

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 23-01, a new section to chapter
2 65-02, two new sections to chapter 65-05, and a new section to chapter 65-05.1 of the North
3 Dakota Century Code, relating to audits of workers' compensation independent medical
4 examinations, a workforce safety and insurance advisory board, timely processing of workers'
5 compensation claims, workers' compensation benefits for a surviving spouse, and pilot
6 programs for workers' compensation rehabilitation services; to amend and reenact sections
7 21-10-01(1), 54-57-03, 65-01-01, 65-01-02(7) and (13), 65-02-01, 65-02-27, 65-02-30,
8 65-04-19.3, 65-05-08.1, 65-05-09.2, 65-05-09.3, 65-05-09.4, 65-05-29(3)(b), 65-05-32(4),
9 65-05.1-08, 65-05.2-01, and 65-10-01 of the North Dakota Century Code, relating to the office
10 of administrative hearings, workers' compensation law construction, the governor's appointment
11 of the executive director of workforce safety and insurance, the location of the workforce safety
12 and insurance office of independent review, the impact of a social security disability
13 determination on workers' compensation benefits, the workers' compensation retirement offset
14 and presumption, workers' compensation additional benefit payable, workforce safety and
15 insurance open records, workers' compensation supplementary benefits, and appeals by
16 workforce safety and insurance of administrative decisions; to repeal sections 65-02-03.1,
17 65-02-03.2, 65-02-03.3, and 65-05-09.5 of the North Dakota Century Code, relating to the
18 workforce safety and insurance board of directors and the alternative calculation for additional
19 benefits payable; to provide a penalty; to provide a continuing appropriation; to apply for
20 transition; and to provide for application.

21 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

22 **SECTION 1. AMENDMENT.** Section 21-10-01(1) is amended:

23 1. The North Dakota state investment board consists of the governor, the state
24 treasurer, the commissioner of university and school lands, the executive director

of workforce safety and insurance, the insurance commissioner, three members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, and three of the elected members of the public employees retirement system board as selected by that board. The executive director of workforce safety and insurance may appoint a designee; ~~subject to approval by the workforce safety and insurance board of directors,~~ to attend the meetings, participate, and vote when the director is unable to attend. The teachers' fund for retirement board may appoint an alternate designee with full voting privileges to attend meetings of the state investment board when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend. The members of the state investment board, except elected and appointed officials and the executive director of workforce safety and insurance or the executive director's designee, are entitled to receive as compensation sixty-two dollars and fifty cents per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.

SECTION 2. A new section to chapter 23-01 is created:

Audits of workforce safety and insurance independent medical examinations -

Biennial report - Penalty.

1. The state department of health shall establish and implement a program to conduct random audits of independent medical examinations performed for workforce safety and insurance under section 65-05-28. The department may select a private third party to perform all or specified parts of the audits. An audit must:
 - a. Determine whether workforce safety and insurance procedure is being followed in conducting independent medical examinations and, if necessary, recommend how the procedure could be improved;
 - b. Determine whether appropriate medical practice standards and medical billing standards are being met in reviewing claimants' diagnoses, prognoses,

1 treatments, and fees and, if necessary, recommend how the review system
2 could be improved; and

3 c. Determine workforce safety and insurance claimant satisfaction and doctor
4 satisfaction in the independent medical examination system and, if necessary,
5 recommend how to better meet the expectations of claimants and doctors.

6 2. The department shall complete a biennial report of audits performed during the
7 biennium and shall present the report to the legislative council's legislative audit
8 and fiscal review committee in conjunction with the independent performance
9 evaluation received by the legislative audit and fiscal review committee under
10 section 65-02-30. The biennial report must include a summary of the audits
11 performed during the biennium and recommendations but may not identify specific
12 workforce safety and insurance claimants, doctors, or health care providers or
13 other confidential information. Information compiled and analysis performed
14 pursuant to an audit under this section which relate to the audit, including patterns
15 of treatment, costs, or determinations made by doctors are confidential and are not
16 open to public inspection to the extent the information and analysis identify specific
17 workforce safety and insurance claimants, doctors, or health care providers.

