

WORKERS' COMPENSATION

CHAPTER 607

HOUSE BILL NO. 1061

(Legislative Council)

(Workers' Compensation Review Committee)

AN ACT to amend and reenact subsection 3 of section 65-01-02 of the North Dakota Century Code, relating to workers' compensation definition of artificial members as it relates to compensable injuries; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁹ **SECTION 1. AMENDMENT.** Subsection 3 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Artificial members" includes ~~only such devices as are substitutes for, and not mere aids to,~~ a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. The term does not include A prescriptive device includes prescription eyeglasses or, contact lenses unless the eye is, or eyes are, injured as a result of a compensable injury, and such injury causes a change in sight which requires fitting of eyeglasses or contact lenses not previously worn by the injured worker or requires a change in existing prescription, dental braces, and orthopedic braces.

SECTION 2. APPLICATION. This Act applies to injuries that occur after July 31, 2009.

Approved March 19, 2009
Filed March 24, 2009

²⁸⁹ Section 65-01-02 was also amended by section 1 of House Bill No. 1151, chapter 608, and section 4 of House Bill No. 1360, chapter 163.

CHAPTER 608**HOUSE BILL NO. 1151**

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact a new section to chapter 65-03 of the North Dakota Century Code, relating to reporting requirements in safety grant programs; to amend and reenact subsection 31 of section 65-01-02 and sections 65-01-13, 65-03-04, and 65-04-15 of the North Dakota Century Code, relating to definition of wages, information fund, safety grant awards, and confidentiality of employer files for workforce safety and insurance purposes; and to repeal section 65-03-03 of the North Dakota Century Code, relating to rules for mine foremen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹⁰ **SECTION 1. AMENDMENT.** Subsection 31 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

31. "Wages" means an employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes. For purposes of chapter 65-04, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.

SECTION 2. AMENDMENT. Section 65-01-13 of the North Dakota Century Code is amended and reenacted as follows:

65-01-13. Information fund - Continuing appropriation. There is ~~hereby~~ created a fund to be known as the information fund: ~~Workforce safety and insurance within the workforce safety and insurance fund, to which the organization shall deposit into this fund~~ all moneys received from private citizens, businesses, associations, corporations, and limited liability companies for providing these entities with publications and statistical information concerning workforce safety and insurance matters. The information must be provided at cost. The moneys in the fund are appropriated, as a standing and continuing appropriation, to workforce safety and insurance to pay publication and statistical processing expenses incurred by the organization. ~~If on the first day of July in any year the amount of money in the information fund is more than ten thousand dollars, the amount in excess of ten thousand dollars must be transferred to the organization's general fund.~~

SECTION 3. AMENDMENT. Section 65-03-04 of the North Dakota Century Code is amended and reenacted as follows:

²⁹⁰ Section 65-01-02 was also amended by section 1 of House Bill No. 1061, chapter 607, and section 4 of House Bill No. 1360, chapter 163.

65-03-04. Safety programs - Continuing appropriation. The organization shall create and operate work safety and loss prevention programs to protect the health of covered employees and the financial integrity of the fund, including programs promoting safety practices by employers and employees through education, training, consultation, grants, or incentives. As a term of award of a grant under this section, a recipient authorizes the organization to disclose the name of the award recipient and the amount of the award received. Any funds deposited in the workforce safety insurance fund are appropriated to the organization on a continuing basis for the purpose of funding the programs implemented under this section.

SECTION 4. A new section to chapter 65-03 of the North Dakota Century Code is created and enacted as follows:

Safety grant programs - Reporting requirements. The organization shall compile data relating to grants issued under this chapter. The organization shall report biennially to the legislative council.

SECTION 5. AMENDMENT. Section 65-04-15 of the North Dakota Century Code is amended and reenacted as follows:

65-04-15. Information in employer's files confidential - Exceptions - Penalty if employee of organization divulges information.

1. The information contained in an employer's file is confidential and not subject to ~~section 44-04-18~~ disclosure under chapter 44-04 and section 6 of article XI of the Constitution of North Dakota; is for the exclusive use and information of the organization or its agents in the discharge of the organization's official duties; and is not open to the public nor usable in any court in any court action or proceeding unless the organization is a party to that court action or proceeding. The information contained in the file, however, may be tabulated and published by the organization in statistical form for the use and information of the state departments and of the public.
2. An employer file includes all documents and data pertaining to a person that pays premium to the organization, except for information relating to a grant award under section 65-03-04 which the organization is specifically authorized to disclose or under section 65-03-04 which does not disclose payroll or premium information as provided in subsection 3.
3. Upon request, the organization shall disclose the rate classification of an employer to the requester; however, the organization may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. The organization may disclose whether an employer's file is active, canceled, closed, pending, delinquent, or uninsured. The information in the employer's file may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title, except upon written authorization by the employer for a specified purpose, or at the discretion of the organization with regard to delinquent and uninsured employers. Disclosure by a public servant of information contained in an employer's report, except as otherwise allowed by law, is a violation of section 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the organization.

4. The organization may, upon request of the state tax commissioner or the secretary of state, furnish to them a list of employers showing only the names, addresses, and organization file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The organization may provide any state or federal agency information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of that state or federal agency.
5. Whenever the organization obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the organization shall provide any relevant information to those officials for the purpose of administering their duties.
6. The organization may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

SECTION 6. REPEAL. Section 65-03-03 of the North Dakota Century Code is repealed.

Approved May 1, 2009
Filed May 4, 2009

CHAPTER 609

SENATE BILL NO. 2071

(Senators J. Lee, Klein, Wanzek)
(Representatives Ruby, N. Johnson)

AN ACT to amend and reenact section 65-01-03 of the North Dakota Century Code, relating to the workers' compensation presumption of employment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

65-01-03. Person Individual performing service for remuneration presumed an employee.

1. Each ~~person~~ individual who performs services for another for remuneration is presumed to be an employee of the person for ~~whom~~ which the services are performed, unless it is proven that the ~~person~~ individual is an independent contractor under the "common law" test. The person ~~who~~ that asserts that a ~~person~~ an individual is an independent contractor under the "common law" test, rather than an employee, has the burden of proving that fact.
2. In the case of commercial motor vehicles whose gross vehicle weight rating is more than twenty-six thousand pounds [11793.40 kilograms], with an individual operating a licensed truck or licensed tractor for a motor carrier of property, the presumption in subsection 1 is successfully rebutted if all of the following factors are present:
 - a. The individual owns, leases, or enters a purchase agreement to purchase a truck or tractor. The lease or purchase agreement must represent reasonably the value of the lease or purchase of the truck or tractor. The lease or purchase agreement may be with the carrier of property. An unreasonable lease or purchase agreement with a third party, unaffiliated with the carrier, does not affect this factor.
 - b. The individual is responsible for the maintenance and repair of the truck or tractor.
 - c. The individual bears the principal burden of operating costs, including fuel, supplies, vehicle insurance, and personal expenses.
 - d. The individual is responsible for supplying the necessary personal services to operate the truck or tractor.
 - e. Income taxes are not withheld from the individual's compensation.
 - f. The individual generally determines the details and means of performing the services, in conformance with statutory or

regulatory requirements, operating procedures of the carrier, and specifications of the shipper.

