

WORKERS' COMPENSATION

CHAPTER 602

HOUSE BILL NO. 1122

(Industry, Business and Labor Committee)

(Representative Ruby)

(Senator Klein)

(At the request of Workforce Safety and Insurance)

WSI SUBROGATION AND BENEFIT REIMBURSEMENT

AN ACT to amend and reenact sections 65-01-09 and 65-05-05 of the North Dakota Century Code, relating to subrogation and lien rights of the organization and reimbursement of benefits paid by the organization; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-09 of the North Dakota Century Code is amended and reenacted as follows:

65-01-09. Injury through negligence of third person - Option of employee - ~~Fund~~ Organization subrogated when claim filed - Lien created.

When an injury or death for which compensation is payable under provisions of this title shall have been sustained under circumstances creating in some person other than the ~~fund~~ organization a legal liability to pay damages in respect thereto, the injured employee, or the employee's dependents may claim compensation under this title and proceed at law to recover damages against such other person. The ~~fund~~ organization is subrogated to the rights of the injured employee or the employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The organization also has a lien to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid in compensation and benefits. The organization's subrogation interest or lien may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or the employee's dependents in the event of the employee's death. Such action shall be brought in the injured employee's or in the employee's dependents' own right and name and as trustee for the organization for the subrogation interest of the organization. However, if the director chooses not to participate in an action, the ~~fund~~ organization has no subrogation interest and no obligation to pay fees or costs under this section and no lien. If the injured employee or the employee's dependents do not institute suit within sixty days after date of injury, the organization may bring the action in its own name and as trustee for the injured employee or the employee's dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents and retain as its lien the full amount it has paid in compensation and benefits. Within sixty days after both the injured employee and the organization have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the

employee, or both, and in trust for the organization and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or the employee's dependents, or the employer as provided above, the organization shall pay fifty percent of the costs of the action, exclusive of attorney's fees, when such costs are incurred ~~as the action progresses before recovery of damages.~~ If there is no recovery of damages in the action, this shall be a cost of the organization to be paid from the organization's general fund. ~~When there is~~ After recovery of damages in the action, the costs of the action, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the organization recovered to the total recovery in the action. The organization shall pay attorney's fees to the injured employee's attorney from the organization's general fund as follows:

1. ~~Twenty percent of the subrogation interest recovered for the organization when legal action is not commenced.~~
2. Twenty-five percent of the subrogation interest recovered for the organization ~~when action is commenced and settled~~ before judgment.
3. 2. Thirty-three and one-third percent of the subrogation interest recovered for the organization when recovered through judgment entered as a result of a trial on the merits or recovered through binding alternative dispute resolution.

The above provisions as to costs of the action and attorney's fees ~~is~~ are effective only when the injured employee advises the organization in writing the name and address of the employee's attorney, and that the employee has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If a claimant fails to pay the organization's subrogation interest and lien within thirty days of receipt of a recovery in a third-party action, the organization's subrogation interest is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents, ~~and~~ no costs or attorney's fees will be paid from the organization's subrogation interest and the organization's lien is the full amount of the damages recovered up to a maximum of the total amount it has paid. The organization's lien is created upon first payment of benefits. The lien attaches to all claims, demands, settlement proceeds, judgment awards, or insurance payable by reason of a legal liability of a third person. If the organization does not receive payment of its lien amount within thirty days of the payment of any recovery and if the organization has served, by regular mail, written notice of its lien upon the employee or the employee's dependents and upon the third person, the third person, the insurer of the third person, the employee or employee's dependents, and the attorney of the employee or employee's dependents are liable to the organization for the lien amount. A release or satisfaction of any judgment, claim, or demand given by the employee or the employee's dependents is not valid or effective against the lien. An action to collect the organization's lien amount must be commenced within one year of the organization first possessing actual knowledge of a recovery.

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

65-05-05. Payments made to insured employees injured in course of employment and to their dependents. The organization shall disburse the fund for

the payment of compensation and other benefits as provided in this chapter to employees, or to their dependents in case death has ensued, who:

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

If an employee applies for benefits from another state for the same injury, the organization will suspend all future benefits pending resolution of the application. If an employee is determined to be eligible for benefits through some other state act, no further compensation shall be allowed under this title and the employee must reimburse the organization for the entire amount of benefits paid if the award covers the same time period already reimbursed by the organization.

SECTION 3. APPLICATION. This Act applies to all claims regardless of the date of injury.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 603

HOUSE BILL NO. 1199

(Representative Keiser)

WSI DIRECTOR APPOINTMENT

AN ACT to amend and reenact section 65-02-03.1 of the North Dakota Century Code, relating to appointment of the workforce safety and insurance board of directors; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

65-02-03.1. Workforce safety and insurance board of directors - Appointment.

