

## 2007 LEGISLATION RELATING TO WORKERS' COMPENSATION

### 2007 ENACTED BILLS

**House Bill No. 1038** (Legislative Council Workers' Compensation Review Committee) increased the workers' compensation benefits available to catastrophically injured employees for adaptations to real estate, specially equipped motor vehicles, and vehicle adaptations; created an alternative calculation for additional benefits payable applicable to employees injured before August 1, 2005, who were determined to be permanently and totally disabled after July 30, 2005; expanded the qualification for death benefits for catastrophically injured employees; expanded who may qualify for a student loan under the educational revolving loan fund; and shortened the time requirements to be eligible for supplementary benefits for employees injured after December 31, 2005. (91-1; 47-0)

**House Bill No. 1140** (Representative Keiser; Senator Klein) provided for an inflation adjustment for injured employees receiving long-term temporary partial disability benefits. (91-0; 47-0)

**House Bill No. 1156** (Representatives Keiser, N. Johnson, and Porter; Senators Klein and Stenehjelm) removed the July 31, 2007, expiration date of the Workers' Compensation Review Committee. (89-0; 47-0)

**House Bill No. 1411** (Representative N. Johnson) allowed Workforce Safety and Insurance to provide benefits for adaptations to real estate, specially equipped motor vehicles, or vehicle adaptations for injured employees who are not catastrophically injured. (92-0; 44-0)

**House Bill No. 1460** (Representatives Skarphol, Carlson, and Dosch; Senator Christmann) modified the membership of the Workforce Safety and Insurance Board of Directors, transferring the employer member representing the risk management program to be an employer at large representative, providing qualifying premium levels for employer representatives are determined at the time of initial appointment, providing the employee member who received Workforce Safety and Insurance benefits must have received wage-loss benefits at some time during the 10 years before initial appointment, providing that board members whose initial appointments were after July 31, 2007, may not serve more than two consecutive terms, providing for a coordinating committee to submit to the Governor a list of three employer members for appointment, providing the Governor selects the employee board members who do not represent organized labor, providing the Governor selects the North Dakota Medical Association member from a list of three names submitted by the North Dakota Medical Association, allowing the Governor to reject the list of names submitted, and providing the new membership provisions apply to board member appointments

occurring after July 31, 2007. Additionally, the bill provided spending authority limitations for education, training, and awards. (93-1; 45-2)

**House Bill No. 1517** (Representatives Schneider and Wall; Senator Holmberg) allowed Workforce Safety and Insurance to provide an injured employee's insurer information regarding the injured employee's claim. (92-0; 47-0)

**Senate Bill No. 2021** (Governor) allowed Workforce Safety and Insurance to establish programs to advance occupational health and preventive medicine, including education, consultation, grants, scholarships, and incentives that promote superior care and treatment of the workforce in this state. (28-17; 89-0)

**Senate Bill No. 2028** (Legislative Council Budget Section) removed the requirement that Workforce Safety and Insurance make biennial reports to the Budget Section on all revenues deposited in and expenditures made from the building maintenance account within the Workforce Safety and Insurance fund. (45-0; 91-0)

**Senate Bill No. 2042** (Legislative Council Workers' Compensation Review Committee) provided that under the presumption of compensability for full-time paid firefighters and law enforcement officers, if a medical examination produces a false positive result for a condition covered under the presumption, the condition is a compensable injury. (43-0; 92-0)

**Senate Bill No. 2092** (Office of Management and Budget) corrected the statutory reference to the workers' compensation fund and provided the money in the fund may be used to pay costs associated with workers' compensation loss control programs. (45-0; 91-0)

**Senate Bill No. 2123** (Workforce Safety and Insurance) made several changes to the workers' compensation laws, including permitted Workforce Safety and Insurance to print a certificate that identifies an account as one that has no employees; permitted Workforce Safety and Insurance to disclose information pertaining to whether an employer is delinquent or uninsured; eliminated the workers' compensation experience rating surcharge cap for employer premiums; and changed the workers' compensation risk management program from a document-based program to a results-based program. (42-0; 92-1)

**Senate Bill No. 2294** (Senators Nething, Robinson, and Triplett; Representatives Amerman, DeKrey, and Kasper) changed the injured employee's burden of proof in reopening a claim that was presumed closed from having to prove the work injury was the sole cause of the current symptoms to having to prove the work injury was the primary cause of the current symptoms. (45-0; 93-0)

