

LEGISLATION RELATING TO WORKERS' COMPENSATION - 1995

1995 ADOPTED BILLS AND FINAL VOTE TOTALS

House Bill No. 1190 (Representatives Soukup, Skarphol, and Aarsvold; Senators Traynor, Kinnoin, and Robinson) (93-0; 49-0) required the Workers Compensation Bureau to establish a workers' compensation fraud unit. The bill also allowed the bureau to employ investigators and licensed attorneys or contract with a private investigator whenever feasible or cost-effective to investigate and review any alleged case of willful misrepresentation of payroll to the bureau by an employer and to review any alleged case of willful filing of a false claim or false statement in relation to a claim.

House Bill No. 1195 (Representatives Wald and Dalrymple; Senators Mutch and Nething) (97-0; 46-0) allowed the Workers Compensation Bureau to establish a pilot program to provide retrospective rating to an employer whose annual workers' compensation premium is \$250,000 or more.

House Bill No. 1206 (Representatives Wald, Skarphol, Carlson, and Dobrinski; Senators Andrist and Kinnoin) (91-5; 30-16) provided that when an employee is involved in an accident while on the job, the employee must take steps to notify immediately the employer that the accident occurred and the general nature of the injury to the employee if apparent. The bill also required an employer to file a first report of notice of injury with the Workers Compensation Bureau within seven days from the date the employer receives the notice of the injury from the employee. The bill provided that if an employee fails to notify an employer of an accident and the general nature of the employee's injury, the Workers Compensation Bureau may consider that failure to notify in determining whether the employee's injury is compensable.

House Bill No. 1207 (Representatives Wald, Skarphol, Kelsch, and Dobrinski; Senators Andrist and Robinson) (95-0; 33-15) required that interest on deferred premiums be charged at the prevailing base rate posted by the Bank of North Dakota plus 2.5 percent. The bill also provided that the interest charged on the deferred premiums must be at least 6 percent per annum.

House Bill No. 1208 (Representatives Wald, Skarphol, and Bernstein; Senators Kinnoin, B. Stenehjem, and Traynor) (75-17; 37-12) provided that the Workers Compensation Bureau will pay attorney's fees only when the injured employee has prevailed in a dispute. The bill also provided that except for in an initial determination of compensability, workers' compensation attorney's fees may not exceed 20 percent of the amount awarded, subject to a maximum fee set by administrative rule. The bill further required that a dispute between the bureau and an injured employee must be resolved by

arbitration when the dispute concerns an amount no greater than \$3,000. The bill applied to a new request for arbitration, hearing, or appeal taken from an administrative order issued after August 1, 1995.

House Bill No. 1217 (Representatives Wald, Kretschmar, and Carlson; Senators Christmann, Robinson, and Kinnoin) (60-36; 35-13) provided that a civil action or civil claim arising under the North Dakota workers' compensation law which is subject to judicial review must be reviewed solely on the merits of the action or claim. The bill also provided that the North Dakota workers' compensation law may not be construed liberally on behalf of any party to the action or claim.

House Bill No. 1219 (Representative Keiser) (94-0; 48-0) provided that the Workers Compensation Bureau, upon recovery of its subrogation interest after a third-party lawsuit must give relief to the employer from the date of injury for the amount of the recovery up to the actual amount expended on a claim charged against the employer's account. The bill provided that if an employee's compensable injury is determined through civil action to have been sustained through the fault or negligence of a third person, or if a settlement has been entered between the employee and a third person through which the third person agrees to compensate the employee for the injury, the Workers Compensation Bureau, upon receipt of its subrogation interest, must credit the account of the employer to the extent of the payment made by the employer to the bureau. The bill became effective for all compensable injuries that occurred after July 31, 1995, and effective for all accounts affected by a third-party recovery received by the bureau after July 31, 1995.

House Bill No. 1221 (Representatives Wald, Carlson, Delzer, and Froseth; Senators Kinnoin and Teneffos) (84-11; 47-1) allowed employers with an approved risk management program to select a preferred provider to treat injured employees. The bill also provided that during the first 60 days after a compensable injury, an employee of an employer who has selected a preferred provider may seek medical treatment only from the preferred provider for the injury.

House Bill No. 1224 (Representatives Carlson, Koppelman, Kelsch, and Soukup; Senators Kinnoin and Wanzek) (91-6; 37-12) removed the provision that if an employee can prove by a preponderance of the evidence, within one year of the denial of benefits 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.

House Bill No. 1225 (Representatives Wald, Keiser, Kelsch, and Kempenich; Senators Mutch and

Krebsbach) (81-14; 38-11) provided that for workers' compensation purposes, the term "compensable injury" includes heart-related diseases. The bill also provided that the term "compensable injury" does not include a willfully self-inflicted injury caused by an employee's willful intention to commit suicide.

House Bill No. 1226 (Representatives Wald, Skarphol, and Froseth; Senators Andrist, Grindberg, and Kelsh) (97-0; 48-0) provided an appropriation out of the workers' compensation fund to allow the Workers Compensation Bureau to establish a program of reinsurance. The bill allowed the Workers Compensation Bureau to execute a contract for reinsurance which is binding on the bureau and the reinsurer.