18 3. For purposes of complying with this section, employees of the state department of
19 health and any third party selected by the department to conduct all or a portion of
20 the audits may access an injured employee's claim file and records for which an
21 independent medical examination is being audited in the same manner as an
22 employee of workforce safety and insurance. An employee of the state department
23 of health and any third party selected by the department to conduct all or a portion
24 of the audits who access an injured employee's claim file under this section are
25 subject to the same confidentiality provisions and information disclosure provisions
26 under section 65-05-32 as employees of workforce safety and insurance and are
27 considered public servants for purposes of section 12.1-13-01.

28 **SECTION 3. AMENDMENT.** Section 54-57-03 is amended:

29 **54-57-03. Hearings before administrative law judges.**

30 1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or
31 other persons to preside in an administrative proceeding, all adjudicative

proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, ~~workforce safety and insurance~~, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings.

Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

2. The agency head shall make a written request to the director requesting the designation of an administrative law judge to preside for each administrative proceeding or adjudicative proceeding to be held.
3. Informal disposition of an administrative proceeding or adjudicative proceeding may be made by an agency at any time before or after the designation of an administrative law judge from the office of administrative hearings.
4. If a party to an administrative proceeding or adjudicative proceeding is in default, the agency may issue a default order and a written notice of default, including a statement of the grounds for default, prior to the hearing. The agency shall determine all the issues involved. If issued, the default notice and order must be served upon all the parties and the administrative law judge, if one has been designated to preside. After service of the default notice and order, if a hearing is necessary to complete the administrative action with or without the participation of the party in default, an administrative law judge from the office of administrative hearings must preside.

5. When designating administrative law judges to preside in an administrative proceeding or adjudicative proceeding, the director shall attempt to assign an administrative law judge having expertise in the subject matter to be dealt with.

6. The director of administrative hearings may assign an administrative law judge to preside in an administrative proceeding or adjudicative proceeding, upon request, to any agency exempted from the provisions of this section, to any agency, or part of any agency, that is not an administrative agency subject to the provisions of chapter 28-32, to any unit of local government in this state, to any tribal government in this state, to the judicial branch, or to any agency to conduct a rulemaking hearing.

SECTION 4. AMENDMENT. Section 65-01-01 is amended:

65-01-01. Purposes of workforce safety and insurance law - Police power. The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wage workers, and, hence, for workers injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for those personal injuries and all jurisdiction of the courts of the state over those causes are abolished except as is otherwise provided in this title. ~~A civil action or civil claim arising under this title, which is subject to judicial review, must be reviewed solely on the merits of the action or claim. This title may not be construed liberally on behalf of any party to the action or claim.~~

SECTION 5. AMENDMENT. Section 65-01-02(7) and (13) is amended:

7. "Board" means the workforce safety and insurance advisory board ~~of directors~~.

13. "Director" means the executive director of the organization.

SECTION 6. AMENDMENT. Section 65-02-01 is amended:

65-02-01. Workforce safety and insurance - ~~Director~~ Executive director - Division directors. The organization must be maintained for the administration of this title. The ~~board~~ governor shall appoint the executive director of the organization. The director is subject to the supervision and direction of the ~~board~~ governor and serves at the pleasure of the ~~board~~ governor. The appointment must be on a nonpartisan, merit basis in accordance with chapter

54-42. The governor shall set the compensation and prescribe the duties of the director. The director may appoint the director of any division established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

SECTION 7. A new section to chapter 65-02 is created:

Workforce safety and insurance advisory board - Composition - Compensation - Duties. The director shall appoint a workforce safety and insurance advisory board composed of an equal number of employer representatives and employee representatives who may be regarded fairly as representative because of the representative's vocation, employment, or affiliations, and of members representing the general public as the director may designate. The board shall aid the organization in formulating policies, discussing problems related to the administration of the organization, and in assuring impartiality and freedom from political influence in the solution of these problems. The members of the board may be reimbursed for expenses in the amounts provided by law for state officials but shall serve without further compensation except as may be authorized and fixed by the organization by rule. The organization shall provide staff services to the board. The board shall assist the organization in formulating policies and discussing problems related to the administration of the organization, including adoption of rules, establishment of fees, determination of employer premium rates, maintenance of the solvency of the workforce safety and insurance fund, and provision of rehabilitation services. The board may make recommendations and proposals for consideration by the director.