- g. The individual enters a written agreement with the motor carrier outlining the nature of the relationship.

Approved March 19, 2009

Filed March 19, 2009

CHAPTER 610**SENATE BILL NO. 2055**

(Legislative Council)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact subsection 1 of section 65-01-15.1 of the North Dakota Century Code, relating to the burden of proof under the workers' compensation firefighter's and law enforcement officer's presumption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

1. 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 an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. The presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related.

Approved March 19, 2009
Filed March 19, 2009

CHAPTER 611**HOUSE BILL NO. 1464**
(Representatives N. Johnson, Berg, Boe)
(Senators Klein, Wanzek)

AN ACT to amend and reenact subsection 14 of section 54-44.3-20, section 54-57-01, subsection 1 of section 54-57-03, sections 65-01-16, 65-02-01, 65-02-03.3, 65-02-22, 65-02-33, 65-04-19.3, and 65-04-32, subdivision b of subsection 3 of section 65-05-29, and subsection 2 of section 65-05.1-08 of the North Dakota Century Code, relating to the workforce safety and insurance board, workforce safety and insurance administrative hearings, and workforce safety and insurance personnel; to repeal sections 65-02-01.2 and 65-02-34 of the North Dakota Century Code, relating to the workforce safety and insurance personnel system and spending authority; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹¹ **SECTION 1. AMENDMENT.** Subsection 14 of section 54-44.3-20 of the North Dakota Century Code is amended and reenacted as follows:

14. Officers ~~and employees~~ of workforce safety and insurance.

SECTION 2. AMENDMENT. Section 54-57-01 of the North Dakota Century Code is amended and reenacted as follows:

54-57-01. Office of administrative hearings - Agency defined - Administrative agency defined.

1. A state office of administrative hearings is created.
2. The office is under the direction of a director of administrative hearings who must be free of any association that would impair the director's ability to function officially in a fair and objective manner. The director must be an attorney at law in good standing, admitted to the bar in this state, and currently licensed by the state board of law examiners. The director of administrative hearings must be appointed by the governor and confirmed by the senate and shall hold office for a term of six years, the term beginning July first of the year of appointment and ending June thirtieth of the sixth calendar year after appointment.
3. The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section 28-32-31 and to provide administrative law judges to preside at administrative hearings as requested by agencies. The director of

²⁹¹ Section 54-44.3-20 was also amended by section 1 of House Bill No. 1067, chapter 511.

administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state board of law examiners. Administrative law judges employed by the director before August 1, 1995, need not be attorneys at law and may be designated by the director to preside at any administrative proceedings or adjudicative proceedings under section 54-57-03. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative law judges must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative law judge must have a demonstrated knowledge of administrative practices and procedures and must be free of any association that would impair the person's ability to function officially in a fair and objective manner.

4. The director of administrative hearings may employ the necessary support staff required by the office. Support staff must be classified employees.
5. The director of administrative hearings shall develop categories of positions in the classified service under class titles for the appointment or employment of administrative law judges and support staff in consultation with and approved by the director of North Dakota human resource management services, including the salary to be paid for each position or category of position.
6. The director shall file a report with the governor and the state advisory council for administrative hearings not later than the first day of December of each odd-numbered year. The report must provide information regarding all administrative hearings conducted by the office of administrative hearings during the previous biennium. The report must provide information regarding meeting case processing guidelines for each agency, the cost of hearings for each agency, the decisions issued for each agency, and the results of the office of administrative hearings' service survey.
7. In this chapter, unless the context or subject matter otherwise requires, "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government whether headed by an appointed or elected official.
- 7- 8. In this chapter, unless the context or subject matter otherwise requires, "administrative agency" means that term as defined in section 28-32-01.

SECTION 3. AMENDMENT. Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, ~~workforce safety and insurance~~, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted

by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

²⁹² **SECTION 4. AMENDMENT.** Section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

65-01-16. Decisions by organization - Disputed decisions. The following procedures must be followed in claims for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

1. The organization shall send a copy of each initial claim form filed with the organization to the claimant's employer, by regular mail, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed. Failure of the employer to file a response within fourteen days from the day the response form was mailed to the employer constitutes the employer's admission that the information in the claim form is correct.
2. The organization may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of record.
3. The organization may issue a notice of decision for any decision made by informal internal review and shall serve the notice of decision on the parties by regular mail. A notice of decision must include a statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.
4. A party has thirty days from the day the notice of decision was mailed by the organization in which to file a written request for reconsideration. The request must state the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.
5. Within sixty days after receiving a request for reconsideration, the organization shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the

²⁹² Section 65-01-16 was also amended by section 1 of House Bill No. 1201, chapter 612.

North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.

6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the office of independent review under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the office of independent review mails its notice that the office's assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section. ~~The organization may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings, conclusions, and orders. In reviewing recommended findings, conclusions, and orders, the organization may consult with its legal counsel representing it in the proceeding.~~
9. ~~Within sixty days after receiving the recommended findings, conclusions, and order, the organization shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.~~
40. A party may appeal a posthearing administrative order to district court in accordance with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing to district court a final order issued by a hearing officer under this title.
44. 10. Any notice of decision, administrative order, or posthearing administrative order is subject to review and reopening under section 65-05-04.
42. ~~This section is effective for all orders and decisions on all claims regardless of the date of injury or the date the claim was filed.~~

SECTION 5. AMENDMENT. Section 65-02-01 of the North Dakota Century Code is amended and reenacted as follows:

65-02-01. Workforce safety and insurance - Director - Division directors. The organization must be maintained for the administration of this title. ~~The board shall appoint the director of the organization. The director is subject to the supervision and direction of the board and serves at the pleasure of the board.~~ The director may appoint the director of any division established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

SECTION 6. AMENDMENT. Section 65-02-03.3 of the North Dakota Century Code is amended and reenacted as follows:

65-02-03.3. Board - Powers and duties. The board may authorize the organization to transfer moneys between line items within the organization's budget. The board shall:

1. ~~Appoint a director on a nonpartisan, merit basis.~~
2. ~~Set the compensation of the director.~~
3. ~~Ensure a proper response to any audit recommendations.~~
4. ~~Present an annual report to the legislative audit and fiscal review committee. The report must be presented by the chairman of the board and the director.~~
5. ~~Prepare, with the assistance of the organization, an organization budget, beginning with the July 1, 1999, through June 30, 2001, biennium. The organization shall present the budget to the governor for inclusion in the governor's budget. If the governor makes adjustments to the budget, the board may concur in the adjustments or may present testimony to the appropriations committees of the legislative assembly, requesting amendments to the budget to remove adjustments made by the governor. The deadline for submission of the budget is the same as the deadline for all executive agencies.~~
6. ~~Assist the organization in developing and submitting a budget, responding to any audit recommendations, formulating policies, and discussing ~~problems~~ issues related to the administration of the organization, including the determination of employer premium rates, maintenance of the solvency of the workforce safety and insurance fund, and provision of rehabilitation services, while ensuring impartiality and freedom from political influence.~~
7. ~~2. Incorporate Recommend principles of continuous improvement goalsetting, a procedure for implementing a team-oriented continuous improvement program throughout all operations of the organization. The program must include a number of challenging, measurable goals to ensure the organization maintains focus on improving those areas most important to its primary mission.~~
8. ~~3. Adopt internal management rules creating bylaws for the board and relating to the election of a board chairman, formation of committees, replacement of departing members, voting procedures, and other procedural matters.~~
4. ~~Provide annual, formal recommendations to the governor regarding setting premium levels and providing premium dividend distributions.~~
5. ~~Provide formal recommendations to the governor regarding legislation that affect the organization.~~
6. ~~Provide formal recommendations to the governor regarding the fund's investment allocation.~~

SECTION 7. AMENDMENT. Section 65-02-22 of the North Dakota Century Code is amended and reenacted as follows:

65-02-22. Hearing officer - Qualifications - Location. A hearing officer designated by the ~~organization~~ office of administrative hearings under chapter 28-32 must be a ~~person an individual~~ licensed to practice law in this state. A hearing officer ~~designated by the organization~~ may not maintain an office within the organization from which the hearing officer conducts daily business. This section does not preclude a hearing held pursuant to chapter 28-32 from being held within the organization.