House Bill No. 1227 (Representatives Wald, Nichols, and Keiser; Senators Mutch, Lee, and Watne) (76-19; 32-16) replaced the inactive claim presumption with a closed claim presumption and provided that a claim for workers' compensation benefits is presumed closed if the Workers Compensation Bureau has not paid any benefit or received a demand for the payment of any benefit for a period of four years.

House Bill No. 1228 (Representatives Wald, Skarphol, and Carlson; Senators Andrist, Kinnoin, and Krebsbach) (76-21; 33-16) provided that an employee who has retired or voluntarily withdrawn from the labor force and who is not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits, or a rehabilitation allowance from the Workers Compensation Bureau is presumed retired from the labor market. The bill also provided that an injured employee who is receiving permanent total, temporary total, or temporary partial disability benefits, or rehabilitation benefits and who begins receiving Social Security retirement benefits or other retirement benefits in lieu of Social Security retirement benefits or who is at least 65 years old and is eligible to receive Social Security retirement benefits or other retirement benefits in lieu of Social Security retirement benefits is considered to be retired. The bill provided that the Workers Compensation Bureau may not pay permanent total, temporary total, or temporary partial disability benefits, rehabilitation benefits, or supplemental benefits to an employee who is considered retired. The bill applied to all persons who retire or become eligible for Social Security retirement benefits or other retirement benefits in lieu of Social Security retirement benefits after July 31, 1995.

House Bill No. 1250 (Representatives Skarphol, Keiser, Byerly, and Carlson; Senators Andrist and Mutch) (68-27; 31-18) required the Workers Compensation Bureau to establish a system of personnel administration for its employees based upon principles and methods to be determined by the bureau, and governing position classification, pay administration, transfer of employees, discipline of employees, and removal of employees.

House Bill No. 1251 (Representatives Skarphol, Carlson, and Froseth; Senator Andrist) (97-0; 28-18)

would have allowed the Workers Compensation Bureau to solicit persons to place advertisements within any published information of the Workers Compensation Bureau. The Governor vetoed the bill and the House sustained the veto.

House Bill No. 1252 (Representatives Skarphol, Monson, and Carlson; Senators Andrist, Mutch, and Krauter) (72-18; 33-13) provided that for workers' compensation purposes the term "compensable injury" does not include a mental injury arising from mental stimulus.

House Bill No. 1253 (Representatives Wald, Tollefson, Carlson, and Kelsch; Senators Andrist and Kinnoin) (81-12; 39-8) provided that an employee who returns to work on a part-time basis must receive temporary partial disability benefits from the Workers Compensation Bureau until a doctor determines that the employee is medically capable of full-time employment.

House Bill No. 1287 (Representatives Kelsch, Carlson, Mahoney, and Poolman; Senators Krebsbach and Traynor) (91-6; 47-0) required a hearing officer designated by the Workers Compensation Bureau to be an individual licensed to practice law in this state. The bill provided that a hearing officer designated by the Workers Compensation Bureau may not maintain an office within the bureau from which the hearing officer conducts daily business.

House Bill No. 1329 (Representatives Skarphol, Wald, Oban, and Clark; Senators Kinnoin and Robinson) (95-0; 43-6) increased penalties for employers who are in default or refuse to comply with the provisions of the North Dakota workers' compensation law. The bill also provided that an officer or director of a corporation, or manager or governor of a limited liability company, or employee of a corporation or limited liability company having 20 percent stock ownership who has control of or supervision over the filing or the responsibility for filing of premium reports or making payments of premiums or reimbursements under the workers' compensation law and who fails to file the reports or to make payments as required is personally liable for premiums and reimbursement. The bill also authorized an injured employee to maintain a civil action against an uninsured employer for damages resulting from injury or death and provided that the bureau is subrogated to the recovery made in the action against the uninsured employer.

House Bill No. 1366 (Representatives Skarphol, Soukup, and Shide; Senators Grindberg, Robinson, and Tallackson) (90-6; 33-13) provided that in seasonal employment, the average weekly wage for purposes of determining workers' compensation benefits is one-fiftieth of the total wages the employee has earned from all occupations during the 12 calendar months immediately preceding the injury or one-fiftieth of the average annual income for the three-year period immediately preceding the injury, whichever is greater.

House Bill No. 1439 (Representatives Carlson, Kelsch, and Clayburgh; Senators Nalewaja, W. Stenehjem, and Traynor) (72-22; 32-16) allowed the Workers Compensation Bureau to employ attorneys to represent the bureau. The bill required the bureau to pay the salaries and expenses of the attorneys and provided that the attorneys that represent the bureau must be special assistant attorney's general appointed by the Attorney General.

Senate Bill No. 2015 (Governor) (47-0; 90-5) required that before November 1, 1995, every state agency, institution, and entity employing 25 or more full-time equivalent (FTE) employees must submit to the Workers Compensation Bureau for approval a written risk management program.

