

# WORKERS' COMPENSATION

## CHAPTER 605

### HOUSE BILL NO. 1217

(Representatives Wald, Kretschmar, Carlson)  
(Senators Christmann, Robinson, Kinnoin)

## WORKERS' COMPENSATION LAW JUDICIAL REVIEW

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 65-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-01-01. Purposes of compensation 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 ~~such~~ those personal injuries and all jurisdiction of the courts of the state over ~~such~~ 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.

Approved March 27, 1995  
Filed March 28, 1995

**CHAPTER 606****HOUSE BILL NO. 1366**

(Representatives Skarphol, Soukup, Shide)  
(Senators Grindberg, Robinson, Tallackson)

**WORKERS' COMPENSATION AVERAGE WEEKLY  
WAGE**

AN ACT to amend and reenact subsection 4 of section 65-01-02 of the North Dakota Century Code, relating to the definition of average weekly wage for purposes of determining workers' compensation benefits; and to provide an effective date.

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

<sup>281</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Average weekly wage" means the weekly wages the employee was receiving from all employments at the time of injury. The average weekly wage as determined under this section must be rounded to the nearest dollar. In cases where 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. The "average weekly wage" of a self-employed employee is determined by the following formula: net profits based on preceding tax year or preceding fifty-two weeks whichever is higher, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.
  - b. Hourly or daily rate multiplied by number of hours or days worked per seven-day week<sub>2</sub>.
  - c. Monthly rate multiplied by twelve months and divided by fifty-two weeks<sub>2</sub>.
  - d. Biweekly rate divided by two<sub>2</sub>.
  - e. In seasonal employment, the average weekly wage is one-fiftieth of the total wages the employee has earned from all occupations during the twelve calendar months immediately preceding the injury

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<sup>281</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2280, chapter 609; section 1 of House Bill No. 1225, chapter 607; section 1 of House Bill No. 1252, chapter 608; section 24 of Senate Bill No. 2037, chapter 456; and section 1 of Senate Bill No. 2085, chapter 610.

or one-fiftieth of the average annual income for the three-year period immediately preceding the injury, whichever is greater.

- f. If the average weekly wage of an employee cannot be ascertained, the wage for the purposes of calculating compensation ~~must be taken to be~~ is the usual wage paid other employees engaged in ~~like~~ or similar occupations where the wages are fixed; ~~or.~~
- ~~f.~~ g. If there are special circumstances under which the average weekly ~~wages~~ wage cannot be reasonably and fairly determined by applying subdivisions a through e f, an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty-two weeks, or the number of weeks actually worked; ~~whichever~~ if that number is less than fifty-two.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for all claims filed after July 31, 1995.

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 607

## HOUSE BILL NO. 1225

(Representatives Wald, Keiser, Kelsch, Kempenich)  
 (Senators Mutch, Krebsbach)

**COMPENSABLE INJURY FOR WORKERS'  
 COMPENSATION PURPOSES**

AN ACT to amend and reenact subsection 9 of section 65-01-02 of the North Dakota Century Code, relating to the definition of compensable injury for workers' compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>282</sup> SECTION 1. AMENDMENT. Subsection 9 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Compensable injury" means an injury by accident arising out of and in the course of employment which must be established by medical evidence supported by objective medical findings.
  - a. The term "compensable injury", in addition to an injury by accident, includes:
    - (1) Any disease which can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed ~~shall~~ are not be compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of ~~his~~ employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It ~~need~~ does not have ~~been~~ to be foreseen or expected, but after it is contracted, it must ~~appear to~~ have had its origin in a risk connected with the employment and ~~to~~ have flowed from that source as a rational consequence. ~~However, preventative~~ Preventive treatment for communicable diseases is not compensable under this title.
    - (2) An injury to artificial members.

<sup>282</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2280, chapter 609; section 1 of House Bill No. 1366, chapter 606; section 1 of House Bill No. 1252, chapter 608; section 24 of Senate Bill No. 2037, chapter 456; and section 1 of Senate Bill No. 2085, chapter 610.

- (3) Injuries due to heart attack or other heart-related disease, stroke, and mental or physical injury precipitated by mental stimulus, which must be causally related to the employee's employment, with reasonable medical certainty, and which must have been precipitated by unusual stress.
  - (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.
- b. The term does not include:
- (1) ~~An~~ A willfully self-inflicted injury, an injury caused by the employee's willful intention to commit suicide or to injure or kill himself, herself, or another, which includes those instances where the including injury or aggravation thereof of an injury, which results from the employee's suicide or attempted suicide.
  - (2) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
  - (3) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor.
  - (4) An injury that arises out of ~~the commission~~ of an illegal act committed by the injured employee.
  - (5) An injury that arises out of an employee's purely 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.
  - (6) Injuries attributable to a preexisting injury, disease, or condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. ~~However, it~~ It is insufficient, however, to afford compensation under this title solely because the employment acted as a trigger to produce symptoms in a latent and underlying condition if the underlying condition would likely have progressed similarly in the absence of such the employment trigger, unless the employment trigger is also deemed determined to be a substantial aggravating or accelerating factor. An underlying condition is a preexisting injury, disease, or infirmity.
  - (7) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.

- (8) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment injury.
- (9) A mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except ~~such~~ an action that is the intentional infliction of emotional harm.

Approved March 31, 1995

Filed March 31, 1995

**CHAPTER 608****HOUSE BILL NO. 1252**

(Representatives Skarphol, Monson, Carlson)

(Senators Andrist, Mutch, Krauter)

**COMPENSABLE INJURY UNDER WORKERS'  
COMPENSATION**

AN ACT to amend and reenact subsection 9 of section 65-01-02 of the North Dakota Century Code, relating to the definition of compensable injury for workers' compensation purposes.

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

<sup>283</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Compensable injury" means an injury by accident arising out of and in the course of employment.

a. The term "compensable injury", in addition to an injury by accident, includes:

- (1) Any disease ~~which~~ that can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed ~~shall~~ are not be compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of ~~his~~ employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It need not have been foreseen or expected, but after it is contracted, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. However, preventative treatment for communicable diseases is not compensable under this title.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack, stroke, and ~~mental~~ or physical injury precipitated by mental stimulus, which must be causally related to the employee's employment, with reasonable

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<sup>283</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2280, chapter 609; section 1 of House Bill No. 1225, chapter 607; section 1 of House Bill No. 1366, chapter 606; section 24 of Senate Bill No. 2037, chapter 456; and section 1 of Senate Bill No. 2085, chapter 610.

medical certainty, and which must have been precipitated by unusual stress.

- (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.

b. The term does not include:

- (1) An injury caused by the employee's willful intention to injure or kill himself, herself, or another, which includes those instances where the injury or aggravation thereof results from the employee's suicide or attempted suicide.
- (2) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
- (3) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor.
- (4) An injury that arises out of the commission of an illegal act by the injured employee.
- (5) An injury that arises out of an employee's purely 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.
- (6) Injuries attributable to a preexisting injury, disease, or condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. However, it is insufficient to afford compensation under this title solely because the employment acted as a trigger to produce symptoms in a latent and underlying condition if the underlying condition would likely have progressed similarly in the absence of such employment trigger, unless the employment trigger is also deemed a substantial aggravating or accelerating factor. An underlying condition is preexisting injury, disease, or infirmity.
- (7) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.
- (8) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment injury.

- (9) A mental injury arising from mental stimulus or a mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except such an action that is the intentional infliction of emotional harm.

Approved April 3, 1995  
Filed April 3, 1995

**CHAPTER 609****SENATE BILL NO. 2280**

(Senators Krauter, O'Connell, Sand)  
(Representatives Aarsvold, Kerzman, Kunkel)

**TOWNSHIP EMPLOYEES UNDER WORKERS'  
COMPENSATION**

AN ACT to amend and reenact subsection 16 of section 65-01-02 of the North Dakota Century Code, relating to the definition of employer for workers' compensation purposes.

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

<sup>284</sup> SECTION 1. AMENDMENT. Subsection 16 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. "Employer" means:
- 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 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.

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<sup>284</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1225, chapter 607; section 1 of House Bill No. 1366, chapter 606; section 1 of House Bill No. 1252, chapter 608; section 24 of Senate Bill No. 2037, chapter 456; and section 1 of Senate Bill No. 2085, chapter 610.

- h. 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.

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 610

## SENATE BILL NO. 2085

(Senator Solberg)

FAIRLY TRACEABLE TO EMPLOYMENT DEFINED  
FOR WORKERS' COMPENSATION

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to the eligibility of a full-time paid firefighter or law enforcement officer for workers' compensation benefits; and to amend and reenact subsection 18 of section 65-01-02 of the North Dakota Century Code, relating to the definition of "fairly traceable to the employment" for purposes of workers' compensation.

## BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>285</sup> SECTION 1. AMENDMENT. Subsection 18 of section 65-01-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease ~~which~~ that:
- a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
  - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
  - c. Can be fairly traced to the employment; or
  - d. However, any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic,

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<sup>285</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2280, chapter 609; section 1 of House Bill No. 1225, chapter 607; section 1 of House Bill No. 1366, chapter 606; section 1 of House Bill No. 1252, chapter 608; and section 24 of Senate Bill No. 2037, chapter 456.

poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid firefighter or law enforcement officer has completed ~~two~~ five years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition. An employer shall require a physical examination upon employment, and annually thereafter, for any employee subject to this subdivision. Results of the examination must be used in rebuttal to a presumption afforded under this subdivision. For purposes of this subdivision, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

SECTION 2. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Yearly documentation required for firefighter and law enforcement officer. Except for benefits for exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under subdivision d of subsection 18 of section 65-01-02 unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years. Any full-time paid firefighter or law enforcement officer employed on June 30, 1995, is not subject to this section until July 1, 1997.

Approved April 13, 1995  
Filed April 18, 1995

## CHAPTER 611

## HOUSE BILL NO. 1224

(Representatives Carlson, Koppelman, Kelsch, Soukup)  
(Senators Kinnoin, Wanzenk)

## WORKERS' COMPENSATION BENEFITS

AN ACT to amend and reenact section 65-01-11 of the North Dakota Century Code, relating to the denial of workers' compensation benefits due to use of alcohol or controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-01-11. Burden of proof in compensation matters - Death certificate.** If the bureau or an employer claims that an employee is not entitled to the benefits of the North Dakota Workers' Compensation Law by reason of the fact that the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving such exemption or forfeiture is upon the bureau or upon the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in 49 CFR ~~383.52~~ 383.51 or a level of an illegally used controlled substance sufficient to cause impairment found by a test required by a physician, qualified technician, chemist, or registered nurse and performed as required by the United States secretary of transportation under 49 CFR part 40, at or above the cutoff level in part 40, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired, the employee forfeits all entitlement to workers' compensation benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to participate in the same. In the event of a claim for death benefits the official death certificate must be considered as evidence of death and may not be used to establish the cause of death. ~~If the employee can prove by a preponderance of the evidence, within one year of a denial based upon impairment caused by the use of alcohol or the illegal use of a controlled substance, that the employee has successfully completed treatment with a licensed addiction facility, the employee's benefits must be reinstated. Costs for treatment under this section may not be paid by the bureau.~~

Approved March 15, 1995

Filed March 15, 1995

**CHAPTER 612****SENATE BILL NO. 2377**

(Senators Nalewaja, Goetz, Krebsbach, Lindaas)  
(Representative Byerly)

**WORKERS' COMPENSATION ADVISER PROGRAM**

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to the establishment of a workers' compensation adviser program; to provide an effective date; and to provide an expiration date.

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

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

**Workers' adviser program.** A workers' adviser program is established. The program is independent of the claims department of the workers compensation bureau and activities administered through the program must be administered in accordance with this title. The program must provide assistance to an injured employee, including acting on behalf of an injured employee who is aggrieved by a decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and advising an injured employee of the effect of decisions made by the bureau, the employee, or an employer under this title. The bureau shall employ a director of the program, support staff for the program, and other personnel determined to be necessary for the administration of the program. Personnel employed to administer the program may not act as an attorney for an injured employee. The bureau may not pay attorney fees to an attorney who represents an injured employee in a disputed claim before the bureau unless the injured employee has first attempted to resolve the dispute through the workers' adviser program. An injured employee who contacts the program for assistance within the appeal period after an administrative order has been issued is deemed to have satisfied the requirement of requesting an administrative hearing or an arbitration hearing on that order. The information contained in a file established by the workers' adviser program on an injured employee's disputed claim is not subject to discovery and may not be used as evidence in subsequent proceedings relative to that dispute.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for all disputed claims arising after July 31, 1995.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 1999, and after that date is ineffective.

Approved March 27, 1995  
Filed March 28, 1995

**CHAPTER 613****HOUSE BILL NO. 1226**

(Representatives Wald, Skarphol, Froseth)

(Senators Andrist, Grindberg, Kelsh)

**WORKERS' COMPENSATION REINSURANCE**

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to allowing reinsurance for workers' compensation; to amend and reenact section 65-02-06 of the North Dakota Century Code, relating to expenditures by the workers compensation bureau; and to provide a continuing appropriation.

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

<sup>286</sup> **SECTION 1. AMENDMENT.** Section 65-02-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-06.** Expenditures by bureau from fund - Employment of full-time assistant attorney general authorized. ~~With prior approval of the emergency commission, the bureau may make necessary expenditures to implement reinsurance.~~ The bureau may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this title. The salaries and compensation of the director of the bureau and of all employees of the bureau, and all other authorized expenses ~~thereof~~ of the bureau, including the premium on the bond required of the state treasurer under section 65-04-30, must be paid out of the fund. The bureau may employ as its full-time attorney a duly appointed assistant attorney general and pay from the fund the entire salary of the assistant.

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

Expenditures by bureau for reinsurance - Report to budget section. There is appropriated out of the workers' compensation fund, as a continuing appropriation, an amount necessary to allow the bureau to establish a program of reinsurance. The bureau may execute a contract for reinsurance which is binding on the bureau and the reinsurer. The term identified in the contract may extend past the end of the biennium in which the contract is executed. The bureau shall report to the legislative council's budget section annually on any contract negotiated between the bureau and an insurer for reinsurance.

Approved March 10, 1995

Filed March 10, 1995

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<sup>286</sup> Section 65-02-06 was also amended by section 2 of House Bill No. 1439, chapter 504.

## CHAPTER 614

## HOUSE BILL NO. 1208

(Representatives Wald, Skarphol, Bernstein)  
(Senators Kinnoin, B. Stenehjelm, Traynor)

WORKERS' COMPENSATION ATTORNEY FEES AND  
ARBITRATION

AN ACT to amend and reenact sections 65-02-08, 65-02-15, 65-02-20, subsection 1 of section 65-05.1-06.1, and section 65-10-03 of the North Dakota Century Code, relating to workers' compensation attorney fees; to repeal sections 65-02-17 and 65-02-18 of the North Dakota Century Code, relating to binding arbitration; and to provide an effective date.

## BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau.** The bureau shall adopt such rules; ~~not inconsistent with this title, as may be necessary to carry out this title.~~ All fees on claims for legal, medical, and hospital services rendered under this title to ~~any claimant~~ an injured employee must be in accordance with schedules of fees adopted ~~or to be adopted~~ by the bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee on administrative rules before submission to the legislative council for publication. The bureau shall establish, by administrative rule, a reasonable maximum hourly rate and a maximum fee to compensate ~~claimants' attorneys~~ an injured employee's attorney for legal services following ~~constructive denial of a claim, notice of informal decision, or~~ issuance of an administrative order under chapter 28-32 reducing or denying benefits. ~~"Constructive denial" means failure to~~ The bureau shall issue an administrative order within sixty days of the date when all elements of initial filing or notice of reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. Satisfaction of elements of filing must be defined by administrative rule. All attorneys' The bureau shall pay an injured employee's attorney's fees and costs must be paid from the bureau general fund. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The bureau shall pay ~~attorneys' an attorney's~~ an attorney's fees as follows when:

1. The employee has prevailed in binding dispute resolution under section 65-02-20; or
2. ~~The dispute is referred to binding arbitration under section 65-02-17;~~
3. ~~The employee has prevailed after reconsideration of an informal decision under section 65-01-14;~~
4. The employee has prevailed after an administrative hearing under chapter 28-32;

5. If there has been constructive denial of a claim, the bureau shall only pay attorneys' fees from the occurrence of the constructive denial until the bureau issues a notice of informal decision or administrative order; or
6. As otherwise provided by administrative rule.

The bureau shall adopt administrative rules for the payment of an employee's attorney's fees when an employee's request for binding arbitration is rejected by the employer. Nothing provided herein may be construed to. This section does not prevent a claimant an injured employee or an employer from hiring or paying his or her own an attorney; however, the claimant's employee's attorney may not seek or obtain costs or attorney's fees from both the bureau and the claimant employee relative to the same services. The bureau may deny attorneys' fees upon a finding that the claim is frivolous. All disputes relating to payment or denial of attorneys' fees an attorney's fee must be submitted to binding arbitration by a fee arbitration panel composed of one member selected by the claimant's attorney; one member selected by the bureau; and one member selected jointly by the claimant's attorney and the bureau. An attorney who agrees to accept compensation from the bureau for services pursuant to this section agrees to binding fee arbitration of all disputes relating to payment or denial of fees the hearing officer or arbitrator for decision.

