

# WORKERS' COMPENSATION

## CHAPTER 713

HOUSE BILL NO. 1324  
(Representatives Jensen, R. Berg, Tollefson)  
(Senator Nalewaja)

### WORKERS' COMPENSATION EXEMPTION FOR REAL ESTATE PROFESSION

AN ACT to amend and reenact subdivision b of subsection 14 of section 65-01-02 of the North Dakota Century Code, relating to exemption of certain real estate brokers and real estate salespersons from mandatory contribution participation under the workers compensation laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subdivision b of subsection 14 of section 65-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. The term does not include:

- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse or child of the employer dwelling in the household of the employer.
- (4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
  - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
  - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
  - (c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.

Approved March 27, 1991  
Filed March 28, 1991

\* NOTE: Section 65-01-02 was also amended by section 30 of Senate Bill No. 2068, chapter 54, and by section 23 of Senate Bill No. 2206, chapter 714.

## CHAPTER 714

SENATE BILL NO. 2206  
 (Committee on Industry, Business and Labor)  
 (At the request of the Workers Compensation Bureau)

### WORKERS' COMPENSATION RESTRUCTURING

AN ACT to create and enact a new section to chapter 54-03, a new section to chapter 65-01, seven new sections to chapter 65-02, a new section to chapter 65-04, three new sections to chapter 65-05, two new subsections to section 65-05-07, sections 65-05-08.1, 65-05-09.3, 65-05-34, 65-05-35, and a new section to chapter 65-05.1 of the North Dakota Century Code, relating to actuarial impact statements and workers' compensation administration, coverage, and benefits; to amend and reenact sections 19-20.2-07, 21-03-32, 21-10-01, subsection 6 of section 23-01.1-02, subdivision b of subsection 2 of section 26.1-23-08, sections 28-32-08, 28-32-14, 37-11-02, subsection 5 of section 43-07-01, sections 43-07-04, 43-07-25, subsection 3 of section 51-04-08, sections 52-01-02, 52-01-03, 52-02-01, 52-08-03, subsection 1 of section 54-06-04, sections 54-16-10, 54-56-01, subsection 4 of section 57-38-57, sections 57-39.2-23, 65-01-02, 65-01-09, 65-01-10, 65-02-06, 65-02-07, 65-02-08, 65-04-04, 65-04-10, 65-04-13, 65-04-14, 65-04-15, 65-04-20, 65-04-27.1, 65-04-29, 65-05-08, 65-05-09, 65-05-10, 65-05-25, 65-05-28, 65-05-33, 65-05.1-01, 65-05.1-02, 65-05.1-02.1, 65-05.1-04, 65-05.1-06.1, 65-05.2-01, 65-05.2-02, 65-06-05, 65-06.1-04, subsection 4 of section 65-06.2-02, sections 65-08-02, 65-11-04.1, 65-11-06, subsection 4 of section 65-12-02, subsection 4 of section 65-12-03, sections 65-12-04.1, 65-12-08, 65-12-12, and subsection 1 of section 65-13-03 of the North Dakota Century Code, relating to job service North Dakota, workers' compensation administration, coverage, and benefits; to repeal sections 65-02-01, 65-02-01.1, and 65-02-02 of the North Dakota Century Code, relating to the workers compensation bureau; to provide for a legislative council study; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.2-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.2-07. Inspection.

1. The commissioner may inspect each permanent installation for storage of anhydrous ammonia and each farm transportation wagon or vehicle designed to apply anhydrous ammonia.
2. The commissioner shall inspect any anhydrous ammonia facility where the commissioner has reason to believe violations of the safety standards under this chapter exist. The safety engineer of the North Dakota workers compensation bureau job service North Dakota shall inform the commissioner of agriculture of any violations of

this chapter that arise in the course of the safety engineer's regular inspections of anhydrous ammonia storage facilities.

3. The commissioner may revoke or suspend the license of any storage facility violating this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any farm transportation wagon or implement of husbandry which is found unsafe or hazardous.

SECTION 2. AMENDMENT. Section 21-03-32 of the North Dakota Century Code is amended and reenacted as follows:

21-03-32. Departments prohibited from purchasing bonds at higher prices within five years. Should the board of university and school lands, the state fire and tornado fund, ~~the workmen's compensation bureau job service North Dakota~~, the state bonding department, the Bank of North Dakota, and the industrial commission fail to submit an offer or bid for such bonds, or should said board or any of said agencies or departments offer or bid for such bonds but not be the successful purchaser or bidder, it shall not, within five years after the sale of said bonds, purchase said bonds or any part thereof, at a price greater than that paid by the successful bidder for the same.

SECTION 3. AMENDMENT. Section 21-10-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-10-01. State investment board - Membership - Term - Compensation. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, ~~the executive director of the workers compensation bureau job service North Dakota~~, the commissioner of insurance, the executive secretary of the teachers' fund for retirement, and three members who are experienced in, and have considerable knowledge of the field of investments, and who are not otherwise employed by the state of North Dakota. The governor shall appoint the members with investment experience to three-year, two-year, and one-year terms respectively on January 31, 1989. Thereafter, the appointed members shall serve four-year terms. The appointed members are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04.

SECTION 4. AMENDMENT. Subsection 6 of section 23-01.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Establish arrangements with the department of health and consolidated laboratories, the department of human services, the commissioner of insurance, ~~the workers compensation bureau job service North Dakota~~, and the public employees retirement system to assure patient confidentiality, the sharing of information, and the coordination, analysis, and dissemination of health care data, and to act in a manner which does not duplicate data collection activities of other state agencies.

SECTION 5. AMENDMENT. Subdivision b of subsection 2 of section 26.1-23-08 of the North Dakota Century Code is amended and reenacted as follows:

- b. If the judgment creditor has effected collection of a portion of the judgment from payment from ~~the workers compensation bureau job service North Dakota~~, then the amount collected from that source must be subtracted from the judgment before the procedure outlined in subdivision a is followed.

SECTION 6. AMENDMENT. Section 28-32-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-08. Specifications of any issues to be furnished by agency. Whenever an administrative agency, pursuant to authority conferred upon it by law, institutes an investigation upon its own motion or without the filing of a specified complaint, or holds any hearing or makes any independent investigation upon the claim or request of any person, no decision may be made by the agency until all parties in interest have been furnished with a written specification of the issues which are to be considered and determined, nor until an opportunity has been afforded to such parties to present evidence and to be heard upon the precise issues so specified. The executive director of ~~the workers compensation bureau job service North Dakota, in the administration of title 65,~~ may make determinations without giving the notice provided by this section, but the director is subject to the requirements of section 28-32-13.

SECTION 7. AMENDMENT. Section 28-32-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-14. Petition for rehearing. Any party before an administrative agency who is aggrieved by the decision thereof, within fifteen days after a copy of such decision has been mailed or delivered to such party by the administrative agency, may request a rehearing by such agency; provided, however, that any party appearing before ~~the workers compensation bureau job service North Dakota for a proceeding arising under title 65~~ may have thirty days within which to request a rehearing. ~~He~~ The party shall submit with the request for rehearing a statement of any further showing to be made in the proceeding, and such request and statement shall constitute a part of the record in the proceeding. The administrative agency may deny such request for rehearing or may grant the same on such terms as it may prescribe. This section, however, shall not limit the right of any agency to reopen any proceeding under any continuing jurisdiction which is granted to any such agency by any law of this state.

SECTION 8. AMENDMENT. Section 37-11-02 of the North Dakota Century Code is amended and reenacted as follows:

37-11-02. Compensation for disability or death. Applications for compensation for disability or death of any member of the militia or member of the national guard under conditions as specified in section 37-11-01 must be made by such member or ~~his~~ the member's surviving dependents to ~~the workers compensation bureau job service North Dakota. The bureau~~ job service North Dakota. ~~The bureau~~ job service North Dakota shall process ~~such~~ the application in the manner set forth in title 65 and shall make determinations of eligibility and disability in the same manner and upon the same basis as provided in such title. ~~In the event the bureau~~ If job service North Dakota determines a member of the militia or national guard has been disabled under the provisions of section 37-11-01 and title 65 or valid claims of surviving dependents of such member exist in accordance with section 37-11-01 and title 65, it shall pay the claim pursuant to title 65.

SECTION 9. AMENDMENT. Subsection 5 of section 43-07-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The term "nonresident contractor" denotes and applies to any contractor who has not an established and maintained place of business within this state, or who has not made reports to the job service North Dakota workers compensation bureau, pursuant to chapter 65-04, within the previous year of employees within this state, and who has not made contribution to the job service North Dakota workers' compensation fund accordingly, or who, during a like period has not made an income tax return in this state.

SECTION 10. AMENDMENT. Section 43-07-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained. To obtain a license under this chapter, an applicant shall submit, on such forms as the registrar shall prescribe, an application under oath containing a statement of the applicant's experience and qualifications as a contractor, and the names of three persons who are knowledgeable about the applicant's experience and qualifications. A bond, as hereinafter prescribed, must be filed with the application and the contractor shall submit a statement from the job service North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage pursuant to title 65 satisfactory to the bureau job service North Dakota along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. Any person refused a license by the registrar may appeal to the district court of Burleigh County, if a nonresident, or to the district court of the county of residence, if a resident of this state.

SECTION 11. AMENDMENT. Section 43-07-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-25. Licensed contractors' list. On request, the registrar shall provide city and county enforcement officials with a list of contractors licensed under this chapter. The registrar shall also provide similar information to persons governed by section 43-07-24. Whenever the registrar obtains information on the activities of a contractor doing business in this state of which officials of the workers compensation bureau, job service North Dakota, or the tax commissioner may be unaware and that may be relevant to the duties of those officials, the registrar shall provide any relevant information to those officials for the purpose of administering their duties.

SECTION 12. AMENDMENT. Subsection 3 of section 51-04-08 of the North Dakota Century Code is amended and reenacted as follows:

3. Sales made by a person who has a sales or use tax permit in accordance with chapter 57-39.2 or 57-40.2, pays contributions to job service North Dakota for unemployment compensation in accordance with chapter 52-04, and who has reported to the workers compensation bureau job service North Dakota in accordance with chapter 65-04.

SECTION 13. AMENDMENT. Section 52-01-02 of the North Dakota Century Code is amended and reenacted as follows:

52-01-02. Employing unit to keep records - Reports of employing unit - Inspection prohibited - Exception. Each employing unit shall keep true and accurate work records containing such information as the bureau may prescribe. The records must be open to inspection and may be copied by the bureau or its authorized representatives at any reasonable time as often as may be necessary. The bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the bureau, or the chairman, ~~deems necessary requires~~ for the effective administration of the North Dakota Unemployment Compensation Law. ~~In addition, the bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the workers compensation bureau deems necessary requires for effective administration of the North Dakota Workers' Compensation Law set forth in title 65. Such reports must be provided to the workers compensation bureau by the bureau or the chairman of appeal tribunal.~~ Information thus obtained may not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, but any claimant or the claimant's legal representative at a hearing before an appeal tribunal or the bureau must be supplied with information from such records to the extent necessary for the proper presentation of the claim.