SECTION 8. AMENDMENT. Section 65-02-33 of the North Dakota Century Code is amended and reenacted as follows:

65-02-33. Occupational health and preventive medicine programs - Continuing appropriation. ~~Upon approval of the board, the~~ The organization may establish and implement programs to advance occupational health and preventive medicine in this state and to protect the integrity of the fund. These programs may include the provision of education or training, consultation, grants, scholarships, or other incentives that promote superior care and treatment of the workforce in this state. Funds in the workforce and insurance fund are appropriated to the organization on a continuing basis for the purpose of funding the programs implemented under this section.

SECTION 9. AMENDMENT. Section 65-04-19.3 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19.3. Premium calculation programs - Authority. ~~Upon approval of its board of directors, the~~ The organization may create and implement actuarially sound employer premium calculation programs, including dividends, group insurance, premium deductibles, and reimbursement for medical expense assessments. Programs created or modified under this section are not subject to title 28-32 and may include requirements or incentives for the early reporting of injuries. An employer with a deductible policy under this section, who chooses to pursue a third-party action under section 65-01-09 after an injured worker and the organization have chosen not to pursue the third-party action, may keep one hundred percent of the recovery obtained, regardless of the expense incurred in covering the injury and regardless of any contrary provision in section 65-01-09. If the employer pursues the third-party action pursuant to this section, neither the organization nor the injured worker has any liability for sharing in the expense of bringing that action.

SECTION 10. AMENDMENT. Section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

65-04-32. Decisions by organization - Disputed decisions. Notwithstanding any provisions to the contrary in chapter 28-32, the following procedures apply when the organization issues a decision under this chapter or section 65-05-07.2:

1. The organization may issue a notice of decision based on an informal internal review of the record and shall serve notice of the decision on the parties by regular mail. The organization shall include with the decision a notice of the employer's right to reconsideration.
2. An employer has thirty days from the date of service to file a written petition for reconsideration. The request must state specifically the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the

organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.

3. Within sixty days after receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by certified mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration.
4. A party has thirty days from the date of service of an administrative order to file a written request for rehearing. The request must state specifically each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that chapter does not conflict with this section. ~~The organization may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings of fact, conclusions of law, and orders. In reviewing recommended findings, conclusions, and orders, the organization may consult with its legal counsel representing it in the proceeding.~~
6. ~~Within sixty days after receiving the administrative law judge's recommended findings of fact, conclusions of law, and order, the organization shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.~~
7. An employer may appeal a posthearing administrative order to district court in accordance with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing to district court a final order issued by a hearing officer under this title.

²⁹³ **SECTION 11. AMENDMENT.** Subdivision b of subsection 3 of section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

- b. An adjudication by the organization or by order of ~~the board~~ of any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;

SECTION 12. AMENDMENT. Subsection 2 of section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

2. The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount

²⁹³ Section 65-05-29 was also amended by section 1 of House Bill No. 1063, chapter 626.

payable on behalf of an applicant may not exceed fifty thousand dollars and must be payable within five years. A loan must be repaid within a period not to exceed twenty years. A loan must be repaid at an interest rate established by the organization which may not exceed the rate of one percent below the Bank of North Dakota's prime interest rate. The organization shall pay the Bank of North Dakota a negotiated fee for administering and servicing loans under this section. At the ~~board's~~ organization's discretion, moneys to establish and maintain the revolving loan fund must be appropriated from the organization's workforce safety and insurance fund. The revolving loan fund is a special fund and must be invested pursuant to section 21-10-06. Investment income and collections of interest and principal on loans made from the revolving loan fund are appropriated on a continuing basis to maintain the fund and provide loans in accordance with this section. The ~~board~~ organization, as determined necessary, may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.

SECTION 13. REPEAL. Sections 65-02-01.2 and 65-02-34 of the North Dakota Century Code are repealed.

SECTION 14. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 612

HOUSE BILL NO. 1201 (Representative Keiser)

AN ACT to amend and reenact subsections 6 and 7 of section 65-01-16 and section 65-02-27 of the North Dakota Century Code, relating to changing the name of the workforce safety and insurance office of independent review.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹⁴ **SECTION 1. AMENDMENT.** Subsections 6 and 7 of section 65-01-16 of the North Dakota Century Code are amended and reenacted as follows:

6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the ~~office of independent decision review office~~ under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the ~~office of independent decision review office~~ mails its notice that the office's assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.

SECTION 2. AMENDMENT. Section 65-02-27 of the North Dakota Century Code is amended and reenacted as follows:

65-02-27. Office of independent Decision review office. The organization's ~~office of independent decision review office~~ is established. The ~~office of independent decision review office~~ is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title. The ~~office of independent decision review must office~~ shall provide assistance to a ~~worker an employee~~ who has filed a claim, which may include acting on behalf of a ~~worker an employee~~ who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing a ~~worker an employee~~ of the effect of decisions made by the organization, ~~the worker an employee~~, or an employer under this title. The ~~office of independent decision review office~~ shall provide assistance to ~~workers employees~~, upon request, in cases of constructive denial or after a vocational consultant's report has been issued. The organization shall employ a director of the ~~office of independent decision review office~~ and other personnel determined to be necessary for the administration of the office. A person employed to administer the ~~office of independent decision review office~~ may not act as an attorney for a ~~worker an employee~~. The organization may not pay attorney's fees to an attorney who represents a ~~worker an employee~~ in a disputed claim before the organization unless the ~~worker employee~~ has first attempted to resolve the dispute through the ~~office of~~

²⁹⁴ Section 65-01-16 was also amended by section 4 of House Bill No. 1464, chapter 611.

independent decision review office. A written request for assistance by a worker an employee who contacts the office of independent decision review office within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order. The period begins upon notice to the worker employee, sent by regular mail, that the office of independent review's decision review office's assistance to the worker employee is completed. The information contained in a file established by the office of independent decision review office on a worker's an employee's disputed claim, including communications from a worker an employee, is privileged and may not be released without the worker's employee's permission. Information in the file containing the notes or mental impressions of office of independent decision review office staff is confidential and may not be released by the office of independent decision review office.

