT AND NOT VOTING:** Heitkamp

**House — SECOND READING OF SENATE BILL HJ 927**

**SB 2292:** A BILL for an Act to amend and reenact section 65-02-27 and subsection 4 of section 65-05-32 of the North Dakota Century Code, relating to changing the administration of the workforce safety and insurance's office of independent review to the department of labor; and to provide for transition.

**ROLL CALL**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 29 YEAS, 59 NAYS, 0 EXCUSED, 6 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Boe; Boucher; Conrad; Delmore; Ekstrom; Froelich; Griffin; Gruchalla; Guleson; Hanson; Hunskor; Kelsh, S.; Kerzman; Kroeber; Meyer, S.; Mueller; Myxter; Onstad; Pinkerton; Schmidt; Schneider; Solberg; Thorpe; Vig; Williams; Wolf; Zaiser

**NAYS:** Bellew; Belter; Berg; Boehning; Brandenburg; Carlisle; Carlson; Charging; Clark; Dahl; Damschen; DeKrey; Dietrich; Dosch; Drovdal; Froseth; Grande; Haas; Hatlestad; Hawken; Headland; Heller; Herbel; Hofstad; Johnson, D.; Johnson, N.; Karls; Kasper; Keiser; Kempenich; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Kretschmar; Martinson; Meier, L.; Monson; Nottestad; Owens; Pietsch; Pollert; Porter; Price; Ruby; Skarphol; Sukut; Svedjan; Thoreson; Uglem; Vigasaa; Wald; Wall; Weiler; Weisz; Wieland; Wrangham; Speaker Delzer

**ABSENT AND NOT VOTING:** Glassheim; Kaldor; Kelsch, R.; Metcalf; Nelson; Potter  
**Engrossed SB 2292 lost.**

**SB 2294 Closed Claim Presumption--- Item 14 in attached resolution.**

***Introduced by***

***Senators Nething, Robinson, Triplett***

***Representatives Amerman, DeKrey, Kasper***

SB 2294 passed and the title was agreed to in Senate and House.

A BILL for an Act to amend and reenact section 65-05-35 of the North Dakota Century Code, relating to reopening of workforce safety and insurance claims that are presumed closed.

2. A claim that is presumed closed may not be reopened for payment of any further benefits unless the presumption is rebutted by clear and convincing evidence that the work injury is the sole primary cause of the current symptoms.

**Fiscal impact sections:** BILL NO: Engrossed SB 2294

**BILL DESCRIPTION:** Closed Claim Presumption

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The engrossed bill provides for the reopening of a claim after 4 years of no payment activity in the event that clear and convincing evidence is presented that the work injury is "the primary cause of" the current symptoms versus "the sole cause of" the current systems.

**FISCAL IMPACT:** We do not have access to sufficient data to permit a comprehensive evaluation of the potential rate level and reserve impact of the engrossed bill. However, WSI anticipates that,



if passed in its present form, the legislation will act to increase costs. The introduction of a clear standard for reopening claims was an important element of the workers' compensation reform package that was passed in the mid 1990's. Since then, **time loss claim frequency has declined from prior levels.** Though many factors contributed to the observed decrease in claim frequency, WSI believes that the proposed legislation could act to partially reverse the trend. The proposed change may also act to increase the level of uncertainty of any actuarial estimates because of the increased **potential for upward loss development (increases in cost estimates) associated with very old injuries.**

DATE: February 8, 2007

**SB 2294 ROLL CALL SJ 384**

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 45 YEAS, 0 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

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**YEAS:** Anderson; Andrist; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Home; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjem; Taylor; Tollefson; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Tallackson; Triplett

Engrossed SB 2294 passed and the title was agreed to.