**Senate Bill No. 2389** (Senators Nething, Klein, and Robinson; Representatives Amerman and Kasper) clarified that a permanent impairment is not intended to be a periodic payment and is not intended to reimburse the employee for specific expenses related to the injury or to wage loss and changed the permanent impairment award schedule from a calculation based on a period of weeks to a schedule that uses a corresponding multiplier. (46-0; 91-0)

## 2007 FAILED BILLS

**House Bill No. 1132** (State Department of Health) would have required the State Forensic Examiner to disclose a copy of final autopsy report to Workforce Safety and Insurance if the death of the autopsied individual is related to the individual's work. (0-90)

**House Bill No. 1204** (Representatives Kempenich and S. Meyer) would have extended the presumption of compensability for certain conditions such as lung or respiratory disease, hypertension, and heart disease to volunteer firefighters. (11-78)

**House Bill No. 1239** (Representatives Amerman and Solberg; Senator Krauter) would have prohibited Workforce Safety and Insurance from decreasing an employee's aggregate wage-loss benefits by offsetting the employee's Social Security retirement benefits. (20-72)

**House Bill No. 1283** (Representatives Amerman, DeKrey, and Kretschmar; Senators Cook, Nelson, and Nething) would have repealed the statutory provisions that provide that a civil action or claim arising under the workers' compensation law, which is subject to judicial review, must be reviewed solely on the merits of the action or claim and that provide the workers' compensation law may not be construed liberally on behalf of any party to the action or claim. (36-58)

**House Bill No. 1285** (Representatives Amerman, Solberg, and Thorpe; Senators Heitkamp and Mathern) would have provided that in the case of the death of a claimant who was receiving permanent total disability benefits, supplementary benefits, or additional benefits payable, the claimant's surviving spouse would be eligible to receive the claimant's benefits payable in the same manner as the deceased claimant would have been entitled to receive the benefits. (27-65)

**House Bill No. 1286** (Representatives Amerman and Boe; Senator Heitkamp) would have required the State Department of Health to establish and implement a program to conduct random audits of independent medical examinations performed for Workforce Safety and Insurance. (31-62)

**House Bill No. 1287** (Representatives Amerman and S. Kelsh; Senator Horne) would have required Workforce Safety and Insurance to implement an ongoing system of pilot programs to allow Workforce Safety and Insurance to assess alternative methods of providing rehabilitation services. (33-61)

**House Bill No. 1288** (Representatives Amerman and Solberg) would have reduced the eligibility threshold from seven years to three years with respect

to receipt of supplementary benefits for claimants receiving permanent total disability benefits or death benefits. (32-61)

**House Bill No. 1307** (Representatives Keiser, Dosch, and Ruby; Senator Klein) would have provided that if a claimant successfully rebutted the presumption that an injury was caused by an employee's voluntary impairment by use of alcohol or an illegal controlled substance, no more than 50 percent of the chargeable costs of that claim may be assessed against the employer for the purposes of experience rating if the employer had preemployment testing for alcohol and illegal use of a controlled substance, postaccident testing for alcohol and illegal use of a controlled substance, and random testing programs for alcohol and illegal use of a controlled substance which were previously registered with Workforce Safety and Insurance. (Withdrawn)

**House Bill No. 1323** (Representatives Zaiser, Amerman, S. Kelsh, and Schmidt) would have required the Governor to appoint the executive director of Workforce Safety and Insurance on a nonpartisan, merit basis and would have replaced the Workforce Safety and Insurance Board of Directors with a workers' compensation department advisory board. The bill also would have changed the name of Workforce Safety and Insurance to the Workers' Compensation Department. (33-60)

**House Bill No. 1345** (Representatives Amerman, Boucher, and Thorpe; Senators Heitkamp, O'Connell, and Potter) would have changed the workers' compensation additional benefits payable rates to provide that the percentage of the final payment payable as an additional benefit would be 30 percent of the employee's compensation rate if the total length of disability is at least one year and less than 10 years and would be 60 percent of the employee's compensation rate if the total length of disability is at least 10 years. (30-63)

**House Bill No. 1424** (Representative Boe; Senator Christmann) would have required Workforce Safety and Insurance to establish a pilot program for coverage of out-of-state employers with the rate classification of building construction or concrete work. (40-53)

**House Bill No. 1442** (Representatives Boucher and Zaiser; Senators Heitkamp and Potter) would have provided the termination of benefits upon retirement for a permanently and totally disabled employee does not apply to an employee who is permanently and totally disabled due to an injury that occurred before August 1, 1995, if the permanent and total disability occurred before the employee was considered retired. (27-66)