1. ~~After August 1, 2003, the~~ The board consists of eleven members. The appointment and replacement of the members must ensure that:
 - a. Six board members represent employers in this state ~~that~~ which maintain active accounts with the organization, at least one of which must be a participant in the risk management program, at least two of which must be employers with annual premiums greater than twenty-five thousand dollars, at least one of which must be an employer with an annual premium of ten thousand dollars but less than twenty-five thousand dollars, ~~and~~ at least one of which must be an employer with an annual premium of less than ten thousand dollars, and at least one employer at large representative. Except for the employer at large representative, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.
 - b. Three members represent employees; at least one member must have received workforce safety and insurance benefits; and at least one member must represent organized labor.
 - c. One member is a member of the North Dakota medical association.
 - d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.
2. Board members shall serve four-year terms, except the initial term of office of the member at large to be appointed on August 1, 2003, expires on December 31, 2006, and the term of office of the medical association member whose term of office became effective January 1, 2003, expires on December 31, 2006. The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each odd-numbered year. Board members may not serve more than three consecutive terms. A departing member representing an employer must be replaced by a member representing

an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the replacement member for a departing employer representative or medical association representative from a list of three candidates submitted by the board. The board shall interview an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the governor. The governor shall select the replacement member for the departing organized labor employee representative from a list of three names of potential candidates submitted by an organization that is statewide in scope and which through its affiliates embraces a cross section and a majority of organized labor in this state. The governor shall select the replacement member for a departing nonorganized labor employee representative. The governor shall appoint the replacement member for the member at large from a list of three candidates submitted by the board. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in this subsection.

SECTION 2. APPLICATION. This Act applies only to members appointed or reappointed to the board after the effective date of this Act.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 604

HOUSE BILL NO. 1125

(Representatives Carlson, Vigesaa)

(Senator Krebsbach)

(At the request of Workforce Safety and Insurance)

WSI PREMIUMS, EXPENSES, AND COVERAGE

AN ACT to amend and reenact sections 65-03-04, 65-04-01, 65-04-19.1, 65-04-19.3, 65-05-07.2, 65-07-02, and 65-07-03 of the North Dakota Century Code, relating to workforce safety and insurance annual establishment of minimum premium, premium discount and premium calculation programs, employer medical expense assessment incentives, elective coverage, and coverage for employer's children; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-03-04 of the North Dakota Century Code is amended and reenacted as follows:

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. 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 2. 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. 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.

SECTION 3. AMENDMENT. Section 65-04-19.1 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19.1. Premium discount for implementation of preapproved risk management program. Any employer who implements or maintains risk management programs approved by the organization is entitled to a ~~five percent~~ discount in the annual premium the employer must pay to the organization for the year following the year in which the risk management programs are implemented or maintained. The organization may not apply the discount to an employer's premium unless the organization has approved the programs implemented by the employer.

SECTION 4. 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 organization may create and implement ~~by emergency rulemaking~~ 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 ~~may be created or modified by emergency rulemaking~~ are not subject to title 28-32 and ~~must~~ 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 5. AMENDMENT. Section 65-05-07.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-07.2. Payment to organization for certain claims. The employer shall reimburse the organization for all medical expenses related to a compensable injury to an employee if the expenses are not more than two hundred fifty dollars and shall reimburse the organization for the first two hundred fifty dollars of medical expenses when the expenses are more than two hundred fifty dollars. If a claim for benefits is filed with the organization by midnight central time on the first business day following the workplace injury, the organization shall pay the first two hundred fifty dollars of medical expenses. A claim is filed by submitting a form furnished by the organization or by another method designated by the organization. If a claim for benefits is filed with the organization more than fourteen days from the date the employer received notice of the workplace injury from the employee, the employer shall reimburse the organization for the first three hundred fifty dollars of medical expenses when the expenses are greater than three hundred fifty dollars. If an employee's compensable injury is determined through a civil action to have been sustained through the fault or negligence of a third person, or if a settlement has been entered between the employee and a third person through which the third person agrees to compensate the employee for the injury, the organization, upon receipt of its subrogation interest, shall credit the account of the employer to the

extent of the payment made by the employer to the organization under this section. Upon the organization's determination that the claim is compensable, the organization shall pay the medical expenses associated with the claim and notify the employer of payments to be made by the employer under this section. If the employer does not pay the organization within thirty days of notice by the organization, the organization may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five percent of the payment owed by the employer. The organization shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for any payment the employer makes on a claim. ~~When~~ Except as otherwise provided, if the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the organization shall pay all further medical expenses ~~pursuant to this title~~. This section is effective for all compensable injuries that occur after July 31, 1995. Compensable injuries paid under sections 65-06.2-04 through 65-06.2-08 are not subject to this section.

SECTION 6. AMENDMENT. Section 65-07-02 of the North Dakota Century Code is amended and reenacted as follows:

65-07-02. Organization may refuse to contract for coverage. The organization, on receipt of an application for insurance, shall determine whether ~~or not~~ the applicant is a good insurance risk and may deny such special contract if ~~in its opinion the organization determines~~ it is in the best interests of the ~~fund~~ organization to do so.

SECTION 7. AMENDMENT. Section 65-07-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as outlined in subdivision b of subsection 5 of section 65-01-02 for purposes of determining the premium for coverage of an employer, an employer's spouse, ~~an employer's child over the age of seventeen,~~ or a self-employed person. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.
2. A reasonable wage as determined by the organization for employees in the same class of industry that the volunteer organization is engaged.
3. Actual wages paid to a clerk, an assessor, a treasurer, or a member of the board of supervisors of an organized township, if the contract for insurance is to provide protection for a person mentioned in this subsection and that person is not employed by the township in any other capacity.
4. Actual wages paid to an employer's child if that child is under the age of ~~eighteen~~ twenty-two.