Approved March 24, 2009

Filed March 24, 2009

CHAPTER 613**HOUSE BILL NO. 1525**

(Representatives Amerman, J. Kelsh, Wolf)
(Senator Pomeroy)

AN ACT to provide for a workforce safety and insurance study of post-retirement benefits within the workers' compensation system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. POST-RETIREMENT BENEFITS STUDY. During the 2009-10 interim, workforce safety and insurance shall study the additional benefits payable benefit structure that comprises the post-retirement benefits available to an individual whose disability benefits end at the time of social security retirement eligibility. The study must identify the advantages and disadvantages of the current system to workers' compensation benefit recipients. The study must include recommendations on whether changes are necessary and the cost of any proposed changes. Before August 1, 2010, workforce safety and insurance shall report the results of the study to the legislative council's workers' compensation review committee.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 614

HOUSE BILL NO. 1035

(Legislative Council)
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact subdivision a of subsection 1 of section 65-02-03.1 and section 65-04-02 of the North Dakota Century Code, relating to the workforce safety and insurance board of directors and workforce safety and insurance reserves.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. Six board members represent employers in this state which maintain active accounts with the organization. Two of the employer members must be employers with annual premiums, which at the time of the member's initial appointment were greater than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was ~~at least ten thousand dollars~~ but less than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was less than ten thousand dollars; and two of the employer members must be employer at large representatives. Except for the employer at large representatives, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.

SECTION 2. AMENDMENT. Section 65-04-02 of the North Dakota Century Code is amended and reenacted as follows:

65-04-02. Reserves - Surplus.

1. The organization shall maintain adequate financial reserves to ensure the solvency of the fund and the payment of future benefit obligations, based upon actuarially sound principles. The discount rate used in evaluating the financial reserves may not exceed six percent. The level of financial reserves plus available surplus determined as of June thirtieth of each year must be at least one hundred twenty percent but may not exceed one hundred forty percent of the actuarially established discounted reserve.
2. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve the organization may not issue premium dividends and, notwithstanding section 65-04-01, the organization shall modify recommended premium rate levels so that the organization is estimated to come into compliance within the following two years.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years. However, premium dividends issued may not exceed fifty percent of the preceding year's premium in any given year.
4. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is between one hundred twenty percent and one hundred thirty percent of the actuarially established discounted reserve, the organization may not issue premium dividends.
5. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is one hundred thirty percent to one hundred forty percent of the actuarially established discounted reserve, the organization may issue premium dividends. However, premium dividends issued may not exceed forty percent of the preceding year's premium in any given year, and the level of financial reserves plus available surplus may not be reduced below one hundred thirty percent.
6. For the purposes of this section, "available surplus" means net assets as stated on the statement of net assets of the organization, but does not include funds designated or obligated to specific programs or projects pursuant to a directive or specific approval by the legislative assembly.
7. The independent annual financial audit of the organization must report the organization's financial reserves.

Approved April 30, 2009
Filed May 4, 2009

CHAPTER 615**SENATE BILL NO. 2058**

(Legislative Council)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-02-21.1 and subsection 3 of section 65-05-28 of the North Dakota Century Code, relating to a distinction between workers' compensation independent medical examinations and independent medical reviews.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-21.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-21.1. Licensure required for psychologists and physicians performing utilization review. Psychologists making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of medical examiners. This requirement does not apply to psychologists or physicians conducting independent medical examinations or independent medical reviews under section 65-05-28.

²⁹⁵ **SECTION 2. AMENDMENT.** Subsection 3 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

3. The organization may at any time require an injured employee to submit to an independent medical examination or independent medical review by a one or more duly qualified ~~doctor~~ or doctors designated or approved by the organization. ~~The~~ An independent medical examination and independent medical review must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. An independent medical examination contemplates an actual examination of an injured employee, either in person or remotely if appropriate. An independent medical review contemplates a file review of an injured employee's records, including treatments and testing. The injured employee may have a duly qualified doctor designated by that employee present at the examination if procured and paid for by that employee. Providing further that:
 - a. In case of any disagreement between doctors making an examination on the part of the organization and the injured employee's doctor, the organization shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the organization.

²⁹⁵ Section 65-05-28 was also amended by section 1 of Senate Bill No. 2056, chapter 623, and section 1 of Senate Bill No. 2431, chapter 624.

- b. The injured employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the injured employee is working and loses gross wages from the injured employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.

Approved March 19, 2009

Filed March 19, 2009

CHAPTER 616

HOUSE BILL NO. 1037

(Legislative Council)
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact sections 65-02-23 and 65-02-30 of the North Dakota Century Code, relating to the independent performance evaluation of workforce safety and insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workforce safety and insurance fraud unit - Continuing appropriation. The organization shall establish a workforce safety and insurance fraud unit. The organization may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost-effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-33 or 65-05-33. The unit shall refer cases of fraud to the organization for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. ~~The biennial independent performance evaluation of the organization must evaluate and report on the effectiveness of these expenditures.~~ The organization may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class.

²⁹⁶ **SECTION 2. AMENDMENT.** Section 65-02-30 of the North Dakota Century Code is amended and reenacted as follows:

65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation. Biennially, the director shall request the state auditor to select a firm with extensive expertise in ~~workforce safety and insurance workers' compensation practices~~ and standards to complete a performance evaluation of the functions and operations of the organization during that biennium. This may not be construed to require the firm to be a certified public accounting firm. ~~As determined necessary by the state auditor, but at least once every other biennium, the biennial independent performance evaluation must evaluate departments of the organization to determine whether the organization is providing quality service in an efficient and cost-effective manner; evaluate the effectiveness of safety and loss prevention programs under section 65-03-04; and evaluate the board to determine whether the board is operating within section 65-02-03.3 and within the board's bylaws.~~ The firm's report

²⁹⁶ Section 65-02-30 was also amended by section 95 of House Bill No. 1436, chapter 482.

must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director or the director's designee, the chairman of the board or the chairman's designee, and a representative of the firm shall present the evaluation report and any action taken to the legislative council's legislative audit and fiscal workers' compensation review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative session following the performance evaluation the governor. The director shall provide a copy of the performance evaluation report to the state auditor. ~~The organization shall develop and maintain comprehensive, objective performance measurements. These measurements must be evaluated as part of the independent performance evaluation performed under this section~~ Except as otherwise provided in this section, the workers' compensation review committee may select no more than four elements to be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor shall include the elements selected by the committee in the performance evaluation, but the state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the workers' compensation review committee, may not exceed eight. In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements. Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation. The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 617**SENATE BILL NO. 2059**

(Legislative Council)
(Workers' Compensation Review Committee)

AN ACT to create and enact two new sections to chapter 65-02 of the North Dakota Century Code, relating to workforce safety and insurance payment of an injured employee's attorney's fees for a case review or settlement proposal; to provide for a report to the legislative assembly; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Attorney's fees for legal review in preparation for rehearing of an administrative order.

