

June 2009

TITLE 65

Workforce Safety and Insurance

Summary of Bills Enacted by 2009 Legislative Assembly

This memorandum summarizes 2009 legislation primarily affecting North Dakota Century Code Title 65. Bills primarily affecting other titles may also affect this title, but those bills are not summarized in this memorandum.

The legislation relating to Workforce Safety and Insurance may be classified in these subject areas: administration and benefits.

ADMINISTRATION

House Bill No. 1021 provides money in the Workforce Safety and Insurance (WSI) fund is appropriated to WSI on a continuing basis for payment of WSI expenses associated with litigating employer-related issues and for payment of WSI expenses associated with litigating medical provider-related issues identified under Sections 65-02-23 and 65-02-20.

House Bill No. 1035 modifies the WSI Board of Directors membership for employer representatives and amends the WSI financial reserve requirements law, including providing the level of financial reserves plus available surplus is to be determined annually as of June 30th of each year and directing the actions WSI shall take if the annual level of financial reserves plus available surplus is below the statutory minimum, within the statutory levels, or above the statutory maximum.

House Bill No. 1036 provides WSI shall establish premium rates annually on an actuarial basis and that the workers' compensation statewide average premium rate level may not deviate by more than five percentage points from the recommended actuarial indicated premium level for that year.

House Bill No. 1037 removes the requirement that the biennial independent performance evaluation of WSI must include an evaluation and report of the effectiveness of WSI costs associated with identifying, preventing, and investigating employer or provider fraud and modifies the requirements of the WSI independent performance evaluation, including changing the entity to which the report is provided from the Legislative Audit and Fiscal Review Committee to the Workers' Compensation Review Committee and modifying the required elements of the independent performance evaluation.

House Bill No. 1151 modifies the definition of "wages" as used in the state's workers' compensation law, clarifying the term means all gross earnings of all employees, including pretax deductions for amounts allocated by the employee; provides the WSI information fund is a fund within the WSI insurance fund and removes the \$10,000 maximum on the information fund's balance; provides a recipient of funds awarded under a WSI safety grant program authorizes WSI to disclose the name of the award recipient and the amount of the award received; clarifies what is included in a WSI employer's file and changes WSI employer files from being exempt from the state's public records laws to being confidential and not subject to disclosure under the public records laws; and repeals the law relating to WSI rules regarding mine foremen.

House Bill No. 1201 changes the name of the WSI Office of Independent Review to the Decision Review Office.

House Bill No. 1360, as part of a bill relating to the rights of regional education association employees, clarifies that multidistrict special education units, area career and technology centers, and regional education associations shall pay WSI premiums at the same time and in the same manner as school districts.

House Bill No. 1436, as part of the bill that changes the name of the Legislative Council to the Legislative Management and retains the name Legislative Council as it pertains to the Legislative Council staff, corrects references to the Legislative Council.

House Bill No. 1464 amends the workers' compensation laws to reconcile existing law with 2008 initiated measure No. 4, including clarifying WSI does not arrange for the designation of hearing officers, that hearing officers are designated by the Office of Administrative Hearings, that the hearing officer's results of an administrative hearing are final, and that WSI may appeal to district court a final order issued by a hearing officer; revising the powers and duties of the WSI Board of Directors to be advisory; and repealing WSI's authority to establish its own personnel

system for its employees. The bill also repeals the statutory provision prohibiting WSI from expending funds for the purpose of providing education or training for public officials and from providing awards.

Senate Bill No. 2431 provides when WSI requires an injured employee to submit to an independent medical examination, WSI is directed to make a reasonable effort to designate a duly qualified doctor licensed in the state in which the injured employee resides.

Senate Bill No. 2432 decreases from 60 days to 30 days the period of time following a work injury that an injured employee is required to seek medical treatment only from the employer's preferred provider.

BENEFITS

House Bill No. 1061 redefines the term "artificial member" as it applies to workers' compensation law providing the term includes a device that is a substitute for a natural part, organ, limb, or other part of the body, including a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body.

House Bill No. 1062 provides in the case of an injured employee receiving a vocational rehabilitation award, WSI may grant up to an additional 20 weeks of benefits to be used as a rehabilitation extension allowance; in the case of an injured employee who is required to return to the local or statewide job pool or who is unable to return to employment with adequate earnings, WSI may grant an additional award; and WSI shall implement a system of pilot programs to allow WSI to address alternative methods of providing rehabilitation services, including an annual report to the Workers' Compensation Review Committee and WSI data collection regarding the status of claims that have received rehabilitation services.