SECTION 14. AMENDMENT. Section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or ~~his~~ the claimant's legal representative must be supplied with information from ~~his~~ the records of the job insurance division, to the extent necessary for the proper presentation of ~~his~~ the claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to such claim. Subject to such restrictions as the bureau by ~~regulations~~ rule may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in

subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide ~~the workers compensation bureau its workers' compensation staff, the state labor commissioner of labor, the state economic development commission, and the state tax commissioner with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided must be used only for the purpose of administering the duties of the workers compensation bureau, the state labor commissioner of labor, the state economic development commission, and the state tax commissioner.~~

Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, ~~workers compensation bureau~~, or the tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

The bureau shall request and exchange information as required of the bureau under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

SECTION 15. AMENDMENT. Section 52-02-01 of the North Dakota Century Code is amended and reenacted as follows:

52-02-01. Job service North Dakota created. ~~There is hereby created job~~ Job service North Dakota which is ~~herewith~~ charged with administering the ~~provisions of the~~ North Dakota Unemployment Compensation Law ~~and, the provisions of the~~ North Dakota state employment service, as set forth in chapter 52-08, ~~and title 65~~, which must be administered by a full-time salaried executive director, who is subject to the supervision and direction of the governor. The governor is authorized to appoint, fix the compensation of, and prescribe the duties of such executive director, provided that such appointment must be made on a nonpartisan, merit basis, in accordance with ~~the provisions set forth in~~ chapter 54-42. The duties and responsibilities of the executive director extend to and include the power of full administration of the ~~provisions of the~~ North Dakota Unemployment Compensation Law, ~~and the provisions of~~ chapter 52-08 relating to the North Dakota state employment service, including job insurance programs, title 65, and the establishment and maintenance of free public employment offices and ~~of workers' compensation programs~~. The executive director may also establish such separate divisions and make such separate appointments as ~~he may deem~~ the executive director determines advisable for efficient administration of the duties and responsibilities imposed hereunder. Any such separate appointments must be on a nonpartisan, merit basis.

SECTION 16. AMENDMENT. Section 52-08-03 of the North Dakota Century Code is amended and reenacted as follows:

52-08-03. Job service North Dakota - Offices maintained. The job service North Dakota executive director shall establish and maintain free public employment offices in ~~such sufficient~~ number and in ~~such~~ places as ~~may~~

be necessary for the proper administration of chapters 52-01 through 52-08 and title 65.

SECTION 17. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Introduction of bills and amendments - Actuarial impact statement. Beginning December 1, 1992, a legislative measure affecting workers' compensation benefits or premium rates may not be prefiled for introduction or introduced in either house of the legislative assembly unless the measure has been reviewed by the workers compensation bureau and the bureau has determined whether the measure will have an actuarial impact on the workers' compensation fund. If the bureau determines that the measure will have an actuarial impact on the fund, the measure may not be prefiled or introduced unless accompanied by an actuarial impact statement prepared, at the expense of the bureau, by the actuary employed by the bureau. No amendment affecting workers' compensation benefits or premium rates may be attached to any legislative measure unless the amendment is accompanied by either a statement prepared by the bureau, stating that the amendment is not expected to have any actuarial impact on the workers' compensation fund, or an actuarial impact statement prepared, at the expense of the bureau, by the actuary employed by the bureau.

SECTION 18. AMENDMENT. Subsection 1 of section 54-06-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the office of management and budget reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
  - a. Secretary of state.
  - b. State auditor.
  - c. Commissioner of insurance.
  - d. Attorney general.
  - e. Commissioner of agriculture.
  - f. Superintendent of public instruction.
  - g. State tax commissioner.
  - h. Public service commission.
  - i. State board of higher education.
  - j. Director of institutions.
  - k. Department of transportation.
  - l. State department of health and consolidated laboratories.

- m. Department of human services.
- n. ~~Workers compensation bureau.~~
- ~~o. Director of the office of management and budget.~~
- ~~p. o. State treasurer.~~
- ~~q. p. Commissioner of labor.~~

SECTION 19. AMENDMENT. Section 54-16-10 of the North Dakota Century Code is amended and reenacted as follows:

54-16-10. Departmental emergency funds - Penalty. No moneys appropriated by the legislative assembly to be used for emergency purposes by any state department, state officer, employee, board, commission, bureau, or institution, including the Bank of North Dakota, mill and elevator association, fire and tornado, and bonding departments, ~~and the workers compensation bureau,~~ may be expended until such moneys so appropriated, or so much thereof as may be necessary for such appropriation, have been transferred to the subdivision of the regular appropriation in which the emergency exists. No ~~such~~ transfer of emergency funds, ~~hereinbefore~~ referred to, may be made until an itemized, verified petition, setting forth the facts by virtue of which such emergency exists and the necessity for such expenditure has been presented to the state emergency commission, by the department, state officer, board, commission, bureau, or institution desiring such transfer, and has been approved in writing by a majority of such commission. Any person who violates ~~the provisions of~~ this section is guilty of a class A misdemeanor.

SECTION 20. AMENDMENT. Section 54-56-01 of the North Dakota Century Code is amended and reenacted as follows:

54-56-01. Children's services coordinating committee - Membership. The children's services coordinating committee ~~is hereby established and~~ consists of the governor or a designee of the governor, the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner, the superintendent of public instruction, the executive director of the department of human services, the state health officer, the executive director of job service North Dakota or a designee of the executive director, the director of institutions, the director of vocational education, the ~~chairperson~~ chairman of the governor's committee on children and youth, the executive director of the Indian affairs commission, and a designee of the chief justice. The governor or the governor's designee ~~shall act as chairperson~~ is the chairman of the committee.

SECTION 21. AMENDMENT. Subsection 4 of section 57-38-57 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The tax commissioner ~~is hereby authorized to may~~ furnish to ~~the workers compensation bureau, to the~~ job service North Dakota, or to the secretary of state, upon their request a list or lists of employers showing only the names, addresses, and the tax department file identification numbers of such employers; provided, that any

such list may be used only for the purpose of administering the duties of the requesting governmental unit.

SECTION 22. AMENDMENT. Section 57-39.2-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-23. Information deemed confidential. It is unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge, or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person except as provided by law. The commissioner may authorize examination of such returns by other state officers, and at his discretion furnish to the tax officials of another state, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed pursuant to this chapter, and in the report of an audit or investigation made with respect thereto, provided only that said information be furnished solely for tax purposes; and the multistate tax commission may make said information available to the tax officials of any other state and the United States for tax purposes.

The commissioner ~~is hereby authorized to may~~ furnish to the workers compensation bureau or to the job insurance division of job service North Dakota upon request of either a list or lists of holders of permits issued pursuant to the provisions of this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of such permit holders; provided, that any such list shall be used by the bureau to which it is furnished job service North Dakota only for the purpose of administering the duties of such bureau job service North Dakota. The commissioner, or any person having an administrative duty under this chapter, is hereby authorized to may announce that a permit has been revoked.

\* SECTION 23. AMENDMENT. Section 65-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
2. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body. ~~Eyeglasses~~ The term does not include eyeglasses or contact lenses are not artificial members unless the eye is, or eyes are, injured as a result of a compensable injury, and such injury causes a change in sight which requires fitting of eyeglasses or contact lenses not previously worn by the injured worker, or requires a change in existing prescription.
3. "Artificial replacements" means mechanical aids including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury. The term does not include:

\* NOTE: Section 65-01-02 was also amended by section 1 of House Bill No. 1324, chapter 713, and by section 30 of Senate Bill No. 2068, chapter 54.

- a. Personal items that are for the injured employee's personal use or hygiene, including hand massages, toothbrushes, slippers, shampoo, and soap;
  - b. Any product or item such as clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating doctor or health care provider;
  - c. All items of furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating doctor or health care provider;
  - d. Vitamins and food supplements except in those cases where the injury causes severe dietary problems, where the injury results in the employee's paraplegia or quadriplegia, or where the employee becomes wheelchair-bound due to the injury;
  - e. Eye exams unless there is a reasonable potential for injury to the employee's eyes as a result of the injury;
  - f. Home gym or exercise equipment unless the bureau otherwise orders;
  - g. Memberships or monthly dues to health clubs, unless the bureau orders otherwise;
  - h. Private hospital or nursing home rooms except in cases of extreme medical necessity, and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the difference in cost will be paid by the employee;
  - i. Serological tests (VDRL and RPR) for syphilis or any other venereal disease tests, pregnancy tests, or any other routine tests unless clearly necessitated by the injury; and
  - j. Aids or programs primarily intended to help the employee lose weight or stop smoking.
4. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
  5. "Brother" and "sister" includes a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption, but such terms shall. The terms do not include a married brother or sister unless he or she actually is dependent.
  6. "Bureau" means the job service North Dakota workers compensation bureau, or any director, department heads, assistants, or employees, or other entity designated by the commissioners director, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.
  7. "Child" means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation

of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but shall not include a married child unless actually dependent.

8. "Compensable injury" means an injury by accident arising out of and in the course of employment.
  - a. The term "compensable injury", in addition to an injury by accident, includes:
    - (1) Any disease which can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed shall not be compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of his employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It need not have been foreseen or expected, but after it is contracted, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. However, preventative treatment for communicable diseases is not compensable under this title.
    - (2) An injury to artificial members.
    - (3) Injuries due to heart attack, stroke, and mental or physical injury precipitated by mental stimulus, which must be causally related to the ~~worker's~~ employee's employment, with reasonable medical certainty, and which must have been precipitated by unusual stress.
    - (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
    - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
  - b. The term "~~compensable injury~~" does not include:
    - (1) An injury caused by the employee's willful intention to injure or kill himself, herself, or another, which includes those instances where the injury or aggravation thereof results from the employee's suicide or attempted suicide.

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

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

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

- e. The receiver or trustee of any person, partnership, association, or corporation, having one or more employees as herein defined.
  - f. The president, vice presidents, secretary, or treasurer of a business corporation.
16. "Employment" means employment by the state and all political subdivisions thereof, by all public and quasi-public corporations therein, and all private employments.
  17. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease which:
    - a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
    - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
    - c. Can be fairly traced to the employment;
    - d. However, any condition or impairment of health of a full-time paid fireman firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid fireman firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid fireman firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid fireman firefighter. A full-time paid fireman firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid fireman firefighter or law enforcement officer has completed two years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition.
  18. "Fee schedule" means the relative value scale, conversion factors, fee schedules, and medical aid rules adopted by the bureau.
  19. "Fund" means the North Dakota workers' compensation fund.
  20. "Grandchild" and the terms defined in subsections 4 and 6 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.

21. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
  - a. Agricultural or domestic service.
  - b. Any employment of a common carrier by railroad.
  - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
  - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
22. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.
23. "Orphan" means a child who has no lawful parent.
24. "Parent" includes a stepparent and a parent by adoption.
25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement or recovery, and includes disfigurement resulting from an injury if such disfigurement diminishes the ability of the employee to obtain employment. The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment", must be determined by clear and convincing medical evidence.
26. "Premises" means that part of the employer's property upon or in which the employee is expected to perform services for his employer.
- ~~27.~~ "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. Such services The term may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.
- ~~28.~~ 27. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
- ~~29.~~ 28. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of

health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the bureau to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.