SECTION 8. AMENDMENT. Section 65-02-27 is amended:

65-02-27. Office of independent review.

1. The ~~organization's department of labor's~~ office of independent review is established. The office of independent review ~~is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title~~ must be collocated with the office of the labor commissioner. The organization shall fund the office of independent review in accordance with legislative appropriation. The office of independent review ~~must~~ shall provide assistance to ~~a worker~~ an employee who has filed a claim; which may include acting on behalf of ~~a worker~~ an employee who is aggrieved by a decision of the organization, communicating with organization staff

1 regarding claim dispute resolution, and informing ~~a worker~~ an employee of the
2 effect of decisions made by the organization, the ~~worker~~ employee, or an employer
3 under this title. ~~The~~ At the request of an employee, the office of independent
4 review shall provide assistance to ~~workers, upon request,~~ the employee in cases of
5 constructive denial or after a vocational consultant's report has been issued.

6 2. The ~~organization~~ labor commissioner shall employ a director of the office of
7 independent review and other personnel determined to be necessary for the
8 administration of the office. ~~A person~~ An individual employed to administer the
9 office of independent review may not act as an attorney for ~~a worker~~ an employee.

10 3. The organization may not pay attorney's fees to an attorney who represents a
11 ~~worker~~ an employee in a disputed claim before the organization unless the ~~worker~~
12 employee has first attempted to resolve the dispute through the office of
13 independent review. A written request for assistance by ~~a worker~~ an employee
14 who contacts the office of independent review within the period for requesting a
15 hearing on an administrative order tolls the time period for requesting a hearing on
16 that order. The period begins upon notice to the ~~worker~~ employee, sent by regular
17 mail, that the office of independent review's assistance to the ~~worker~~ employee is
18 completed.

19 4. The information contained in a file established by the office of independent review
20 on ~~a worker's~~ an employee's disputed claim, including communications from a
21 ~~worker~~ an employee, is privileged and may not be released without the ~~worker's~~
22 employee's permission. Information in the file containing the notes or mental
23 impressions of office of independent review staff is confidential and may not be
24 released by the office of independent review.

25 **SECTION 9. AMENDMENT.** Section 65-02-30 is amended:

26 **65-02-30. Independent performance evaluation - Organization development of**
27 **performance measurements - Continuing appropriation.** Biennially, the director shall
28 request the state auditor to select a firm with extensive expertise in workforce safety and
29 insurance practices and standards to complete a performance evaluation of the functions and
30 operations of the organization during that biennium. This may not be construed to require the
31 firm to be a certified public accounting firm. As determined necessary by the state auditor, but

1 at least once every other biennium, the biennial independent performance evaluation must
2 evaluate departments of the organization to determine whether the organization is providing
3 quality service in an efficient and cost-effective manner; evaluate the effectiveness of safety
4 and loss prevention programs under section 65-03-04; and evaluate the board to determine
5 whether the board is operating within section ~~65-02-03.3~~ and within the board's bylaws 7 of this
6 Act. The firm's report must contain recommendations for departmental improvement or an
7 explanation of why no recommendations are being made. The director, ~~the chairman of the~~
8 ~~board~~, and a representative of the firm shall present the evaluation report and any action taken
9 to the legislative council's legislative audit and fiscal review committee and to the house and
10 senate industry, business and labor standing committees during the next regular session of the
11 legislative session following the performance evaluation. The director shall provide a copy of
12 the performance evaluation report to the state auditor. The organization shall develop and
13 maintain comprehensive, objective performance measurements. These measurements must
14 be evaluated as part of the independent performance evaluation performed under this section.
15 Money in the workforce safety and insurance fund is appropriated on a continuing basis for the
16 payment of the expense of conducting the performance evaluation.