Senate Bill No. 2027 (Governor) (41-8; 94-2) provided the appropriation for the Workers Compensation Bureau.

Senate Bill No. 2085 (Senator Solberg) (49-0; 92-0) provided that the presumption that any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability, is presumed to have been suffered in the line of duty. The bill provided that the presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer who has been employed for 10 years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The bill provided that the presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer who has been employed more than 10 years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends. The bill provided that a full-time paid firefighter or law enforcement officer who used tobacco is not eligible for benefits under the presumption unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician that indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years.

Senate Bill No. 2202 (Workers Compensation Bureau) (38-10; 62-34) provided for a minimum eligibility requirement of a total body impairment of 16 percent in order for an injured employee to collect permanent partial impairment benefits. The bill provided that attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. The bill became effective on August 1, 1995, for all permanent impairment awards determined after July 31, 1995, irrespective of the date of injury.

Senate Bill No. 2280 (Senators Krauter, O'Connell, and Sand; Representatives Aarsvold, Kerzman, and Kunkel) (49-0; 91-0) provided that for workers' compensation purposes, the term "employer" includes the clerk, assessor, or any member of the board of supervisors of an organized township, if the individual is not employed by the township in any other capacity.

Senate Bill No. 2377 (Senators Nalewaja, Goetz, Krebsbach, and Lindaas; Representative Byerly) (49-0; 94-0) provided for the establishment of a workers' compensation advisory program to provide assistance to an injured employee, including acting on behalf of an injured employee who is aggrieved by a decision of the Workers Compensation Bureau, communicating with bureau staff regarding claim dispute resolution, and advising an injured employee of the effect of decisions made by the bureau, the employee, or an employer.

Senate Bill No. 2403 (Senators Solberg, Krauter, and Krebsbach; Representatives Austin, Christopherson, and Klein) (94-0; 49-0) provided that before the effective date of any premium rate change, the Workers Compensation Bureau must hold a public hearing on the rate change. The bill also prohibited the bureau from amending its experience rating of employers by emergency rulemaking.

Senate Bill No. 2501 (Senators Andrist, Sand, and Solberg) (43-6; 84-9) provided that if an employee undertakes activities, whether or not in the course of employment, which exceed treatment recommendations of the employee's doctor regarding the work injury, and the doctor determines that employee's injury or condition has been aggravated or has worsened as a result of the employee's activities, the Workers Compensation Bureau may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer.

1995 FAILED BILLS AND FINAL VOTE TOTALS

House Bill No. 1028 (Interim Budget Committee on Government Finance; Representatives Carlisle, Boucher, and Gorman; Senators O'Connell, Nalewaja, and Streibel) (33-63) would have authorized Roughrider Industries to secure workers' compensation coverage for Penitentiary inmates employed in the private sector prison industry enhancement certification program.

House Bill No. 1414 (Representatives Christenson, Glassheim, Gulleon, Mutzenberger, and Wilkie; Senator Holmberg) (24-72) would have required that an independent medical examination of an injured employee be conducted by a doctor designated by the bureau and the employee's treating doctor.

House Bill No. 1420 (Representatives Delzer and Grosz) (3-92) would have required the Workers Compensation Bureau to reinstate a surviving spouse's right to workers' compensation death

benefits if the individual to whom the remarried surviving spouse married dies within two years of the marriage.

House Bill No. 1428 (Representatives Wald, Bernstein, and Carlson; Senators Kinnoin and Mutch) (40-53) would have changed the Workers Compensation Bureau to the North Dakota Workers Compensation Fund and established a board of directors for the fund.

House Bill No. 1444 (Representatives Christenson, Grumbo, Guleson, Mahoney, and Mutzenberger; Senator DeMers) (19-76) would have provided that for the purposes of temporary total or permanent total disability compensation, if an injured employee would exceed 100 percent of the average weekly wage in the state but for the 100 percent maximum limitation, the benefits must be increased to reflect each increase in the average weekly wage.

House Bill No. 1445 (Representatives Delmore, Mahoney, and Maragos; Senators Heinrich and Mushik) (25-72) would have specifically provided for the composition and appointment of the members of the Workers' Compensation Advisory Council.

House Bill No. 1466 (Representative Oban) (12-84) would have removed the limitation on civil actions against employers by injured workers.

House Bill No. 1498 (Representatives Coats and Delmore; Senator Mathern) (7-90) would have repealed the Social Security retirement benefit offset.

Senate Bill No. 2387 (Senators O'Connell, Kelsh, and Schobinger; Representatives DeWitz, Guleson, and Jacobs) (49-0; 18-75) would have required the Workers Compensation Bureau to conduct a comprehensive study of employment classifications to determine whether the classification system should be revised and report the results of the study to the Legislative Council at least once during each interim.

Senate Bill No. 2432 (Senators Krebsbach and Solberg; Representative Austin) (0-48) would have provided that the rule of construction of the North Dakota Century Code which provides that all provisions are to be construed liberally, with a view to effecting its objects and to promoting justice, does not apply to Title 65.