~~30-~~ 29. "Wages" means all remuneration payable in money or a substitute for money for services rendered by an employee.

a. The term "~~wages~~" includes:

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

b. The term "wages" does not include:

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

~~31-~~ 30. "Gross weekly wage" means the weekly wages the ~~worker~~ employee was receiving from all employments at the time of injury. The average

weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the ~~worker's~~ employee's wages are not fixed by the week, they must be determined in the following manner:

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

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

SECTION 24. AMENDMENT. Section 65-01-09 of the North Dakota Century Code is amended and reenacted as follows:

65-01-09. Injury through negligence of third person - Option of employee - Fund subrogated when claim filed. When an injury or death for which compensation is payable under provisions of this title shall have been sustained under circumstances creating in some person other than the fund a legal liability to pay damages in respect thereto, the injured employee, or ~~his~~ the employee's dependents may claim compensation under this title and proceed at law to recover damages against such other person. The fund ~~shall be~~ is subrogated to the rights of the injured employee or ~~his~~ the employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The bureau's subrogation interest may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or ~~his~~ the employee's dependents in the event of ~~his~~ the employee's death. Such action shall be brought in ~~his~~ the injured employee's or in ~~his~~ the employee's dependents' own right and name and as trustee for the ~~workmen's compensation~~ bureau for the subrogation interest of the bureau. If the injured employee or ~~his~~ the employee's dependents do not institute suit within sixty days after date of injury the bureau may bring the action in its own name and as trustee for the injured employee or ~~his~~ the employee's dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or ~~his~~ the employee's dependents. Within sixty days after both the injured employee and the bureau have declined to commence an action against a third person as provided above, the employer may bring the action in ~~his~~ the employer's own name or in the name of the employee, or both, and

in trust for the bureau and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or ~~his~~ the employee's dependents, or the employer as provided above, the bureau shall pay fifty percent of the costs of the action, exclusive of attorney fee, when such costs are incurred. ~~Should If there be is~~ is no recovery of damages in the action, this shall be a cost of the bureau to be paid from the bureau general fund. When there is recovery of damages in the action, the costs of the action, exclusive of attorneys fees, ~~shall must~~ must be prorated and adjusted on the percentage of the total subrogation interest of the bureau recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured employee's attorney from the bureau general fund as follows:

1. Twenty percent of the subrogation interest recovered for the bureau when legal action is not commenced.
2. Twenty-five percent of the subrogation interest recovered for the bureau when action is commenced and settled before judgment.
3. Thirty-three and one-third percent of the subrogation interest recovered for the bureau when recovered through judgment.

The above provisions as to costs of the action and attorney fees is effective only when the injured employee advises the bureau in writing the name and address of ~~his~~ the employee's attorney, and that ~~he~~ the employee has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If a claimant fails to pay the bureau's subrogation interest within thirty days of receipt of a recovery in a third party action, the bureau's subrogation interest ~~shall be is~~ is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or ~~his~~ the employee's dependents, and no costs or attorney fees will be paid from the bureau's subrogation interest.

SECTION 25. AMENDMENT. Section 65-01-10 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 26. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

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

1. All claims must be filed on forms furnished by the bureau for that purpose.

2. Upon filing of a claim, including the claimant's statement and physician's certificate, the bureau shall send a copy of the claim, along with a form provided for the employer's response by regular mail, to the employer, if the employer's response is not filed at the time the claim is filed.
3. The employer has thirty days from the day a copy of the claim is mailed to the employer by the bureau to file or mail a response. Failure of the employer to file a response to the claim within thirty days constitutes an admission by the employer that the allegations stated in the claim form are true. The bureau may reopen a determination made without an employer's report on its own motion, pursuant to section 65-05-04, on the grounds it deems sufficient.
4. The bureau shall make its informal decision on the claim after filing of the claim and the physician's certificate. The bureau shall issue a notice of decision, including a short summary indicating the reason for decision, and shall serve the notice on the parties by mailing a copy to them by regular mail. The bureau is not required to make findings of fact and conclusions of law when it makes an informal decision. Any party may, within thirty days of the date of mailing of notice of initial award, request reconsideration by filing a written request for reconsideration. The request may be accompanied by affidavits, medical records, or other evidence not previously submitted to the bureau. No later than ninety days following filing of a request for reconsideration, the bureau shall issue an order conforming to the requirements of chapter 28-32. Following issuance of an order, any party may request rehearing or file an appeal in accordance with chapter 28-32. If a timely request for reconsideration is not filed, the decision of the bureau is final, subject only to reopening of the claim under section 65-05-04. The provisions of section 65-10-01, relating to appeals from decision of the bureau, apply only when the bureau issues an order following a timely request for reconsideration.
5. The bureau may hold informal proceedings to determine any matter subject to its jurisdiction. The bureau shall issue to the parties a notice of decision, including a short statement or summary indicating the reason for the decision, and notice of the right to request reconsideration as provided by this section. The bureau may convene a formal hearing prior to issuing an administrative order, if the bureau so desires.
6. After acceptance of a claim, the bureau may continue to pay medical charges, disability benefits, or a vocational award for time loss without issuing notice of award.
7. The bureau shall issue an administrative order under chapter 28-32 when it makes a permanent partial impairment award or a vocational award, terminates or denies disability or vocational services, or has otherwise been requested to issue an administrative order by an aggrieved party by filing a request for reconsideration of its informal decision.

SECTION 27. AMENDMENT. Section 65-02-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-06. Expenditures by bureau from fund - Employment of full-time assistant attorney general authorized. With prior approval of the emergency commission, the bureau may make necessary expenditures to implement reinsurance. The bureau may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this title. The salaries and compensation of the director of the bureau and of all employees of the bureau, and all other authorized expenses thereof, including the premium on the bond required of the state treasurer under section 65-04-30, must be paid out of the fund. The bureau may employ as its full-time attorney a duly appointed assistant attorney general and pay from the fund the entire salary of the assistant.

SECTION 28. AMENDMENT. Section 65-02-07 of the North Dakota Century Code is amended and reenacted as follows:

65-02-07. Bureau to have seal. The bureau shall have a seal for the purpose of authentication, whenever authentication is required, upon which seal shall be inscribed the words "Workers' Compensation Bureau - Job Service North Dakota - Seal".

SECTION 29. AMENDMENT. Section 65-02-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

claimant's attorney may not seek or obtain costs or attorney's fees from both the bureau and the claimant relative to the same services. The bureau may deny attorneys' fees upon a finding that the claim is frivolous. All disputes relating to payment or denial of attorneys' fees must be submitted to binding arbitration by a fee arbitration panel composed of one member selected by the claimant's attorney, one member selected by the bureau, and one member selected jointly by the claimant's attorney and the bureau. An attorney who agrees to accept compensation from the bureau for services pursuant to this section agrees to binding fee arbitration of all disputes relating to payment or denial of fees.

SECTION 30. Four new sections to chapter 65-02 of the North Dakota Century Code are created and enacted as follows:

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

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

Binding arbitration panel - Attorneys' fees. Following constructive denial of a claim or issuance of an administrative order under chapter 28-32 reducing or denying benefits, an aggrieved employee may request that the action be submitted to binding arbitration before the workers' compensation binding arbitration panel in lieu of a formal administrative hearing or judicial remedy. The bureau shall pay, at an hourly rate established by the bureau, a claimant's attorneys' fees on claims submitted for binding

arbitration. If the aggrieved employee elects not to submit the action to binding arbitration, attorneys' fees may only be paid if the employee prevails.

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

SECTION 31. Three new sections to chapter 65-02 of the North Dakota Century Code are created and enacted as follows:

Bureau to contract for administrative services. The bureau shall contract for the services of a third-party administrator to monitor medical treatments of injured employees and to monitor the payment of medical expenses of all workers' compensation claims. The bureau shall solicit bids for administrative services within four months after the effective date of this Act and by December 1, 1991, shall award an administrative services contract to the bidder who will best serve the interests of the bureau and the employees under this title. The initial contract must begin January 1, 1992, and continue through June 30, 1993. Subsequent contracts must be for the period of a biennium. Subsequent solicitations must be made at least forty-five days before the expiration of an existing administrative services contract.

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

Contract for administration of managed care program. The bureau shall contract for the services of a third-party administrator to implement the managed care program. The bureau shall solicit bids for these administrative services within four months after the effective date of this Act. The solicitation must include a description of the program and the services expected of the managed care administrator. By December 1, 1991, the bureau shall award an administrative services contract to the bidder who will best serve the interests of the bureau and the employees under this title. The initial contract must begin January 1, 1992, and continue through June 30, 1993. Subsequent contracts must be for the period of a biennium. Subsequent solicitations must be made at least forty-five days before the expiration of an existing administrative services contract.

\* SECTION 32. AMENDMENT. Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

65-04-04. Employers obligated to pay premiums - Determination of premiums - Premium receipts and certificates to be mailed. Each employer subject to the provisions of this title shall pay into the fund annually the amount or premiums determined and fixed by the bureau for the employment or

\* NOTE: Section 65-04-04 was also amended by section 1 of House Bill No. 1321, chapter 716.

occupation of such employer, which amount shall be determined by the classifications, rules, and rates made and published by the bureau and shall be based on a proportion of the annual expenditure of money by such employer for the service of persons subject to the provisions of this title; provided, however, that the computation of such premiums shall not be based upon any premium wages in excess of the basic hourly rate of pay or any annual remuneration, in whatever form, in excess of the sum of thirty-six hundred dollars paid to any employee by any employer. A receipt or certificate specifying that such payment has been made shall be mailed to such employer by the bureau immediately after such payment is made, and such receipt or certificate, attested by the seal of the bureau, shall be prima facie evidence of the payment of the premium. Each employer shall report and submit premiums on a calendar year basis except as otherwise specified. Annual premium rate changes must be implemented on January first of each year. The bureau shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of such entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates and for the purpose of effectuating such due dates the bureau may carry new or current risks for a period of less than one year and not to exceed fifteen months, either by request of the employer or action of the bureau.

SECTION 33. AMENDMENT. Section 65-04-10 of the North Dakota Century Code is amended and reenacted as follows:

65-04-10. Provision relating to compensation required in contractor's bonds. There ~~shall~~ must be inserted in every bond given by a contractor doing work for the state of North Dakota or for any political subdivision thereof, in addition to the general provisions for the faithful and complete performance of all work required under such contract, this further provision: That the ~~said~~ contractor has made, or will make, prior to the commencement of any work by ~~himself~~ the contractor or any subcontractor under ~~such~~ the contract, full and true report to the workmen's compensation bureau job service North Dakota of the payroll expenditures for the employees to be engaged in ~~such~~ the work, and that ~~he~~ the contractor has paid, or will pay, the premium thereon prior to the commencement of ~~such~~ the work.

SECTION 34. AMENDMENT. Section 65-04-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 35. AMENDMENT. Section 65-04-14 of the North Dakota Century Code is amended and reenacted as follows:

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

\* SECTION 36. AMENDMENT. Section 65-04-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 37. AMENDMENT. Section 65-04-20 of the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 65-04-15 was also amended by section 6 of Senate Bill No. 2244, chapter 568.

