

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1332

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1332

Industry, Business and Labor

☐ Conference Committee

Hearing Date Jan. 20, 1999

Tape Number	Side A	Side B	Meter #
2	x		38.1
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

HB 1332 Relating to Worker's Compensation definitions, medical treatment, coverage, and relating to calculation of the wages of a self-employed person; and to provide and effective date.

Chairman Berg opened the hearing on the bill.

Representative Keiser introduced and testified in support of bill. The benefits for workers are increased with this bill. The requirements of the workers is additionally clarified. The third aspect of the bill is that coverage for workers is also clarified. The fourth thing is that optional coverage defines when coverage takes place. Representative Ekstrom asked what was reason for cut off on age 22 difference. This discussion took place with Ms. Julie Leer responding.

Ms Julie Leer, Attorney for Workers Compensation Bureau, testified in support of the bill.

Page 2

Industry, Business and Labor

Bill/Resolution Number Hb 1332

Hearing Date Jan. 20, 1999

(see attached written testimony)

Additional questions and discussion followed. Representative Thorpe asked who makes determination of non cooperation if that is evident by parties. The response was that the person who conducts the examination will make that determination.

Mr. Dave Kemnitz, President of AFL-CIO, testified in support of the bill. He suggested change in language on page 6 of the bill. He does have concern that someone may overlook language and not elect coverage for a child in early 20's age.

Mr. Steve Lathum, ND Trial Lawyers Association, testified on the bill. He offered an amendment to the bill.

Chairman Berg closed the hearing on the bill.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1332

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-26-99

Tape Number	Side A	Side B	Meter #
3	x		26.3
Committee Clerk Signature <i>Lisa Warner</i>			

Minutes:

HB 1332

Chairman Berg opened the meeting on the bill

Committee members gave considerable discussion to the bill.

Julie from Auditor's office explained components to the bill and responded the committee member questions.

Representative Kempenich moved to adapt the amendments, Second by Representative Johnson
by voice vote all yes, 0 no, motion carried

Representative Kempenich moved for do pass as amended, Second by Representative Kline

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1332.1

Hearing Date 1-26-99

By roll vote, 14 yes, 0 no, 1 absent, motion carried

Representative Froseth will carry the bill

Chairman Berg closed the meeting on the bill.

FISCAL NOTE

(Return original and 10 copies)

III/Resolution No.: _____ Amendment to: Eng. HB 1332

Requested by Legislative Council _____ Date of Request: 3-4-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached.

2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: _____
- b. For the 1999-2001 biennium: _____
- c. For the 2001-03 biennium: _____

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Department Workers Compensation Bureau

Phone Number 328-3856

Date Prepared: 3-4-99

NORTH DAKOTA WORKERS COMPENSATION BUREAU
1999 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Definitions and Disability Benefits for Seasonal Workers

BILL NO: Engrossed HB 1332

SUMMARY OF ACTUARIAL INFORMATION: The Workers Compensation Bureau, with the assistance of its Actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation is intended to increase disability benefits for future claims by seasonal workers by changing the benefit rate calculation for the first 28 consecutive days of disability; clarifies the requirement that injured workers cooperate with medical treatment and examinations; clarifies the coverage exclusion for mental injuries from mental causes; and clarifies optional coverage for an employer's spouse or child.

FISCAL IMPACT: Not quantifiable. The proposed bill may result in disability benefit increases for new injury claims filed by seasonal workers for the first 28 days of disability, however, no significant impact is anticipated.

AMENDMENT: The proposed bill clarifies the effective date of the change in the calculation of disability benefits for seasonal employment.

The amendment results in no change to the fiscal impact for the bill as introduced.

DATE: 3-3-99

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ Amendment to: HB 1332

Requested by Legislative Council _____ Date of Request: 1-29-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached.

2. **State** fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: _____
b. For the 1999-2001 biennium: _____
c. For the 2001-03 biennium: _____

4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed,
attach a supplemental sheet.

Date Prepared: 01-29-99

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Department Workers Compensation Bureau

Phone Number 328-3856

NORTH DAKOTA WORKERS COMPENSATION BUREAU
1999 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: **Definitions and Disability Benefits for Seasonal Workers**

BILL NO: HB 1332

SUMMARY OF ACTUARIAL INFORMATION: The Workers Compensation Bureau, with the assistance of its Actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

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FISCAL IMPACT: Not quantifiable. The proposed bill may result in disability benefit increases for new injury claims filed by seasonal workers for the first 28 days of disability, however, no significant impact is anticipated.