1. The organization shall pay an injured employee's attorney for the fees and costs to consult with the injured employee regarding a request for rehearing of an administrative order issued by the organization under section 65-01-16 and chapter 28-32. The attorney's fees and costs under this section are for the purpose of an initial consultation and review of the claimant's case and are separate from and independent of the attorney's fees and costs provided for under section 65-02-08. To be eligible for payment of attorney's fees and costs under this section, before consulting the attorney the injured employee must first receive a certificate of completion from the office of independent review, and the attorney consultation must take place after the certificate of completion is issued but before the rehearing is conducted.
2. Payment of attorney's fees and costs under this section is limited as follows:
 - a. An injured employee may consult with one attorney per administrative order;
 - b. The payment amount for attorney's fees may not exceed a total of five hundred dollars per injured employee, per administrative order;
 - c. The payment amount for costs may not exceed a total of one hundred fifty dollars per injured employee, per administrative order;
 - d. The attorney must be licensed to practice law in North Dakota and must be in good standing; and
 - e. The organization may deny fees and costs the organization determines to be excessive or frivolous.

3. To obtain payment under this section, an attorney shall submit to the organization a fee statement. The fee statement must be signed by the attorney and must include:
 - a. The name of the injured employee;
 - b. The workforce safety and insurance claim number;
 - c. The date of the billing statement;
 - d. A summary of the basic legal issue;
 - e. The date of each service or charge being billed;
 - f. An itemization and a reasonable description of the legal work performed for each service or charge;
 - g. The time and amount billed for each item; and
 - h. The total time and amounts billed.
4. Under this section, the organization shall reimburse the following costs:
 - a. Actual postage, if postage exceeds three dollars per parcel;
 - b. Actual toll charges for long-distance telephone calls;
 - c. Copying charges at eight cents per page;
 - d. Mileage and other expenses for reasonable and necessary travel, including per diem, all of which are to be paid in the amounts paid state officials as provided under sections 44-08-04 and 54-06-09; and
 - e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars.
5. Under this section, the organization may not reimburse the following costs:
 - a. Express mail;
 - b. Additional copies of transcripts;
 - c. Costs incurred to obtain medical records;
 - d. Copy charges for documents provided by the organization; and
 - e. Costs for typing and clerical or office services.

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

Attorney's fees for legal review of proposed settlement. The organization shall pay up to five hundred dollars to an attorney for review of a proposed settlement offered to an injured employee, if the employee to whom the settlement is

offered was not represented by an attorney at the time the offer was made. Subdivisions d and e of subsection 2 of section 1 of this Act apply to the payment of fees under this section. The organization may reimburse an attorney for costs under this section according to subsections 3, 4, and 5 of section 1 of this Act. Fees and costs under this section are payable regardless of whether the injured employee accepts the settlement proposal.

SECTION 3. REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY.

Workforce safety and insurance shall report the number of injured employees per year that were eligible for payment of attorney's fees and costs under section 1 of this Act to the senate and house industry, business and labor standing committees during the sixty-second legislative assembly.

SECTION 4. APPLICATION.

Section 1 of this Act applies to injured employees who have received a certificate of completion from the office of independent review on or after the effective date of this Act. Section 2 of this Act applies to settlement proposals offered on or after the effective date of this Act.

Approved April 30, 2009
Filed May 1, 2009

CHAPTER 618**HOUSE BILL NO. 1036**

(Legislative Council)
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact section 65-04-01 of the North Dakota Century Code, relating to the calculation of workforce safety and insurance premiums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-01 of the North Dakota Century Code is amended and reenacted as follows:

65-04-01. Classification of employments - Premium rates - Requirements.

1. The organization shall classify employments with respect to their degrees of hazard, determine the risks of different classifications, and fix the rate of premium for each of the classifications sufficiently high to provide for:
 - a. The payment of the expenses of administration of the organization;
 - b. The payment of compensation according to the provisions and schedules contained in this title; and
 - c. The maintenance by the fund of adequate reserves and surplus to the end that it may be kept at all times in an entirely solvent condition.
2. In the exercise of the powers and discretion conferred upon it, the organization shall fix and maintain for each class of occupation, the lowest rate which still will enable it to comply with the other provisions of this section.
3. The organization shall establish premium rates annually on an actuarial basis. The statewide average premium rate level may not deviate by more than five percentage points from the recommended actuarial indicated premium level for that year.
4. Before the effective date of any premium rate change, including a change in the minimum premium, the organization shall hold a public hearing on the rate change. Chapter 28-32 does not apply to a hearing held by the organization under this subsection.

Approved March 19, 2009
Filed March 24, 2009

CHAPTER 619

HOUSE BILL NO. 1101

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact subsection 10 of section 65-05-08, sections 65-05-08.2, 65-05-09, and 65-05-10, subsection 4 of section 65-05-15, and sections 65-05-17 and 65-05-26 of the North Dakota Century Code, relating to workers' compensation dependency allowances, preacceptance disability benefits, maximum disability benefits, travel and other reimbursement, death benefits, and burial expenses; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 65-05-08 of the North Dakota Century Code is amended and reenacted as follows:

10. The organization shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of ~~ten~~ fifteen dollars per week per child. ~~Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.~~

SECTION 2. AMENDMENT. Section 65-05-08.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08.2. Preacceptance disability benefits. If, after receiving a claim for benefits, the organization determines that more information is needed to process the claim, but that the information in the file indicates the injured employee is more likely than not entitled to disability benefits, the organization may pay preacceptance disability benefits equal to the ~~minimum~~ weekly disability benefit allowed under section 65-05-09. The organization may continue to pay preacceptance disability benefits to the employee during the period the claim is pending, unless the injured employee is not cooperating with requests from the organization for additional information needed to process the claim. The organization may not pay more than sixty days of preacceptance benefits. The organization may only recover a payment made to an injured employee under this section if that recovery is allowed under section 65-05-33. There is no appeal from an organization decision not to pay preacceptance disability benefits.

²⁹⁷ **SECTION 3. AMENDMENT.** Section 65-05-09 of the North Dakota Century Code is amended and reenacted as follows:

65-05-09. Temporary total or permanent total disability - Weekly and aggregate benefit. If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during that disability a weekly benefit equal to sixty-six and two-thirds percent of the gross weekly wage of the employee,

²⁹⁷ Section 65-05-09 was also amended by section 1 of House Bill No. 1064, chapter 621.

subject to a minimum of sixty percent and a maximum of one hundred ~~ten~~ twenty-five percent of the average weekly wage in the state. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage and the organization benefit rates in effect on the date of first disability.

1. If an employee suffers disability but is able to return to employment for a period of twelve consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher. The organization benefit rates are those in effect at the time of that recurrence.
2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the employee after deductions for social security and federal income tax.
3. When an employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that employee's weekly benefit as is necessary may be used by the organization to help defray the cost of the nursing home care.

SECTION 4. AMENDMENT. Section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

65-05-10. Partial disability - Weekly benefit. If the injury causes temporary partial disability resulting in decrease of earning capacity, the disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage-earning capacity after the injury in the same or another employment. Partial disability benefits are subject to a maximum of one hundred ~~ten~~ twenty-five percent of the average weekly wage in the state. The combined partial disability benefits, dependency allowance, and postinjury wage-earning capacity may not exceed the preinjury weekly wage of the employee after deductions for social security and federal income tax.

1. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the organization.
2. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The organization may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity if the job employs the employee to full work capacity in terms of hours worked per week, and if the job is in a field related to the employee's transferable skills. The presumption may

be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

SECTION 5. AMENDMENT. Subsection 4 of section 65-05-15 of the North Dakota Century Code is amended and reenacted as follows:

4. When an injured worker is entitled to benefits on an aggravation basis, the organization shall still pay costs of vocational rehabilitation, burial expenses under section 65-05-26, travel, other personal reimbursement for seeking and obtaining medical care under section 65-05-28, and dependency allowance on a one hundred percent basis.