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**House -SECOND READING OF SENATE BILL-SB 2294: ROLL CALL HJ 891**

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 93 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Bellew; Belter; Berg; Boe; Boehning; Boucher; Brandenburg; Carlisle; Carlson; Charging; Clark; Conrad; Dahl; Damschen; DeKrey; Delmore; Dietrich; Dosch; Drovdal; Ekstrom; Froelich; Froseth; Glassheim; Grande; Griffin; Gruchalla; Guleson; Haas; Hanson; Hatlestad; Hawken; Headland; Heller; Herbel; Hofstad; Hunsakor; Johnson, D.; Johnson, N.; Kaldor; Karls; Kasper; Keiser; Kelsch, R.; Kelsh, S.; Kempenich; Kerzman; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Kretschmar; Kroeber; Martinson; Meier, L.; Meyer, S.; Monson; Mueller; Myxter; Nelson; Nottestad; Onstad; Owens; Pietsch; Pinkerton; Pollert; Porter; Potter; Price; Ruby; Schmidt; Schneider; Skarphol; Solberg; Sukut; Svedjan; Thoreson; Thorpe; Uglem; Vig; Vigasaa; Wald; Wall; Weiler; Weisz; Wieland; Williams; Wolf; Wrangham; Zaiser; Speaker Delzer

**ABSENT AND NOT VOTING:** Metcalf

Engrossed SB 2294 passed and the title was agreed to.

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**SB 2297 Independent Medical Exams to be held in state—Item 6 attached resolution  
Introduced by**

**Senators Nething, Cook, Robinson**

**Representatives DeKrey, R. Kelsch, Skarphol**

SB 2297 lost in the Senate.

The organization may at any time require an employee to submit to an independent medical examination for the purpose of review of the diagnosis, prognosis, treatment, or fees by a *duly qualified doctor or doctors designated or approved by the organization* who specializes in the diagnosis, prognosis, or treatment being reviewed. The organization shall select a doctor for the independent medical examination *must be for the purpose of review of the diagnosis, prognosis, treatment, or fees* from a list of three doctors which is provided by the state board of medical examiners. In creating a list of three doctors the state board of medical examiners shall give preference to doctors in the state unless the employee



expresses a preference for an out-of-state doctor. The employee may have a duly qualified doctor designated by that employee present at the examination if procured and paid for by that employee and at the employee's request the organization shall designate and pay for a registered nurse to be present at the examination. This section does not prohibit an employee from requesting that a friend or family member be present at the examination. Providing further that:

a. In case of any disagreement between doctors making an examination on the part of the organization and the employee's doctor, the organization shall appoint an impartial doctor duly qualified and selected from a list of three doctors which is provided by the state board of medical examiners who shall make an examination and shall report to the organization.

**B. Fiscal impact sections:**

**WORKFORCE SAFETY & INSURANCE--SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: SB 2297**

**BILL DESCRIPTION: IME Doctor Selection**

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation requires WSI to select a doctor for an independent medical examination from a list of three doctors provided by the State Board of Medical Examiners; requires the State Board of Medical Examiners to give preference to in-state doctors unless the employee expresses a preference for an out-of-state doctor; and at the employee's request requires WSI to pay the costs of a registered nurse to be present at the examination.

**FISCAL IMPACT: Not quantifiable.** Independent Medical Examinations (IMEs) are requested sparingly and in only a limited number of cases. To the extent the proposed IME doctor selection process results in lengthened claim processing timeframes and potentially limit willing, qualified doctors that would otherwise be eligible, it may result in increased costs associated with these claims. Given the relatively few cases where IMEs are utilized, **we would not anticipate the proposal having a material impact on statewide premium rate and reserve levels.**

**DATE:** January 20, 2007

**SECOND READING OF SENATE BILL SB 2297— SJ 364-365— ROLL CALL**

: A BILL for an Act to amend and reenact section 65-05-28 of the North Dakota Century Code, relating to workers' compensation independent medical examinations.

