

WORKERS' COMPENSATION

CHAPTER 613

HOUSE BILL NO. 1039
(Legislative Council)
(Interim Industry, Business and Labor Committee)

WORKERS COMPENSATION BUREAU-JOB SERVICE MERGER REPEAL

AN ACT to amend and reenact subsection 6 of section 65-01-02, sections 65-02-07, and 65-04-10 of the North Dakota Century Code and section 77 of chapter 714 of the 1991 Session Laws of North Dakota, relating to the workers compensation bureau and the effective date of the merger of the workers compensation bureau and job service North Dakota; to repeal sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 27, 28, 33, and 75 of chapter 714 of the 1991 Session Laws of North Dakota and the amendments to subsections 6 and 11 of section 65-01-02 of the North Dakota Century Code as provided by section 23 of chapter 714 of the 1991 Session Laws of North Dakota, relating to the references to the workers compensation bureau and job service North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Bureau" means the North Dakota workers compensation bureau, or ~~any~~ the director, or any department heads, assistants, or employees of the bureau designated by the director, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.

SECTION 2. AMENDMENT. Section 65-02-07 of the 1991 Supplement to 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 "~~Workmen's~~ Workers Compensation Bureau - North Dakota - Seal".

SECTION 3. AMENDMENT. Section 65-04-10 of the 1991 Supplement to 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~~ the 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~~ workers compensation bureau 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 4. AMENDMENT. Section 77 of chapter 714 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

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.~~

SECTION 5. REPEAL. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 27, 28, 33, and 75 of chapter 714 of the 1991 Session Laws of North Dakota and the amendments to subsections 6 and 11 of section 65-01-02 of the North Dakota Century Code as provided by section 23 of chapter 714 of the 1991 Session Laws of North Dakota are hereby repealed.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 614

SENATE BILL NO. 2200
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION BENEFITS AND PROCEDURES

AN ACT to create and enact a new subsection to section 65-01-02 of the North Dakota Century Code, relating to workers' compensation definitions; to amend and reenact paragraph 2 of subdivision b of subsection 8 of section 65-01-02, subsection 30 of section 65-01-02, sections 65-01-11, 65-02-15, 65-02-17, 65-02-18, 65-04-04, subdivision a of subsection 2 of section 65-05-08.1, section 65-05-09.2, and subsection 2 of section 65-05-25 of the North Dakota Century Code, relating to workers' compensation benefits and procedures; to provide for a legislative council study; and to repeal section 65-02-16 of the North Dakota Century Code, relating to removal of a workers' compensation binding arbitration panel member.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Paragraph 2 of subdivision b of subsection 8 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (2) Any injury caused by the use of ~~narcotics or~~ intoxicants or the illegal use of controlled substances.

SECTION 2. A new subsection to section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

"Seasonal employment" includes an occupation that has periods of forty-five consecutive days of not receiving wages.

SECTION 3. AMENDMENT. Subsection 30 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30. "Gross Average weekly wage" means the weekly wages the 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 employee's wages are not fixed by the week, they must be determined ~~in the following manner by using the first applicable formula from the schedule below:~~
 - a. The "average weekly wage" of a self-employed employee is determined by the following formula: net profits based on preceding tax year or preceding fifty-two weeks whichever is higher, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.
 - b. Hourly or daily rate multiplied by number of hours or days worked per seven day week;

- b- c. Monthly rate multiplied by twelve months and divided by fifty-two weeks;
- e- d. Biweekly rate divided by two;
- d- e. If the average weekly earnings wage 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- f. If there are special circumstances under which the average weekly wages cannot be reasonably and fairly determined by applying subdivisions a through d e, 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.