CHAPTER 605

HOUSE BILL NO. 1531

(Representatives Keiser, Berg, Carlson, N. Johnson, Wald)
(Approved by the Delayed Bills Committee)

WSI RESERVE BALANCE AND DISCOUNT RATE

AN ACT to amend and reenact section 65-04-02 of the North Dakota Century Code, relating to workforce safety and insurance fund reserve balance and rate of discount.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-02 of the North Dakota Century Code is amended and reenacted as follows:

65-04-02. Reserves - Surplus. 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 surplus must be at least one hundred twenty percent but may not exceed one hundred forty percent of the actuarially established discounted reserve. The independent annual financial audit of the organization must report the organization's financial reserves.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 606

HOUSE BILL NO. 1336

(Representatives Kasper, Clark, Keiser, Koppelman)
(Senators Espgaard, Klein)

ZIP CODE REPORTING

AN ACT to amend and reenact section 65-04-15 and subsection 4 of section 65-04-33 of the North Dakota Century Code, relating to reporting of employer and employee zip codes for commerce purposes; and to repeal section 54-60-08 of the North Dakota Century Code, relating to publishing of employer and employee zip codes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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. The information contained in an employer's file is not subject to section 44-04-18 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. 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, or delinquent. 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 or except upon written authorization by the employer for a specified purpose. ~~At least annually, the organization shall furnish the department of commerce with employers' and employees' nine-digit zip codes.~~ 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.

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. 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. 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.

³⁰⁸ **SECTION 2. AMENDMENT.** Subsection 4 of section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

4. An employer who fails or refuses to furnish to the organization the annual payroll report and estimate or who fails or refuses to furnish other information required by the organization under this chapter is subject to a penalty established by the organization of two thousand dollars. Upon the request of the organization, the employer shall furnish the organization any of that employer's payroll records, annual payroll reports, ~~employer's and employees' nine-digit zip codes,~~ and other information required by the organization under this chapter and an estimate of payroll for the advance premium year. If the employer fails or refuses to provide the records within thirty days of a written request from the organization, the employer is subject to a penalty not to exceed one hundred dollars for each day until the organization receives the records, in addition to the two thousand dollar penalty set forth above. The organization may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township. The organization may reduce penalties for employers under this subsection. However, an employer may not appeal an organization decision not to reduce a penalty. The organization shall notify an employer by regular mail of the amount of premium and penalty due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the organization regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.

SECTION 3. REPEAL. Section 54-60-08 of the North Dakota Century Code is repealed.

Approved March 22, 2005

Filed March 22, 2005

³⁰⁸ Section 65-04-33 was also amended by section 3 of House Bill No. 1123, chapter 607.

CHAPTER 607

HOUSE BILL NO. 1123

(Representatives Bernstein, Wald, Kasper)
(At the request of Workforce Safety and Insurance)

WSI PREMIUMS, COVERAGE, AND CERTIFICATION

AN ACT to amend and reenact sections 65-04-20 and 65-04-22, subsection 3 of section 65-04-33, subsection 4 of section 65-08-01, and subsection 2 of section 65-09-01 of the North Dakota Century Code, relating to premium installment payments, authority to decline coverage and negotiate penalties, extraterritorial coverage, and certification by contractor of independent contractor status.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-20 of the North Dakota Century Code is amended and reenacted as follows:

65-04-20. Installment payment of premiums - Interest required. ~~If the amount of premium billed to an~~ An employer on a premium billing statement is greater than the minimum premium, the employer may pay the excess of the minimum annual premium in installments.

Interest must be charged at the prevailing base rate posted by the Bank of North Dakota plus two and one-half percent. The interest charged must be at least six percent per annum. Interest must be charged on all premiums deferred under this section. Upon default in payment of any installment, the penalties apply which are provided in this chapter apply sections 65-04-22 and 65-04-33.

SECTION 2. AMENDMENT. Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

65-04-22. Organization may make premium due immediately - When premium is in default. ~~The organization, by its proper order, and by an endorsement and notification to that effect upon the premium billing statement sent to an employer, may require payment of a premium within any time less than one month which, in the judgment of the organization, is reasonable and necessary to secure the payment of the premium by any employer whose employment within this state is likely to continue for less than one month, and in such case, default shall begin at the end of the time allowed by the organization for the payment of the premium. In the absence of such an order, endorsement, and notification, the premium, whether the same is to be paid in full or in installments, shall be in default one month from the payment due date specified in the premium billing statement.~~

Default of any installment payment will, at the option of the organization, make the entire remaining balance of the premium due and payable. The organization may declare an employer to be uninsured at any time after forty-five days have passed from the due date specified in the premium billing statement and the employer has failed to make a payment to the organization. The organization may decline coverage to any employer that has been determined to be uninsured under this section and the premium delinquency remains unresolved.

³⁰⁹ **SECTION 3. AMENDMENT.** Subsection 3 of section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

3. An employer who is uninsured is liable for any premiums plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of noncompliance. An additional five percent penalty is due for each year of noncompliance before the most recent year beginning on the date the organization became aware of the employer's uninsured status, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent. The organization may not assess a penalty for more than six years of past noncompliance. The organization may assess additional penalties, from the date the organization became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. The penalties for employers are in addition to any other penalties provided by law. The organization may reduce these penalties. However, the amount due from an employer may not be less than the actual cost and reserves of any claim attributable to the employer during the time the employer was uninsured, unless authorized by the director. An employer may not appeal an organization decision not to reduce a penalty under this subsection.