SECTION 6. AMENDMENT. Section 65-05-17 of the North Dakota Century Code is amended and reenacted as follows:

65-05-17. Weekly compensation allowances for death claims. If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified:

1. To the decedent's spouse or to the guardian of the children of the decedent, an amount equal to the benefit rate for total disability under section 65-05-09. All recipients of benefits under this subsection are eligible for benefits at the rate provided in this section, regardless of the date of death of the deceased employee. These benefits continue until the death of the decedent's spouse; or, if the surviving children of the decedent are under the care of a guardian, until those children no longer meet the definition of "child" in this title. If there is more than one guardian for the children who survive the decedent, the organization shall divide the death benefits equally among the children and shall pay benefits to the children's guardians. Total death benefits, including supplementary benefits, paid on any one claim may not exceed ~~two~~ three hundred ~~fifty~~ thousand dollars.
2. To each child of the deceased employee, the amount of ~~ten~~ fifteen dollars per week. This rate must be paid to each eligible child regardless of the date of death. The organization may pay the benefit directly to the child of the deceased employee or to the surviving parent or guardian of the child. Dependency allowance may not be reduced by the percentage of aggravation.
3. In addition to the payments provided under subsections 1 and 2, a payment in the sum of ~~twelve~~ two thousand five hundred dollars to the decedent's spouse or the guardian of the children of the decedent and ~~four~~ eight hundred dollars for each dependent child. If there is more than one guardian of the decedent's surviving children, the ~~twelve~~ two thousand five hundred dollars must be divided equally among the children and paid to the children's guardians.

SECTION 7. AMENDMENT. Section 65-05-26 of the North Dakota Century Code is amended and reenacted as follows:

65-05-26. Burial expenses. If death benefits are payable under section 65-05-16, the fund shall pay to the facility handling the funeral arrangements of the

deceased employee burial expenses not to exceed ~~six~~ ten thousand ~~five hundred~~ dollars.

SECTION 8. APPLICATION. The increase in section 1 of this Act applies to employees eligible for a dependency allowance on or after the effective date of this Act and applies only to dependency allowance payments made on or after the effective date of this Act. The amendment in section 2 of this Act applies to employees who have incurred claimed injuries on or after the effective date of this Act. The increases in the maximums in section 3 and section 4 of this Act apply to employees who have incurred compensable injuries on or after the effective date of this Act. The amendment in section 5 of this Act applies to expenses incurred by employees on or after the effective date of this Act. The increases in section 6 and section 7 of this Act apply to employee deaths resulting from injuries that occur on or after the effective date of this Act.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 620**HOUSE BILL NO. 1561**

(Representatives Schneider, Gruchalla, Kasper)
(Senator Wanzek)

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to a treating doctor's opinion in workers' compensation decisions; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Treating doctor's opinion.

1. If the organization does not give an injured employee's treating doctor's opinion controlling weight, the organization shall establish that the treating doctor's opinion is not well-supported by medically acceptable clinical and laboratory diagnostic techniques or is inconsistent with the other substantial evidence in the injured employee's record based on one or more of the following factors:
 - a. The length of the treatment relationship and the frequency of examinations;
 - b. The nature and extent of the treatment relationship;
 - c. The amount of relevant evidence in support of the opinion;
 - d. How consistent the opinion is with the record as a whole;
 - e. Appearance of bias;
 - f. Whether the doctor specializes in the medical issues related to the opinion; and
 - g. Other relevant factors.
2. This section does not apply to managed care programs under section 65-02-20. For purposes of this section, the organization shall determine whether a doctor is an injured employee's treating doctor.

SECTION 2. APPLICATION. This Act applies only to claims filed on or after the effective date of this Act.

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

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 621**HOUSE BILL NO. 1064**

(Legislative Council)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact sections 65-05-09, 65-05.2-01, and 65-05.2-02 of the North Dakota Century Code, relating to cost-of-living adjustments for workers' compensation total disability benefits; to provide for application; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹⁸ **SECTION 1. AMENDMENT.** Section 65-05-09 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If an employee suffers disability but is able to return to employment for a period of ~~twelve~~ three consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher. The organization benefit rates are those in effect at the time of that recurrence.
2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the employee after deductions for social security and federal income tax.
3. When an employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that employee's weekly benefit as is necessary may be used by the organization to help defray the cost of the nursing home care.

SECTION 2. AMENDMENT. Section 65-05.2-01 of the North Dakota Century Code is amended and reenacted as follows:

65-05.2-01. Eligibility for supplementary benefits.

²⁹⁸ Section 65-05-09 was also amended by section 3 of House Bill No. 1101, chapter 619.

1. For claims filed before January 1, 2006, a workforce safety and insurance claimant who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of ~~seven~~ three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this subsection lasts as long as the claimant is entitled to temporary total disability benefits, permanent total disability benefits, or death benefits.
2. For claims filed after December 31, 2005, a workforce safety and insurance claimant who is receiving permanent total disability benefits or death benefits and who has been receiving disability or death benefits for a period of at least three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this subsection lasts as long as the claimant is entitled to permanent total disability benefits or death benefits.

SECTION 3. AMENDMENT. Section 65-05.2-02 of the North Dakota Century Code is amended and reenacted as follows:

65-05.2-02. Supplementary benefits - Amount.

1. A claimant whose weekly benefit rate is less than sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit that, when added to the weekly temporary total disability benefit, permanent total disability benefit, or death benefit, equals the ratio of that claimant's weekly benefit to the state's average weekly wage on the date of the claimant's first disability, times the state's average weekly wage in effect at the date eligibility for supplementary benefits is achieved. The organization shall determine on an annual basis, for a claimant who receives a supplementary benefit under this subsection, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. For purposes of this section, combined weekly benefit means the weekly benefit for which the claimant is eligible before any applicable social security offset plus the amount of weekly supplementary benefits for which the claimant is eligible.
2. A claimant whose weekly benefit rate is greater than or equal to sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit equal to a percentage of that claimant's weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. The organization shall determine on an annual basis, for that claimant, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage.

3. An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

SECTION 4. APPLICATION. Sections 2 and 3 of this Act apply to temporary total disability recipients or permanent total disability recipients who filed a claim before January 1, 2006, and whose first date of eligibility for supplementary benefits under this Act occurs after June 30, 2009.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on July 1, 2009.

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

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 622

SENATE BILL NO. 2057

(Legislative Council)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact subsection 11 of section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent partial impairment awards for loss of vision; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

- 11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the permanent impairment multiplier identified in the following schedule, the organization shall pay an award equal to the permanent impairment multiplier set out in the following schedule:

Table with 2 columns: Description of amputation and Permanent impairment multiplier. Includes entries for thumb, first, second, third, and fourth fingers, and the leg at the hip.

| | |
|--|---|
| For amputation of the leg at or above the knee | permanent impairment multiplier of 195 |
| For amputation of the leg at or above the ankle | permanent impairment multiplier of 150 |
| For amputation of a great toe | permanent impairment multiplier of 30 |
| For amputation of the second or distal phalanx of the great toe | permanent impairment multiplier of 18 |
| For amputation of any other toe | permanent impairment multiplier of 12 |
| For loss of an eye | permanent impairment multiplier of 150 |
| <u>For the loss of vision of an eye which equals or exceeds 20/200 corrected</u> | <u>permanent impairment multiplier of 100</u> |

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the organization shall issue an impairment award based on the greater of the permanent impairment multiplier allowed for the combined rating established under the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the permanent impairment multiplier set forth in this subsection.