SECTION 4. AMENDMENT. Section 65-01-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1 65-01-11. Burden of proof in compensation matters - Death certificate. If the bureau or an employer claims that an employee is not entitled to the benefits of the North Dakota Workers' Compensation Law by reason of the fact that the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary ~~intoxication of impairment caused by use of alcohol or illegal use of a controlled substance by~~ the employee, the burden of proving such exemption or forfeiture is upon the bureau or upon the person alleging the same; however, a blood alcohol concentration level at or above the ~~legal intoxication limit as defined in subsection 3 of section 39-20-07 set by the United States secretary of transportation in 49 CFR 383.52 or a level of an illegally used controlled substance sufficient to cause impairment found by a test required by a physician, qualified technician, chemist, or registered nurse and performed as required by the United States secretary of transportation under 49 CFR part 40, at or above the cutoff level in part 40,~~ creates a rebuttable presumption that the injury was due to ~~intoxication impairment caused by the use of alcohol or the illegal use of a controlled substance.~~ An employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the ~~employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired, the employee forfeits all entitlement to workers' compensation benefits arising out of that injury.~~ Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to participate in the same. In the event of a claim for death benefits the official death certificate must be considered as evidence of death and may not be used to establish the cause of death. If the employee can prove by a preponderance of the evidence, within one year of a denial

¹ NOTE: Section 65-01-11 was also amended by section 8 of House Bill No. 1098, chapter 387.

based upon impairment caused by the use of alcohol or the illegal use of a controlled substance, that the employee has successfully completed treatment with a licensed addiction facility, the employee's benefits must be reinstated. Costs for treatment under this section may not be paid by the bureau.

SECTION 5. AMENDMENT. Section 65-02-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~65-02-15. Workers' compensation binding arbitration panel—Membership - Qualified arbitrator - Regions. 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 bureau shall divide the state into four regions for the purpose of holding arbitration proceedings. 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. The process for choosing arbitrators and qualifications for arbitrators must be outlined by rule. The employee can request and the bureau may allow a change of arbitrator upon a showing of just cause.~~

SECTION 6. AMENDMENT. Section 65-02-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~65-02-17. 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 or employer 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~~ Binding arbitration is permitted only with the consent of the nonrequesting party.

SECTION 7. AMENDMENT. Section 65-02-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-18. Administrative orders - ~~Decisions of binding arbitration panel~~ Binding arbitration decisions - Appeals. An appeal of an administrative order is subject to section 28-32-14. ~~A decision of the workers' compensation resulting from binding arbitration panel~~ is final and nonreviewable by ~~a district~~ any court, except as provided in section 65-05-04.

SECTION 8. AMENDMENT. Section 65-04-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

² **SECTION 9. AMENDMENT.** Subdivision a of subsection 2 of section 65-05-08.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The medical basis established by medical evidence supported by objective medical findings for the certification of disability;

² NOTE: Section 65-05-08.1 was also amended by section 1 of House Bill No. 1136, chapter 627.

SECTION 10. AMENDMENT. Section 65-05-09.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-09.2. Retirement offset. If ~~a claimant~~ an employee is entitled to permanent total disability benefits and social security retirement benefits under 42 U.S.C. sections 402 and 405, the aggregate wage-loss benefits payable under this title must be determined in accordance with this section. The employee's social security retirement offset must equal forty percent of the calculated ratio of the employee's average weekly wages, as calculated on the commencement of the first, or recurrent, disability under section 65-05-09, to the current state's average weekly wage. Any offset calculated cannot exceed forty percent of the employee's weekly social security retirement benefit. If a claim has been accepted on an aggravation basis and the ~~worker~~ employee is eligible for social security benefits, the bureau's offset must be proportionally calculated. An overpayment must be recouped in the same manner as set forth in section 65-05-09.1. ~~The provisions of this section are effective for workers who retire on or after July 1, 1989. This section applies to an employee who becomes entitled to and receives social security retirement benefits after June 30, 1989, or who receives social security retirement benefits that have been converted from social security disability benefits by the social security administration after June 30, 1989. A conversion by the bureau from offsetting an employee's social security disability benefits to offsetting an employee's social security retirement benefits under this section may not result in a decrease in the aggregate amount of benefits the employee receives from both sources.~~

SECTION 11. AMENDMENT. Subsection 2 of section 65-05-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 ~~inapplicable~~.

SECTION 12. LEGISLATIVE COUNCIL STUDY. During the 1993-94 interim, the legislative council shall study the feasibility and desirability of replacing the workers' compensation permanent partial impairment benefit system with a permanent partial disability system and of requiring that the medical basis for certifying disability be established by medical evidence supported by objective medical findings and shall study the impact of consortium awards on third-party subrogation settlements and cases. The workers compensation bureau shall develop rules and procedures to implement a permanent partial disability system and present those rules and procedures to the legislative council or a designated committee for review as part of the interim study.