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

4. An employer whose employment results in significant contacts with this state shall acquire workforce safety and insurance coverage in this state unless a reciprocal agreement between the states is entered which provides that the other state will likewise recognize that an employment relationship entered into in this state is exempted from the application of the ~~workforce safety and workers' compensation~~ insurance law of the other state. An employment has significant contacts with this state when:
 - a. ~~The~~ Any employee earns or would have been expected to earn twenty-five percent or more of the employee's gross annual wage or income from that employer from services rendered in this state; or
 - b. ~~If no employee earns twenty-five percent of the employee's gross annual income from that employment within this state, Twenty-five percent of the employer's gross annual payroll in a calendar year in this state is at least one hundred thousand dollars is payable to employees for services rendered in this state.~~

³⁰⁹ Section 65-04-33 was also amended by section 2 of House Bill No. 1336, chapter 606.

Under this subsection, an employee injured in this state may elect to file a claim in this state notwithstanding that the employee had another remedy in the state in which the employment was principally localized. A claim filed under this subsection is subject to section 65-05-05. The time limits within which the organization shall issue a decision on a claim, as specified in sections 65-01-16 and 65-02-08, do not begin to run for claims filed under this section until the first date the organization may begin to process the claim as set forth in section 65-05-05.

SECTION 5. AMENDMENT. Subsection 2 of section 65-09-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The organization ~~shall~~ may establish a procedure ~~by which a person may apply to the organization for a determination of~~ determine whether that a person is an employer required to obtain workforce safety and insurance workers' compensation coverage under this title and to require a person asserting independent contractor status to file a statement annually with the organization certifying that status. A determination under this section that a person is not required to be insured is effective for no more than one year from the date the person is notified of the determination. The organization retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

Approved March 9, 2005
Filed March 9, 2005

CHAPTER 608

SENATE BILL NO. 2351

(Senators Robinson, Cook, Kringstad)
(Representatives Amerman, N. Johnson, Porter)

WORKERS' COMPENSATION ADDITIONAL BENEFITS

AN ACT to amend and reenact section 65-05-09.4 of the North Dakota Century Code, relating to workers' compensation additional benefits for retired injured employees; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-09.4 of the North Dakota Century Code is amended and reenacted as follows:

65-05-09.4. Additional benefit payable. If an injured employee's benefits cease under subsection 2 of section 65-05-09.3, the organization shall pay to that employee every twenty-eight days a benefit based on the length of time the injured employee received disability benefits during the term of that claim. The organization shall pay the injured employee's additional benefits until the employee's death or for a period of time not to exceed the total length of time the employee received disability benefits under sections 65-05-08, 65-05-08.1, 65-05-09, and 65-05-10, and a vocational rehabilitation allowance under chapter 65-05.1, for that claim, whichever occurs first. The benefit is based on the ~~disability benefit that was discontinued under subsection 2 of section 65-05-09.3, which is the~~ injured employee's compensation rate ~~less~~ before any applicable social security offset. The percentage of that final payment payable as the additional benefit is:

At least 1 year and less than 3 years of disability	5 percent of weekly benefit.
At least 3 years and less than 5 years of disability	10 percent of weekly benefit.
At least 5 years and less than 7 years of disability	15 percent of weekly benefit.
At least 7 years and less than 9 years of disability	20 percent of weekly benefit.
At least 9 years and less than 11 years of disability	25 percent of weekly benefit.
At least 11 years and less than 13 years of disability	30 percent of weekly benefit.
At least 13 years and less than 15 years of disability	35 percent of weekly benefit.
At least 15 years and less than 17 years of disability	40 percent of weekly benefit.
At least 17 years and less than 20 years of disability	45 percent of weekly benefit.
Twenty or more years of disability	50 percent of weekly benefit.

However, the organization shall pay to an injured employee who has been determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee, equal to one hundred percent of the final payment of the disability benefit that was discontinued under subsection 2 or 3 of section 65-05-09.3.

SECTION 2. APPLICATION OF ACT. This Act only applies to additional benefit payments made pursuant to section 65-05-09.4 which are scheduled to be paid on or after the effective date of this Act.

Approved March 25, 2005
Filed March 25, 2005

CHAPTER 609

HOUSE BILL NO. 1506

(Representatives Charging, Maragos)
(Senators Hacker, Kringstad, Warner)

NONDEPENDENT CHILD WSI PAYMENTS

AN ACT to amend and reenact section 65-05-19 of the North Dakota Century Code, relating to providing nondependency payments in certain workforce safety and insurance cases; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-19 of the North Dakota Century Code is amended and reenacted as follows:

65-05-19. Providing nondependency payments in certain cases. If the death of an employee with no surviving spouse or dependent children results from an injury within the time specified in section 65-05-16, the organization shall pay a lump sum of two thousand dollars equal to five percent of the maximum total death benefits specified in subsection 1 of section 65-05-17 to the surviving nondependent child, or in equal shares to the surviving nondependent children. In the event that no nondependent child is living, the sum provided herein shall under this section must be paid in equal shares to the surviving parents of the deceased, and if there are none, then to the deceased employee's living brothers and sisters. If there are no living brothers or sisters, the sum herein shall under this section must be paid in equal shares to the surviving grandparents, if any, of the deceased employee.

SECTION 2. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to all recipients beginning November 29, 2004.