House Bill No. 1063 expands workers' compensation coverage by providing that during the 60 days immediately following an injury, if WSI accrues a medical expense or makes a payment for a medical expense for which WSI later determines was for a noncompensable injury, the injured employee is not liable for the medical expense unless the organization had made an earlier determination of noncompensability or unless the medical provider or injured employee should have reasonably known the medical expense was for a noncompensable injury.

House Bill No. 1064, for purposes of workers' compensation temporary total or permanent total disability, shortens the attempt-to-work period from 12 months to 3 months, and the bill also modifies the supplementary benefits provision, also known as the cost-of-living adjustment, by providing recipients of temporary total disability benefits may qualify for supplementary benefits and by shortening from seven years to three years the period of time after which an injured employee may qualify for supplementary benefits.

House Bill No. 1073, as part of the bill that enacts the Uniform Emergency Volunteer Health Practitioners Act, amends the workers' compensation law to use consistent language and to clarify a volunteer health practitioner under the uniform law is eligible for workers' compensation benefits under the volunteer firefighter, emergency or disaster volunteer, community emergency response team member law.

House Bill No. 1101 increases the workers' compensation dependency allowance for a child from \$10 to \$15 per week per child; revises the calculation of the amount of preacceptance disability benefits, basing the benefit on the regular weekly disability benefit amount instead of the minimum weekly disability benefit amount; increases the maximum allowed partial disability, temporary total disability, or permanent total disability benefit from 110 percent to 125 percent of the state's average weekly wage; expands the benefits an injured employee may receive for an aggravation to include costs of travel and other personal reimbursement for seeking and obtaining medical care for the aggravated work injury; increases the weekly compensation allowance for a death claim, including increasing the maximum total death benefits, including supplementary benefits, paid on any one claim from \$250,000 to \$300,000, increasing from \$10 to \$15 the per child weekly compensation for a death claim, and increasing the additional death benefit payments from \$1,200 to \$2,500 for a surviving spouse and \$400 to \$800 per dependent child; and increases the maximum burial expense payment from \$6,500 to \$10,000.

House Bill No. 1455 creates a new type of surviving spouse benefit for a qualified spouse of an injured employee who had been receiving permanent total disability benefits or additional benefits payable for at least 10 years if the surviving spouse was married to the injured employee for at least 10 years and had been providing home health care services for the injured employee.

House Bill No. 1561 provides that if WSI does not give an injured employee's treating doctor's opinion controlling weight, WSI shall establish that the treating doctor's opinion is not well-supported by medically acceptable clinical and laboratory diagnostic techniques or is inconsistent with other substantial evidence in the injured employee's record based on specified factors.

Senate Bill No. 2055 revises the burden of proof under the workers' compensation firefighter's and law enforcement officer's presumption, providing the presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related.

Senate Bill No. 2056 revises the workers' compensation mileage reimbursement for injured employees' medical travel, replacing calculations based on travel from city limit to city limit with calculations based on miles actually and necessarily traveled.

Senate Bill No. 2057 provides a scheduled injury for workers' compensation permanent partial impairment awards for loss of vision of an eye which equals or exceeds 20/200.

Senate Bill No. 2058 clarifies that an independent medical review contemplates a file review of an injured employee's records and an independent medical examination contemplates an actual examination of an injured employee.

Senate Bill No. 2059 creates a new payment by WSI for an injured employee's attorney's fees and costs to consult with the injured employee regarding a request for rehearing of an administrative order issued by WSI.

Senate Bill No. 2071 provides the standard by which to establish whether an individual operating a licensed truck or licensed tractor for a motor carrier of property rebuts the presumption the individual is an employee for purposes of the workers' compensation law.

Senate Bill No. 2419 revises the provision that directs WSI to provide an injured employee with a rehabilitation allowance if travel or maintaining a second domicile is required to attend school or a training institution, clarifying the injured employee has the choice of whether to commute or maintain a second domicile, decreasing from 30 miles to 25 miles the travel distance required before qualifying for a second domicile, and providing travel of less than 30 miles qualifies for an increased rehabilitation allowance.

Senate Bill No. 2433 clarifies that as part of vocational rehabilitation services provided by WSI, once WSI makes a determination of the first appropriate vocational rehabilitation option, WSI shall notify the injured employee of the obligation to make a good-faith work search or good-faith work trial and to provide information regarding reinstatement of benefits if the work search or work trial is unsuccessful.