**SECTION 2. AMENDMENT.** Section 65-02-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-15. Workers' compensation binding arbitration - Qualified arbitrator - Regions.** The bureau shall divide the state into four regions for the purpose of holding arbitration proceedings. The appropriate region is the region in which the employee resides. If the employee resides out of state, the appropriate region is the region of the situs of employment. The bureau shall provide staff services to the panel members. The salaries and expenses of the panel must be paid from money appropriated to the bureau for that purpose. The process for choosing arbitrators and qualifications for arbitrators must be outlined by rule. The employee can request and the bureau may allow a change of arbitrator upon a showing of just cause. A dispute between the bureau and an injured employee must be resolved by arbitration when the dispute concerns an amount no greater than three thousand dollars. If the amount in dispute is greater than three thousand dollars, the dispute may not be resolved through arbitration. The bureau shall adopt rules to establish how the amount of the dispute is determined. The bureau may hire arbitrators based upon criteria the bureau determines relevant, including education, training, and experience. The bureau shall pay an injured employee's attorney's fee only when the employee prevails. The bureau shall adopt rules to establish a maximum fee for an injured employee's attorney. An attorney's fee may not exceed twenty percent of the amount awarded. Payment of a disputed amount pursuant to an arbitration award does not establish the bureau's liability for any issue not raised during the arbitration proceeding and does not establish the bureau's liability for any underlying condition. The arbitration process may not be used for determinations of compensability of medical conditions. The bureau retains continuing jurisdiction over the arbitration proceeding under section 65-05-04. An arbitration decision that is not revoked or modified by the bureau under section 65-05-04 is final and not reviewable by any court.

**SECTION 3. AMENDMENT.** Section 65-02-20 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-02-20. Bureau to establish managed care program.** The bureau shall establish a managed care program with a third-party administrator to effect the best medical solution for an injured employee. The managed care system must allow for a third-party administrator to direct the program for medical care of the injured employee upon a finding by the bureau that the employee suffered a compensable injury. The managed care administrator shall operate according to guidelines adopted by the bureau to ensure that an injured employee receives appropriate medical treatment in a cost-effective manner. The managed care administrator shall assist the bureau in the medical management of claims within the bounds of workers' compensation law. If an employee, employer, or medical provider disputes the recommendation of the managed care administrator, the employee, employer, or medical provider may request binding dispute resolution on the recommendation. The bureau shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-14 or ~~65-02-17~~ 65-02-15. A dispute resolution decision under this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion by the dispute resolution panel. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

<sup>287</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 65-05.1-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Within sixty days of receipt of the final vocational consultant's report, the bureau shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to lost-time and vocational rehabilitation services. ~~The bureau shall establish, by rule, an hourly rate to compensate an employee's attorney from the date the bureau has notified the employee to be available for testing under subsection 7 of section 65-05.1-02. The bureau may establish, by rule, absolute maximum fees for such representation.~~

**SECTION 5. AMENDMENT.** Section 65-10-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-10-03. Cost of appeal and attorney's fee fixed by the bureau.** ~~The bureau shall pay the cost of the judicial appeal and an the attorney's fee for the claimant's an injured employee's attorney must be borne by the bureau when the claimant employee prevails. The claimant employee is deemed to have prevailed when any part of the decision of the bureau is reversed or the claim is remanded to the bureau for further administrative proceedings. In an appeal by the bureau to the North Dakota supreme court, the claimant shall recover costs and attorneys' fees incurred in responding to the appeal. The bureau shall pay such the attorney's fee from the~~

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<sup>287</sup> Section 65-05.1-06.1 was also amended by section 4 of House Bill No. 1253, chapter 628.

bureau general fund. The amount of ~~such~~ the attorney's fee must be determined in the same manner as prescribed by the bureau for attorney fees, and the amount of attorney's fee already allowed in administrative proceedings before the bureau must be taken into consideration. The bureau shall; ~~pursuant to section 65-02-08;~~ establish, pursuant to section 65-02-08, a maximum fee to be paid in an appeal; ~~provided that the.~~ The maximum fee may be exceeded upon application of the ~~claimant injured employee~~ and approval of the court, upon a finding that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex. Notwithstanding the foregoing, the bureau is liable for its costs on appeal if the decision of the bureau is affirmed.

**SECTION 6. REPEAL.** Sections 65-02-17 and 65-02-18 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 7. EFFECTIVE DATE.** This Act applies to any request for arbitration, hearing, or appeal taken from an administrative order issued after August 1, 1995.

Approved March 29, 1995  
Filed March 29, 1995

**CHAPTER 615**

**HOUSE BILL NO. 1287**

(Representatives Kelsch, Carlson, Mahoney, Poolman)  
(Senators Krebsbach, Traynor)

**WORKERS' COMPENSATION HEARING OFFICER  
QUALIFICATIONS**

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to requiring a hearing officer of the workers compensation bureau to be a person licensed to practice law in this state.

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

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

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

Approved March 24, 1995  
Filed March 27, 1995

**CHAPTER 616****HOUSE BILL NO. 1190**

(Representatives Soukup, Skarphol, Aarsvold)  
(Senators Traynor, Kinnoin, Robinson)

**WORKERS' COMPENSATION FRAUD UNIT**

AN ACT to create and enact four new sections to chapter 65-02 of the North Dakota Century Code, relating to a workers' compensation fraud unit, immunity from civil liability, nondisclosure of investigative information, and immunity from criminal prosecution; and to amend and reenact sections 65-04-14 and 65-05-33 of the North Dakota Century Code, relating to penalties for misrepresenting payroll or for filing false claims or false statements.

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

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

Workers' compensation fraud unit. The bureau shall establish a workers' compensation fraud unit. The bureau may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost effective, to investigate and review any alleged case of willful misrepresentation of payroll to the bureau by an employer as described under section 65-04-14 and to investigate and review any alleged case of willful filing of a false claim or false statement in relation to a claim as defined under section 65-05-33. The unit shall refer a case of willful misrepresentation of payroll to the bureau or of willful filing of a false claim or false statement for prosecution.

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

Immunity from civil liability. A person who notifies the bureau or who assists the bureau on any matter pertaining to the administration of this title of an alleged violation of section 65-04-14 or 65-05-33, or who provides information in the course of an investigation of an alleged violation of section 65-04-14 or 65-05-33, is not subject to civil liability for that action if the action was in good faith and without malice. At the request of the person who notifies or assists the bureau or who provides information to the bureau, the bureau may not reveal the identity of that person or disclose any information that may reveal the identity of that person to any person other than a representative of or a person rendering assistance to the bureau.

**SECTION 3.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Amnesty for certain claims and accounts. After the workers' compensation fraud unit is established, the bureau may offer a period of amnesty to any person who has willfully made a false claim or false statement or who has willfully misrepresented payroll, to allow that person the opportunity to close and repay the false claim, to close and repay the claim for which a false statement has been made, or to pay the appropriate premium and penalty on an account for which payroll was misrepresented. The amnesty period may not exceed sixty days. A person who

receives amnesty under this section is immune from criminal prosecution relating to those acts for which amnesty is received.

**SECTION 4.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Nondisclosure of investigative information. Any investigative information gathered pursuant to section 1 of this Act is criminal investigative information and may not be disclosed except as provided in section 44-04-18.7.

<sup>288</sup> **SECTION 5. AMENDMENT.** Section 65-04-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-04-14. False payroll report - Liability of employer - Collection and disposition of penalty.** Any employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is liable to the state in ten times the amount of the difference between the premium paid and the amount the employer should have paid. The liability to the state under this section must be enforced in a civil action in the name of the state, and all sums collected under the section must be paid into the fund. Any employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is guilty of a class A misdemeanor, but if the difference between the premium paid and the amount the employer should have paid is more than five hundred dollars, the offense is a class C felony.

**SECTION 6. AMENDMENT.** Section 65-05-33 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05-33. Filing false claim or false statements - Penalty.** Any person claiming benefits or payment for services under this title, who willfully files a false claim or makes a false statement, or willfully fails to notify the bureau as to the receipt of income, or an increase in income, from employment, after the issuance of an order awarding benefits, in connection with any claim or application under this title is guilty of a class A misdemeanor, but if the act is committed to obtain, or pursuant to a scheme to obtain, more than five hundred dollars in benefits or services, the offense is a class C felony. Provided further that:

1. For the purposes of this section, "statement" includes any testimony, claim form, notice, proof of injury, proof of return to work status, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test results, or other evidence of loss, injury, or expense.
2. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall:
  - a. ~~Reimburse~~ reimburse the bureau for any benefits paid based upon the false claim or false statement; and, if applicable, under section 65-05-29:

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<sup>288</sup> Section 65-04-14 was also amended by section 3 of House Bill No. 1329, chapter 619.

- b. ~~Forfeit~~ and shall forfeit any additional benefits relative to that injury.

Approved March 28, 1995

Filed March 29, 1995

## CHAPTER 617

## SENATE BILL NO. 2403

(Senators Solberg, Krauter, Krebsbach)  
(Representatives Austin, Christopherson, Klein)

EMPLOYER EXPERIENCE RATING AND RATES FOR  
WORKERS' COMPENSATION

AN ACT to amend and reenact sections 65-04-01 and 65-04-17 of the North Dakota Century Code, relating to classification of employments for workers' compensation premium rates and the experience rating of employers by the workers compensation bureau; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. The bureau 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 ~~said~~ the classifications sufficiently high to provide for:
  - 1 a. The payment of the expenses of administration of the bureau;
  - 2 b. The payment of compensation according to the provisions and schedules contained in this title; and
  - 3 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 bureau 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, the bureau shall hold a public hearing on the rate change. Chapter 28-32 does not apply to a hearing held by the bureau under this subsection.