Approved March 22, 2005
Filed March 22, 2005

CHAPTER 610

HOUSE BILL NO. 1120

(Representatives Wald, Kasper)

(Senator Dever)

(At the request of Workforce Safety and Insurance)

WSI SOCIAL SECURITY NUMBERS AND DEFINITIONS

AN ACT to create and enact a new subsection to section 65-05-32 of the North Dakota Century Code, relating to use of social security numbers by workforce safety and insurance; to amend and reenact sections 65-01-02, 65-01-17, and 65-05-20.1, subsection 1 of section 65-05-25, and section 65-05-30 of the North Dakota Century Code, relating to workforce safety and insurance definitions of child and grandchild, the agricultural employment exemption, scholarship fund distribution rules, lump sum settlements, and communications regarding medical treatment; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁰ **SECTION 1. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions. In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body. The term does not include 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.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest

³¹⁰ Section 65-01-02 was also amended by section 1 of House Bill No. 1171, chapter 611, and section 6 of House Bill No. 1410, chapter 235.

dollar. If the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax year years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
 7. "Board" means the workforce safety and insurance board of directors.
 8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
 9. "Child", for determining eligibility for benefits under chapter 65-05, means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but

who is under eighteen years of age and resides with the employee; or is under eighteen years of age and does not reside with the employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the employee for support. A child does not include a married child unless actually dependent on the employee as shown on the preceding year's income tax returns.

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not preexist the work injury.

b. The term does not include:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the bureau may pay for

- preventive treatment for significant exposures documented by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3, and for exposure to rabies occurring in the course of employment.
- (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
 - (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
 - (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
 - (7) Injuries attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity.
 - (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
 - (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
 - (10) A mental injury arising from mental stimulus.
11. "Date of first disability" means the first date the employee was unable to work because of a compensable injury.
 12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
 13. "Director" means the director of the organization.

14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.
16. "Employee" means a person who performs hazardous employment for another for remuneration unless the person is an independent contractor under the "common law" test.
 - a. The term includes:
 - (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
 - (2) Aliens.
 - (3) County general assistance workers, except those who are engaged in repaying to counties moneys that the counties have been compelled by statute to expend for county general assistance.
 - (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.
 - b. The term does not include:
 - (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
 - (2) Any person who is engaged in an illegal enterprise or occupation.
 - (3) The spouse of an employer or a child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
 - (4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
 - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.

- (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.
 - (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
 - (6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.
 - (7) An employer.
 - c. Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium for the coverage. This subdivision does not impose any liability upon a general contractor other than liability to the organization for the payment of premiums which are not paid by a subcontractor or independent contractor.
17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the "common law" test. The term includes:
- a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.

- f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
 - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
- 18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
- 19. "Fund" means the workforce safety and insurance fund.
- 20. ~~"Grandchild" and the terms defined in subsections 8 and 9 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.~~
- 24. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
 - a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
- ~~22.~~ 21. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.
- ~~23.~~ 22. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
- ~~24.~~ 23. "Parent" includes a stepparent and a parent by adoption.
- ~~25.~~ 24. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.

- ~~26-~~ 25. "Permanent total disability" means an employee is determined incapable of rehabilitation of earnings capacity as determined by the:
- Nature of injury.
 - Degree of physical impairment.
 - Education.
 - Work history.
 - Vocational rehabilitation potential.
- ~~27-~~ 26. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including ~~on-the-job training or~~ training for alternative employment with the same employer, and job placement assistance.
- ~~28-~~ 27. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
- ~~29-~~ 28. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
- ~~30-~~ 29. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
- ~~34-~~ 30. "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" may not include dismissal or severance pay.

SECTION 2. AMENDMENT. Section 65-01-17 of the North Dakota Century Code is amended and reenacted as follows:

65-01-17. Agricultural employment exemption - Custom agricultural operations. For purposes of the agricultural service exception to hazardous employment under ~~subsection 24 of~~ section 65-01-02, an agricultural employer that engages in a custom agricultural operation, which is the planting, care, or harvesting of grain or field crops on a contract-for-hire basis, exclusive of hauling by special contractor, retains the exemption unless the employer's custom agricultural operations are based outside this state or require more than thirty actual working days of operation during the calendar year.

SECTION 3. AMENDMENT. Section 65-05-20.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05-20.1. Scholarship fund - Rules. The organization may establish a scholarship fund to provide scholarships for the spouse and dependent children of a worker who dies as a result of a compensable work-related injury, if the spouse and children have received benefits under section 65-05-17. The organization may also grant scholarships to injured workers for whom the organization determines a scholarship would be beneficial and appropriate because of exceptional circumstances as determined by the organization. Scholarships are payable to an accredited institution of higher education or an institution of technical education on behalf of a student attending that institution. The total amount awarded annually in scholarships may not exceed ~~one~~ three hundred fifty thousand dollars. The maximum amount payable on behalf of an applicant is ~~three~~ four thousand dollars per year for no more than five years, except that scholarships awarded on the basis of exceptional circumstances may not exceed ten thousand dollars per year for more than five years, per applicant. Scholarships must be awarded by a panel chosen by the organization. The organization shall adopt rules establishing selection criteria and obligations associated with the program and identifying information an applicant is required to submit to determine an appropriate scholarship award. There is no right to reconsideration, rehearing, or appeal from any decision regarding the award, denial, or amount of a scholarship.