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

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

Interest ~~shall~~ must be charged at the same rate of nine percent per annum as earned by the investment of the fund based on the investment measurement review as of March thirty-first of each year and effective July first of each year and the interest charged may not be less than six percent per annum. Such rate must be charged on all premiums deferred under the provisions of this section, and upon default in payment of any installment such installment shall carry penalties as provided in this chapter.

SECTION 38. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Corporate officer personal liability.

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

within thirty days after mailing of the notice of determination to the person's last known address.

SECTION 39. AMENDMENT. Section 65-04-27.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-27.1. Injunctive relief - Procedure.

1. To protect the lives, safety, and well-being of wage workers, to ensure fair and equitable contributions to the state workers' compensation insurance fund between all employers, and to protect the workers' compensation fund, the ~~workers compensation~~ bureau may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title in any of the following instances:
  - a. When it has been brought to the attention of the bureau that the employer has unlawfully employed uninsured workers in violation of the provisions of section 65-01-05;
  - b. When the employer defaults in the payment of insurance premiums into the state fund; or
  - c. When the bureau, in exercise of the power and authority granted by section 65-03-01, giving it full power and jurisdiction over and the supervision of, every employment and every place of employment for the purpose of issuing and enforcing all necessary and proper safety rules and regulations, finds that it is necessary to enjoin and restrain certain employers and employments in order to protect the lives and safety of the employees because of failure or refusal to comply with necessary and proper safety rules and regulations.

The courts of this state are vested with jurisdiction and power to grant such preventive relief in the instances herein set forth.

2. The provisions of chapter 32-06 relating to injunction shall apply to proceedings instituted hereunder in so far as such provisions may be applicable.
3. In addition to the provisions of chapter 32-06, when the court has granted an immediate temporary injunction at the time of the commencement of the action the defendant employer shall be entitled to have a hearing by the court on the merits of the case without delay and upon three days' written notice to the ~~workers compensation~~ bureau the court shall then proceed to hearing on the merits and render its decision.
4. In addition to the provisions of chapter 32-06, when the court has not granted an immediate temporary injunction at the time of the commencement of the action and the time for answer has expired either party shall be entitled to have a hearing by the court on the merits of the case and upon ten days' notice by either party to the other the court shall then proceed to hearing on the merits and render its decision.

SECTION 40. AMENDMENT. Section 65-04-29 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-29. Employers carrying on nonhazardous employment may come under law - Employee's option. Any employer carrying on any employment not defined as hazardous under section 65-01-02 who complies with this title and who pays into the fund the premiums provided for under this chapter is covered under the fund and is not liable to respond in damages at common law or by statute for injuries to or the death of any employee, wherever occurring, during the period covered by such premiums. Any employee who elects before injury not to come under workers' compensation insurance may do so by notifying the ~~workers compensation~~ bureau and the employer of such election in writing.

SECTION 41. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Employer required to pay bureau for certain claims. The employer shall reimburse the bureau for all medical expenses related to a compensable injury to an employee if the expenses are not more than two hundred fifty dollars and shall reimburse the bureau for the first two hundred fifty dollars of medical expenses when the expenses are more than two hundred fifty dollars. Upon the bureau's determination that the claim is compensable, the bureau shall pay the medical expenses associated with the claim and notify the employer of payments to be made by the employer under this section. If the employer does not pay the bureau within ninety days of notice by the bureau, the bureau may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five percent of the payment owed by the employer. The bureau shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for any payment the employer makes on a claim. When the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the bureau shall pay all further medical expenses pursuant to this title. This section is effective for all compensable injuries that occur after June 30, 1991.

SECTION 42. Two new subsections to section 65-05-07 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

If a doctor or health care provider who has treated or provided services to an injured employee fails or refuses without just cause to file with the bureau a report required by sections 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for such report made by the claimant, the claimant's representative, or the bureau, the bureau shall assess as a penalty a sum of one hundred dollars. Health care providers or doctors may not bill injured workers for any penalty assessed by the bureau as a result of failure or refusal without just cause to file a required report.

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

SECTION 43. AMENDMENT. Section 65-05-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. If the period of disability is for not more than fourteen days, disability benefits for the first five days may only be paid for days that the employee was scheduled to work.
2. When partial or total disability benefits are discontinued, the claimant shall provide the bureau written notice of reapplication for disability benefits. In case of reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon a finding that:
  - a. The employee has sustained a significant change in medical condition shown by a preponderance of the evidence;
  - b. The employee has provided evidence of actual wage loss attributable to the work injury; and
  - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.
- ~~2. A health care provider or physician may not certify or verify past disability unless the health care provider or physician has examined the employee within the previous sixty days and filed those reports required by this title. A health care provider or physician certifying disability shall include in the report the basis for the certification of disability and a professional opinion as to the expected length of, and reason for, the disability.~~
3. All payments of benefits must be suspended during the period of confinement of any ~~worker~~ employee who is eligible for, or receiving, benefits under this title who is confined in any institution under conviction and sentence unless the ~~worker~~ employee is receiving permanent total disability benefits or the bureau has determined that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and the employee has a spouse or child, in which case the benefits must be paid directly to such spouse or child. After discharge from the institution, payment of benefits thereafter due must be paid as the ~~worker~~ employee would, but for the provisions of this subsection, otherwise be entitled.
4. Any ~~worker~~ employee who is eligible for, or receiving, disability benefits under this title shall report any wages earned, from part-time or full-time employment, from the employer of injury or any other employer. Failure to report such wages earned requires the ~~worker~~ employee to refund to the bureau any partial or total disability benefits overpaid by the bureau for that time period.

To facilitate recovery, the bureau may offset future benefits otherwise payable, under section 65-05-29. If the bureau determines that the failure to report wages earned was willful, the employee forfeits all further lost-time benefits otherwise payable under this title for that injury pursuant to section 65-05-33.

5. An employee shall request disability benefits on a lost-time claim form furnished by the bureau. In no case may lost-time benefits commence more than one year prior to filing of the initial lost-time claim form.
6. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, ~~1989~~ 1991, irrespective of injury date.

SECTION 44. Section 65-05-08.1 of the North Dakota Century Code is created and enacted as follows:

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

1. The claimant's doctor shall certify the period of temporary total disability upon request of the bureau.
2. A doctor certifying disability shall include in the report filed with the bureau:
  - a. The medical basis for the certification of disability;
  - b. Whether the employee is totally disabled, from any and all employment, or whether the employee is able to return to some employment, including light work or sedentary work;
  - c. If the employee is not totally disabled, a statement of the employee's restrictions and physical limitations; and
  - d. A professional opinion as to the expected length of, and reason for, the disability.
3. The report must be filed on a form furnished by the bureau, or on any other form acceptable to the bureau.
4. The claimant shall ensure that the required reports are filed.
5. Prior to expiration of a period of temporary total disability certified by a doctor, if a report certifying an additional period of disability has not been filed, the bureau shall send a notice to the claimant of intention to discontinue benefits, the reason therefor, and an explanation of the right to respond and the procedure for filing the required report or challenging the proposed action. A copy of the notice must be mailed to the claimant's doctor. Thereafter, if the required certification is not filed, the bureau shall discontinue temporary total disability benefits by formal order, effective no sooner than twenty-one days after the date of notice of intention to discontinue benefits is mailed.

6. Upon receipt of a report or other evidence indicating a claimant who is receiving temporary total disability benefits has been or will be released to return to work, the bureau shall issue and mail to the claimant a notice of intention to discontinue benefits. Such benefits may thereafter be discontinued on the date of release to return to work or twenty-one days following mailing of the notice, whichever is later. The notice must include a statement of the reason for the action, a brief summary of the evidence relied upon by the bureau, and an explanation of the right to respond and the procedure for challenging the action and submitting additional evidence to the bureau.

SECTION 45. AMENDMENT. Section 65-05-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 46. Section 65-05-09.3 of the North Dakota Century Code is created and enacted as follows:

65-05-09.3. Retirement presumption. An employee who has retired or voluntarily withdrawn from the labor force is presumed retired from the labor

market and is ineligible for receipt of disability benefits under this title. The presumption may be rebutted by a preponderance of the evidence that the worker:

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

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

SECTION 47. AMENDMENT. Section 65-05-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-10. Partial disability - Weekly compensation. If the injury causes temporary partial disability resulting in decrease of earning capacity, the compensation is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage earning capacity after the injury in the same or another employment. However, the partial disability benefits may not exceed an amount equal to sixty-six and two-thirds percent of the employee's average weekly wage at the time of the injury benefit rates as defined in section 65-05-09.

1. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury, is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.
2. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, such employee is not entitled to any compensation at any time during the continuance of such refusal unless, at any time, such refusal is justified in the opinion of the bureau.
3. No compensation is payable unless the loss of earning ~~power~~ capacity exceeds ten percent. The claimant may earn up to ten percent of the claimant's average gross weekly earnings with no reduction in total disability benefits.
4. Upon securing suitable employment, the injured employee shall notify the bureau of the name and address of the employer, the date the employment began, and the amount of wages being received on an annual basis. The injured employee shall notify the bureau whenever there is a change in wages received.
5. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning ~~power~~ capacity occurs after July 1, 1989. Partial loss of earning ~~power~~

- capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the bureau.
6. Dependency allowance must be paid under section 65-05-09 on claims receiving benefits under this section.
  7. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The bureau may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
  8. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity where the job employs the employee to full work capacity in terms of hours worked per week, and where the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

SECTION 48. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Permanent impairment. When there is a dispute as to the percentage of an employee's permanent impairment, all medical evidence must be submitted to an independent physician who has not treated the employee or who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish a comprehensive list of physicians who are medical specialists within the state. The bureau and the claimant shall choose a physician to review a disputed permanent impairment rating by striking names from the list until a name is chosen. The decision of the independent physician is presumptive evidence of the degree of permanent impairment of the employee.

SECTION 49. AMENDMENT. Section 65-05-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~65-05-25. Lump sum settlement - Granted in discretion of bureau - How computed. The bureau, if it determines it is in the best interest of the claimant, may pay a lump sum equal to the present value of all future payments of compensation. The bureau and the claimant, after an opportunity to seek legal counsel, may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The probability of the beneficiary's or claimant's death before the expiration of the period during which he is entitled to compensation must be determined by reference to generally accepted mortality studies. In case of the spouse of a deceased employee, the lump sum may not exceed compensation for four hundred sixteen weeks and the probability of the happening of any other contingency affecting the amount or duration of the compensation must be disregarded. If at the expiration of a period for which lump sum settlement was made hereunder the claimant is still alive and has not remarried, the bureau, in its discretion, may again assume liability and resume pension payments. The bureau may also~~

grant a partial lump sum settlement, based upon the same computations as the complete lump sum. Any decision of the bureau rendered under this section may be appealed to the district court as provided for in chapter 65-10, and the district court shall render its decision sustaining the decision of the bureau, reversing it, or remanding it back to the bureau with instructions.