17 **SECTION 10. AMENDMENT.** Section 65-04-19.3 is amended:

18 **65-04-19.3. Premium calculation programs - Authority.** ~~Upon approval of its board~~
19 ~~of directors, the~~ The organization may create and implement actuarially sound employer
20 premium calculation programs, including dividends, group insurance, premium deductibles, and
21 reimbursement for medical expense assessments. Programs created or modified under this
22 section are not subject to title 28-32 and may include requirements or incentives for the early
23 reporting of injuries. An employer with a deductible policy under this section, who chooses to
24 pursue a third-party action under section 65-01-09 after an injured ~~worker~~ employee and the
25 organization have chosen not to pursue the third-party action, may keep one hundred percent
26 of the recovery obtained, regardless of the expense incurred in covering the injury and
27 regardless of any contrary provision in section 65-01-09. If the employer pursues the third-party
28 action pursuant to this section, neither the organization nor the injured ~~worker~~ employee has
29 any liability for sharing in the expense of bringing that action.

30 **SECTION 11.** A new section to chapter 65-05 is created:

1 **Timely filing and processing of claims.** This section applies if a claimant files an
2 original claim for benefits with the organization within sixty days following the injury or within six
3 months following death. If an original claim for benefits is still pending on the sixty-first day
4 following filing, the claim is deemed approved. If the organization seeks to end or diminish
5 compensation awarded under this section, the organization bears the burden of proving the
6 claimant's lack of entitlement to benefits. If a claimant incurs an overpayment under this
7 section, the organization may not seek repayment or recovery from the claimant unless the
8 organization proves the award of benefits under this section was a direct result of fraud
9 committed by the claimant. A claimant may not be awarded benefits under this section if the
10 claimant is not cooperating with requests from the organization for additional information
11 needed to process the claim.

12 **SECTION 12. AMENDMENT.** Section 65-05-08.1 is amended:

13 **65-05-08.1. Verification of disability.**

- 14 1. An injured employee's doctor shall certify the period of disability and the extent of
15 the injured ~~worker's~~ employee's abilities and restrictions.
- 16 2. A doctor certifying disability shall include in the report filed with the organization:
 - 17 a. The medical basis established by medical evidence supported by objective
18 medical findings for the certification of disability;
 - 19 b. Whether the employee is totally disabled, or, if the employee is not totally
20 disabled, whether the employee is able to return to any employment, and a
21 statement of the employee's restrictions and physical limitations; and
 - 22 c. A professional opinion as to the expected length of, and reason for, the
23 disability.
 - 24 d. A doctor may not certify or verify past disability commencing more than sixty
25 days before the doctor's examination of the employee.
- 26 3. The report must be filed on a form furnished by the organization, or on any other
27 form acceptable to the organization.
- 28 4. The injured employee shall ensure that the required reports for any period of
29 disability are filed.
- 30 5. If an employee has been determined to be disabled for purposes of the
31 supplemental security income program under title XVI of the federal Social Security

1 Act [42 U.S.C. 1381 et seq.] or for purposes of social security disability, the
2 organization shall accept medical reports related to these determinations and shall
3 consider the determination as a relevant factor in determining disability under this
4 title.

- 5 6. Prior to the expiration of a period of disability certified by a doctor, if a report
6 certifying an additional period of disability has not been filed, or upon receipt of a
7 report or other evidence indicating an injured employee who is receiving disability
8 benefits has been or will be released to return to work, the organization shall send
9 a notice to that employee of the organization's intention to discontinue benefits,
10 including an explanation of the reason for discontinuing benefits, an explanation of
11 the employee's right to respond, and the procedure for filing the required report or
12 challenging the proposed action. A copy of the notice must be mailed to the
13 employee's doctor. Thereafter, if the required certification is not filed, the
14 organization shall discontinue disability benefits, effective twenty-one days after the
15 date the notice of intention to discontinue benefits is mailed or the date on which
16 the employee actually returned to work, whichever occurs first.