SECTION 4. AMENDMENT. Subsection 1 of section 65-05-25 of the North Dakota Century Code is amended and reenacted as follows:

1. If an employee is determined to be permanently and totally disabled, the organization may pay the employee a lump sum equal to the present value of all future payments of compensation. The probability of the employee's death before the expiration of the period during which the employee is entitled to compensation must be determined by generally accepted mortality studies. The organization may not pay the employee a lump sum unless it has first determined that there is clear and convincing evidence that the lump sum payment is in the best interest of the employee. Best interest of the employee may not be deemed to exist because the employee can invest the lump sum in another manner to realize a better yield. The employee must show a specific plan of rehabilitation which will enable the employee to return ~~to work~~ as a productive member of society.

SECTION 5. AMENDMENT. Section 65-05-30 of the North Dakota Century Code is amended and reenacted as follows:

65-05-30. Filing of claim constitutes consent to use of information received by doctor. The filing of a claim with the organization constitutes a consent to the use by the organization, in any proceeding by it or to which it is a party in any court, of any information, including prior and subsequent prognosis reports, medical records, medical bills, and other information concerning any health care or health care services which was received by any doctor, hospital, or clinic in the course of any examination or treatment of the claimant. The filing of such claim authorizes a doctor, hospital, or clinic to disclose any such information to the organization ~~or to~~ its representative, or to the employer, except that any such information directly disclosed to the employer must be relevant to the employee's work injury or to return to work issues. No physician or health care provider furnishing such reports or records incurs any liability as a result.

SECTION 6. A new subsection to section 65-05-32 of the North Dakota Century Code is created and enacted as follows:

The organization may release the social security number of an individual claiming entitlement to benefits under this title to health care providers or health care facilities for the purpose of adjudicating a claim for benefits.

SECTION 7. APPLICATION. Sections 5 and 6 of this Act apply to all claims, regardless of the date of injury. Sections 1 and 4 of this Act apply to all claims filed after July 31, 2005.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 611

HOUSE BILL NO. 1171

(Representative N. Johnson)

(Senator Klein)

(At the request of Workforce Safety and Insurance)

WORKERS' COMPENSATION DISABILITY AND REHABILITATION

AN ACT to amend and reenact sections 65-01-02, 65-05.1-01, 65-05.1-02.1, 65-05.1-04, and 65-05.1-06.1 of the North Dakota Century Code, relating to the definition of permanent total disability and temporary total disability, vocational rehabilitation options, eligibility for partial disability benefits, elective vocational rehabilitation retraining, and vocational rehabilitation noncompliance appeals for workforce safety and insurance purposes; to provide an effective date; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹¹ **SECTION 1. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions. In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body. The term does not include 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.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the employee was receiving from all employments at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the employee's wages are not fixed by

³¹¹ Section 65-01-02 was also amended by section 1 of House Bill No. 1120, chapter 610, and section 6 of House Bill No. 1410, chapter 235.

the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the net earnings reported the preceding tax year or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
 7. "Board" means the workforce safety and insurance board of directors.
 8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
 9. "Child", for determining eligibility for benefits under chapter 65-05, means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but does not include a married child unless actually dependent.

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.
 - a. The term includes:
 - (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
 - (2) An injury to artificial members.
 - (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
 - (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
 - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
 - (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not preexist the work injury.
 - b. The term does not include:
 - (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the bureau may pay for preventive treatment for significant exposures documented by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3, and for exposure to rabies occurring in the course of employment.
 - (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.

- (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
 - (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
 - (7) Injuries attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity.
 - (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
 - (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
 - (10) A mental injury arising from mental stimulus.
- 11. "Date of first disability" means the first date the employee was unable to work because of a compensable injury.
 - 12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
 - 13. "Director" means the director of the organization.
 - 14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
 - 15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.
 - 16. "Employee" means a person who performs hazardous employment for another for remuneration unless the person is an independent contractor under the "common law" test.

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
- (2) Aliens.
- (3) County general assistance workers, except those who are engaged in repaying to counties moneys that the counties have been compelled by statute to expend for county general assistance.
- (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse of an employer or a child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
 - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.

- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
 - (6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.
 - (7) An employer.
 - c. Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium for the coverage. This subdivision does not impose any liability upon a general contractor other than liability to the organization for the payment of premiums which are not paid by a subcontractor or independent contractor.
- 17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the "common law" test. The term includes:
 - a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
 - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.

18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Grandchild" and the terms defined in subsections 8 and 9 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.
21. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
 - a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
22. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.
23. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
24. "Parent" includes a stepparent and a parent by adoption.
25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
26. "Permanent total disability" means ~~an employee is determined incapable of rehabilitation of earnings capacity as determined by the:~~
 - a. ~~Nature of injury.~~
 - b. ~~Degree of physical impairment.~~
 - c. ~~Education.~~
 - d. ~~Work history.~~
 - e. Vocational rehabilitation potential disability that is the direct result of a compensable injury that prevents an employee from

performing any work and results from any one of the following conditions:

- a. Total and permanent loss of sight of both eyes;
- b. Loss of both legs or loss of both feet at or above the ankle;
- c. Loss of both arms or loss of both hands at or above the wrist;
- d. Loss of any two of the members or faculties in subdivision a, b, or c;
- e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
- f. Third-degree burns that cover at least forty percent of the body and require grafting;
- g. A medically documented traumatic brain injury affecting cognitive and mental functioning which renders an employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
- h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

- 27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.
- 28. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
- 29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
- 30. "Temporary total disability" means disability that results in the inability of an employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.

31. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.