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 10 YEAS, 35 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

**YEAS:** Behm; Heitkamp; Horne; Krauter; Mathern; O'Connell; Pomeroy; Potter; Taylor; Warner

**27th DAY THURSDAY, FEBRUARY 8, 2007 365**

**NAYS:** Anderson; Andrist; Bakke; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger;

Fischer; Flakoll; Freborg; Grindberg; Hacker; Holmberg; Kilzer; Klein; Krebsbach;

Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Nelson; Nething; Oehlke; Olafson;

Robinson; Seymour; Stenehjem; Tollefson; Triplett; Urlacher; Wanizek; Wardner

**ABSENT AND NOT VOTING:** Heckaman; Tallackson

**SB 2297 lost.**

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**SB 2389 Permanent Partial Impairment vs. SSD offset. Item 3 in attached resolution**  
**Introduced by**

**Senators Nething, Klein, Robinson**

**Representatives Amerman, Kasper**

SB 2389, as amended, passed and the title was agreed to in Senate and House.

**65-05-12.2. Permanent impairment - Compensation - Time paid.** When A permanent impairment is not intended to be a periodic payment and is not intended to reimburse the employee for specific expenses related to the injury or wage loss. If a compensable injury causes permanent impairment, the organization shall determine a permanent impairment award on the following terms: See table in NDCC

The following was amended in by the House:

15. If an injured employee qualifies for an additional award and the prior award was based upon the number of weeks, the impairment multiplier must be used to compare against the prior award of weeks in determining any additional award.

**SECTION 2. APPLICATION.** This Act applies to permanent impairment award determinations made after July 30, 2007.

**ROLL CALL SJ 518**—the roll was called and there were 45 YEAS, 0 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

**YEAS:** Anderson; Bakke; Behm; Bowman; Christmann; Cook; Dever; Erbele; Fiebiger; Fischer; Flakoll; Grindberg; Hacker; Heckaman; Heitkamp; Holmberg; Horne; Kilzer; Klein; Krauter; Krebsbach; Lee, G.; Lee, J.; Lindaas; Lyson; Marcellais; Mathern; Nelson; Nething; O'Connell; Oehlke; Olafson; Pomeroy; Potter; Robinson; Seymour; Stenehjerm; Tallackson; Taylor; Tollefson; Triplett; Urlacher; Wanzek; Wardner; Warner

**ABSENT AND NOT VOTING:** Andrist; Freborg

Engrossed SB 2389 passed and the title was agreed to.

.....  
**SECOND READING OF SENATE BILL SB 2389: in House— HJ 905—ROLL CALL**

The question has been read, and has committee recommendation of DO PASS, the roll was called and there were 91 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Bellew; Belter; Berg; Boe; Boehning; Boucher; Brandenburg; Carlisle; Carlson; Charging; Clark; Conrad; Dahl; Damschen; DeKrey; Delmore; Dietrich; Dosch; Drovda; Ekstrom; Froelich; Froseth; Glassheim; Grande; Griffin; Gruchalla; Gulleon; Haas; Hanson; Hatlestad; Hawken; Headland; Heller; Herbel; Hofstad; Hunskor; Johnson, D.; Johnson, N.; Karls; Kasper; Keiser; Kelsh, S.; Kempenich; Kerzman; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Kretschmar; Kroeber; Martinson; Meier, L.; Meyer, S.; Monson; Mueller; Myxter; Nelson; Nottestad; Onstad; Owens; Pietsch; Pinkerton; Pollert; Porter; Potter; Price; Ruby; Schmidt; Schneider; Skarphol; Solberg; Sukut; Svedjan; Thoreson; Thorpe; Uglem; Vig; Vigasaa; Wald; Wall; Weiler; Weisz; Wieland; Williams; Wolf; Wrangham; Zaiser; Speaker Delzer

**ABSENT AND NOT VOTING:** Kaldor; Kelsch, R.; Metcalf

Engrossed SB 2389, as amended, passed and the title was agreed to.