SECTION 2. APPLICATION. This Act applies to injuries that occur on or after the effective date of this Act.

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

Approved March 19, 2009
 Filed March 19, 2009

CHAPTER 623**SENATE BILL NO. 2056**

(Legislative Council)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact subsection 2 of section 65-05-28 of the North Dakota Century Code, relating to workers' compensation mileage reimbursement for injured employees' medical travel; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹⁹ **SECTION 1. AMENDMENT.** Subsection 2 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the organization reimbursement rates in effect on the date of incurred travel or expense. Mileage calculations must be based upon the atlas or map mileage from city limit to city limit and do not include intracity mileage. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. Providing further that:
 - a. ~~No payment~~ Payment for mileage or other travel expenses may not be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
 - b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the organization may pay no more than actual cost of meals and lodging, if actual cost is less;
 - c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
 - d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and

²⁹⁹ Section 65-05-28 was also amended by section 2 of Senate Bill No. 2058, chapter 615, and section 1 of Senate Bill No. 2431, chapter 624.

- e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.

SECTION 2. APPLICATION. This Act applies to travel that takes place on or after the effective date of this Act.

Approved March 19, 2009

Filed March 19, 2009

CHAPTER 624**SENATE BILL NO. 2431**

(Senator O'Connell)

AN ACT to amend and reenact subsection 3 of section 65-05-28 of the North Dakota Century Code, relating to independent medical examinations required by workforce safety and insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁰ **SECTION 1. AMENDMENT.** Subsection 3 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

3. The organization may at any time require an employee to submit to an independent medical examination by a duly qualified doctor or doctors designated or approved by the organization. The organization shall make a reasonable effort to designate a duly qualified doctor licensed in the state in which the employee resides to conduct the examination before designating a duly qualified doctor licensed in another state or shall make a reasonable effort to designate a duly qualified doctor licensed in a state other than the employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the employee's residence. The independent medical examination must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. The employee may have a duly qualified doctor designated by that employee present at the examination or later review the written report of the doctor performing the independent medical examination, if procured and paid for by that employee. Providing further that:
 - a. In case of any disagreement between doctors making an examination on the part of the organization and the employee's doctor, the organization shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the organization.
 - b. The employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the employee is working and loses gross wages from the employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.

Approved April 22, 2009
Filed April 23, 2009

³⁰⁰ Section 65-05-28 was also amended by section 1 of Senate Bill No. 2056, chapter 623, and section 2 of Senate Bill No. 2058, chapter 615.

CHAPTER 625**SENATE BILL NO. 2432**
(Senator O'Connell)

AN ACT to amend and reenact subsections 1 and 3 of section 65-05-28.2 of the North Dakota Century Code, relating to preferred providers for work-related injuries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 65-05-28.2 of the North Dakota Century Code are amended and reenacted as follows:

1. During the first ~~sixty~~ thirty days after a work injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the organization may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a work injury.

3. After ~~sixty~~ thirty days have passed following the injury, the employee may make a written request to the organization to change providers. The employee shall make the request and serve it on the employer and the organization at least thirty days prior to treatment by the provider. The employee shall state the reasons for the request and the employee's choice of provider.

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 626**HOUSE BILL NO. 1063**

(Legislative Council)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-05-29 of the North Dakota Century Code, relating to workers' compensation coverage for preexisting conditions; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰¹ **SECTION 1. AMENDMENT.** Section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

65-05-29. Assignment of claims void - Claims exempt.

1. Any assignment of a claim for compensation under this title is void. All compensation and claims therefor are exempt from claims of creditors except any of the following:
 - ~~1-~~ a. A child support obligation ordered by a court of competent jurisdiction.
 - ~~2-~~ b. A claim by job service North Dakota for reimbursement of unemployment benefits, for the amount that was paid by job service North Dakota during the period for which the claimant is found eligible for temporary total or permanent total disability benefits, not to exceed the disability award actually made by the organization.
 - ~~3-~~ c. A claim by the organization for any payments made due to:
 - (1) Clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient, or any other circumstance of a similar nature, all not induced by fraud, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;
 - (2) An adjudication by the organization or by order of the board or any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;

³⁰¹ Section 65-05-29 was also amended by section 11 of House Bill No. 1464, chapter 611.

- e. (3) Fraud, in which case the recipient shall repay the payment or the unpaid amount of the sum may be recouped from any future payments due to the recipient on any claim with the organization; or
- e. (4) Overpayment due to application of section 65-05-09.1.
- 2. a. Notwithstanding paragraph 2 of subdivision c of subsection 1, during the sixty days immediately following the date of injury, if the organization accrues a medical expense or makes a payment for a medical expense and the organization later determines the medical expense is for the care and treatment of a noncompensable injury, disease, or other condition, the injured employee is not liable for the medical expense accrued or paid by the organization before the earlier of:
 - (1) The third day following the date the organization makes a determination the medical expense is for a noncompensable injury, disease, or condition; or
 - (2) The third day following the date the injured employee or medical provider reasonably should have known the medical expense is for a noncompensable injury, disease, or condition.
- b. Medical expenses incurred under this subsection may not be charged against an employer's account for purposes of experience rating.

SECTION 2. APPLICATION. This Act applies to medical expenses incurred on or after the effective date of this Act.

Approved April 15, 2009
Filed April 15, 2009

CHAPTER 627**HOUSE BILL NO. 1455**

(Representatives Thorpe, Boucher, Ekstrom, Zaiser)
(Senator Bakke)

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation benefits for surviving spouse of permanently and totally disabled injured employee; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Death of permanently and totally disabled employee - Surviving spouse.
In the case of the death of an injured employee who is receiving permanent total disability benefits, or additional benefits payable, if the injured employee was permanently and totally disabled for at least ten years and was married to the surviving spouse for at least ten years, the decedent's surviving spouse is eligible to receive no more than six months of the decedent's permanent total disability benefits, supplementary benefits, and additional benefits payable in the same manner as the deceased spouse would have been entitled to receive the benefits. A surviving spouse is eligible for benefits under this section if the organization approved the decedent for home health care services and reimbursed the surviving spouse for providing the home health care services. The surviving spouse is not eligible for benefits under this section if the surviving spouse is eligible for benefits under section 65-05-16. The eligibility of the surviving spouse to receive benefits under this section terminates upon the remarriage of the surviving spouse.

SECTION 2. APPLICATION. This Act applies to surviving spouses of workforce safety and insurance claimants who die on or after the effective date of this Act.