AMENDMENT:

The amendment results in no change to the fiscal impact for the bill as introduced.

DATE: 1-29-99

FISCAL NOTE

Turn original and 10 copies)

Bill/Resolution No.: HB 1332 Amendment to: _____

Requested by Legislative Council

Date of Request: 1-13-99

- Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached.

- State fiscal effect in dollar amounts:

1997-99 Biennium
General Fund Special Funds

1999-2001 Biennium
General Fund Special Funds

2001-03 Biennium
General Fund Special Funds

Revenues:

Expenditures:

- What, if any, is the effect of this measure on the appropriation for your agency or department:

- For rest of 1997-99 biennium: _____
- For the 1999-2001 biennium: _____
- For the 2001-03 biennium: _____

- County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium
Counties Cities School Districts

1999-2001 Biennium
Counties Cities School Districts

2001-03 Biennium
Counties Cities School Districts

If additional space is needed,
attach a supplemental sheet.

Date Prepared: 01-18-99

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Department Workers Compensation Bureau

Phone Number 328-3856

***NORTH DAKOTA WORKERS COMPENSATION BUREAU
1999 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION***

BILL DESCRIPTION: **Definitions and Disability Benefits for Seasonal Workers**

BILL NO: HB 1332

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The proposed legislation is intended to increase disability benefits for future claims by seasonal workers by changing the benefit rate calculation for the first 28 consecutive days of disability; clarifies the requirement that injured workers cooperate with medical treatment and examinations; clarifies the coverage exclusion for mental injuries from mental causes; and clarifies optional coverage for an employer's spouse or child.

FISCAL IMPACT: Not quantifiable. The proposed bill may result in disability benefit increases for new injury claims filed by seasonal workers for the first 28 days of disability, however, no significant impact is anticipated.

DATE: 1-17-99

PROPOSED AMENDMENTS TO 1999 HOUSE BILL NO. 1332

Page 10, line 22, overstrike "reasonably" and after "to" insert "reasonably"

Renumber accordingly

Date: 1-26-71
Roll Call Vote #: _____

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1332

House Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as amended

Motion Made By Kempnich Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		
Vice Chair - Kempnich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Froseth

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 27, 1999 4:15 p.m.

Module No: HR-17-1311
Carrier: Froseth
Insert LC: 98286.0102 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1332: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1332 was placed on the Sixth order on the calendar.

Page 10, line 22, overstrike "reasonably" and after "to" insert "reasonably"

Renumber accordingly

1999 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1332

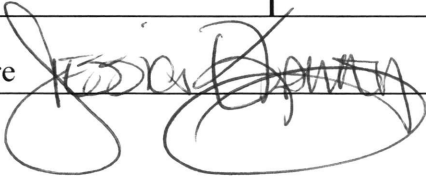
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1332

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 2, 1999

Tape Number	Side A	Side B	Meter #
2	x		2490-4100
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1332. All senators were present.

Julie Leer introduced the bill to the committee. Her testimony is included. She proposed an amendment to the committee.

Senator Mutch closed the hearing on HB1332.

Senator Krebsbach motioned for the committee to adopt the amendments that were offered from Julie Leer. Senator Thompson seconded her motion. The motion carried with a unanimous vote.

Senator Klein motioned for a do pass committee recommendation on HB1332. Senator

Krebsbach seconded his motion. The motion carried with a 7-0-0 vote.

Senator Thompson will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1332

Page 11, line 25, replace "Sections 1," with "The change in subdivision a of subsection 5 of section 1 of this Act dealing with calculation of disability benefits for seasonal employment for up to the first twenty-eight consecutive days of disability is effective for all claims filed for injuries occurring after July 31, 1999. The remainder of section 1 and sections" and remove the second comma

Renumber accordingly

Date: 3/2
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
HOUSE BILL/RESOLUTION NO. 1332

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken AMEND

Motion Made By KREBSBACH Seconded By THOMPSON

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

SR 383920

Date: 3/2
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
HOUSE BILL/RESOLUTION NO. 1332

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By KLEIN Seconded By KREBSBACH

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment THOMPSON

REPORT OF STANDING COMMITTEE

HB 1332, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1332 was placed on the Sixth order on the calendar.