SECTION 13. REPEAL. Section 65-02-16 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 615

SENATE BILL NO. 2396
(Senators O'Connell, Holmberg, Tallackson)
(Representatives Dobrinski, Grosz, Martin)

WORKERS' COMPENSATION DEFINITIONS

AN ACT to amend and reenact subsections 14 and 15 of section 65-01-02 of the North Dakota Century Code, relating to the definitions of employee and employer for purposes of workers' compensation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ SECTION 1. AMENDMENT. Subsections 14 and 15 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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.

¹ NOTE: Subsection 15 of section 65-01-02 was also amended by section 105 of Senate Bill No. 2223, chapter 54.

- (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.
 - (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- c. Persons employed by a 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, but not members of the board of directors of a business corporation who are not also officers of the corporation.

- g. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.

Approved March 30, 1993

Filed April 1, 1993

CHAPTER 616

HOUSE BILL NO. 1310
(Representatives Porter, Gorman, Hanson, Kelsch)
(Senator Krebsbach)

NEWS DELIVERY UNDER WORKERS' COMPENSATION

AN ACT to create and enact a new paragraph to subdivision b of subsection 14 of section 65-01-02 of the North Dakota Century Code, relating to exclusion of newspaper definition of employee for purposes of workers' compensation coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new paragraph to subdivision b of subsection 14 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 617

HOUSE BILL NO. 1262
(Representative Dorso)
(Senator Krebsbach)

WORKERS' COMPENSATION WAGES DEFINED

AN ACT to amend and reenact subsection 29 of section 65-01-02 of the North Dakota Century Code, relating to the definition of wages for workers' compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 29 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

a. ~~The term 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 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 from all employment reportable by employers to the internal revenue service as earned income for federal income tax purposes and lost as the result of a compensable work injury.~~

Approved April 2, 1993

Filed April 2, 1993

CHAPTER 618

HOUSE BILL NO. 1165
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION INFORMAL DECISIONS

AN ACT to amend and reenact subsections 4 and 7 of section 65-01-14 of the North Dakota Century Code, relating to workers' compensation informal decisions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 7 of section 65-01-14 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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~~ the parties 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~~ sixty 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.
7. The bureau shall issue an administrative order under chapter 28-32 when it makes a permanent partial impairment award ~~or a~~ vocational award, or when it 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.~~ The bureau shall issue an informal decision on an initial determination of disability benefits.

SECTION 2. EFFECTIVE DATE. This Act is effective on August 1, 1993, for all claims irrespective of injury date.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 619

HOUSE BILL NO. 1163
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION RULES AND ATTORNEYS' FEES

AN ACT to amend and reenact section 65-02-08 of the North Dakota Century Code, relating to workers compensation bureau rulemaking power and payment of attorneys' fees; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-08 of the 1991 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 adopt such rules, not inconsistent with this title, as may be necessary to carry out 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 a reasonable maximum hourly rate and a maximum fee to compensate claimants' attorneys for legal services following constructive denial of a claim, notice of informal decision, 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 sixty~~ days of the date when all elements of initial 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. Satisfaction of elements of filing must be defined by administrative rule. All attorneys' fees and costs must be paid from the bureau general fund. The bureau shall pay attorneys' fees as follows:

1. The employee has prevailed in binding dispute resolution under section 65-02-20;
2. The dispute is referred to binding arbitration under section 65-02-17;
3. The employee has prevailed after reconsideration of an informal decision under section 65-01-14;
4. The employee has prevailed after an administrative hearing under chapter 28-32;
5. If there has been constructive denial of a claim, the bureau shall only pay attorneys' fees from the occurrence of the constructive denial until the bureau issues a notice of informal decision or administrative order;
or

6. As otherwise provided by administrative rule.

The bureau shall adopt administrative rules for the payment of an employee's attorney's fees when an employee's request for binding arbitration is rejected by the employer. 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 2. EFFECTIVE DATE. This Act is effective on August 1, 1993, for all claims irrespective of injury date.