Submitted to Industry, Business and Labor Committee  
March 5 & 6, 2008

**ND Workers Compensation  
Changes Needed in North Dakota's Worker's Compensation as  
recommended by ND AFL-CIO Convention August 26, 2006**

WHEREAS: The North Dakota Workers Compensation system now known as Workforce Safety and Insurance or WSI has been changed significantly

WHEREAS: The control of WC/WSI has been removed from the executive branch and placed in the hands of a board of directors, and

WHEREAS: The system's ability to provide sure and certain relief to injured workers has come under question, now, therefore, be it

**RESOLVED: That the following ' be provided to the 2007 legislative session.**

1) Require that WC/WSI use hearing officers and that the hearing officers' finding be final.

2) Fraud. Require that the bureau use the same standard for fraud that is used in all other fraud cases. Equal standards would apply, no harm-no foul.

3) **SB 2389** Permanent Partial Impairment (PPI). A PPI award is a one-time payment for job related injuries that result in permanent loss of use of bodily functions(s). Because of the use of weeks, rather than a dollar amount within the formula, Social Security unfairly offsets about 80% of that award. Change the formula for calculating PPI from a "weeks" calculation to a "dollar amount" calculation.

4) **SB 2257 & HB 1323** Executive Director. The Governor should have sole power to appoint the executive director of the bureau/WSI.

5) **SB 2292** Office of Independent Review. Place the control of the OIR with the Governor.

6) **SB 2297 & HB 1286** Independent Medical Exam (IME). Require that independent medical examinations be conducted in state unless the specific specialty is not available. The IME should be conducted with a physician picked from a panel of all physicians licensed in and practicing in North Dakota.

7) Independent Medical Review (IMR). Give greater weight to the opinion of the claimant's treating physician when the claimant undergoes an independent medical review.

8) Physician. Eliminate the requirement that an employee choose his/her own doctor at the time of hire or 30 days prior to an injury. The injured claimant should be allowed to pick the treating physician.

9) Permanent Partial Impairment (PPI) awards. Presently, an individual must have 16 % whole body impairment to obtain a PPI award. If a person has 16%, in effect, they are getting 1 percent in an award. Although the Bureau/WSI does pay for the more catastrophic impairments, this still does not justify the denial of an award for 5% to 15% impairment. Exclusions for pain, disfigurement, loss of range of motion etc. need to be addressed.



10) **HB 1283** Liberal Construction. The loss of the "liberal construction" of the Worker's Compensation Act has made it very difficult for the employee to establish an otherwise legitimate claim.

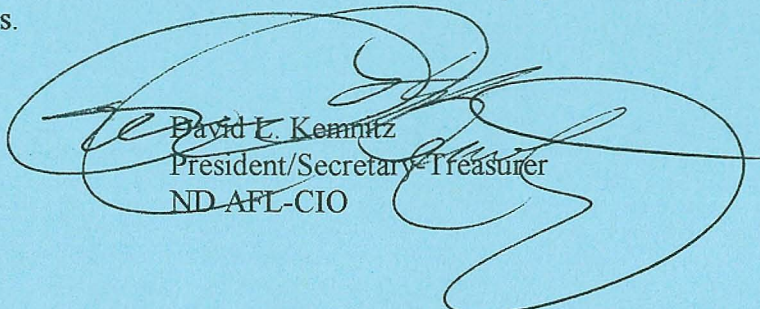
11) Definition of Compensable Injury. There is no specific definition of what is "objective medical evidence." Before 1995, the doctor's notations that the person has sustained an injury and has subjective complaints of pain sufficed. The argument is that the doctor's notations no longer meet the requirements of "objective medical evidence". Injury should be any need for treatment arising out of and as a result of any incident, event or cumulative trauma arising from work.

12) **HB 1516** Pre-existing condition. The Bureau now denies claims because the claimant has a pre-existing condition. The language should be changed back to what it was before 1997, thereby requiring that if there is a pre-existing condition that it must be "active" at the time of the injury to allow an offset. Burden of proof should be on the employer to prove that the pre-existing condition would have caused the disability absent the work event.