**House Bill No. 1443** (Representative Boucher; Senators Heitkamp and Potter) would have provided that if an employee was determined to be disabled for the purpose of the supplemental security income program under the federal Social Security Act or for purposes of Social Security disability, Workforce Safety and Insurance would be required to accept

medical reports related to those determinations and consider the determination as a relevant factor in determining disability under the workers' compensation law. (32-59)

**House Bill No. 1493** (Representatives N. Johnson, Berg, Clark, Froseth, and Ruby; Senator Klein) would have provided that for injuries occurring after June 30, 2007, if a claimant successfully rebuts the presumption that the injury was caused by reason of voluntary impairment by the use of alcohol or an illegal controlled substance, no more than 50 percent of the chargeable costs of that claim could be assessed against the employer for the purposes of experience rating if the employer has preemployment testing for illegal use of a controlled substance, postaccident testing for alcohol and the illegal use of a controlled substance, and random testing programs for alcohol and the illegal use of a controlled substance which were previously registered with Workforce Safety and Insurance. The bill also would have provided that for injuries occurring before July 1, 2007, if the claimant were to successfully rebut the presumption, no more than 50 percent of the chargeable costs of that claim could be assessed against the employer for purposes of experience rating if the employer provided sufficient documentation the testing programs were in place at the time of the injury. (29-63)

**House Bill No. 1516** (Representatives Kaldor and Wall; Senator Fiebiger) would have provided that if a claimant appealing an order of Workforce Safety and Insurance for which Workforce Safety and Insurance did not accept the administrative law judge's recommended finding of fact, conclusion of law, and order, the burden of proof would shift to Workforce Safety and Insurance to prove by a preponderance of the evidence the claimant is not entitled to the benefits sought. (41-53)

**Senate Bill No. 2043** (Legislative Council Workers' Compensation Review Committee) would have provided that for purposes of workers' compensation claims brought under the presumption of compensability of the full-time paid firefighters and law enforcement officers, the period to appeal would be extended from 30 days to 45 days. (1-43)

**Senate Bill No. 2072** (Workforce Safety and Insurance) would have specifically exempted Workforce Safety and Insurance from Administrative Agencies Practice Act provisions relating to payment of attorney's fees; would have allowed the Workforce Safety and Insurance special investigations unit to operate vehicles without state decals and State Fleet

license plates; would have allowed Workforce Safety and Insurance to destroy claim files in which there had been no benefits paid for at least 30 years; would have increased the dependency allowance payments to injured employees; would have allowed Workforce Safety and Insurance to notify employees regarding rehabilitation awards through a notice of decision rather than an administrative order; and would have removed Workforce Safety and Insurance's discretion with respect to exceeding limits for attorney's fees in an appeal of an injured employee to the district court. (9-38 - After conference committee report accepted)

**Senate Bill No. 2073** (Workforce Safety and Insurance) would have removed the requirement that one of the employer members on the Workforce Safety and Insurance Board of Directors be a participant in the risk management program and would have clarified that one of the three employee members must have received Workforce Safety and Insurance benefits. (42-0; 4-85)

**Senate Bill No. 2257** (Senators Heitkamp and Nething; Representatives Amerman and DeKrey) would have required that the executive director of Workforce Safety and Insurance be appointed by the Governor on a nonpartisan, merit basis. The bill also would have replaced the Workforce Safety and Insurance Board of Directors with a Workforce Safety and Insurance advisory board. (25-21; 6-81)

**Senate Bill No. 2292** (Senators Nething, Dever, and Robinson; Representatives Amerman, DeKrey, and Delmore) would have transferred the Workforce Safety and Insurance Office of Independent Review to the Department of Labor. (39-7; 29-59)

**Senate Bill No. 2297** (Senators Nething, Cook, and Robinson; Representatives DeKrey, R. Kelsch, and Skarphol) would have required Workforce Safety and Insurance to select a doctor for the independent medical examination of a claimant from a list of three doctors provided by the State Board of Medical Examiners. The bill also would have required Workforce Safety and Insurance to designate and pay for a registered nurse to be present at an independent medical examination, upon the request of the injured employee. (10-35)

**Senate Bill No. 2342** (Senators Andrist, Heitkamp, Klein, and Nething) would have provided that if a claimant files an original claim for benefits with Workforce Safety and Insurance within 60 days following an injury or within six months following a death and if the original claim for benefits is still pending in the 61<sup>st</sup> day following the claim, the claim would be deemed approved. (29-17; 28-62)