Approved April 9, 1993

Filed April 9, 1993

CHAPTER 620

SENATE BILL NO. 2040
(Legislative Council)
(Interim Industry, Business and Labor Committee)

WORKERS' COMPENSATION SERVICES, CLAIMS, AND RECORDS

AN ACT to amend and reenact sections 65-02-19, 65-02-21, 65-05-01, and 65-05-32 of the North Dakota Century Code, relating to contracts for administrative and managed care services, to the time limit for filing a claim for workers' compensation, and to privacy of records and hearings concerning workers' compensation matters; to provide for application of this Act; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-19. 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 July 1, 1991, 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. The bureau may renew, renegotiate, or rebid a contract based upon contract performance, cost, and the best interests of an employee who suffers a compensable injury. The bureau shall rebid the contract for the biennium beginning July 1, 1995, and shall rebid subsequent contracts at least every four years.~~

SECTION 2. AMENDMENT. Section 65-02-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-21. 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 July 1, 1991.~~ The solicitation must include a description of the program and the services expected of the managed care administrator. ~~By December 1, 1991, the~~ 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. The bureau may renew, renegotiate, or rebid a contract based upon contract performance, cost, and the best interests of an employee who suffers a compensable injury. The bureau~~

shall rebid the contract for the biennium beginning July 1, 1995, and shall rebid subsequent contracts at least every four years.

SECTION 3. AMENDMENT. Section 65-05-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-01. Claims for compensation - When and where filed. All original claims for compensation must be filed by the injured ~~worker~~ employee, or someone on the injured ~~worker's~~ employee's behalf, within one year after the injury or within two years after the death. The date of injury for purposes of this section ~~must be~~ is the actual date of injury when ~~such~~ that date can be determined with certainty by the claimant and bureau. When the actual date of injury cannot be determined with certainty, the date of injury ~~must be~~ is the first date that a reasonable person knew or should have known that the ~~injury was related to employment~~ employee suffered a compensable injury and the employee was informed by the employee's treating health care provider that the employee's work activities are a substantial contributing factor in the development of the employee's injury or condition. No compensation or benefits may be allowed under ~~the provisions of~~ this title to any person, except as provided in section 65-05-04, unless ~~he or she~~ that person, or someone on ~~his or her~~ that person's behalf, files a written claim ~~therefor~~ for compensation or benefits within the time specified in this section. ~~Such~~ A claim must be filed by:

1. Delivering it at the office of the bureau or to any person whom the bureau by regulation may designate; or
2. Depositing it in the mail properly stamped and addressed to the bureau or to any person whom the bureau by regulation may designate.

SECTION 4. AMENDMENT. Section 65-05-32 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the bureau.
2. Employers or their duly authorized representatives may review and have access to any files of their own injured workers.
3. Physicians or health care providers treating or examining workers claiming benefits under this title, or physicians giving medical advice to the bureau regarding any claim may, at the discretion of the bureau, inspect the claim files and records of injured workers.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the bureau at any stage of the proceedings on any matter pertaining to the administration of this title.

5. The claimant's name; social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the bureau for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.
6. At the request of a claimant, the bureau may close the medical portion of a hearing to the public.

SECTION 5. APPLICATION OF ACT. Section 4 of this Act applies to all claims irrespective of the date information is requested.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 621

HOUSE BILL NO. 1138
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS COMPENSATION BUREAU MANAGED CARE PROGRAM

AN ACT to amend and reenact section 65-02-20 of the North Dakota Century Code, relating to the workers compensation bureau managed care program; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-20. 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. If an employee, employer, or medical provider disputes the recommendation of the managed care administrator, the employee, employer, or medical provider may request binding dispute resolution on the recommendation. The bureau shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-14 or 65-02-17. A dispute resolution decision under this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion by the dispute resolution panel. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

SECTION 2. APPLICATION OF ACT. This Act applies to all managed care recommendations that occur after the adoption of administrative rules providing for the procedures for dispute resolution. Final administrative rules must be adopted by January 1, 1994.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 622

SENATE BILL NO. 2199
 (Industry, Business and Labor Committee)
 (At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION PREMIUMS AND EXPERIENCE RATING