13) Disability benefits. Changes made to 65-05-08.1, NDCC (1995), make it more difficult for employees to receive disability benefits and demands more from the doctor as to what the doctor is required to do in order for the employee to obtain disability benefits. Presently, the doctor is required not only to say that the person is disabled but also to exclude other types of employment, for example, light or sedentary. The doctor is also to list specifically what the restrictions are. If these are not all included in the doctor's letter, the person is not eligible for disability benefits. Expert vocational evidence by those experienced in job ergonomics is preferable.

14) **SB 2294** Closed Claim Presumption. Once again, the 1995 legislature made it much more difficult for an individual to receive benefits that they were clearly entitled to. 65-05-35, NDCC (1995) states that an individual's claim is "presumed closed" if there has not been a payment of any benefit for four years on the claim. The Bureau/WSI maintains that this can be rebutted, however, the only way to rebut this is to establish that the employee proves by "clear and convincing evidence" the work injury is the sole cause of the later symptoms. Virtually throughout the Workers Compensation Act the employee is required to show "more likely than not" or by a preponderance that the claim is compensable. This standard of "clear and convincing evidence" and "sole cause" makes it virtually impossible for a claimant to have their case reopened or any medical bill paid if it has been more than four years since any activity on that claim. It should go back to the old standard of simply preponderance of the evidence rather than clear and convincing evidence.

15) **HB 1287** Vocational Rehabilitation Services. Over the past 10 years, vocational rehabilitation services have been virtually eliminated. There are very few people being retrained and/or offered assistance back to work. Vocational Rehabilitation Services reform must address the needs of the claimant and the employers willing to hire people with special needs.



David L. Kennitz  
President/Secretary-Treasurer  
ND AFL-CIO



## EXHIBIT ONE

### Additional PPI Commentary

The threshold concept in North Dakota is unique insofar as PPI benefits are concerned. States with an impairment scale award benefits even when the impairment is as low as 1%.

Even when PPI awards were being paid under the old law in North Dakota, they comprised a relatively small percentage of the overall cost of indemnity benefits. For instance, PPI benefits accounted for \$7.88 million (19.5%) out of a total indemnity benefit payout in FY 1994 of \$40.31 million. In 1996, PPI accounted for \$7.62 million (20.2%) of \$37.79 million. When these payouts are compared to PPI payments in more recent years, the threshold over the last several years has probably reduced indemnity benefit payments by at least \$6 million annually.

If the PPI threshold were to be reduced, what else might be done to balance the effects of these increases in PPI payments? We think the answer lies in reducing the number of PTD benefits that are awarded.

By way of background, some states resort to benefit caps as a way of making sure that those injured workers whose injuries do not rise to a statutory definition of permanent total disability do not receive indemnity benefits for their lifetime. For instance, disability benefit caps exist in Georgia, but the vocational rehabilitation statute is so weak there that injured workers who are not able to return to their usual work often come close to reaching the cap before settling their claims. As capped benefits run for approximately six years, this creates a long-term exposure that would be better managed if the vocational statute had some teeth. Other states simply take the view that vocational and permanent impairment benefits are finite and when those benefit entitlements are exhausted indemnity benefits come to an end.

In North Dakota, PTD benefits tend to get awarded more frequently because of a worker's inability to fulfill rehabilitation objectives than because of the degree of impairment. The reasons for unsuccessful vocational programs are many, and they can include prior work experience, geography, education and interest in the vocational process.

*See next page*

To illustrate this point, during FY 2004, WSI awarded PTD benefits to 20 injured workers who had previously been evaluated for permanent partial impairments under the threshold law and whose dates of injury occurred no earlier than 1995. Of that number, only seven of those injured workers had a PPI award of greater than 25%. Six of the injured workers who were awarded PTD benefits had impairment ratings below the threshold meaning that they received no impairment benefits. However, those same injured workers were declared permanently and totally disabled.