SECTION 2. AMENDMENT. Section 65-04-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-04-17. Experience rating of employers.** The bureau may establish a system for the experience rating of risks of employers contributing to the fund, and such system shall provide for the credit rating and the penalty rating of individual risks within such limitations as the bureau may establish from time to time.

In calculating the experience rating, the bureau shall determine the maximum and minimum rates for each employment classification by:

1. Multiplying the required average premium rate by one and seventy-five hundredths to get the maximum rate assigned to an employer with a negative experience rating; and
2. Multiplying the required average premium rate by twenty-five hundredths to get the minimum rate assigned to an employer with a positive experience rating.

The bureau may not amend its experience rating system by emergency rulemaking.

**SECTION 3. LEGISLATIVE COUNCIL STUDY.** During the 1995-1996 interim, the legislative council shall study the feasibility and desirability of the workers compensation bureau establishing a system through which injured workers whose disability benefits cease upon reaching retirement age under 1995 House Bill No. 1228 would receive a pension or an annuity in lieu of further disability benefits. The legislative council shall review the different methods through which the pension or annuity would be established and paid, who would be responsible for administering the pension or annuity, and to which injured workers the pension or annuity would be paid. The bureau shall provide information to the legislative council necessary to facilitate the study.

Approved April 13, 1995  
Filed April 18, 1995

## CHAPTER 618

HOUSE BILL NO. 1219  
(Representative Keiser)

## WORKERS' COMPENSATION THIRD-PARTY CLAIMS

AN ACT to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to employer relief for third-party lawsuit recovery; to amend and reenact section 65-05-07.2 of the North Dakota Century Code, relating to requiring a third party to pay the workers compensation bureau for certain claims; and to provide an effective date.

## BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Employer relief for third-party recovery. The bureau, upon recovery of its subrogation interest after a third-party lawsuit under section 65-01-09, shall give relief to the employer from the date of injury for the amount of the recovery up to the actual amount expended on a claim charged against the employer's account. For purposes of this section, "relief" means the amount of money recovered by the bureau in a third-party action will be deducted from the amount charged against the employer's experience rating.

SECTION 2. AMENDMENT. Section 65-05-07.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05-07.2. Employer required Payment to pay bureau for certain claims.** The employer shall reimburse the bureau 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 bureau for the first two hundred fifty dollars of medical expenses when the expenses are more than two 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 bureau, 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 bureau under this section. Upon the bureau's determination that the claim is compensable, the bureau 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 bureau within ninety days of notice by the bureau, the bureau 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 bureau 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 the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the bureau shall pay all further medical expenses pursuant to this title. This section is effective for all compensable injuries that occur after ~~June 30, 1991~~ July 31, 1995.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act is effective for all accounts affected by a third-party recovery received by the bureau after July 31, 1995.

Approved March 7, 1995

Filed March 7, 1995

## CHAPTER 619

## HOUSE BILL NO. 1329

(Representatives Skarphol, Wald, Oban, Clark)

(Senators Kinnoin, Robinson)

WORKERS' COMPENSATION PENALTIES AND  
PAYMENTS

AN ACT to amend and reenact sections 65-04-12, 65-04-13, 65-04-14, 65-04-19, 65-04-23, 65-04-24, 65-04-26.1, 65-04-27, 65-04-27.1, 65-09-01, 65-09-02, 65-09-03, and 65-09-04 of the North Dakota Century Code, relating to penalties for failure to obtain workers' compensation coverage and submit payroll reports, penalties for refusal to permit inspection of books, penalties for filing false payroll reports, calculation of premium due, penalties for default in payments to the workers compensation bureau, actions for collection of delinquent premium, corporate officer liability, payment of claims for employees of employers who are in default, and injunctions against employers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-12 of the North Dakota Century Code is amended and reenacted as follows:

65-04-12. Penalties for failure to obtain coverage or to make payroll reports - How collected - Disposition. Any An employer knowing himself to be who knows that the employer is subject to the operation of the provisions of this title and who shall fail fails to report himself the employer's status as an employer to the bureau as such shall be is liable to for a penalty to be fixed established by the bureau in an amount not exceeding one to exceed two and one-half times the premium which that would have been paid on payroll expenditures during the periods not reported. Any An employer who shall fail fails or refuse refuses to furnish to the bureau the annual payroll report and estimate, or who shall fail fails or refuse refuses to furnish such other information as may be required by the bureau under authority of this chapter shall be is subject to a penalty to be fixed established by order of the bureau in an amount not exceeding five hundred to exceed two thousand dollars. Such penalties The bureau shall be collected collect a penalty imposed under this section in a civil action brought against the defaulting employer in the name of the state. Any such penalty, when collected The bureau shall be paid into deposit a penalty collected under this section to the credit of the fund and shall become a part thereof.

SECTION 2. AMENDMENT. Section 65-04-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-13. Books, records, and payrolls of employers subject to audit and inspection - Penalty for refusal to permit inspection. All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of the employers, ~~must be~~ are open always for inspection by the bureau or any of its traveling auditors, inspectors, or assistants for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of employees, and any other information ~~as may be necessary for the uses and purposes of the bureau in its administration of to administer~~ this title. Refusal on the part of any An employer who refuses to submit the employer's books, records, and

payrolls for ~~the inspection of~~ by the bureau, or of a traveling its auditor, inspector, or assistant presenting written authority from the bureau, ~~subjects the employer is subject to a penalty of one five hundred dollars for each offense; the same to be collected.~~ The bureau shall collect the penalty by civil action in the name of the state and ~~paid into~~ shall deposit a penalty collected under this section to the credit of the fund to become a part thereof.

<sup>289</sup> SECTION 3. AMENDMENT. Section 65-04-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-14. False payroll report - Liability of employer - Collection and disposition of penalty. ~~Any An~~ employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is liable to the state in the amount of two thousand dollars plus ten times the amount of the difference between the premium paid and the amount of premium the employer should have paid. ~~The liability to the state~~ bureau shall collect a penalty imposed under this section must be enforced in a civil action in the name of the state, and all sums the bureau shall deposit a penalty collected under the this section must be paid into to the credit of the fund. ~~Any An~~ employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is guilty of a class A misdemeanor.

SECTION 4. AMENDMENT. Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19. Bureau to determine premium due from employer - Mailing of pay-in-order as notice of amount due. The bureau shall determine the amount of premium due from every employer subject to ~~the provisions of~~ this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the bureau received information that an employer is subject to the title. The bureau ~~then~~ shall order ~~such the~~ premium to be paid into the fund and shall mail a copy of the pay-in-order must be mailed to such the employer. Such mailing shall constitute Mailing of the pay-in-order constitutes notice to the employer of the amount due.

SECTION 5. AMENDMENT. Section 65-04-23 of the North Dakota Century Code is amended and reenacted as follows:

65-04-23. Penalties for default in payment of premiums, penalties, and interest. ~~Whenever any~~ When an employer defaults in the payment of any premium, ~~or any installment of the premium, any penalty or interest,~~ or in the filing of any bond required under ~~the provisions of~~ this chapter, the employer at the time of default is subject to a penalty of ~~twenty-five~~ not to exceed two hundred fifty dollars plus two percent of the amount of premiums, penalties, and interest in default, and beginning one month after default, a penalty of two percent of the amount of premiums, penalties, and interest in default for each month or fraction of a month the obligation premium, penalty, or interest remains unpaid.

SECTION 6. AMENDMENT. Section 65-04-24 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>289</sup> Section 65-04-14 was also amended by section 5 of House Bill No. 1190, chapter 616.

65-04-24. Bureau to ~~cause bring suit to be brought~~ for premiums in default. Within twenty days after ~~any such default an employer defaults on payment of premium, penalties, or interest,~~ the bureau shall certify the account in default to the attorney general for the collection of the premium ~~and,~~ accrued penalties ~~and interest, together with the further accruing and any additional penalties; and whenever~~ and interest that may accrue. After an account has been ~~so~~ certified to the attorney general the bureau ~~shall have authority to~~ may adjust or compromise the ~~same account~~ upon recommendation of the attorney general. The bureau ~~may,~~ upon the recommendation and approval of the attorney general, may retain counsel on a contingent fee basis to represent the bureau in any proceeding relating to the collection of amounts due ~~the bureau~~ under this title. ~~All~~ The bureau shall charge attorney fees and costs ~~shall be a charge~~ to the general fund of the workers compensation bureau. In any action for the collection of amounts due the bureau under this title, the court may not review or consider the action of the bureau regarding the acceptance or payment of any claim.

SECTION 7. AMENDMENT. Section 65-04-26.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-26.1. Corporate officer personal liability.