17 **SECTION 13. AMENDMENT.** Section 65-05-09.2 is amended:

18 **65-05-09.2. Retirement offset prohibited.** If an employee is entitled to permanent
19 total disability benefits and social security retirement benefits under 42 U.S.C. sections 402 and
20 405, the organization may not decrease the employee's aggregate wage-loss benefits payable
21 under this title must be determined in accordance with this section. The by offsetting the
22 employee's social security retirement offset must equal forty percent of the calculated ratio of
23 the employee's average weekly wages, as calculated on the commencement of the first, or
24 recurrent, disability under section 65-05-09, to the current state's average weekly wage. Any
25 offset calculated cannot exceed forty percent of the employee's weekly social security
26 retirement benefit. If a claim has been accepted on an aggravation basis and the employee is
27 eligible for social security benefits, the organization's offset must be proportionally calculated.
28 An overpayment must be recouped in the same manner as set forth in section 65-05-09.1. This
29 section applies to an employee who becomes entitled to and receives social security retirement
30 benefits after June 30, 1989, or who receives social security retirement benefits that have been
31 converted from social security disability benefits by the social security administration after

June 30, 1989. A conversion by the organization from offsetting an employee's social security disability benefits to not offsetting an employee's social security retirement benefits under this section may not result in a decrease in the aggregate amount of benefits the employee receives from both sources.

SECTION 14. AMENDMENT. Section 65-05-09.3 is amended:

**65-05-09.3. Retirement presumption - Termination of benefits upon retirement -
Application.**

1. An employee who has retired or voluntarily withdrawn from the labor force and who, at that time, was not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits, or a rehabilitation allowance from the organization is presumed retired from the labor market. The presumption may be rebutted by a preponderance of the evidence; however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement.
2. An injured employee who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who attains retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits is considered retired. The organization may not pay any disability benefits, rehabilitation benefits, or supplementary benefits to an employee who is considered retired; however, the employee remains eligible for medical benefits, permanent partial impairment benefits, and the additional benefit payable under section 65-05-09.4.
3. The organization retains liability for disability benefits, rehabilitation benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits unless the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits and who is gainfully employed and who suffers an injury arising out of and in the course of that employment. The organization may not pay

disability or rehabilitation benefits under this subsection for more than three years, subject to section 65-05-09.2, for injuries occurring after August 1, 1997.

4. ~~This~~ Except as provided under subsection 5, this section applies to all persons who begin receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who attain retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, after July 31, 1995.

5. The termination of benefits upon retirement provision under subsection 2 does not apply to an employee who is permanently and totally disabled due to an injury that occurred before August 1, 1995, if that permanent and total disability occurred before the employee was considered retired.

SECTION 15. AMENDMENT. Section 65-05-09.4 is amended:

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 injured employee's compensation rate 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.

1 ~~At least 17 years and less than 20 years of disability 45 percent of weekly benefit.~~
2 ~~Twenty or more years of disability 50 percent of weekly benefit.~~
3 thirty percent of the employee's compensation rate if the total length of disability is at least one
4 year and less than ten years and is sixty percent of the employee's compensation rate if the
5 total length of disability is at least ten years. However, the organization shall pay to an injured
6 employee who has been determined to be catastrophically injured as defined by subdivision c
7 of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee,
8 equal to one hundred percent of the final payment of the disability benefit that was discontinued
9 under subsection 2 or 3 of section 65-05-09.3.

10 **SECTION 16.** A new section to chapter 65-05 is created:

11 **Death of permanently and totally disabled employee - Surviving spouse.** In the
12 case of the death of an injured employee who is receiving permanent total disability benefits,
13 supplementary benefits, or additional benefits payable, the injured employee's surviving spouse
14 is eligible to receive the injured employee's permanent total disability benefits, supplementary
15 benefits, and additional benefits payable in the same manner as the deceased injured
16 employee would have been entitled to receive the benefits. The eligibility of the surviving
17 spouse to receive benefits under this section terminates upon the remarriage of the surviving
18 spouse.

19 **SECTION 17. AMENDMENT.** Section 65-05-29(3)(b) is amended:

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

25 **SECTION 18. AMENDMENT.** Section 65-05-32(4) is amended:

- 26 4. Other persons, including the labor commissioner and employees of the office of
27 independent review, may have access to and make inspections of the files, if such
28 persons are rendering assistance to the organization at any stage of the
29 proceedings on any matter pertaining to the administration of this title or such
30 persons are conducting audits under section 2 of this Act.