PTD claims and their predecessor claims (the long-term TTD or cyclic claims) dominate overall benefit costs in the state's workers' compensation program. To assess that, we looked at WSI's experience in Fiscal Years 1998 and 1999. These are years that have aged sufficiently to know where most of the high cost claims are coming from, and these years also are post-PPI-threshold years. The table below shows aggregate claim count, paid loss and incurred loss data for all claims as well as the top 1% of claims in those two years. Data is valued as of July 30, 2004.

Fiscal Year	Number of Claims	Total Paid	Total Incurred
1998 (all claims)	19,434	\$42,870,188	\$53,612,598
1998 (top 1%)	194	\$21,598,328	\$31,945,043
Top 1% as percent of all	1%	50%	60%
1999 (all claims)	19,344	\$44,917,890	\$53,517,746
1999 (top 1%)	193	\$21,441,150	\$29,431,083
Top 1% as percent of all	1%	48%	55%

A common rule of thumb in workers' compensation programs is that 20% of the claims will account for 80% of the costs. What we observe in the table is extraordinary by comparison, that 1% of the claims account for such a high percentage of the cost. Many of the claims in the top 1% represent very serious injuries or death claims. But there are others that are high cost cases and this is due to an inability to return to work.

Given this cost profile, we think that asserting vocational protocols appropriately could lead to fewer PTD and long-term TTD claims and that the cost reductions derived from these claims could go a long way toward funding the cost of a lower threshold for PPI. These vocational protocols could include longer training programs where needed, greater diligence on the part of WSI staff to pursue vocational options suggested in NDCC Section 65-05.1-01 (6)(a)(3), and the broadening of vocational possibilities to include work-at-home options. We also think that in those instances where an injured worker is unable to resume work due primarily to non-industrial medical factors that their inability to satisfactorily participate in vocational rehabilitation should allow WSI to reduce or eliminate indemnity benefits over time. This would be true of medical conditions that existed before the industrial accident as well as those that came later. Finally, WSI should consider the cost of expensive vocational options in comparison to the cost of a PTD claim. The expense of returning someone to work is invariably less than paying them PTD benefits.

In closing, there were 968 PTD claims in North Dakota as of 3/31/04. Those PTD claims make up more than one-third of all open time-loss claims. This is an unusually high percentage, and it is the result in significant part of a situation where unsuccessful vocational rehabilitation cases turn into lifelong benefit programs. We are not suggesting here that medical benefit entitlements be taken away from anyone who needs them. We are simply saying that returning injured workers to gainful employment is critical to gaining cost control on a very small segment of the injured worker population, and that with those controls in place benefits could be more widely and reasonably dispensed to deserving injured workers.



## IAIABC Standards

### 1. UNIVERSAL COVERAGE.

Neither an employer nor an employee should have the right to reject coverage; there should be no numerical exemptions nor exemptions for any types of regular employment.

### 2. COVERAGE OF OCCUPATIONAL INJURIES AND DISEASES.

Coverage of all occupational injuries and diseases should be full and complete without any legal requirement of an accidental occurrence.

3. MEDICAL CARE FOR OCCUPATIONAL INJURIES AND DISEASES. Medical care should be full for all occupational injuries and diseases without limitation as to cost or time and should include physical rehabilitation.

4. CHOICE OF PHYSICIAN. The employer should have responsibility to provide immediate treatment of occupational injury or disease. Thereafter the injured worker should have free choice of a treating physician.

5. COMPENSATION RATES. Substantial protection against loss of earnings should be provided. This may be achieved by compensation payable at either 66-2/3 percent of the employee's gross wages, or 80 percent of an employee's spendable earnings, with a maximum rate of no less than 100 percent of the average weekly wage for the jurisdiction.

6. WAITING PERIOD. The waiting period should not be more than three calendar days; and if disability continues at least 14 calendar days, compensation should be paid from the date of disability.

7. BENEFIT DURATION. In case of total disability, benefits should be paid for the entire duration of disability.

8. PARTIAL DISABILITY BENEFITS. Benefits should be provided for temporary partial disability and for decreased earning ability of the worker after maximum medical recovery and rehabilitation is completed.