1. Any officer, director, or any employee having twenty percent ownership of a corporation and any manager, governor, or any employee having twenty percent ownership of a limited liability company that is an employer under this title who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums under this title, and who fails to file the reports or to make payments as required An officer or director of a corporation, or manager or governor of a limited liability company, or employee of a corporation or limited liability company having twenty percent stock ownership who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums or reimbursements under this title and who fails to file the reports or to make payments as required, is personally liable for premiums ~~or~~ under this chapter and reimbursement under section 65-05-07.2, including interest, penalties, and costs ~~in the event if~~ the corporation or limited liability company does not pay to the bureau those amounts for which the employer corporation or limited liability company is liable.
2. The personal liability of any person as provided in this section survives dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation or limited liability company must be considered earned from the any person determined to be personally liable.
3. After notice and opportunity for hearing review of the evidence in the employer's file, the bureau shall make a determination as to the determine personal liability under this section. A hearing must be requested within thirty days from the date of mailing of the notice. The determination is final unless the person found to be personally liable requests review by the bureau within thirty days after mailing of the notice of determination to the person's last known address. The bureau shall provide, by registered mail, notice of liability to a person determined to be personally liable under this section. A person determined to be liable may request reconsideration or rehearing by the

bureau of that determination. The bureau's determination of personal liability is final and is not reviewable in any court unless the person requests reconsideration or rehearing of the determination. The request must be in writing and must be served on the bureau within thirty days from the date of mailing of the notice. Thereafter, hearing must be held pursuant to chapter 28-32.

**SECTION 8. AMENDMENT.** Section 65-04-27 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-27. Payment of claims where employers in default.** The payment of a judgment rendered in an action brought against an employer for the collection of defaulted premiums, or the voluntary payment of the amount of premium, penalties, and costs prior to judgment ~~shall entitle~~ entitles the employer and ~~his~~ that ~~employer's~~ employees to the benefits provided in this title from the date of ~~the pay in order which bills the employer for the premiums. Where the payment. The~~ bureau shall pay an employee who sustains an injury is sustained in an employment when the while working for an employer whose premium is in default the injured employee shall be paid the same as where the employee would receive if the employee were working for an employer whose premium is not in default.

**SECTION 9. AMENDMENT.** Section 65-04-27.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-04-27.1. Injunctive relief - Procedure.**

1. a. To protect the lives, safety, and well-being of wage workers, to ensure fair and equitable contributions to the ~~state workers' compensation insurance fund between among~~ all employers, and to protect the workers' compensation fund, the bureau may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title ~~in any of the following instances:~~
  - ~~a-~~ (1) When it has been brought to the attention of the bureau that the employer has unlawfully employed uninsured workers in violation of ~~the provisions~~ of section 65-01-05;
  - ~~b-~~ (2) When the employer defaults in the payment of insurance premiums, reimbursements, penalties, or interest into the state fund; or
  - ~~c-~~ (3) When the bureau, in exercise of the ~~power and~~ authority granted ~~it~~ by section 65-03-01, ~~giving it full power and jurisdiction over and the supervision of; every employment and every place of employment for the purpose of issuing and enforcing all necessary and proper safety rules and regulations;~~ finds that it is necessary to enjoin and restrain certain employers and employments ~~in order~~ to protect the lives and safety of the employees because of the employer's failure or refusal to comply with necessary and proper safety rules ~~and regulations.~~

- b. The courts of this state ~~are vested with~~ have jurisdiction and power to grant ~~such preventive relief in the instances herein set forth~~ under the circumstances described in subdivision a.
2. ~~The provisions of chapter Chapter 32-06 relating as it relates to~~ injunction shall apply applies to proceedings instituted ~~hereunder insofar as such provisions may be under this section to the extent that chapter is~~ applicable.
  3. In addition to ~~the provisions of~~ chapter 32-06, when the court has granted an immediate temporary injunction at the time of the commencement of the action the defendant employer ~~shall be entitled to~~ may have a hearing by the court on the merits of the case without delay ~~and upon.~~ Upon three days' written notice to the bureau the court shall ~~then~~ proceed to hearing on the merits and render its decision.
  4. In addition to ~~the provisions of~~ chapter 32-06, when the court has not granted an immediate temporary injunction at the time of the commencement of the action and the time for answer has expired either party ~~shall be entitled to~~ may have a hearing by the court on the merits of the case ~~and upon.~~ Upon ten days' notice by either party to the other the court shall ~~then~~ proceed to hearing on the merits and render its decision.
  5. Any court of competent jurisdiction in this state shall impose a fine of at least one thousand dollars against an employer who has violated an injunction granted under this section. The court shall impose a fine for each violation, in addition to any other penalty provided by law.

**SECTION 10. AMENDMENT.** Section 65-09-01 of the North Dakota Century Code is amended and reenacted as follows:

**65-09-01. Liability of uninsured employer for injury to employees - Common-law defenses not available.**

1. Any employer subject to ~~the provisions of~~ this title who fails to comply with ~~the provisions of~~ chapter 65-04, ~~shall be is~~ liable to his that ~~employer's~~ employees for damages suffered by reason of injuries sustained in the course of employment, and ~~also shall be is~~ liable to the ~~personal dependents and legal representatives of such employees where~~ an employee whose death results from such injuries. ~~The employer shall not avail himself in such action of the following common-law defenses:~~
  - 1- ~~The defense of the fellow-servant rule;~~
  - 2- ~~The defense of the assumption of risk; or~~
  - 3- ~~The defense of contributory negligence sustained in the course of employment.~~ The employer shall be is liable also for the premiums, reimbursements, penalties, and interest provided for in this title.
2. The bureau shall establish a procedure by which a person may apply to the bureau for a determination of whether that person is an employer required to obtain workers' compensation coverage under this title. 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 bureau retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

**SECTION 11. AMENDMENT.** Section 65-09-02 of the North Dakota Century Code is amended and reenacted as follows:

65-09-02. Application for compensation - Common-law defenses not available - Fund subrogated to recovery - Hearing - Time for filing - Payroll report. Any An employee whose employer has failed to comply with the provisions of chapter 65-04, who has been injured in the course of his employment, ~~whenever such injury has occurred, or his~~ the employee's dependents or legal representatives in case death has ensued, ~~in lieu of proceedings against his employer by civil action in court,~~ may file ~~his an~~ application with the bureau for an award of compensation ~~in accordance with the terms of~~ under this title: ~~All~~ and in addition may maintain a civil action against the employer for damages resulting from the injury or death. In the action, the employer may not assert the common-law defenses of:

1. The fellow servant rule.
2. Assumption of risk.
3. Contributory negligence.

The bureau is subrogated to the recovery made in the action against the uninsured employer. The subrogation interest is determined according to section 65-01-09, with the uninsured employer being the person other than the fund with a legal liability to pay damages with respect to the employee's injury or death. An injured employee, or the dependents of an employee who died as a result of a work-related accident, shall file the original ~~claims claim~~ for compensation ~~shall be filed~~ within one year after the injury or within two years after the death. The bureau shall notify the claimant and the employer that the matter is being processed under this chapter, and ~~thereafter it~~ subsequently shall hear and determine ~~such the~~ application for compensation in like manner as in it would for other claims before the bureau. ~~The employer shall be required to furnish to the bureau all of such employer's payroll records for the preceding six years. A determination by the bureau that a person is not an employer required to obtain workers' compensation coverage under this title is a defense to any claim that the person failed to obtain coverage for the time period during which the determination is effective.~~

**SECTION 12. AMENDMENT.** Section 65-09-03 of the North Dakota Century Code is amended and reenacted as follows:

65-09-03. Award - Payroll reports - Notice - Premium - Judgment. If the information submitted to the bureau is sufficient to substantiate the prayer application of the claimant injured employee, the bureau shall make such awards award compensation to the claimant necessary to comply with the provisions of employee pursuant to this title. Upon acceptance of the claim, the application by an employee for compensation under this chapter, the employer shall furnish the bureau all of that employer's payroll records for the preceding six years. If the employer fails or refuses to provide the records within thirty days of a written request from the bureau, the employer is subject to a penalty not to exceed one hundred dollars for each day until the records are received by the bureau. The bureau shall serve an order upon the employer by certified registered mail which shall state states the amount of premium and penalty due the bureau in accordance with under section 65-09-04, by from the employer. If the employer fails to pay the amount ordered

within thirty days, the bureau shall impose a penalty not to exceed twenty-five percent of the amount ordered and shall collect the same premium, penalties, and interest due by civil action. In such that action, the court may not review or consider the action of the bureau regarding the acceptance or payment of the a claim. No exemptions except absolute exemptions shall be under section 28-22-02 are allowed against any levy under executions pursuant to any a judgment recovered in such the action.

**SECTION 13. AMENDMENT.** Section 65-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**65-09-04. Premiums and penalties to be paid by employer.** Any employer who whose employee was injured and was awarded benefits under section 65-09-03 while that employer was uninsured at the time of the injury of his employee for which the bureau has made an award under section 65-09-03 shall be entitled to the benefits of this title but shall be is liable for any premiums plus penalties and interest due on such those premiums plus a penalty of two hundred not to exceed one thousand dollars and twenty-five percent of all premiums due or paid in the preceding six years. Such The penalties for employers shall be are in lieu of addition to any other penalties provided by law and may be reduced within the absolute discretion of the bureau; provided that; however, the bureau shall may not reduce the amount due from any employer to an amount which is less than the actual cost and reserves of the claim plus the premiums and the penalty on such those premiums.