1. If an employee is determined to be permanently and totally disabled, the bureau may pay the employee a lump sum equal to the present value of all future payments of compensation. The probability of the employee's death before the expiration of the period during which the employee is entitled to compensation must be determined by generally accepted mortality studies. The bureau may not pay the employee a lump sum unless it has first determined that there is clear and convincing evidence that the lump sum payment is in the best interest of the employee. Best interest of the employee may not be deemed to exist because the employee can invest the lump sum in another manner to realize a better yield. The employee must show a specific plan of rehabilitation which will enable the employee to return to work as a productive member of society.
2. The bureau and an employee may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The contract may provide that the employee shall utilize the funds to engage in certain rehabilitation programs. If the employee breaches the contract, the bureau may require the employee to repay the benefits received under the agreement. In cases in which the extent of disability is disputed and resolved by agreement, the concept of reopening a disability claim due to significant change in medical condition is applicable.

SECTION 50. AMENDMENT. Section 65-05-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate. Every employee who sustains an injury may select a doctor of that employee's choice to render initial treatment. Upon a determination that the employee's injury is compensable, the bureau may require the employee to begin treating with another doctor, to better direct the medical aspects of the injured employee's claim. The bureau shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the bureau's request, the employee shall select a doctor from the list. An injured employee shall follow the directives of that employee's the doctor or health care provider who is treating the employee as chosen by the employee at the request of the bureau, and comply with all reasonable requests during the time the employee is under medical care. Providing further that:

1. No employee may change from one doctor to another while under treatment or after being released, without the prior written authorization of the bureau. Failure to obtain approval of the bureau renders the employee liable for the cost of treatment and the new doctor will not be considered the attending doctor for purposes of certifying temporary disability.
  - a. Any employee requesting a change of doctor shall file a written request with the bureau stating all reasons for the change.

Upon receipt of the request, the bureau will review the employee's case and approve or deny the change of doctor, notifying the employee and the requested doctor.

- b. Emergency care or treatment or referral by the attending doctor does not constitute a change of doctor and does not require prior approval of the bureau.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the bureau reimbursement rates in effect on the date of incurred travel or expense. Mileage calculations must be based upon the atlas or map mileage from city limit to city limit and do not include intracity mileage. Providing further that:
    - a. No payment for mileage or other travel expenses may be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
    - b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the bureau may pay no more than actual cost of meals and lodging, if actual cost is less;
    - c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
    - d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and
    - e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.
  3. The bureau may at any time require an employee to submit to an independent medical examination by a duly qualified doctor or doctors designated or approved by the bureau. The independent medical examination must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. The employee may have a duly qualified doctor designated by that employee present at the examination if procured and paid for by that employee. Providing further that:
    - a. In case of any disagreement between doctors making an examination on the part of the bureau and the employee's doctor, the bureau shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the bureau.

- b. The employee, in the discretion of the bureau, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the employee is working and loses gross wages from the employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
4. If an employee, or the employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination, or refuses reasonably to participate in medical or other treatments, the employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the employee.

SECTION 51. AMENDMENT. Section 65-05-33 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 52. Section 65-05-34 of the North Dakota Century Code is created and enacted as follows:

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

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

3. There was a causal connection between the false representation and the injury.

SECTION 53. Section 65-05-35 of the North Dakota Century Code is created and enacted as follows:

65-05-35. Inactive claim - Presumption.

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

SECTION 54. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Bureau to adopt fee schedule. Unless the bureau has adopted fee schedules for medical and hospital services as required by section 65-02-08, the bureau, by February 1, 1992, shall adopt a fee reimbursement schedule for medical and hospital services and supplies for claims for workers' compensation. The amount of the fees for a specific medical or hospital service or supply set forth in the schedule adopted pursuant to this section must be equal to one hundred ten percent of the amount allowed for that medical or hospital service or supply under the urban hospital fee schedule of the medicare prevailing profile in effect at the time the service or supply is provided. The bureau shall establish a supplemental schedule to include any medical or hospital service or supply that is provided to injured employees and is not covered by the medicare prevailing profile. Any fee for a medical or hospital service or supply which is in excess of the amount allowed for that medical or hospital service or supply by the appropriate schedule under this section may not be recovered by the health care provider from the injured employee, the employer, or the bureau. A health care provider may charge a fee for a medical or hospital service or supply that is less than the fee allowed by the appropriate schedule. The fee schedules provided for in this section remain in effect until the bureau adopts fee schedules for medical and hospital services as required by section 65-02-08.

SECTION 55. AMENDMENT. Section 65-05.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

## 65-05.1-01. Rehabilitation services.

1. The state of North Dakota exercising its police and sovereign powers, declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. It is the purpose of this chapter to provide for the health and welfare by ensuring to workers' compensation claimants otherwise covered by this title, services, so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled ~~worker~~ employee to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, medical limitations, age, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the ~~worker~~ employee as soon as practical and as nearly as possible to the ~~worker's~~ employee's average weekly earnings at the time of injury, or to seventy-five percent of the average weekly wage in this state on the date the rehabilitation consultant's report is issued under section 65-05.1-02.1, whichever is less. The purpose of defining substantial gainful employment in terms of earnings is to determine the first appropriate priority option under subsection 4 of section 65-05.1-04 which meets this income test.
4. The first appropriate option among the following, calculated to return the ~~worker~~ employee to substantial gainful employment, must be chosen for the ~~worker~~ employee:
  - a. Return to the same position.
  - b. Return to a modified position.
  - c. Return to a related occupation in the local job pool which is suited to the ~~worker's~~ employee's education, experience, and marketable skills.
  - d. Return to a related occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
  - e. On the job training.
  - ~~e- f.~~ Short-term retraining of fifty-two weeks or less.
  - ~~f- g.~~ Long-term retraining of one hundred four weeks or less.
  - ~~g- h.~~ Self-employment.

5. If the vocational consultant concludes that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and will not return the employee to the lesser of seventy-five percent of the average weekly wage, or the employee's preinjury earnings, the employee shall continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:

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

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

~~5-~~ 6. By agreement between the bureau and the worker employee, the income test in subsection 3 and the priority options in subsection 4 may be waived.

~~6-~~ 7. Vocational rehabilitation services may be initiated by:

- a. The bureau on its own motion; or
- b. The worker employee or the employer if proof exists:
  - (1) That the claimant has reached maximum medical recovery;
  - (2) That the claimant is not working and has not voluntarily retired or removed himself from the labor force; and
  - (3) That the worker employee has made good faith efforts to seek, obtain, and retain employment.

~~7-~~ 8. The provisions of chapter 50-06.1 do not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.

SECTION 56. AMENDMENT. Section 65-05.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-02. Bureau responsibility. The workers compensation bureau shall:

1. Appoint a director of rehabilitation services and such other staff as necessary to fulfill the purposes of this chapter.
2. Cooperate with such federal or state agency as shall be charged with vocational education, vocational rehabilitation, and job placement in order that any duplication of effort can be avoided, as far as possible, in any individual claim.

3. Make determinations on individual claims as to the extent and duration of the ~~workers compensation~~ bureau involvement under this chapter.
4. Enter into such agreements with other agencies and promulgate any rules or regulations as may be necessary or advantageous in order to carry out the purpose of this chapter.
5. Provide such rehabilitation services and allowances as may be determined by the bureau to be most beneficial to the worker within the limits of this chapter.
6. Establish medical assessment teams, the composition of which must be determined by the bureau on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's physical restrictions and limitations. The medical assessment team must be provided the medical records compiled by the worker's treating physicians. The medical assessment team may consult the worker's treating physicians prior to making its final assessment of the worker's functional capacities. The provisions of section 65-05-28 do not apply to the medical findings made under this section.
7. Appoint one or more vocational consultants, the identity of which must be determined by the bureau on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's transferable skills, employment options, and the physical demand characteristics of the worker's employment options, and determining which option available under subdivisions a through f of subsection 4 of section 65-05.1-01 will enable the worker to return to employment within the physical restrictions and limitations provided by the medical assessment team. The vocational consultant shall issue to the bureau a report as provided in section 65-05.1-02.1.

SECTION 57. AMENDMENT. Section 65-05.1-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 58. AMENDMENT. Section 65-05.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. It shall be the responsibility of the ~~The injured worker to~~ employee shall seek, obtain, and retain reasonable and substantial employment in order to reduce the period of temporary disability to a minimum. ~~The worker~~ employee has the burden to establish that the ~~worker~~ employee has met this responsibility.
2. In the event that the injured ~~worker~~ employee is unable to obtain substantial employment as a direct result of ~~his~~ his injury ~~he,~~ he, the employee shall promptly notify the bureau under subdivision b of subsection 6 of section 65-05.1-01.
3. It is the responsibility of the ~~The injured worker to~~ employee shall be available for testing under subsection 6 or 7 of section 65-05.1-02, and for any further examinations and testing as may be prescribed by the bureau to determine whether or not a program of rehabilitation is necessary.
4. If the bureau determines that a program of rehabilitation is necessary and feasible, the injured worker, upon having been so notified, shall be available for such a program. Upon notification, with the appropriate assistance and testing from a vocational coordinator appointed by the bureau, the worker shall identify a specific qualified rehabilitation program within sixty days. A qualified rehabilitation program is a rehabilitation plan that meets the criteria of this title, and which is an approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 5 of section 65-05.1-01. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same or modified position, or return to related occupation, or on-the-job training, the employee

is responsible to make a good faith work trial or work search. If the employee fails to perform a good faith work trial or work search, the finding of nondisability or partial disability is res judicata, and the bureau may not reinstate total disability benefits or recalculate an award of partial disability benefits in the absence of a significant change in medical condition attributable to the work injury. However, the bureau shall recalculate the partial disability award if the employee returns, in good faith, to gainful employment. If the employee meets the burden of proving that the employee made a good faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the bureau shall reevaluate the employee's vocational rehabilitation claim. A good faith work search that does not result in placement is not, in itself, sufficient grounds to prove the work injury caused the inability to acquire gainful employment. The employee shall show that the injury significantly impacts the employee's ability to successfully compete for gainful employment in that the injury leads employers to favor those without limitations over the employee.

5. If the injured worker shall fail to comply with this section without a reasonable cause, the bureau, by administrative order, shall discontinue all lost-time benefits under this title during the period of noncompliance. If, upon the bureau order becoming final, the period of noncompliance shall continue for six months, the bureau shall have no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or rehabilitation benefits. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is short-term or long-term training, the employee shall cooperate with the necessary testing to determine whether the proposed training program meets the employee's medical limitations and aptitudes. The employee shall attend a qualified rehabilitation training program when ordered by the bureau. A qualified training program is a rehabilitation plan that meets the criteria of this title, which is the approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 6 of section 65-05.1-01, and commences within a reasonable period of time such as the next quarter or semester.
6. If, without good cause, the injured employee fails to perform a good faith work trial in a return to the same or modified position, or in an on-the-job training program, or fails to make a good faith work search in return to work utilizing the employee's transferable skills, the employee must be deemed to be in noncompliance with vocational rehabilitation. If, without good cause, the injured employee fails to attend a scheduled medical or vocational assessment, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee must be deemed to be in noncompliance with vocational rehabilitation. If without good cause, the employee discontinues a job the employee is performing, or a training program in which the employee is enrolled, the employee must be deemed to be in noncompliance with vocational rehabilitation. If the employee establishes a pattern of noncooperation as heretofore described, involving two or more incidents of noncooperation, subsequent efforts by the employee to come into compliance with

vocational rehabilitation may not be deemed successful compliance until the employee has successfully returned to the job or training program for a period of sixty days. In all cases of noncompliance by the employee, the bureau, by administrative order, shall discontinue lost-time benefits. If, upon the bureau order becoming final, the period of noncompliance continues for sixty days, the bureau has no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or vocational rehabilitation benefits.