AN ACT to amend and reenact sections 65-04-04.2, 65-04-17, and 65-07-03 of the North Dakota Century Code, relating to determination of weekly wage for workers compensation premium purposes, reporting of employer premiums, and calculation of the experience rating for employers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-04.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-04.2. 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 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 2. AMENDMENT. Section 65-04-17 of the North Dakota Century Code is amended and reenacted as follows:

65-04-17. Experience rating of employers. The bureau may establish a system for the experience rating of risks of employers contributing to the fund, and such system shall provide for the credit rating and the penalty rating of individual risks within such limitations as the bureau may establish from time to time.

In calculating the experience rating, the bureau shall determine 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. AMENDMENT. Section 65-07-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as determined by said person outlined in subdivision a of subsection 31 of section 65-01-02. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.
2. A reasonable wage as determined by the bureau for said employees in the same class of industry that the volunteer organization is engaged.

Approved March 31, 1993
Filed April 1, 1993

CHAPTER 623

HOUSE BILL NO. 1141
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION PREMIUM RATES

AN ACT to repeal section 32 of chapter 714 of the 1991 Session Laws of North Dakota, relating to workers' compensation premium rate changes and payments; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 32 of chapter 714 of the 1991 Session Laws of North Dakota is repealed.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1993.

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

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 624

HOUSE BILL NO. 1367
(Representatives Dorso, Hokana)
(Senators Langley, Mutch)

WORKERS' COMPENSATION RISK MANAGEMENT

AN ACT to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to a workers' compensation premium for a risk management program; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Premium discount for implementation of preapproved risk management program. Any employer who implements or maintains risk management programs approved by the bureau is entitled to a five percent discount in the annual premium the employer must pay to the bureau for the year following the year in which the risk management programs are implemented or maintained. The bureau may not apply the discount to an employer's premium unless the bureau has approved the programs implemented by the employer.

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

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 625

HOUSE BILL NO. 1140
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION PREMIUMS LIENS

AN ACT to amend and reenact section 65-04-26 of the North Dakota Century Code, relating to workers' compensation delinquent premium lien priority and filing; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-26 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26. Lien priority and filing - Remedies available in action for delinquent premiums - Exemptions restricted. The claim of the bureau in bankruptcy, probate, insolvency, and receivership proceedings for premiums in default and penalties shall be a lien with the same priority as prior income tax liens, except that this lien shall not be enforceable against a purchaser (including a lien creditor) of real estate or personal property for valuable consideration without notice. Notice of this lien shall be filed in the place and manner provided for in section 57-38-49. A certificate of the bureau that premiums and penalties are due for the period stated in the certificate is prima facie evidence of this fact. In any action brought for the recovery of premiums in default and penalties, the remedies of garnishment or attachment, or both, shall be available. No exemptions except absolute exemptions under section 28-22-02 shall be allowed against any levy under execution pursuant to judgment recovered in ~~such~~ the action.

SECTION 2. EFFECTIVE DATE. This Act becomes effective for any levy under execution issued after August 1, 1993, irrespective of the date of judgment.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 626

HOUSE BILL NO. 1164
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION OTHER STATE BENEFITS

AN ACT to amend and reenact section 65-05-05 of the North Dakota Century Code, relating to workers' compensation payments to insured employees injured in the course of employment and to their dependents; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

65-05-05. Payments made to insured employees injured in course of employment and to their dependents. The bureau shall disburse the fund for the payment of compensation and other benefits as provided in this chapter to employees, or to their dependents in case death has ensued, who:

1. Are subject to the provisions of this title;
2. Are employed by employers who are subject to this title; and
3. Have been injured in the course of their employment.