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 620****HOUSE BILL NO. 1195**  
(Representatives Wald, Dalrymple)  
(Senators Mutch, Nething)**WORKERS' COMPENSATION RETROSPECTIVE  
RATING PILOT PROJECT**

AN ACT to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to establishing a pilot program for retrospective rating for workers' compensation; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

**Retrospective rating pilot program.** The bureau may establish a pilot program to provide retrospective rating to an employer whose annual workers' compensation premium is two hundred fifty thousand dollars or more. The bureau may not require an employer to participate in the program, but it may refuse to allow an employer to participate when it determines that refusal is appropriate. The bureau shall establish formulas, based on sound actuarial principles, for premium calculation under the program. Sections 65-04-01, 65-04-04, and 65-04-04.2 do not apply to retrospective premiums allowed under this section. Any moneys held by the bureau for future claim payments must accrue interest at a reasonable rate as determined by the bureau. The bureau may execute a contract with an employer to establish a retrospective rating plan for that employer. The contract is binding on the employer and the bureau for the term identified in the contract. The term identified in the contract may extend past the end of the biennium in which the contract is executed but the term may not exceed ten years. The bureau may not enter any contract under this section after June 30, 1999. The bureau shall determine the amount of the deposit premium to be paid by an employer participating in the program. The amount of the deposit premium must be based on current rates, payroll, and experience rate factors. The bureau shall establish the maximum premium liability of a participating employer. The maximum premium is not subject to the limitations of section 65-04-17. The bureau may provide refunds from the workers' compensation fund when it is determined appropriate under the retrospective rating formula established. The bureau shall provide any refund due within thirty days after the date of the retrospective premium valuation. The bureau may impose a penalty if an employer fails to pay additional premium due within thirty days after the retrospective premium valuation. The bureau may require an employer to provide a bond, letter of credit, or other security approved by the bureau to guarantee payment of future employer obligations incurred by a retrospective rating plan. The bureau may charge an employer participating in the program a nonrefundable surcharge for the purpose of assisting retirement of any unfunded liability of the fund.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 1996.

Approved March 21, 1995  
Filed March 21, 1995

## CHAPTER 621

## HOUSE BILL NO. 1207

(Representatives Wald, Skarphol, Kelsch, Dobrinski)  
(Senators Andrist, Robinson)

## WORKERS' COMPENSATION PREMIUM INTEREST

AN ACT to amend and reenact section 65-04-20 of the North Dakota Century Code, relating to the installment payment of premiums for workers' compensation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-20 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-20. Installment payment of premiums - ~~Bond~~ Interest required.

1. If the amount of premium billed to an employer on a pay-in-order is ~~in excess of greater than~~ one hundred dollars, such the employer may pay the premium may be paid in installments as follows:
  - 1- a. If the employer is the state of North Dakota, or any department, industrial association, or political subdivision ~~thereof of the state, such the employer may pay the premium may be paid~~ in two equal semiannual installments at the option of the ~~state, department, industrial association, or political subdivision,~~ employer and no bond or undertaking ~~shall be~~ is required to secure the payment of deferred premiums.
  - 2- b. If the employer is other than one mentioned in ~~subsection 1 subdivision a,~~ subsection 1 subdivision a, ~~such the employer may pay the premium may be paid, at the option of the employer, either~~ in two equal semiannual installments or in four equal quarterly installments.
2. Interest must be charged at the ~~same rate per annum as earned by the investment of the fund based on the investment measurement review as of March thirty-first of each year and effective July first of each year and the prevailing base rate posted by the Bank of North Dakota plus two and one-half percent.~~ The interest charged may not be less than must be at least six percent per annum. Such rate Interest must be charged on all premiums deferred under the provisions of this section; and upon. Upon default in payment of any installment such installment shall carry, the penalties as provided in this chapter apply.

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 622****HOUSE BILL NO. 1206**

(Representatives Wald, Skarphol, Carlson, Dobrinski)  
(Senators Andrist, Kinnoin)

**WORKERS' COMPENSATION EMPLOYEE INJURY  
NOTICE REQUIREMENT**

AN ACT to create and enact four new sections to chapter 65-05 of the North Dakota Century Code, relating to an employee's first report of injury to an employer.

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

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

**Notice to employer.** When an employee is involved in an accident while on the job, the employee shall take steps immediately to notify the employer that the accident occurred and what is the general nature of the injury to the employee, if apparent. Notice may be either oral or written. The notice must be given to the employee's immediate supervisor or another supervisor authorized to receive notice. Absent good cause, notice may not be given later than seven days after the accident occurred or the general nature of the employee's injury became apparent.

**SECTION 2.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Failure to comply with notice and filing provisions.** If an employee fails to notify the employer of an accident and the general nature of the employee's injury, the bureau may consider that failure to notify in determining whether the employee's injury is compensable.

**SECTION 3.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Employer to file first report of notice of injury.** The employer shall file a first report of notice of injury with the bureau within seven days from the date the employer receives the notice of injury from the employee. Failure of the employer to file a first report of notice of injury is an admission by the employer that the alleged injury may be compensable. The bureau may make or reopen a determination made without an employer's first report of notice of injury on its own motion pursuant to section 65-05-04 on the grounds determined by the bureau to be sufficient.

**SECTION 4.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Bureau to notify employee of receipt of employer's first report of notice of injury.** If a claim for compensation has not been received by the bureau but the bureau has received an employer's first report of notice of injury, the bureau shall notify the employee that the employer's first report has been received and shall advise the employee of the claim filing requirements of section 65-05-01.

Approved March 21, 1995

Filed March 21, 1995

## CHAPTER 623

### HOUSE BILL NO. 1228

(Representatives Wald, Skarphol, Carlson)  
(Senators Andrist, Kinnoin, Krebsbach)

## TERMINATION OF WORKERS' COMPENSATION BENEFITS UPON RETIREMENT

AN ACT to amend and reenact section 65-05-09.3 of the North Dakota Century Code, relating to termination of workers' compensation benefits upon retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-09.3 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. An employee who has retired or voluntarily withdrawn from the labor force and who is not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits, or a rehabilitation allowance from the bureau is presumed retired from the labor market and is ineligible for receipt of disability benefits under this title. 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 that the worker:
  1. Is actively seeking employment;
  2. Is available for gainful employment;
  3. Has not rejected any job offer made by a former employer, or other bona fide job offer by another employer; and
  4. Has not provided the employer, upon written request, with written notice of a scheduled retirement date.

The presumption does not apply to any employee who is permanently and totally disabled as defined under this title.

2. An injured employee who is receiving permanent total, temporary total, or temporary partial disability benefits, or rehabilitation benefits, and who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who is at least sixty-five years old and is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, is considered to be retired. The bureau may not pay any permanent total, temporary total, or temporary partial disability benefits, rehabilitation benefits, or supplemental benefits to an employee who is considered retired; however, the bureau is liable for payment of

medical benefits and permanent partial impairment benefits. An employee who is determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 is not subject to this section.

3. The bureau retains liability for disability benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security, who is gainfully employed, and who suffers an injury arising out of and in the course of that employment.
4. This section applies to all persons who retire or become eligible for social security retirement benefits or other retirement benefits in lieu of social security retirement benefits after July 31, 1995.

Approved April 4, 1995  
Filed April 4, 1995

**CHAPTER 624****SENATE BILL NO. 2202**

(Industry, Business and Labor Committee)  
(At the request of the Workers Compensation Bureau)

**PERMANENT IMPAIRMENT UNDER WORKERS'  
COMPENSATION**

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation permanent impairment; to repeal sections 65-05-12, 65-05-12.1, 65-05-13, and 65-05-14 of the North Dakota Century Code, relating to permanent impairment disputes and scheduled injuries; and to provide an effective date.

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

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

**Permanent impairment - Compensation - Time paid.** When a compensable injury results in permanent loss of, or loss of use of, a member of the body, the bureau shall determine a permanent impairment award on the following terms:

1. If the compensable injury causes permanent impairment and the permanent impairment award payable by the bureau is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the bureau under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the bureau. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The bureau shall adopt rules implementing any necessary procedures for award payments made under this subsection.
2. If a compensable injury that occurs after July 31, 1995, causes permanent impairment, the bureau shall calculate the amount of the lump sum payable under subsection 1 by multiplying thirty-three and one-third percent of the average weekly wage in this state rounded to the next highest dollar on the date of the original injury, by the number of weeks specified in subsection 15. The bureau shall pay permanent impairment benefits under subsection 1 at the rate of one hundred twenty-two dollars per week for a compensable injury that occurred before August 1, 1995.
3. The bureau shall notify the employee by certified mail, to the last known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the bureau has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request

within the one hundred eighty day period precludes an award under this section.

4. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and that were caused by the compensable injury. The bureau may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions made symptomatic by the compensable work injury.
5. An injured employee is not eligible for an evaluation for permanent impairment until the employee is at maximum medical improvement. The injured employee's doctor shall report to the bureau the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. A doctor making an evaluation for permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned.
6. Unless otherwise provided by this section, a doctor evaluating the impairment of an injured employee shall use the edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" in effect on the date of the employee's evaluation to establish a rating for impairment of function. A doctor evaluating the impairment of an injured employee resulting from a mental disorder shall use the edition of the American psychiatric association's "Diagnostic and Statistical Manual of Mental Disorders" in effect on the date of the employee's evaluation to establish a rating for the impairment.
7. The bureau shall deduct, from a subsequent award for impairment, any previous award given or calculated on an earlier claim or the same claim for that same member or body part.
8. A rating for impairment of function from an injury to the spinal cord resulting in paraplegia, hemiplegia, or quadriplegia must be calculated based solely on the percentage the impairment of function bears to total impairment of function of the whole body.
9. A rating for impairment of function of the cervical, thoracic, lumbar, or sacral spine must be calculated according to the doctor's diagnosis of the employee's injury or condition that is directly related to the compensable work injury. The rating may not include a rating for other factors, including loss of range of motion, pain, loss of strength, loss of sensation, and radiculopathy unless established by unequivocal electrodiagnostic evidence of nerve root compromise.
10. A rating of impairment of function resulting from injuries other than amputations, injuries to the cervical, thoracic, lumbar, or sacral spine, and injuries to the spinal cord resulting in paraplegia, hemiplegia, or quadriplegia must be based on a diagnosis directly related to the compensable work injury, if the American medical association's "Guides to the Evaluation of Permanent Impairment" provide for an impairment on a diagnostic basis.

11. A rating for impairment of function for loss of strength and sensation must be based on objective medical evidence of nerve damage.
12. A rating of impairment of function due to loss of range of motion must be based on objective medical evidence of structural damage to a joint or loss of motor function.
13. An injured employee is not entitled to a permanent impairment award due solely to pain.
14. If an employee dies, the right to any compensation payable under this section, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment that are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
15. If the injury causes permanent impairment, the percentage the impairment bears to total impairment must be determined in accordance with the first applicable whole body impairment schedule:

For one to fifteen percent impairment	0 weeks
For sixteen percent impairment	5 weeks
For seventeen percent impairment	5 weeks
For eighteen percent impairment	10 weeks
For nineteen percent impairment	10 weeks
For twenty percent impairment	15 weeks
For twenty-one percent impairment	15 weeks
For twenty-two percent impairment	20 weeks
For twenty-three percent impairment	20 weeks
For twenty-four percent impairment	20 weeks
For twenty-five percent impairment	25 weeks
For twenty-six percent impairment	30 weeks
For twenty-seven percent impairment	35 weeks
For twenty-eight percent impairment	40 weeks
For twenty-nine percent impairment	45 weeks
For a thirty percent impairment	50 weeks
For thirty-one percent impairment	60 weeks
For thirty-two percent impairment	70 weeks
For thirty-three percent impairment	80 weeks
For thirty-four percent impairment	90 weeks
For thirty-five percent impairment	100 weeks
For thirty-six percent impairment	110 weeks
For thirty-seven percent impairment	120 weeks
For thirty-eight percent impairment	130 weeks
For thirty-nine percent impairment	140 weeks
For a forty percent impairment	150 weeks
For forty-one percent impairment	160 weeks
For forty-two percent impairment	170 weeks
For forty-three percent impairment	180 weeks
For forty-four percent impairment	190 weeks

For forty-five percent impairment	200 weeks
For forty-six percent impairment	210 weeks
For forty-seven percent impairment	220 weeks
For forty-eight percent impairment	230 weeks
For forty-nine percent impairment	240 weeks
For a fifty percent impairment	250 weeks
For fifty-one percent impairment	265 weeks
For fifty-two percent impairment	280 weeks
For fifty-three percent impairment	295 weeks
For fifty-four percent impairment	310 weeks
For fifty-five percent impairment	325 weeks
For fifty-six percent impairment	340 weeks
For fifty-seven percent impairment	355 weeks
For fifty-eight percent impairment	370 weeks
For fifty-nine percent impairment	385 weeks
For a sixty percent impairment	400 weeks
For sixty-one percent impairment	415 weeks
For sixty-two percent impairment	430 weeks
For sixty-three percent impairment	445 weeks
For sixty-four percent impairment	460 weeks
For sixty-five percent impairment	475 weeks
For sixty-six percent impairment	490 weeks
For sixty-seven percent impairment	505 weeks
For sixty-eight percent impairment	520 weeks
For sixty-nine percent impairment	535 weeks
For a seventy percent impairment	550 weeks
For seventy-one percent impairment	565 weeks
For seventy-two percent impairment	580 weeks
For seventy-three percent impairment	595 weeks
For seventy-four percent impairment	610 weeks
For seventy-five percent impairment	625 weeks
For seventy-six percent impairment	640 weeks
For seventy-seven percent impairment	655 weeks
For seventy-eight percent impairment	670 weeks
For seventy-nine percent impairment	685 weeks
For a eighty percent impairment	700 weeks
For eighty-one percent impairment	715 weeks
For eighty-two percent impairment	730 weeks
For eighty-three percent impairment	745 weeks
For eighty-four percent impairment	760 weeks
For eighty-five percent impairment	775 weeks
For eighty-six percent impairment	790 weeks
For eighty-seven percent impairment	805 weeks
For eighty-eight percent impairment	820 weeks
For eighty-nine percent impairment	835 weeks
For ninety to one hundred percent impairment	1000 weeks

16. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined by the American medical association's "Guides to the Evaluation of Permanent Impairment" to result in a whole body impairment of less than sixteen percent is payable as a sixteen percent impairment.
17. If the percentage of an injured employee's permanent impairment is disputed, all medical evidence must be submitted to an independent

doctor who has not treated the employee and who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish a comprehensive list of doctors who are medical specialists within the state. The bureau shall define, by rule, the process by which the bureau and the injured employee choose an independent doctor to review a disputed permanent impairment rating. The decision of the independent doctor chosen under this process is presumptive evidence of the degree of permanent impairment of the employee. This subsection does not impose liability on the bureau for an impairment award for a rating of impairment for a body part or condition the bureau has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor if the employee disputes the findings of the independent doctor.

18. The bureau shall establish, by rule, a reasonable hourly rate and a maximum fee to compensate an employee's attorney for legal services rendered as a result of the award or denial of compensation for permanent impairment. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.
19. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

**SECTION 2. REPEAL.** Sections 65-05-12, 65-05-12.1, 65-05-13, and 65-05-14 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 3. EFFECTIVE DATE.** This Act is effective on August 1, 1995, for all permanent impairment awards determined after July 31, 1995, irrespective of injury date.

Approved April 6, 1995  
Filed April 6, 1995

**CHAPTER 625****SENATE BILL NO. 2501**  
(Senators Andrist, Sand, Solberg)**AGGRAVATION OF INJURY FOR WORKERS'  
COMPENSATION**

AN ACT to create and enact a new subsection to section 65-05-28 of the North Dakota Century Code, relating to aggravation of a work-related injury for purposes of determining workers' compensation benefits.

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

**SECTION 1.** A new subsection to section 65-05-28 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

If an employee undertakes activities, whether or not in the course of employment, which exceed the treatment recommendations of the employee's doctor regarding the work injury, and the doctor determines that the employee's injury or condition has been aggravated or has worsened as a result of the employee's activities, the bureau may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer. An employer's account may not be charged with the expenses of an aggravation or worsening of a work-related injury or condition unless the employer knowingly required the employee to perform activities that exceed the treatment recommendations of the employee's doctor.

Approved March 27, 1995  
Filed March 28, 1995

**CHAPTER 626****HOUSE BILL NO. 1221**

(Representatives Wald, Carlson, Delzer, Froseth)  
(Senators Kinnoin, Tennefos)

**WORKERS' COMPENSATION PREFERRED PROVIDERS**

AN ACT to allow an employer covered under the workers' compensation act to require the use of preferred providers.

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

**SECTION 1. Employer to select preferred provider.** Notwithstanding section 65-05-28, an employer subject to this title who maintains an approved risk management program pursuant to section 65-04-19.1 may select a preferred provider to render medical treatment to employees who sustain compensable injuries. "Preferred provider" means a designated provider or group of providers of medical services, including consultations or referral by the provider or providers.

**SECTION 2. Preferred provider - Use required - Exceptions - Notice.**

1. During the first sixty days after a compensable injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the bureau may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a compensable injury.
2. An employee of an employer who has selected a preferred provider may elect to be treated by a different provider provided the employee makes the election and notifies the employer in writing prior to the occurrence of an injury.
3. After sixty days have passed following the injury, the employee may make a written request to the bureau to change providers. The employee shall make the request and serve it on the employer and the bureau at least thirty days prior to treatment by the provider. The employee shall state the reasons for the request and the employee's choice of provider.
4. If the employer objects to the provider selected by the employee under subsection 2 or 3, the employer may file an objection to the change of provider. The employer shall detail in the objection the grounds for the objection and shall serve the objection on the employee and the bureau within five days of service of the request. The employee may serve, within five days of service of the employer's objection, a written response on the employer and the bureau in support of the request for change of

provider. Within fifteen days after receipt of the response or of the expiration of the time for filing the response, the bureau shall rule on the request. Failure of the bureau to rule constitutes approval of the request. Treatment by the employee's chosen provider is not compensable until the bureau approves the request. The preferred provider remains the treating provider until the bureau approves the employee's request to change providers.