SECTION 59. AMENDMENT. Section 65-05.1-06.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.1. Rehabilitation award.

1. If the bureau determines that vocational rehabilitation is necessary and feasible, the bureau shall make an award of rehabilitation services by order, under chapter 28-32. Within sixty days of receipt of the final vocational consultant's report, the bureau shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to lost-time and vocational rehabilitation services. The bureau shall establish, by administrative rule, an hourly rate to compensate a worker's an employee's attorney from the date the bureau has notified the worker employee to identify a rehabilitation plan under section 65-05.1-04 be available for testing under subsection 7 of section 65-05.1-02. The bureau may establish, by administrative rule, absolute maximum fees for such representation.
2. The rehabilitation award must be within the following terms: If the appropriate priority option is short-term or long-term training, the vocational rehabilitation award must be within the following terms:
  - a. For the worker's employee's lost time, and in lieu of further temporary total, temporary partial, and permanent total disability benefits, the bureau shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the worker employee was receiving, or was entitled to receive, prior to the award.
  - b. The rehabilitation allowance must include an additional twenty-five percent while the worker employee maintains two domiciles, or meets other criteria established by the bureau by administrative rule.
  - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the bureau. Catastrophic injury includes:
    - (1) Paraplegia, quadraplegia, severe closed head injury, total blindness, or amputation of an arm or leg, which renders a worker an employee permanently and totally disabled without further vocational retraining assistance; or

- (2) Those ~~workers~~ employees the bureau so designates, in its sole discretion, provided that the bureau finds the ~~worker~~ employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from a bureau decision to designate, or fail to designate, a ~~worker~~ an employee as catastrophically injured under this subsection.
- d. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the ~~worker~~ employee resides, provided an equivalent program exists in the public college or university.
- e. The rehabilitation allowance may be paid only during such time as the ~~worker~~ employee faithfully pursues vocational retraining. The rehabilitation allowance may be suspended during such time as the ~~worker~~ employee is not faithfully pursuing the training program, or has failed academically. If the work injury itself precludes the ~~worker~~ employee from continuing training, the ~~worker~~ employee remains eligible to receive disability benefits.
- f. In the event the ~~worker~~ employee successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
- g. In the event the ~~worker~~ employee successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, an additional award, not to exceed two months disability benefit, to assist the ~~worker~~ employee with work search.
- h. If the ~~worker~~ employee successfully concludes the rehabilitation program, the ~~worker~~ employee is not eligible for further vocational retraining or total disability benefits unless the ~~worker~~ employee establishes a significant change in medical condition attributable to the work injury which precludes the ~~worker~~ employee from performing the work for which the ~~worker~~ employee was trained, or any other work for which the ~~worker~~ employee is suited. The bureau may waive the ~~provisions~~ of this section in cases of catastrophic injury defined by subdivision c of subsection 2.
- i. If the ~~worker~~ employee successfully concludes the rehabilitation program, the ~~worker~~ employee remains eligible to receive partial disability benefits, as follows:
- (1) Beginning the date at which the ~~worker~~ employee completes retraining, until the ~~worker~~ employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured ~~worker's~~ employee's average weekly wages before the injury, and the ~~worker's~~ employee's

- employee's wage-earning capacity after retraining, as measured by the average wage in the worker's employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the bureau, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the worker employee completes retraining. The benefit continues until the worker employee acquires substantial gainful employment, but in no case may exceed two years one year in duration.
- (2) Beginning the date at which the worker employee acquires substantial gainful employment in the field for which the worker employee was trained, or in a related occupation, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's employee's average weekly wages before the injury, and the worker's employee's wage-earning capacity after retraining.
  - (3) Beginning the date at which the worker employee acquires substantial gainful employment in an occupation unrelated to the worker's employee's training, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's employee's weekly wages before the injury, and the worker's employee's wage-earning capacity after retraining, as determined under paragraph 1 of this subdivision, or the worker's employee's actual postinjury wage earnings, whichever is higher.
  - (4) The partial disability benefit payable under paragraphs 1, 2, and 3 of this subdivision must be reduced so that the benefit and the worker's employee's earnings or calculated earnings capacity, together, do not exceed one hundred twenty-five percent of the average weekly wage in this state. For purposes of this subsection, the average weekly wage must be determined on the date the worker employee completes retraining or the date the worker employee acquires substantial gainful employment. The partial disability benefit so calculated is not subject to increase or decrease when the average weekly wage in this state changes.
  - (5) The partial disability benefits paid under paragraphs 1, 2, and 3 of this subdivision may not together exceed five years' one year's duration.
  - (6) For purposes of paragraph 1 of this subdivision, the date the worker employee completes retraining is defined as the date the worker employee is available for full-time work. ~~A worker~~ An employee cannot be deemed available for full-time work while the worker employee pursues education, unless such pursuit will in no way interfere with full-time work.

- (7) For purposes of paragraphs 1, 2, and 3 of this subdivision, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
- (8) The bureau may waive the five year one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c of subsection 2.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the bureau shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the bureau, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.
4. If the appropriate priority option is on-the-job training, the bureau shall pay the employee a lost-time benefit throughout the duration of the on-the-job training program. Upon completion of the training program, the bureau shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the bureau, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.

SECTION 60. A new section to chapter 65-05.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

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

SECTION 61. AMENDMENT. Section 65-05.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.2-01. Eligibility for supplementary benefits. A workers' compensation claimant who was is receiving temporary total disability benefits, permanent total disability benefits, or death benefits as of July 1, 1980, and is receiving such benefits as of July 1, 1985, and who has been receiving disability or death benefits for a period of ten consecutive

years or more as of June thirtieth of each year is eligible for supplementary benefits. Eligibility for supplementary benefits starts on July ~~1, 1985~~, first of each year and lasts for as long as the claimant is entitled to ~~workers' compensation benefits~~ permanent total disability benefits or death benefits.

SECTION 62. AMENDMENT. Section 65-05.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 63. AMENDMENT. Section 65-06-05 of the North Dakota Century Code is amended and reenacted as follows:

65-06-05. Reimbursement by state for liability in excess of premiums collected. Whenever liability on claims against the fund credited to the classification of volunteer disaster emergency trainees exceeds the amount of premiums paid into such fund, such excess liabilities shall be a general obligation of the state of North Dakota and be reimbursed to the ~~workmen's compensation~~ bureau for credit to ~~that~~ the workers' compensation fund by legislative appropriation.

SECTION 64. AMENDMENT. Section 65-06.1-04 of the North Dakota Century Code is amended and reenacted as follows:

65-06.1-04. State reimbursement for liability in excess of collected premiums. Whenever claim liability against the fund credited to the classification of civil air patrol members exceeds the amount of premiums paid into such fund, such excess liabilities shall be a general obligation of the state of North Dakota and shall be reimbursed to the ~~workmen's compensation~~ bureau for credit to ~~that~~ the workers' compensation fund through legislative appropriation.

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

4. If a former inmate receiving disability benefits under the provisions of this chapter is recommitted or sentenced by a court to imprisonment in a penal institution, the disability benefits

shall be suspended or paid during any confinement exceeding thirty consecutive days in the following manner:

- a. If the employee has no spouse or child, any right to claim disability benefits under this title during imprisonment shall cease and the term of confinement shall be deducted from the period for which disability benefits are payable to the employee.
- b. If the employee has a spouse or child, payment of disability benefits during the employee's imprisonment shall be paid to the spouse or child of the employee in the manner and in the amount provided in subsection 4 of section 65-05-17 are payable pursuant to subsection 3 of section 65-05-08.

\* SECTION 66. AMENDMENT. Section 65-08-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-08-02. Reciprocity in extraterritorial application of compensation acts of various states provided. An employee who is a resident of another state and the employer from another state is exempted from this title while such nonresident employee is temporarily within this state doing work for the nonresident employer:

1. If that employer has furnished to such employee workers' compensation insurance under the Workers' Compensation Act, or any similar act, of such other state, covering such employee's employment in this state.
2. If the extraterritorial coverage furnished by this title and granted to employers resident in this state covering employment of employees while working in such other state is recognized by such other state.
3. If the employers and employees resident in this state who are covered by this title are likewise exempted from the application of the Workers' Compensation Act, or any similar act, of such other state.

If the annual payroll expended within this state by a nonresident employer exceeds one thousand dollars then the out-of-state employer may no longer be considered as operating in this state on a temporary basis, unless there is an agreement between the North Dakota workers compensation bureau and a similar and a workers' compensation agency of the other state where the employer is a resident, and such agreement provides otherwise.

The benefits under the Workers' Compensation Act or similar laws of the other state, or other remedies under a like act or laws are the exclusive remedy against the employer for any resulting injury or death suffered by such employee while working for that employer in this state.

SECTION 67. AMENDMENT. Section 65-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

65-11-04.1. Mine foremen - Rules regarding. The ~~workmen's compensation~~ bureau may ~~promulgate, issue,~~ adopt and enforce all necessary

- \* NOTE: Section 65-08-02 was repealed by section 2 of House Bill No. 1370, chapter 718.

and proper rules for the qualification, examination, and certification of mine foremen.

\* SECTION 68. AMENDMENT. Section 65-11-06 of the North Dakota Century Code is amended and reenacted as follows:

65-11-06. Removal of safety engineer. If the workmen's compensation bureau finds that the safety engineer is negligent in his the engineer's duties, is incompetent to perform the same or is guilty of malfeasance or misfeasance in office, the bureau shall declare the office of safety engineer vacant and shall proceed in compliance with the provisions of this title to fill the vacancy.

\*\* SECTION 69. AMENDMENT. Subsection 4 of section 65-12-02 of the North Dakota Century Code is amended and reenacted as follows:

4. The workmen's compensation bureau shall establish qualifications for deputy inspectors.

SECTION 70. AMENDMENT. Subsection 4 of section 65-12-03 of the North Dakota Century Code is amended and reenacted as follows:

4. Cooperate and assist in all accident prevention programs sponsored by the workmen's compensation bureau.

SECTION 71. AMENDMENT. Section 65-12-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-12-04.1. Exempt boilers - Inspection of exempt boilers. Nothing in this chapter shall be construed to apply to:

1. Boilers subject to federal inspection or under federal control.
2. Boilers located on farms and used solely for agricultural purposes.
3. Heating boilers which are located in private residences or in apartment houses of less than six family units.
4. Hot water supply boilers with not more than two hundred thousand British thermal units per hour input and pressure not exceeding one hundred sixty pounds [72.57 kilograms] per square inch [6.45 square centimeters] gauge or temperatures not exceeding two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
5. Portable steam cleaners of the type in common use in garages.
6. Boilers of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby and not for commercial use having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which are properly equipped with a safety valve, water level indicator, and pressure gauge.