Page 11, line 25, replace "Sections 1," with "The change in subdivision a of subsection 5 of section 1 of this Act dealing with calculation of disability benefits for seasonal employment for up to the first twenty-eight consecutive days of disability is effective for all claims filed for injuries occurring after July 31, 1999. The remainder of section 1 and sections" and remove the second comma

Renumber accordingly

1999 TESTIMONY

HB 1332

WORKERS COMPENSATION DEFINITIONS

Testimony

Before the House Industry, Business, and Labor Committee

January 20, 1999

Presented by Julie Leer, Attorney
North Dakota Workers Compensation Bureau

Mr. Chairman, Members of the Committee:

My name is Julie Leer and I am an attorney for the Workers Compensation Bureau. I am here today to testify in support of 1999 House Bill No. 1332. The Workers Compensation Board of Directors unanimously supported this bill.

Section 1 of this bill contains changes to the definitions used in administering the workers compensation act. The definition of "seasonal employment" is amended to provide consistency with the other statutes that outline the process for determining how disability benefits are paid. Those statutes require the bureau to use the total wages at the date of first disability to calculate the worker's average weekly wage. Those wages are most representative of the wages an injured worker actually loses as a result of a work injury. The current language requires the Bureau to calculate this wage using the wages on the date of the injury. That standard may subject an injured worker to an unfair calculation of wages, for example, if an injured worker doesn't lose wages immediately following the injury, but suffers wage loss at some later date, maybe due to a surgery. In that case, the wages the injured worker was earning immediately prior to surgery represent the actual loss. This amount may be greater than the wages at the date of injury, due to a promotion or a change in job duties, etc.

The other change in the definition of "seasonal employment" is the result of discussions between the Bureau and labor representatives. A "seasonal worker" is any worker whose work is intermittent rather than continuous throughout the year. For example, a union pipefitter may get referred out to a project that could last a several weeks or months, and then when that project ends could be off work for several weeks or months before going out on the next project.

The 1995 legislature enacted a law stating when a seasonal worker is disabled by a work injury, the wage-loss benefits should be based on what that worker earns over the course of a year rather than being based on the wage the worker was receiving at the time of injury. For workers who are disabled for longer periods of time, this law works well. For example, a worker who is disabled for a year will receive benefits in the amount of two-thirds of what the worker would likely have earned during that year if the

injury had not occurred. This matches the benefit rate provided to other injured workers. Before the 1995 law, that worker would have received two-thirds of the wage being earned on the project at the time of injury, ignoring the fact that the worker would have had layoffs during the year. This could actually result in the worker receiving more money in wage-loss benefits than would have been earned in wages absent the injury.

However, most seasonal workers are disabled for shorter periods of time, and the law does not work as well for them. For example, if a worker were disabled for four weeks in the middle of a three month project that is paying good wages, the worker would lose all of those wages, but would receive benefits at the lower rate based on his average income over the whole year. This bill addresses that problem by providing benefits at two-thirds of the actual wages at the time for injury for the first four weeks of disability, and then at the two-thirds of the average yearly income for longer-term disability. This change will provide benefits to seasonal workers that will more closely track their actual lost wages.

The next change is in the formula for the calculation of the wages for a self-employed individual. Last session that formula was relocated within the Century Code. Some language was inadvertently excluded during that move, so this change is to reinstate that language.

The definition of "compensable injury" is also being amended. The existing language creates confusion. Most employment discrimination or sexual harassment actions are intentional torts and are properly brought under the state or federal laws prohibiting that type of activity. Removing this language that appears to, but really doesn't, modify the types of mental injury claims that are compensable, and simply stating that no mental injuries arising out of mental stimuli are compensable will help direct the parties to pursue the appropriate action in the appropriate forum. This is a clarifying amendment that does not change the substance of the current law

The definition of employee is being amended to put the term "hazardous employment" back into the definition. Hazardous employment is a term of art in the workers' compensation industry that is more descriptive than "services" and which is defined to include all types of employment for which workers' compensation coverage is available.

"Employee" is also being amended to exclude the children and the spouse of an employer. The definition of "child" is being amended to clarify that it only applies to the term when it is used in determining benefits. These two changes, coupled with the changes being made in **section 4** of this bill, would **allow** an employer to purchase workers' compensation coverage for those family members, but coverage for these family members would **not** be mandatory. The language being removed by the change proposed in **section 4** has been subject to many different interpretations. For example, does a child living in the same household as the employer include children home from college in the summer? Does it include children who are not necessarily dependent on the parents for support, but simply choose to continue living at home because it's

cheaper to do so? The proposed amendment removes any confusion. All coverage for an employer's spouse or children under the age of 22 is optional.