9. SURVIVOR BENEFITS. In case of death, benefits should be paid to a dependent spouse until death or remarriage; to a child until age 18, and thereafter to age 23 if a full-time student in an accredited educational institution; or to a mentally or physically disabled child during the period of incapacity for self-support; and to other dependents during their period of incapacity for self-support.

### 10. BENEFIT ADJUSTMENTS.

Compensation payable for total disability or survivor benefits should be adjusted annually to reflect changes in the average weekly wage or cost of living of the jurisdiction.

11. COORDINATION OF BENEFITS. Compensation payable for total disability or survivor benefits should be coordinated under the jurisdiction's law with Social Security and other employer-funded disability programs so as to best effectuate the objectives of the wage replacement and rehabilitation.

12. PROMPT DELIVERY OF BENEFITS. Employers should be encouraged to carry out the obligation of prompt payments of benefits; and jurisdictions should not make admissions of liability a condition precedent to such prompt payments; nor should the payment of compensation be deemed to establish liability.

13. COMPENSATION ASSURANCE. Special funds should exist, supported by assessment or from the jurisdiction's general fund, to assure the obligations of uninsured employers, insolvent employers, or insolvent insurers to pay all benefits required by law.

14. SUBSEQUENT INJURY PROTECTION. Employment of physically handicapped workers should be encouraged by limiting employer liability for subsequent injuries or diseases which, combining with prior injuries or diseases or infirmities, result in further disability or death. A special fund should be created for the purpose of paying benefits beyond the employer's limited liability.

15. VOCATIONAL AND MEDICAL REHABILITATION. When a worker cannot be restored to prior employment by ordinary medical treatment, it should be the employer's obligation to provide and pay the cost of rehabilitation; the obligation of the employee to cooperate with such rehabilitation; and the obligation of the workers' compensation agency to monitor the workers' rehabilitation and medical management, minimizing the adversary environment and creating an atmosphere conducive to successful reemployment.

16. LIMITATION FOR FILING CLAIMS. There should be adequate time limits for filing occupational injury or disease claims. The employee's obligation to give notice or to file claim for an occupational disease should not commence until the employee knows or has reason to believe a relationship exists

between employment and the condition giving rise to the claim.

### 17. CHOICE OF JURISDICTION.

An employee or survivor should be given the choice of filing a workers' compensation claim in the jurisdiction where injury or injury resulting in death occurred; or where the employee's employment was principally localized; or where the employee was hired.

18. EXCLUSIVE REMEDY. Workers' compensation should be the exclusive remedy of the employee, spouse, dependents and personal representative against his employer, its carrier, his co-employees and his union.

19. ADMINISTRATION. The administration of workers' compensation statutes should be vested in an agency created by and in each jurisdiction. The agency should be empowered to administer impartially the statutes enacted by its legislative body to meet the varying and unique needs of its jurisdiction.

20. AGENCY ROLE IN DELIVERY SYSTEM. The workers' compensation agency should take an active role in monitoring all payments made under the compensation statutes including voluntary payments and those made after dispute resolution. The agency should provide mechanisms for informal resolution and prompt adjudication of disputes.

21. INFORMATION SYSTEM. The International Association of Industrial Accident Board and Commissions' Basic Administrative Information System (BAIS) or its equivalent should be an integral part of each jurisdiction's workers' compensation program and used for internal management and for displaying performance and case load inventory and activity.

22. JUDICIAL REVIEW. Judicial review of final administrative determinations should be directly to the jurisdiction's appellate court and limited to consideration of the record only on questions of law without a trial de novo.

23. SAFETY PROMOTION. Jurisdictions should provide programs for the prevention of occupational injuries and diseases, including engineering, educational, hazard identification and elimination, and ergonomic analysis services; should require similar programs by insurers for those firms covered by their worker compensation policies; and should monitor and evaluate these services.



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