Any exempt boiler may be inspected by the chief boiler inspector when the owner, his agent, or the user of such boiler makes written request for inspection to the North Dakota workers compensation bureau.

\* NOTE: Section 65-11-06 was repealed by section 2 of Senate Bill No. 2167, chapter 719.

\*\* NOTE: Section 65-12-02 was also amended by section 2 of Senate Bill No. 2166, chapter 720.

Fees shall be imposed as provided in section 65-12-11 for inspections done pursuant to this chapter.

SECTION 72. AMENDMENT. Section 65-12-08 of the North Dakota Century Code is amended and reenacted as follows:

65-12-08. ~~Rules and regulations and penalty~~ - Penalty for violation - Hearing. The bureau shall ~~promulgate adopt rules and regulations~~ for the safe and proper installation, use, operation, and inspection of boilers subject to this chapter. The bureau shall not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with such rules ~~and regulations~~. The bureau shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules ~~and regulations~~.

Any owner or user of a boiler may request a hearing before the ~~workmen's compensation~~ bureau within fifteen days from service of an order refusing or revoking a certificate of inspection. It ~~shall be~~ is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period herein stated, the order of the bureau shall become final and not subject to further proceedings.

SECTION 73. AMENDMENT. Section 65-12-12 of the North Dakota Century Code is amended and reenacted as follows:

65-12-12. Disposition of funds. All funds collected and received under this chapter shall be paid to the state treasurer and deposited to the credit of the ~~workmen's workers'~~ compensation ~~bureau~~ fund. Any fee not paid within thirty days from the date of billing ~~shall be~~ is in default and may be collected in a civil action against ~~said~~ the defaulting party in the name of the state.

SECTION 74. AMENDMENT. Subsection 1 of section 65-13-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Board" means the ~~workers compensation~~ bureau.

SECTION 75. REPEAL. Sections 65-02-01, 65-02-01.1, and 65-02-02 of the 1989 Supplement to the North Dakota Century Code are repealed.

SECTION 76. LEGISLATIVE COUNCIL STUDY - JOB SERVICE AND WORKERS COMPENSATION CONSOLIDATION. The legislative council shall consider studying the feasibility and desirability of consolidating the workers compensation bureau with job service North Dakota and the amount required to be appropriated from the general fund to implement any consolidation. If a study is conducted, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations proposed, to the fifty-third legislative assembly.

SECTION 77. APPLICATION - EFFECTIVE DATE. Sections 55, 57, 58, and 59 of this Act apply to any rehabilitation award made on or after the effective date of this Act, irrespective of the date of injury. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 28, 33, and 75 of this Act and the amendment to subsections 6 and 11 of section 65-01-02 as provided by section 23 of this Act becomes effective on July 1, 1993.

Section 32 of this Act becomes effective on January 1, 1994. The remainder of this Act is retroactive to July 1, 1991. Any moneys needed to implement the consolidation of the workers compensation bureau and job service North Dakota must be appropriated out of the general fund, for that purpose, by the fifty-third legislative assembly.

Approved April 17, 1991  
Filed April 18, 1991

**CHAPTER 715**

SENATE BILL NO. 2146  
(Committee on Appropriations)  
(At the request of the Workers Compensation Bureau)

**WORKERS' COMPENSATION INFORMATION FUND**

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to the establishment of an information fund for the workers compensation bureau; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Information fund - Continuing appropriation. There is hereby created a fund to be known as the information fund. The workers compensation bureau shall deposit into this fund all moneys received from private citizens, businesses, associations, and corporations for providing these entities with publications and statistical information concerning workers' compensation matters. The information must be provided at cost. The moneys in the fund are appropriated, as a standing and continuing appropriation, to the workers compensation bureau to pay publication and statistical processing expenses incurred by the bureau. If on the first day of July in any year the amount of money in the information fund is more than ten thousand dollars, the amount in excess of ten thousand dollars must be transferred to the bureau's general fund.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1991.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 716

HOUSE BILL NO. 1321  
 (Representatives Dalrymple, Bernstein)  
 (Senators Stenehjem, Meyer)

### WORKERS' COMPENSATION PREMIUMS

AN ACT to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to calculation of employer's premiums; to amend and reenact section 65-04-04 of the North Dakota Century Code, relating to the basis for establishing workers' compensation premiums; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

65-04-04. Employers obligated to pay premiums - ~~Determination of premiums~~— Premium receipts and certificates to be mailed. Each employer subject to ~~the provisions of~~ this title shall pay into the fund annually the amount ~~or of~~ premiums determined and fixed by the bureau for the employment or occupation of ~~such the employer, which.~~ The amount shall must be determined by the classifications, rules, and rates made and published by the bureau and ~~shall~~ must be based on a proportion of the annual expenditure of money by ~~such the employer~~ for the service of persons subject to the provisions of this title; ~~provided, however, that the computation of such premiums shall not be based upon any premium wages in excess of the basic hourly rate of pay or any annual remuneration, in whatever form, in excess of the sum of thirty six hundred dollars paid to any employee by any employer.~~ A receipt or certificate specifying that ~~such the~~ payment has been made ~~shall~~ must be mailed to ~~such the~~ employer by the bureau immediately after ~~such the~~ payment is made, and ~~such the~~ receipt or certificate, attested by the seal of the bureau, ~~shall be is~~ prima facie evidence of the payment of the premium. The bureau shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of ~~such that~~ entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates ~~and for.~~ For the purpose of effectuating such different or specified due dates the bureau may carry new or current risks for a period of less than one year and not to exceed fifteen months, either by request of the employer or action of the bureau.

SECTION 2. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Basis of calculating premiums.

1. For each year, the amount of an employee's wages subject to premium calculations must be determined as an amount equal to seventy

\* NOTE: Section 65-04-04 was also amended by section 32 of Senate Bill No. 2206, chapter 714.

percent of the statewide average annual wage, hereafter referred to as limited payroll, rounded to the nearest one hundred dollars, determined by the bureau on or before July first as calculated by job service North Dakota under subsection 3 of section 52-04-03.

2. The rates for each classification must be determined by:
  - a. Estimating the revenue needed by each employment classification;
  - b. Estimating the total limited payroll to be reported by all employers in each employment classification for the year;
  - c. Dividing the estimated revenue needed by an employment classification by the estimated total limited payroll in that classification to determine the required average premium for that classification rate; and
  - d. Determining the maximum and minimum rates for each employment classification by:
    - (1) Multiplying the required average premium rate by one and seventy-five hundredths to get the maximum rate assigned to an employer with a negative experience rating; and
    - (2) Multiplying the required average premium rate by twenty-five hundredths to get the minimum rate assigned to an employer with a positive experience rating.

SECTION 3. EFFECTIVE DATE. The bureau shall implement the premium calculation system established in this Act by July 1, 1992.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 717

HOUSE BILL NO. 1086  
(Committee on Judiciary)

(At the request of the Department of Corrections and Rehabilitation)

### INMATE DEFINED

AN ACT to amend and reenact section 65-06.2-01 of the North Dakota Century Code, relating to the definition of an inmate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

65-06.2-01. Inmate defined. For the purposes of this chapter, an inmate is a person who is confined against the inmate's will in a city or county penal institution or is a person who, as a criminal defendant before a court, is ordered or elects to perform public service for a city or county in conjunction with or in lieu of a jail sentence. The term inmate shall not include an individual injured while incarcerated in the North Dakota state penitentiary or any of its affiliated facilities or an individual injured in a fight, riot, recreational activity, or other incident not directly related to the inmate's work assignment.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 718

HOUSE BILL NO. 1370  
(Representatives Bernstein, Schmidt, Byerly)  
(Senators Tennefos, Dotzenrod)

## EXTRATERRITORIAL WORKERS' COMPENSATION COVERAGE

AN ACT to amend and reenact section 65-08-01 of the North Dakota Century Code, relating to extraterritorial workers' compensation coverage; to repeal section 65-08-02 of the North Dakota Century Code, relating to reciprocity in extraterritorial application of workers' compensation acts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-08-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-08-01. Extraterritorial coverage; ~~when~~ - When and how furnished.

1. Compensation may be paid on account of injuries occurring outside this state or because of death due to an injury occurring outside of this state only when:
  - a. A North Dakota employee is a duly qualified peace officer of this state who received injury or was killed outside of this state in the course of his employment.
  - b. A North Dakota employee sustains an injury beyond the borders of this state in a service which is incidental to and is referable to the principal employment; the situs of which is within North Dakota.
  - c. A North Dakota employer and the bureau previously shall have contracted for insurance protection for employees while working outside of this state in the employment in which the injury occurred; which employment is incidental to or referable to the principal employment the localization and situs of which is not in North Dakota.
  - d. A North Dakota employer or his authorized agent has hired an employee, who is a resident of another state, for temporary employment the situs of which is located in another state, and where such temporary employment is necessary to the principal employment of such employer; provided that such other state recognizes the coverage under this title as a sole remedy of the employee against the employer for such injury or death.
2. If the injury is sustained at an identifiable out-of-state jobsite, the services rendered and injury sustained may not be deemed to be incidental and referable to the North Dakota employment, even if

the contractual relationship between employer and employee was entered in North Dakota:

- 3- ~~An employer of over-the-road truck drivers will be deemed to be a North Dakota employer only if:~~
- a- ~~The employer's trucking business has an office, operates, and dispatches from North Dakota; and~~
  - b- ~~The employer retains control over the driver, and does not exclusively lease the driver to out-of-state employers.~~
1. An employee who suffers an injury while working outside this state, on account of which the employee or the employee's dependents would have been entitled to workers' compensation benefits provided by this title had such injury occurred within this state, is entitled to benefits, or that employee's dependents in the event of the employee's death are entitled to benefits if at the time of injury:
- a. The employment is principally localized in this state, as determined by the following:
    - (1) The employer has a place of business in this state;
    - (2) The employee regularly works at or from that place of business;
    - (3) The employment contract is entered in this state; and
    - (4) In the case of an employee leasing company, the company retains control over the employee and does not lease the employee to an out-of-state employer;
  - b. The employee is working under a contract of hire, made in this state in employment not principally localized in any state, if:
    - (1) The employer has a place of business in this state;
    - (2) The employment contract is entered in this state; and
    - (3) In the case of over-the-road trucking, the employer retains control over the driver, dispatches employees from this state, and does not lease the driver to out-of-state employers; but trip leasing does not end coverage;
  - c. The employee is working under a contract of hire made in this state in employment principally localized in another state and that state's workers' compensation law is not applicable to the employer, as provided by a reciprocal agreement;
  - d. The employee is working under a contract of hire made in this state for employment outside the United States and the workers' compensation law of that other jurisdiction is not applicable to the employer; or
  - e. The employee is a resident of another state, and is hired by a North Dakota employer or that employer's authorized agent for

- temporary employment, the situs of which is located in another state, and the temporary employment is necessary to the principal employment of the North Dakota employer, provided that the other state recognizes the coverage under this title as the sole remedy of the employee against the employer for the injury or death.
2. The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or the employee's dependents otherwise entitled on account of the injury or death to workers' compensation benefits of this state bars a claim for benefits under this title.
  3. An employment relationship that is principally localized outside of this state is exempt from this title while the employee is temporarily within this state unless the workers' compensation law of the state in which the employment is principally localized provides that the workers' compensation remedy in this state is the exclusive remedy for the employee or the dependents of an employee who died as the result of an injury in this state.
  4. An employer whose employment results in significant contacts with this state shall acquire workers' compensation coverage in this state unless a reciprocal agreement between the states is entered which provides that the other state will likewise recognize that an employment relationship entered into in this state is exempted from the application of the workers' compensation law of the other state. An employment has significant contacts with this state when (a) the employee earns or would have been expected to earn twenty-five percent or more of the employee's gross annual wage or income from that employer from services rendered in this state; or (b) if no employee earns twenty-five percent of the employee's gross annual income from that employment within this state, the employer's gross annual payroll in a calendar year in this state is at least one hundred thousand dollars. Under this subsection, an employee injured in this state may elect to file a claim in this state notwithstanding that the employee had another remedy in the state in which the employment was principally localized. Benefits paid under the other state's workers' compensation law, however, bar benefits in this state, unless benefits pursuant to the other state's act are paid only to supplement benefits under this title.