~~Where compensation is received If an employee applies for benefits from another state for the same injury, the bureau will suspend all future benefits pending resolution of the application. If an employee is determined to be eligible for benefits through some other state act, no further compensation shall be allowed under this title unless such benefits are awarded by another state as a supplement to this state's benefits and the employee must reimburse the bureau for the entire amount of benefits paid if the award covers the same time period already reimbursed by the bureau.~~

SECTION 2. EFFECTIVE DATE. This Act is effective on August 1, 1993, for all claims irrespective of injury date.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 627

HOUSE BILL NO. 1136
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

TEMPORARY TOTAL DISABILITY VERIFICATION

AN ACT to amend and reenact section 65-05-08.1 of the North Dakota Century Code, relating to workers' compensation verification of temporary total disability; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-08.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ **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.
 - e. A doctor may not certify or verify past disability unless the doctor has examined the employee within the previous sixty days and filed those reports required by this title.
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

¹ NOTE: Section 65-05-08.1 was also amended by section 9 of Senate Bill No. 2200, chapter 614.

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 2. EFFECTIVE DATE. This Act is effective on August 1, 1993, for all claims irrespective of injury date.

Approved April 30, 1993

Filed May 3, 1993

CHAPTER 628

HOUSE BILL NO. 1335
(Representative Ness)

WORKERS' COMPENSATION SOCIAL SECURITY OFFSET

AN ACT to amend and reenact section 65-05-09.1 of the North Dakota Century Code, relating to social security offset against workers' compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-09.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-09.1. Social security offset. When an injured employee, or spouse or dependent of an injured employee, is eligible for and is receiving permanent total or temporary total disability benefits under section 65-05-09, and is also eligible for, is receiving, or will receive, benefits under Title II of the Social Security Act [42 U.S.C. 423], the aggregate benefits payable under section 65-05-09 must be reduced, but not below zero, by an amount equal as nearly as practical to one-half of such federal benefit. The federal benefit, or primary insurance amount, must be determined by the social security administration. The amount to be offset must equal the primary insurance amount rounded to the next lowest dollar less credit for either the entire amount of attorneys' fees and costs, or the fees and costs paid to an authorized representative of the employee as allowed by the social security administration, withheld from past due social security benefits or paid directly by the claimant for representation before the social security administration. The amount of the offset computed by the bureau initially must remain the same throughout the period of eligibility and may not be affected by any increase or decrease in federal benefits.

Any injured employee, or dependent of an injured employee, receiving permanent total or temporary total disability benefits under section 65-05-09 and whose benefits are offset as provided herein, is not eligible for any escalation of benefits which would adversely affect the bureau's right to offset workers' compensation benefits against social security benefits, as provided for in this chapter. This offset will become effective on January 1, 1980, provided that it meets the criteria necessary to allow states to offset federal benefits under Title II of the Social Security Act [42 U.S.C. 424a]. Providing further that:

1. If the receipt of social security benefits results in an overpayment of temporary or permanent total disability benefits by the bureau, a refund of any overpayment must be made by the injured worker or that overpayment must be taken from future temporary total or permanent total disability benefits or permanent partial impairment awards, on the current claim or any future claim filed, at a recovery rate to be determined by the bureau.
2. If a claim has been accepted on an aggravation basis and the injured worker is eligible for social security benefits, the bureau's offset must be proportionally calculated.

3. If any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under the Social Security Act, the bureau's estimate of the amount is deemed to be correct until the actual amount is established and no adjustment may be made for any period of time covered by the refusal.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 629

HOUSE BILL NO. 1139
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION REHABILITATION BIDS

AN ACT to amend and reenact section 65-05.1-06.2 of the North Dakota Century Code, relating to workers' compensation rehabilitation services bids.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05.1-06.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.2. 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~~ a biennial 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.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 630

HOUSE BILL NO. 1278
(Representatives Dorso, Mahoney, Wald)

OTHER STATES' BENEFITS

AN ACT to amend and reenact subsection 4 of section 65-08-01 of the North Dakota Century Code, relating to payment of workers' compensation benefits in another state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 65-08-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. A claim filed under this subsection is subject to section 65-05-05. The time limits within which the bureau shall issue a decision on a claim, as specified in sections 65-01-14 and 65-02-08, do not begin to run for claims filed under this section until the first date the bureau may begin to process the claim as set forth in section 65-05-05.~~

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 631

HOUSE BILL NO. 1222
(Representatives Wald, Dorso, Mahoney)
(Senators Dotzenrod, Maxson, Tallackson)