Approved March 24, 2009
Filed March 24, 2009

CHAPTER 628**SENATE BILL NO. 2433**
(Senator O'Connell)

AN ACT to amend and reenact subsection 4 of section 65-05.1-04 of the North Dakota Century Code, relating to work searches by disabled workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 65-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same, modified, or alternative occupation, or return to an occupation that is suited to the employee's education, experience, and marketable skills, the employee is responsible to make a good-faith work trial or work search. If the employee fails to perform a good-faith work trial, the organization may not pay additional disability benefits unless the employee meets the criteria for reapplying for benefits required under subsection 1 of section 65-05-08. If the employee meets the burden of proving that the employee made a good-faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the organization shall reevaluate the employee's vocational rehabilitation claim. When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good-faith work search or good-faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful.

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 629**HOUSE BILL NO. 1062**

(Legislative Council)
(Workers' Compensation Review Committee)

AN ACT to create and enact a new section to chapter 65-05.1 of the North Dakota Century Code, relating to workers' compensation rehabilitation services pilot programs; to amend and reenact section 65-05.1-06.1 of the North Dakota Century Code, relating to expansion of workers' compensation rehabilitation services; and to provide for a report to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰² **SECTION 1. AMENDMENT.** Section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.1. Rehabilitation award.

1. Within sixty days of receiving the final vocational consultant's report, the organization shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to disability and vocational rehabilitation services.
2. If the appropriate priority option is short-term or long-term training, the vocational rehabilitation award must be within the following terms:
 - a. For the employee's lost time, and in lieu of further disability benefits, the organization shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the employee was receiving, or was entitled to receive, prior to the award.
 - b. The rehabilitation allowance must include an additional twenty-five percent when it is necessary for the employee to maintain two households, when it is necessary for the employee to maintain two households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the organization by rule.
 - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the organization. Catastrophic injury includes:

³⁰² Section 65-05.1-06.1 was also amended by section 1 of Senate Bill No. 2419, chapter 630.

- (1) Paraplegia; quadriplegia; severe closed head injury; total blindness in both eyes; or amputation of an arm proximal to the wrist or a leg proximal to the ankle, caused by the compensable injury, which renders an employee permanently and totally disabled without further vocational retraining assistance; or
 - (2) Those employees the organization so designates, in its sole discretion, provided that the organization finds the employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from an organization decision to designate, or fail to designate, an employee as catastrophically injured under this subsection.
- d. Notwithstanding the one hundred four-week limit of subdivision c to facilitate the completion of a retraining program, the organization may award a rehabilitation extension allowance that may not exceed twenty weeks.
- e. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the employee resides, provided an equivalent program exists in the public college or university.
- e- f. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
- f. g. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, an additional award, not to exceed two months' disability benefit, to assist the employee with work search.
- g- h. If the employee successfully concludes the rehabilitation program, the employee is not eligible for further vocational retraining or total disability benefits unless the employee establishes a significant change in medical condition attributable to the work injury which precludes the employee from performing the work for which the employee was trained, or any other work for which the employee is suited. The organization may waive this section in cases of catastrophic injury defined by subdivision c.
- h- i. If the employee successfully concludes the rehabilitation program, the employee remains eligible to receive partial disability benefits, as follows:
- (1) Beginning the date at which the employee completes retraining, until the employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining, as measured by the average wage in the

employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the organization, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the employee completes retraining. The benefit continues until the employee acquires substantial gainful employment.

- (2) Beginning the date at which the employee acquires substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's weekly wages before the injury, and the employee's wage-earning capacity after retraining, as determined under paragraph 1, or the employee's actual postinjury wage earnings, whichever is higher.
 - (3) The partial disability benefit payable under paragraphs 1 and 2 may not exceed the limitation on partial disability benefits contained in section 65-05-10.
 - (4) The partial disability benefits paid under paragraphs 1 and 2 may not together exceed one year's duration.
 - (5) For purposes of paragraphs 1 and 2, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
 - (6) The organization may waive the one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the organization shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the organization, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.
 4. If the appropriate priority option is subdivision e or f of subsection 4 of section 65-05.1-01 or subsection 6 of section 65-05.1-01, to assist with work search the organization may award an additional award. The additional award under this subsection is awarded at the organization's sole discretion and may not exceed an amount equal to two months of the employee's total disability benefits calculated under section 65-05-09.

SECTION 2. A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

Rehabilitation services pilot programs - Reports - Data collection.

1. The organization shall implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation

services. A pilot program may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the outcome of the rehabilitation services offered by the organization to assist the employee in making adjustments necessitated from the employee's injury and to improve the effectiveness of vocational rehabilitation services in returning an employee to substantial gainful employment. Notwithstanding laws to the contrary, a pilot program may address a broad range of approaches, including collaborative efforts between the organization and the employee through which there are variances from the rehabilitation services hierarchy; return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of public and private entities. If a pilot program utilizes coordination of services of other state agencies, such as job service North Dakota, department of human services, North Dakota university system, or department of public instruction, the organization shall consult with the state agency in establishing the relevant portions of the pilot program and the state agency shall cooperate with the organization in implementing the pilot program.

2. Each pilot program must include a cost-benefit analysis; a strengths, weaknesses, opportunities, and threats analysis; and employer and employee satisfaction information. The organization shall include in its annual report to the workers' compensation review committee under section 54-35-22:
 - a. Preliminary reports on future pilot programs;
 - b. Status reports on current pilot programs; and
 - c. Final reports on completed pilot programs, including recommendations and proposed legislative changes necessary to implement recommendations.

3. The organization shall collect data regarding the status of claims that receive rehabilitation services. The data must include:
 - a. The stage of rehabilitation services at which closure occurs;
 - b. The reason for the closure; and
 - c. Followup data to determine the effectiveness of job searches and returns to work, including postinjury earnings.

Approved March 19, 2009

Filed March 24, 2009

CHAPTER 630

SENATE BILL NO. 2419

(Senator O'Connell)

AN ACT to amend and reenact subdivision b of subsection 2 of section 65-05.1-06.1 of the North Dakota Century Code, relating to workers' compensation vocational rehabilitation awards; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰³ **SECTION 1. AMENDMENT.** Subdivision b of subsection 2 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The rehabilitation allowance must include an, as chosen by the employee, an additional ~~twenty-five~~ thirty percent of the rehabilitation allowance for expenses associated with maintaining a second domicile or for travel associated with attendance at a school or training institution when it is necessary for the employee to maintain two households, when it is necessary for the employee to maintain two households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the organization by rule travel at least twenty-five miles [40.23 kilometers] one way. Travel must be calculated from the employee's residence to the school or training institution. If it is necessary for an employee to travel less than twenty-five miles one way to a school or training institution, the employee may qualify for an additional rehabilitation allowance as determined in accordance with the following schedule:

| <u>Round-trip mileage</u> | <u>Percentage increase in rehabilitation allowance</u> |
|---------------------------|--|
| <u>Under 10 miles</u> | <u>0</u> |
| <u>10 to 30 miles</u> | <u>10</u> |
| <u>31 to 50 miles</u> | <u>20</u> |

Travel must be calculated from the employee's residence to the school or training institution.

³⁰³ Section 65-05.1-06.1 was also amended by section 1 of House Bill No. 1062, chapter 629.

SECTION 2. APPLICATION. This Act applies to new retraining programs beginning on or after the effective date of this Act and to existing retraining programs from the date of the first new semester following the effective date of this Act.

Approved April 22, 2009
Filed April 23, 2009