\* SECTION 2. REPEAL. Section 65-08-02 of the 1989 Supplement to the North Dakota Century Code is repealed.

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

Approved March 27, 1991  
Filed March 28, 1991

\* NOTE: Section 65-08-02 was amended by section 66 of Senate Bill No. 2206, chapter 714.

## CHAPTER 719

SENATE BILL NO. 2167  
(Committee on Industry, Business and Labor)  
(At the request of the Workers Compensation Bureau)

### SAFETY ENGINEER

AN ACT to amend and reenact subsection 5 of section 65-11-04 of the North Dakota Century Code, relating to the duty of the safety engineer to study accidents; and to repeal sections 65-11-02, 65-11-03, and 65-11-06 of the North Dakota Century Code, relating to the qualifications, salary, and removal of the safety engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 65-11-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Study ~~each accident~~ accidents to overcome ~~its cause~~ their causes.

\* SECTION 2. REPEAL. Sections 65-11-02, 65-11-03, and 65-11-06 of the North Dakota Century Code are repealed.

Approved April 2, 1991  
Filed April 4, 1991

\* NOTE: Section 65-11-06 was amended by section 68 of Senate Bill No. 2206, chapter 714.

## CHAPTER 720

SENATE BILL NO. 2166  
(Committee on Industry, Business and Labor)  
(At the request of the Workers Compensation Bureau)

### BOILER INSPECTION

AN ACT to amend and reenact sections 65-12-01, 65-12-02, 65-12-06, and 65-12-11 of the North Dakota Century Code, relating to the appointment of the chief and deputy boiler inspectors, inspection of steam traction engines, and boiler inspection fees; and to repeal section 65-12-13 of the North Dakota Century Code, relating to bonding of the boiler inspector.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-12-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-12-01. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction. The director shall ~~appoint~~ employ a chief boiler inspector and ~~such~~ deputy inspectors ~~as necessary in accordance with section 65-02-05~~. The chief boiler inspector shall have jurisdiction over all boilers in this state except as otherwise provided.

\* SECTION 2. AMENDMENT. Section 65-12-02 of the North Dakota Century Code is amended and reenacted as follows:

65-12-02. Qualifications of chief boiler inspector - Deputy inspectors. No person ~~shall be~~ is eligible to the office of chief boiler inspector unless ~~he~~ that person:

1. ~~Has had at least ten years' experience in the construction, maintenance, or repair of high pressure boilers, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector within five years immediately preceding his appointment the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the director.~~
2. ~~Shall hold~~ Holds a commission issued by the national board of boiler and pressure vessel inspectors or ~~shall obtain such~~ obtains the commission within one year after the date of appointment by the bureau ~~director~~.

\* NOTE: Section 65-12-02 was also amended by section 69 of Senate Bill No. 2206, chapter 714.

3. ~~Shall~~ Is not be directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
4. The ~~workmen's~~ workers' compensation bureau shall establish qualifications for deputy inspectors which are not inconsistent with the requirements of the position.

SECTION 3. AMENDMENT. Section 65-12-06 of the North Dakota Century Code is amended and reenacted as follows:

65-12-06. Certificate of inspection - Certificate to be posted - Inspection. A certificate of inspection for each boiler inspected shall be issued by the bureau upon receipt of an inspection report certifying that said boilers are in a safe condition to be operated. No certificate of inspection shall be issued for any boiler not in a safe condition to be operated. Such inspection certificate shall be valid for a period of not more than twelve months for power boilers and twenty-four months for low pressure boilers and steam traction engines except that a two-month grace period shall be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may, ~~at his~~ by discretion, issue a short-term certificate. Each certificate of inspection shall be posted conspicuously under glass in the boiler room or adjacent to such boiler.

Each boiler of one hundred thousand pounds [45,359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined that the owner or user has complied with the recordkeeping requirements hereafter prescribed, shall be inspected at least once every twenty-four months internally and externally while not under pressure, and at least once every eighteen months externally while under pressure. At any time a hydrostatic test shall be deemed necessary to determine the safety of a boiler, the tests shall be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of such a boiler of one hundred thousand pounds [45,359.24 kilograms] per hour or more capacity desiring to qualify for twenty-four months inspection shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefore, and the chemical physical laboratory analysis of samples of the boiler water taken at regular intervals of not more than forty-eight hours of operation as will adequately show the condition of the water and any elements or characteristics thereof which are capable of producing corrosion or other deterioration of the boiler or its parts. In the event an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

SECTION 4. AMENDMENT. Section 65-12-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-12-11. Inspection fees. The owner or user of a boiler required by this chapter to be inspected by the boiler inspector shall pay to the bureau, upon completion of inspection, fees, or a combination of fees, which must be

determined annually by the bureau. The bureau may determine and annually adjust a fee scale for the internal inspection of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than ~~seventy-five~~ one hundred dollars may be charged or collected for any ~~and all inspections~~ one inspection of any boiler in any one year except for special inspections made upon request. Not more than seventy-five dollars may be charged or collected for any one inspection of steam traction engines in any one year except for special inspections made upon request. All other inspections made by the boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged for at a rate not to exceed one hundred eighty-five dollars per day or one hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09.

The bureau shall charge a fee of ten dollars for each certificate of inspection issued as the result of inspections authorized under section 65-12-05. The fees are the liability of the insurance company or self-insured company and must be paid in accordance with rules established by the bureau.

SECTION 5. REPEAL. Section 65-12-13 of the North Dakota Century Code is repealed.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 721

SENATE BILL NO. 2210  
(Committee on Judiciary)  
(At the request of the Workers Compensation Bureau)

### CRIME VICTIMS REPARATIONS PROGRAM

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20-51, a new subsection to section 27-20-52, a new subdivision to subsection 6 of section 65-13-06, and two new sections to chapter 65-13 of the North Dakota Century Code, relating to the inspection of juvenile records by professional staff of the crime victims reparation program and the ability to accept gifts and confidentiality of records of reparation applicants; to amend and reenact subdivision a of subsection 5 of section 65-13-03, subdivision f of subsection 7 of section 65-13-03, subsection 2 of section 65-13-05, and sections 65-13-13 and 65-13-20 of the North Dakota Century Code, relating to crime victims reparations; and to provide a continuing appropriation for the Crime Victims Reparations Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 27-20-51 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 65-13.

SECTION 2. A new subsection to section 27-20-52 of the North Dakota Century Code is created and enacted as follows:

The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 65-13.

SECTION 3. AMENDMENT. Subdivision a of subsection 5 of section 65-13-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Occurs in or outside this state.

SECTION 4. AMENDMENT. Subdivision f of subsection 7 of section 65-13-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- f. "Victim" means a person who suffers bodily injury or death as a result of (1) criminally injurious conduct, (2) the good faith effort of any person to prevent criminally injurious conduct, or (3) the good faith effort of any person to apprehend a

person suspected of engaging in criminally injurious conduct. "Victim" does not mean a person who suffers bodily injury or death as a result of operating a motor vehicle, when, at the time of the injury or death, the person was not in compliance with applicable state laws and rules concerning motor vehicle insurance coverage and the person was at least partially at fault for causing the accident.

SECTION 5. AMENDMENT. Subsection 2 of section 65-13-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The duty to adopt rules to implement this chapter. To adopt and enforce such rules, not inconsistent with the provisions of this chapter, as may be necessary to carry out the provisions of this chapter. All fees on claims for legal, medical, mental health, and hospital services, and the manner in which economic loss benefits are calculated, must be in accordance with the schedules of fees adopted by the board.

SECTION 6. A new subdivision to subsection 6 of section 65-13-06 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

To the extent the board deems reasonable when it is determined that a victim was under the influence of an alcoholic beverage or a controlled substance at the time the criminally injurious conduct occurred and the victim's intoxication was a factor causing the criminally injurious conduct.

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

65-13-13. Attorney's fees. As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous or that the appeal was unsuccessful. Attorney fees are not allowable for assisting a claimant in filing a claim. Awards of attorney's fees shall be in addition to awards of reparations and may be made whether or not reparations are awarded. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.

SECTION 8. AMENDMENT. Section 65-13-20 of the North Dakota Century Code is amended and reenacted as follows:

65-13-20. Filing false claim or false statements - Penalty. Any claimant who knowingly makes a false claim, or a false statement in connection with any claim, is guilty of a class A misdemeanor and upon conviction shall, in addition to serving any punishment as. In addition to any other penalties provided by law, the claimant who violates this section shall forfeit any compensation paid under this chapter and reimburse the program for any benefits paid.

SECTION 9. A new section to chapter 65-13 of the North Dakota Century Code is created and enacted as follows:

Gifts, grants, and bequests - Gift fund - Appropriation. The board may accept on behalf of the state all gifts, grants, or bequests of real or personal property tendered to the state for any purpose pertaining to the activities of the board in implementing this chapter. There is established in the state treasury a special fund designated as the crime victims gift fund. All gifts, grants, and bequests of property or money, and any interest occurring thereon, must be placed in the crime victims gift fund. The fund may be used and disbursed by the board in accordance with the terms of the donation or, if there are no terms, for costs and expenses incurred by the board in the implementation of this chapter.

SECTION 10. A new section to chapter 65-13 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of records. All records of the board concerning the application for or award of reparations under this chapter are confidential and are not open to public disclosure. However, inspection of these records must be permitted by:

1. Law enforcement officers when necessary for the discharge of their official duties;
2. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant;
3. Physicians or health care providers treating or examining persons claiming benefits under this title, or physicians giving medical advice to the board regarding any claim may, at the discretion of the board, inspect the claim files and records of persons;
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the board at any stage of the proceedings on any matter pertaining to the administration of this title.
5. Juvenile or law enforcement records obtained under chapter 27-20 may be released to the parties, their counsel, and representatives in proceedings before the board and must be sealed at the conclusion of the proceedings.

Approved April 5, 1991  
Filed April 8, 1991