~~34.~~ 32. "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" may not include dismissal or severance pay.

SECTION 2. AMENDMENT. Section 65-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-01. Rehabilitation services.

1. The state of North Dakota exercising its police and sovereign powers declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. The purpose of this chapter is to ensure that injured employees covered by this title receive services, so far as possible, necessary to assist the employee and the employee's family in the adjustments required by the injury to the end that the employee receives comprehensive rehabilitation services, including medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled employee to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, functional capacities, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the employee as soon as practicable and as nearly as possible to ninety percent of the employee's average weekly earnings at the time of injury, or to sixty-six and two-thirds percent of the average weekly wage in this state on the date the rehabilitation consultant's report is issued under section 65-05.1-02.1, whichever is less. The purpose of defining substantial gainful employment in terms of earnings is to determine the first appropriate priority option under subsection 4 which meets this income test set out above.
4. The first appropriate option among the following, calculated to return the employee to substantial gainful employment, must be chosen for the employee:
 - a. Return to the same position.
 - b. Return to the same occupation, any employer.

- c. Return to a modified position.
 - d. Return to a modified or alternative occupation, any employer.
 - e. Return to an occupation within the local job pool of the locale in which the claimant was living at the date of injury or of the employee's current address which is suited to the employee's education, experience, and marketable skills.
 - f. Return to an occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
 - g. ~~On-the-job training.~~
 - h. ~~Short-term retraining of fifty-two weeks or less.~~
 - i. ~~Long-term retraining~~ Retraining of one hundred four weeks or less.
 - j. ~~Self-employment.~~
5. If the employee's first appropriate option is an option listed in subdivision c, d, e, or f of subsection 4, the organization may pursue retraining of one hundred four weeks or less. If an option listed in subdivision a, b, c, d, e, or f, or g of subsection 4 has been identified as appropriate for an injured employee and the employee is initially released by the doctor to return to part-time employment with the reasonable expectation of attaining full-time employment, the organization shall pay temporary partial disability benefits under section 65-05-10 until the doctor determines the employee is medically capable of full-time employment.
6. a. If the vocational consultant concludes that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and will not return the employee to the lesser of sixty-six and two-thirds percent of the average weekly wage, or ninety percent of the employee's preinjury earnings, the employee shall continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:
- (1) That meets the employee's functional capacities; and
 - (2) For which the employee meets the qualifications to compete; and.
 - ~~(3)~~ That will reasonably result in retained earnings capacity equivalent to the lesser of ninety percent of the employee's preinjury earnings or the state's current hourly minimum wage on the date the rehabilitation consultant's report is issued. If an employee is initially released to part-time employment by the doctor, the income test defined under this paragraph must be waived provided there is a reasonable expectation that the employee will return to full-time employment meeting the income test previously defined under this paragraph.

- b. Under section 65-05-10, the organization shall award partial disability based on retained earnings capacity calculated under this section.
 - c. For purposes of calculating partial disability based on a retained earnings capacity, an employee is presumed to be capable of earning the greater of the state's hourly minimum wage times the hours of release based on a valid functional capacities examination or the wages payable within the appropriate labor market. This presumption is rebuttable only upon a finding of clear and convincing medical and vocational evidence to the contrary. If the presumption is successfully rebutted, the employee may receive partial disability benefits based on a retained earnings capacity of zero.
- 7. The income test in subsection 3 must be waived when an employer offers the employee a return-to-work option at a wage lower than the income test as defined under subsection 3 or when the organization and the employee agree to waive the income test and the priority options.
- 8. Vocational rehabilitation services may be initiated by:
 - a. The organization on its own motion; or
 - b. The employee or the employer if proof exists:
 - (1) That the employee has reached maximum medical recovery;
 - (2) That the employee is not working and is not voluntarily retired or removed from the labor force; and
 - (3) That the employee has made good-faith efforts to seek, obtain, and retain employment.
- 9. Chapter 50-06.1 does not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.
- 10. If retraining is the first appropriate vocational rehabilitation option identified for an employee, the employee shall notify the organization of the acceptance of the retraining option on a form provided by the organization within thirty days from the date the employee receives notice of eligibility for retraining. If the employee fails to notify the organization of the acceptance of the retraining option within the thirty-day period, the organization shall calculate a retained earnings capacity as provided in subdivision c of subsection 6. A vocational rehabilitation allowance does not accrue as weeks of temporary total disability as defined in section 65-01-02 if the employee successfully completes a retraining program approved by the organization. If the employee fails to successfully complete a retraining program approved by the organization, the vocational rehabilitation allowance paid accrues against the maximum number of weeks of temporary total disability allowed pursuant to section 65-01-02. If an employee attempts and withdraws from an approved retraining program within the first twenty weeks following commencement of the retraining program, the employee, upon request, may receive no more than one hundred

eighty-two weeks of temporary partial disability benefits calculated pursuant to subdivision c of subsection 6.

SECTION 3. AMENDMENT. Section 65-05.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-02.1. Vocational consultant's report. The vocational consultant shall review all records, statements, and other pertinent information and prepare a report to the organization and employee.