WORKERS' COMPENSATION EXTRATERRITORIAL COVERAGE

AN ACT to create a North Dakota workers' compensation insurance company; to amend and reenact section 54-17-07 of the North Dakota Century Code, relating to the duties of the industrial commission; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In sections 1 through 6 of this Act, unless the context otherwise requires:

1. "Company" means the workers' compensation insurance company or other organization established by the bureau to provide additional workers' compensation coverage.
2. "Employers' liability coverage" means an insurance product that provides coverage for injury-related claims suffered by an employee that are not covered by title 65.
3. "Extraterritorial workers' compensation coverage" means coverage provided under section 65-08-01.
4. "Incidental operations" means operations of an employer for fewer than thirty days in a state with which the employer has no other significant contacts.
5. "Other states insurance" means an insurance product that provides workers' compensation insurance coverage to an employer for that employer's employee while the employee is working at an incidental operation in a state in which the employee is eligible to file for workers' compensation benefits if the employee suffers a work-related illness or injury or dies as a result of work activities in that state.
6. "Principally localized" means the employer has a place of business in this state, the employee regularly works at or from that place of business, the employment contract is entered in that state, and in 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.

SECTION 2. Workers' compensation additional coverages. The bureau may establish a casualty insurance organization, organized as a stock or mutual company, a risk pool, a reciprocal exchange, a risk retention or purchasing group, or a reinsurer with the limited purpose of offering extraterritorial workers' compensation insurance coverage or other states' insurance. The casualty insurance organization may be established only upon the director's determination that the organization is needed to provide sufficient workers' compensation coverage for the

employees and employers of this state and upon the approval of the budget section of the legislative council. If a stock insurance company is established, the company shall meet the stock requirements of section 3 of this Act.

SECTION 3. Workers' compensation insurance company created - Stock requirements. The North Dakota workers compensation bureau may establish a stock insurance company to provide extraterritorial workers' compensation insurance, other states' insurance, and employer's liability insurance to North Dakota employers insured by the bureau. The capital stock and surplus for the company must be paid out of the workers' compensation fund. The company shall have capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. The company may not issue an insurance policy until fifty percent of the required capital stock and all of the required surplus have been paid in, and the residue of capital stock must be paid in within twelve months from the time of filing the articles of incorporation. The bureau is the sole stockholder of the company. The company must be incorporated pursuant to the laws of this state and is subject to title 26.1 unless otherwise provided.

SECTION 4. Board of directors - Members. The board of directors of the company consists of the director of the workers compensation bureau and four persons appointed by the director. The director is the chairman of the board. The chairman shall appoint a secretary-treasurer for the board. Any member of the board may be removed at any time by the director.

SECTION 5. Workers' compensation insurance to be provided. The company shall provide extraterritorial workers' compensation insurance or other states' insurance to an employer who is insured by the North Dakota workers compensation bureau. The company may exclude coverage for a state with which the workers compensation bureau has a reciprocal agreement that recognizes an employer's workers' compensation coverage in the state in which the employer's business is principally localized as being sufficient or for a state whose workers' compensation coverage is provided through an exclusive state fund.

SECTION 6. Rates - Billing. The board shall set the rates to be charged by the company for additional workers' compensation coverage. The board may consult with the workers compensation bureau and its actuary in determining the appropriate rates. The company shall incorporate its billings with the billings of the bureau to ensure that an employer receives one billing that itemizes the charges for mandatory workers' compensation coverage and for the optional additional workers' compensation insurance.

SECTION 7. AMENDMENT. Section 54-17-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-17-07. Industries under the industrial commission - Income on deposits and investments. The industrial commission shall operate, manage, control, and govern all utilities, industries, enterprises, and business projects established, owned, undertaken, administered, or operated by the state of North Dakota, except those carried on in penal, charitable, or educational institutions or those conducted pursuant to sections 1 through 6 of this Act. All income earned on state moneys that are deposited or invested to the credit of the industrial commission or any agency, utility, industry, enterprise, or business project operated, managed, controlled, or governed by the industrial commission must be added to and become a part of such moneys.

SECTION 8. EFFECTIVE DATE. This Act becomes effective on January 1, 1994.

Approved April 21, 1993
Filed April 22, 1993