The changes being made in **section 2** of the bill are to address the North Dakota Supreme Court's opinion in Ali v. NDWCB, in which the court held that the Bureau could not suspend Ms. Ali's benefits for failure to reasonably participate in a functional capacity evaluation (FCE) because the FCE was an "examination" and not "treatment". In this case Ms. Ali had three invalid FCE's, and the Bureau suspended her benefits until she successfully completed an FCE. A valid FCE is needed to determine a person's physical abilities so that an appropriate job can be identified. The administrative law judge ruled that while her conduct was not intentional, benefits were properly suspended, and the district court affirmed the Bureau. The Supreme Court, in a 3-2 decision (Chief Justice VandeWalle and Justice Sandstrom dissenting), held that the statute distinguished between "treatment" and "examination" even though claimant's counsel had not even made that argument. The proposed changes eliminate any distinction between an examination and treatment. This will remove any disincentive for an injured worker to refuse to participate. Under the court's ruling, an injured worker could unreasonably refuse to participate in an examination, without good cause, and the Bureau would be unable to compel participation. While the Bureau has no interest in requiring an injured worker to undergo an invasive procedure, such as a surgery, the Bureau must be able to require some cooperation on the part of an injured worker in efforts to determine whether an injury has improved sufficiently to allow an injured worker to pursue substantial gainful employment.

The change made in **section 3** of this bill changes the term "compensable injury" to "work injury". The argument has been made that a worker does not need to seek treatment from the designated medical provider until the claim actually has been filed and accepted by the Bureau and, therefore, becomes a "compensable" injury. This interpretation of the designated medical provider statute would make the statute meaningless. Current law allows a worker to opt out of the designated medical provider program prior to the work injury. If a worker does not opt out, however, and is subsequently injured in what that worker believes is a work injury, the worker is required to seek treatment from the designated medical provider, if the employer has designated one. This change simply clarifies that the treatment must be sought from the designated medical provider from the moment an injury occurs or a condition is diagnosed, not from the time the Bureau accepts liability for the injury or condition.

The repeal requested in **section 5** of the bill removes a definition of self-employment which has become obsolete in light of the development of the wage calculation for self-employed persons which is found in section 65-01-02.

Section 6 of the bill establishes effective dates for all the sections.

The Bureau requests your favorable consideration of 1999 House Bill No. 1332. I'll try to answer your questions at this time. Thank you.

1999 Engrossed House Bill No. 1332
WORKERS COMPENSATION DEFINITIONS

Testimony before the Senate Industry, Business, and Labor Committee
March 2, 1999

Presented by Julie Leer, Attorney
North Dakota Workers Compensation Bureau

Mr. Chairman, Members of the Committee:

My name is Julie Leer and I am an attorney for the Workers Compensation Bureau. I am here today to testify in support of 1999 Engrossed House Bill No. 1332. The Workers Compensation Board of Directors unanimously supported this bill.

Section 1 of this bill contains changes to the definitions used in administering the workers' compensation act. The definition of "seasonal employment" is amended to provide consistency with the other statutes that outline the process for determining how disability benefits are paid. Those statutes require the bureau to use the total wages at the date of first disability to calculate the worker's average weekly wage. Those wages are most representative of the wages an injured worker actually loses as a result of a work injury. The current language requires the Bureau to calculate this wage using the wages on the date of the injury. That standard may subject an injured worker to an unfair calculation of wages, for example, if an injured worker doesn't lose wages immediately following the injury, but suffers wage loss at some later date, maybe due to a surgery. In that case, the wages the injured worker was earning immediately prior to surgery represent the actual loss. This amount may be greater than the wages at the date of injury, due to a promotion or a change in job duties, etc.

The other change in the definition of "seasonal employment" is the result of discussions between the Bureau and labor representatives. A "seasonal worker" is any worker whose work is intermittent rather than continuous throughout the year. For example, a union pipefitter may get referred out to a project that could last several weeks or months, but when that project ends could be off work for several weeks or months before being referred for another project.

The 1995 Legislative Assembly enacted a law stating when a seasonal worker is disabled by a work injury, the wage-loss benefits should be based on what that worker earns over the course of a year rather than being based on the wage the worker was receiving at the time of injury. For workers who are disabled for longer periods of time, this law works well. For example, a worker who is disabled for a year will receive benefits equal to two-thirds of what the worker would likely have earned during that year if the injury had not occurred. This matches the benefit rate provided to other injured workers. Before the 1995 law, that worker would have received two-thirds of the wage being earned on the project at the time of injury, ignoring the fact that the worker would have had layoffs during the year. This could actually result in the worker

receiving more money in wage-loss benefits than the worker would have earned in wages absent the injury.