1. The report must:
 - a. Identify the first appropriate rehabilitation option by following the priorities set forth in subsection 4 of section 65-05.1-01.
 - b. Contain findings of why a higher listed priority, if any, is not appropriate.
2. Depending on which option the consultant identifies as appropriate, the report also must contain findings that:
 - a. Identify jobs in the local or statewide job pool and the employee's anticipated earnings from each job; or
 - b. ~~Describe an appropriate on-the-job training program, and the employee's anticipated earnings;~~
 - c. Describe an appropriate ~~short-term or long-term~~ retraining program, the employment opportunities anticipated upon the employee's completion of the program, and the employee's anticipated earnings; or
 - d. ~~Describe the employee's potential for specific self-employment, limitations the employee might have in such a self-employment, any assistance necessary, and the employee's anticipated earnings.~~
3. The vocational consultant's report is due within sixty days from the date the vocational assessment is performed under this chapter. However, if the vocational consultant determines that ~~short-term or long-term training~~ retraining options must be evaluated because higher priority options are not viable, the final report is due within ninety days of the vocational assessment to allow the employee to assist in formulating the choice among the qualified training programs.

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

65-05.1-04. Injured employee responsibility.

1. The injured employee shall seek, obtain, and retain reasonable and substantial employment to reduce the period of temporary disability to a minimum. The employee has the burden of establishing that the employee has met this responsibility.

2. If the injured employee is unable to obtain substantial employment as a direct result of injury, the employee shall promptly notify the organization under subdivision b of subsection 8 of section 65-05.1-01.
3. The injured employee shall be available for testing under subsection 6 or 7 of section 65-05.1-02, and for any further examinations and testing as may be prescribed by the organization to determine whether or not a program of rehabilitation is necessary. The injured employee also shall participate in remedial or other educational services when those services are determined to be necessary by the organization or the vocational consultant. If the employee is noncompliant with this subsection, the organization shall suspend benefits during the period of noncompliance.
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, ~~or on-the-job training~~, 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.
5. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is ~~short-term or long-term training~~ retraining, the employee shall cooperate with the necessary testing to determine whether the proposed training program meets the employee's medical limitations and aptitudes. The employee shall attend a qualified rehabilitation training program when ordered by the organization. A qualified training program is a rehabilitation plan that meets the criteria of this title, is the approved option of the rehabilitation consultant, and commences within a reasonable period of time such as the next quarter or semester. The organization and the employee, by agreement, may waive the income test applicable under this subsection.
6. If, without good cause, the injured employee fails to make a good-faith work search in return to work utilizing the employee's transferable skills, the employee is in noncompliance with vocational rehabilitation. A good-faith work search that does not result in placement is not, in itself, sufficient grounds to prove the work injury caused the inability to acquire gainful employment. The employee shall show that the injury significantly impacts the employee's ability to successfully compete for gainful employment in that the injury leads employers to favor those without limitations over the employee. If, without good cause, the injured employee fails to attend specific vocational testing, remedial, or other vocational services determined necessary by the organization or the rehabilitation consultant, the employee is in noncompliance with vocational rehabilitation. If, without good cause, the injured employee fails to attend a scheduled medical or vocational assessment, fails to communicate or cooperate with the vocational consultant, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee is in

noncompliance with vocational rehabilitation. If, without good cause, the employee discontinues a training program in which the employee is enrolled, the employee is in noncompliance with vocational rehabilitation. If at any time the employee is noncompliant without good cause, subsequent efforts by the employee to come into compliance with vocational rehabilitation are not considered successful compliance until the employee has successfully returned to the job or training program for a period of thirty days. In all cases of noncompliance by the employee, the organization, ~~by administrative order~~, shall discontinue disability and vocational rehabilitation benefits. If, ~~after issuance of the order~~, the period of noncompliance continues for thirty days following the date benefits are discontinued, or a second instance of noncompliance occurs without good cause, the organization may not pay any further disability or vocational rehabilitation benefits, regardless of whether the employee sustained a significant change in medical condition due to the work injury.

SECTION 5. 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:
 - (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. 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. 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. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, an additional award, not to exceed two ~~months~~ months' disability benefit, to assist the employee with work search.
- g. 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 of ~~subsection 2~~.
- h. 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 on-the-job training, the organization shall pay the employee a disability benefit throughout the duration of the on-the-job training program. Upon completion of the training program, 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.~~

SECTION 6. EFFECTIVE DATE. Sections 1 and 2 of this Act become effective January 1, 2006.

SECTION 7. APPLICATION. This Act applies to all claims filed on or after the effective dates of this Act.

Approved March 31, 2005
Filed March 31, 2005

CHAPTER 612

HOUSE BILL NO. 1491

(Representatives Berg, Boucher, Ekstrom, Keiser)
(Senators O'Connell, Stenehjem)

WSI REVOLVING LOAN FUND

AN ACT to create and enact a new section to chapter 65-05.1 of the North Dakota Century Code, relating to the establishment of a workforce safety and insurance educational revolving loan fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

Workforce safety and insurance educational revolving loan fund - Continuing appropriation.

1. The organization may establish a revolving loan fund to provide a low-interest loan to an individual who has suffered a compensable injury. The loan must be used to pursue an education at an accredited institution of higher education or an institution of technical education. In order to be eligible for a loan under this section, an individual must have obtained a high school diploma or its equivalent and either must be ineligible for retraining under this chapter or must have exhausted training and education benefits. The Bank of North Dakota and the organization shall establish eligibility requirements and make application determinations based on the established criteria. The application must require an applicant to demonstrate a viable education plan that will enable the individual to achieve gainful employment.
2. The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount 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 at an interest 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 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, as determined necessary, may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.