31 **SECTION 19. AMENDMENT.** Section 65-05.1-08 is amended:

**65-05.1-08. 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 injured employee or to a surviving spouse or dependent child of an injured employee whose death resulted from a compensable injury under section 65-05-16. 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. A loan must be repaid at an interest rate established by the organization which may not exceed the rate of one percent below the Bank of North Dakota's prime interest rate. The organization shall pay the Bank of North Dakota a negotiated fee for administering and servicing loans under this section. At the ~~board's~~ director'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~~ director, as determined necessary, may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.

SECTION 20. A new section to chapter 65-05.1 is created:

Rehabilitation services - Pilot programs - Reports.

1. The organization shall implement an ongoing system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services. The pilot programs may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The purpose of each pilot program must be to improve the outcome of the services offered by the organization to the injured employee and the injured employee's family in the adjustments required by the employee's injury and to improve the effectiveness of vocational rehabilitation in returning a disabled employee to substantial gainful employment. Pilot programs may address a broad range of approaches, including return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of other state agencies, such as job service North Dakota.
2. Each pilot program must include a cost-benefit analysis; a strengths, weaknesses, and opportunities analysis; and employer and employee satisfaction information. The organization shall include in its annual reports to the legislative council's legislative audit and fiscal review committee under section 65-02-03.3:
 - a. Preliminary reports on future pilot programs;
 - b. Status reports on current pilot programs; and
 - c. Final reports on completed pilot programs, including recommendations.

SECTION 21. AMENDMENT. Section 65-05.2-01 is amended:

65-05.2-01. Eligibility for supplementary benefits.

- ~~4. For claims filed before January 1, 2006, a workforce safety and insurance claimant who is receiving permanent total disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of seven consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this subsection lasts as long as the claimant is entitled to permanent total disability benefits or death benefits.~~
2. ~~For claims filed after December 31, 2005, a~~ A workforce safety and insurance claimant who is receiving permanent total disability benefits or death benefits and

who has been receiving disability or death benefits for a period of at least three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this ~~subsection~~ section lasts as long as the claimant is entitled to permanent total disability benefits or death benefits.

SECTION 22. AMENDMENT. Section 65-10-01 is amended:

65-10-01. Appeal from decision of organization.

1. If the final action of the organization denies the right of the claimant to participate at all in the fund on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claim, or if the organization allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted or of the county in which the claimant resides. An employer may also appeal a decision of the organization in any injury case or an organization decision issued under chapter 65-04, in the manner prescribed in this section. An appeal involving injuries allegedly covered by insurance provided under contracts with extraterritorial coverage ~~shall be~~ are triable in the district court of Burleigh County.

~~Any~~

2. Except as otherwise provided, an appeal under this section shall must be taken in the manner provided in chapter 28-32. ~~Any~~ If a claimant is appealing an order of the organization for which the organization did not accept the administrative law judge's recommended findings of fact, conclusions of law, and order, the burden of proof shifts to the organization to prove by a preponderance of the evidence the claimant is not entitled to the benefits sought. An appeal to the district court shall must be heard on the record, transmitted from the organization, and; in the discretion of the court, additional evidence may be presented pertaining to the questions of law involved in the appeal.

SECTION 23. REPEAL. Sections 65-02-03.1, 65-02-03.2, 65-02-03.3, and 65-05-09.5 are repealed.

1 **SECTION 24. TRANSITION.** Under section 8 of this Act, all employees of and all
2 records, materials, supplies, and equipment used by the workforce safety and insurance's office
3 of independent review are transferred to and become the employees of and become the
4 property of the department of labor's office of independent review.

5 **SECTION 25. APPLICATION.** Sections 13 and 21 of this Act apply to all workforce
6 safety and insurance claimants who are eligible for benefits on or after the effective date of this
7 Act regardless of the date of injury. Section 14 of this Act does not apply retroactively. An
8 injured employee whose benefits were terminated under section 65-05-09.3 due to being
9 considered retired who becomes eligible for benefits under section 14 of this Act becomes
10 eligible for reinstatement upon the effective date of this Act and is not eligible for back
11 payments. Section 15 of this Act applies to all workforce safety and insurance claimants who
12 are eligible for additional benefits payable after December 31, 2006. Section 16 of this Act
13 applies to workforce safety and insurance injured employees who die on or after the effective
14 date of this Act.