Since most seasonal workers are disabled for shorter periods of time, the law does not work as well for them. For example, if a worker were disabled for four weeks in the middle of a three month project that is paying good wages, the worker would lose all of those wages, but would receive benefits at the lower rate based on his average income over the whole year. This bill addresses that problem by providing benefits at two-thirds of the actual wages at the time of injury for the first four weeks of disability, and then at the two-thirds of the average yearly income for longer-term disability. This change will provide benefits to seasonal workers that will more closely track their actual lost wages.

The next change is in the formula for the calculation of the wages for a self-employed individual. Last session that formula was relocated within the Century Code. Some language was inadvertently excluded during that move, so this change is to reinstate that language.

The definition of "compensable injury" is also being amended. The existing language creates confusion. Most employment discrimination or sexual harassment actions are intentional torts and are properly brought under the state or federal laws prohibiting that type of activity. Removing this language that appears to modify the types of mental injury claims that are compensable, and simply stating that no mental injuries arising out of mental stimuli are compensable will help direct the parties to pursue the appropriate action in the appropriate forum.

The definition of employee is being amended to put the term "hazardous employment" back into the definition. Hazardous employment is a term of art in the workers' compensation industry that is more descriptive than "services" and which is defined in section 65-01-02 to include all types of employment for which workers' compensation coverage is available.

"Employee" is also being amended to exclude the children and the spouse of an employer. The definition of "child" is being amended to clarify that it only applies to the term when it is used in determining benefits. These two changes, coupled with the changes being made in **section 4** of this bill, would **allow** an employer to purchase workers' compensation coverage for those family members, but coverage for these family members would **not** be mandatory. The language being removed by the change proposed in **section 4** has been subject to many different interpretations. For example, does a child living in the same household as the employer include children home from college in the summer? Does it include children who are not necessarily dependent on the parents for support, but simply choose to continue living at home because it's cheaper to do so? The proposed amendment removes any confusion. All coverage for an employer's children under the age of 22 or for an employer's spouse is optional.

The changes being made in **section 2** of the bill are to address the North Dakota Supreme Court's opinion in *Ali v. NDWCB*, in which the court held that the Bureau could

not suspend Ms. Ali's benefits for failure to reasonably participate in a functional capacity evaluation (FCE) because the FCE was an "examination" and not "treatment". In this case Ms. Ali had three invalid FCE's, and the Bureau suspended her benefits until she successfully completed an FCE. A valid FCE is needed to determine a person's physical abilities so that an appropriate job can be identified. The administrative law judge ruled that while her conduct was not intentional, benefits were properly suspended, and the district court affirmed the Bureau. The Supreme Court, in a 3-2 decision (Chief Justice VandeWalle and Justice Sandstrom dissenting), held that the statute distinguished between "treatment" and "examination" even though claimant's counsel had not made that argument. The proposed changes eliminate any distinction between an examination and treatment. This will remove any disincentive for an injured worker to refuse to participate. Under the court's ruling, an injured worker could refuse to participate in an examination, without good cause, and the Bureau would be unable to compel participation. While the Bureau has no interest in requiring an injured worker to undergo an invasive procedure, such as a surgery, the Bureau must be able to require some cooperation on the part of an injured worker in efforts to determine whether an injury has improved sufficiently to allow an injured worker to pursue substantial gainful employment.

The change made in **section 3** of this bill changes the term "compensable injury" to "work injury". The argument has been made that a worker does not need to seek treatment from the designated medical provider until the claim actually has been filed and accepted by the Bureau and, therefore, becomes a "compensable" injury. This interpretation of the designated medical provider statute would make the statute meaningless. Current law allows a worker to opt out of the designated medical provider program prior to the work injury. If a worker does not opt out, however, and is subsequently injured in what that worker believes is a work injury, the worker is required to seek treatment from the designated medical provider, if the employer has designated one. This change simply clarifies that the treatment must be sought from the designated medical provider from the moment an injury occurs or a condition is diagnosed, not from the time the Bureau accepts liability for the injury or condition.

The repeal requested in **section 5** of the bill removes a definition of self-employment which has become obsolete in light of the development of the wage calculation for self-employed persons which is found in section 65-01-02.

Section 6 of the bill establishes effective dates for all the sections. It is to this section that the Bureau requests an amendment. The proposed amendment would clarify that the calculation of wage-loss benefits for a seasonal worker for the first 28 days of disability would only apply to claims filed for injuries occurring after July 31, 1999. This will provide for prospective application and will prevent the Bureau from being asked to recalculate wages for seasonal workers who were injured before the effective date of this change.

The Bureau requests your favorable consideration of 1999 Engrossed House Bill No. 1332. I'll try to answer your questions at this time. Thank you.