5. An employer shall give written notice to its employees when the employer makes an initial selection of a preferred provider or changes the selection of the preferred provider. An employer shall give written notice identifying the selected preferred provider to every employee hired after the selection was made. An employer who has selected a preferred provider shall display notice of the preferred provider in a conspicuous manner at fixed worksites, and wherever feasible at mobile worksites, and in a sufficient number of places to reasonably inform employees of the preferred provider and of the requirements of this section. Failure to give written notice or to properly post notice as required under this subsection invalidates the selection, allowing the employee to make the initial selection of a medical provider.

Approved April 7, 1995  
Filed April 7, 1995

**CHAPTER 627****HOUSE BILL NO. 1227**  
(Representatives Wald, Nichols, Keiser)  
(Senators Mutch, Lee, Watne)**CLAIM CLOSED PRESUMPTION UNDER WORKERS'  
COMPENSATION**

AN ACT to amend and reenact section 65-05-35 of the North Dakota Century Code, relating to the presumption that a workers' compensation claim is closed.

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

**SECTION 1. AMENDMENT.** Section 65-05-35 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-05-35. ~~Inactive~~ Closed claim - Presumption.**

1. A claim for benefits under this title is presumed ~~inactive~~ closed if:
  - a. ~~A doctor's report has been filed indicating the employee has reached maximum medical recovery; and~~
  - b. ~~The~~ the bureau has not paid any benefit or received a demand for payment of any benefit for a period of four years.
2. A claim that is presumed ~~inactive~~ closed may not be reopened for payment of any further benefits unless the presumption is rebutted by a ~~preponderance of the clear and convincing evidence. At a minimum, the employee shall present expert medical opinion that there is a causal relationship between~~ the work injury ~~and~~ is the sole cause of the current symptoms.
3. With respect to a claim that has been presumed ~~inactive~~ closed, the employee shall provide the bureau written notice of reapplication for benefits under that claim. In case of award of lost-time benefits, the award may commence no more than thirty days before the date of reapplication. In case of award of medical benefits, the award may be for medical services incurred no more than thirty days before the date of reapplication.
4. This section applies to all claims for injury, irrespective of injury date.

Approved March 31, 1995

Filed March 31, 1995

## CHAPTER 628

## HOUSE BILL NO. 1253

(Representatives Wald, Tollefson, Carlson, Kelsch)  
(Senators Andrist, Kinnoin)

REHABILITATION UNDER WORKERS'  
COMPENSATION

AN ACT to amend and reenact sections 54-03-25, 65-05.1-01, 65-05.1-04, and subdivision b of subsection 2 of section 65-05.1-06.1 of the North Dakota Century Code, relating to actuarial impact statements for workers' compensation measures, rehabilitation services for injured employees, an injured employee's responsibilities for rehabilitation of a work-related injury, and the twenty-five percent additional rehabilitation allowance given to injured workers.

## BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>290</sup> SECTION 1. AMENDMENT. Section 54-03-25 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-25. Introduction of bills Bills and amendments affecting workers' compensation fund - Actuarial impact statement. Beginning December 1, 1992, a The workers compensation bureau shall review any legislative measure affecting workers' compensation benefits or premium rates may not be prefiled for introduction or introduced in either house of the legislative assembly unless job service North Dakota has reviewed the measure and has determined to determine whether the measure will have an actuarial impact on the workers' compensation fund. If the job service North Dakota bureau determines that the measure will have an actuarial impact on the fund, the measure may not be prefiled or introduced unless accompanied by the bureau shall submit, before the measure is acted upon, an actuarial impact statement prepared, at the expense of the job service North Dakota bureau, by the actuary employed by the job service North Dakota bureau. No The bureau shall review any amendment affecting workers' compensation benefits or premium rates may be attached to any legislative measure unless the amendment is accompanied by and shall submit, before the amendment is acted upon, either a statement prepared by the job service North Dakota bureau, stating that the amendment is not expected to have any actuarial impact on the workers' compensation fund, or an actuarial impact statement prepared, at the expense of the job service North Dakota bureau, by the actuary employed by the job service North Dakota bureau.

SECTION 2. AMENDMENT. Section 65-05.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-01. Rehabilitation services.

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<sup>290</sup> Section 54-03-25 was also amended by section 39 of Senate Bill No. 2070, chapter 54.

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. ~~It is the~~ The purpose of this chapter to provide for the health and welfare by ensuring to workers' compensation claimants otherwise is to ensure that injured employees covered by this title; receive services, so far as possible, necessary to assist the ~~claimant~~ employee and the ~~claimant's~~ employee's family in the adjustments required by the injury to the end that the ~~claimant may receive~~ employee receives comprehensive rehabilitation services: ~~Such services shall include~~ 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, ~~medical limitations;~~ age functional capacities, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the employee as soon as practical and as nearly as possible to ninety percent of the employee's average weekly earnings at the time of injury, or to seventy-five 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 ~~of section 65-05.1-04~~ 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 position or alternative occupation, any employer.
  - ~~e~~ e. Return to ~~a related~~ an occupation in the local job pool which is suited to the employee's education, experience, and marketable skills.
  - ~~f~~ f. Return to ~~a related~~ an occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
  - ~~e~~ g. On-the-job training.
  - ~~f~~ h. Short-term retraining of fifty-two weeks or less.

- ~~9~~ i. Long-term retraining of one hundred four weeks or less.
- ~~4~~ j. Self-employment.
5. If an option listed in subdivision a, b, c, d, e, 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 bureau 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 ~~seventy-five~~ 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:
- ~~a~~ (1) That meets the employee's ~~medical limitations~~ functional capacities;
- ~~b~~ (2) ~~For~~ For which the employee meets the qualifications to compete; and
- ~~e~~ (3) ~~Which~~ That will reasonably result in retained earnings capacity equivalent to the lesser of ninety percent of the employee's preinjury earnings or fifty percent of the average weekly wage in the state 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. ~~An~~ Under section 65-05-10, the bureau shall award of partial disability due to based on retained earnings capacity calculated under this section must be made pursuant to section 65-05-10.
- ~~6~~ 7. By agreement between the bureau and the employee, the The income test in subsection 3 and the priority options in subsection 4 may 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 bureau and the employee agree to waive the income test and the priority options.
- ~~7~~ 8. Vocational rehabilitation services may be initiated by:
- a. The bureau on its own motion; or
- b. The employee or the employer if proof exists:

- (1) That the ~~claimant~~ employee has reached maximum medical recovery;
- (2) That the ~~claimant~~ employee is not working and ~~has~~ is not voluntarily retired or removed ~~himself~~ from the labor force; and
- (3) That the employee has made good faith efforts to seek, obtain, and retain employment.

~~8-~~ 9. The ~~provisions of chapter~~ Chapter 50-06.1 ~~do~~ does not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.

**SECTION 3. AMENDMENT.** Section 65-05.1-04 of the 1993 Supplement to 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 ~~in order~~ to reduce the period of temporary disability to a minimum. The employee has the burden ~~to establish~~ 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 bureau under subdivision b of subsection 7 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 bureau 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 bureau or the vocational consultant. If the employee is noncompliant with this subsection, the bureau 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 ~~or~~, modified ~~position~~, or alternative occupation, or return to ~~related~~ 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 or work search, the finding of nondisability or partial disability is res judicata, and the bureau may not reinstate temporary total disability benefits or recalculate an award of partial disability benefits in the absence of a significant change in medical condition attributable to the work injury. ~~However, the~~ The bureau shall recalculate the partial disability award, ~~however~~, if the employee returns, in good faith, to gainful employment. 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 bureau shall reevaluate the employee's vocational rehabilitation claim. 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.

5. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is short-term or long-term training, 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 bureau. A qualified training program is a rehabilitation plan that meets the criteria of this title, ~~which is the approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 6 of section 65-05.1-01,~~ and commences within a reasonable period of time such as the next quarter or semester. The bureau and the employee, by agreement, may waive the income test applicable under this subsection.
  
6. If, without good cause, the injured employee fails to perform a good faith work trial in a return to the same ~~or, modified position, or alternative occupation,~~ or in an on-the-job training program, or fails to make a good faith work search in return to work utilizing the employee's transferable skills, the employee ~~must be deemed to be is~~ in noncompliance with vocational rehabilitation. If, without good cause, the injured employee fails to attend specific vocational testing, remedial, or other vocational services determined necessary by the bureau 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, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee ~~must be deemed to be is~~ in noncompliance with vocational rehabilitation. If, without good cause, the employee discontinues a job the employee is performing, or a training program in which the employee is enrolled, the employee ~~must be deemed to be is~~ in noncompliance with vocational rehabilitation. If the employee establishes a pattern of noncooperation as heretofore described, involving two or more incidents of noncooperation at any time the employee is noncompliant without good cause, subsequent efforts by the employee to come into compliance with vocational rehabilitation may are not be deemed considered successful compliance until the employee has successfully returned to the job or training program for a period of sixty days. In all cases of noncompliance by the employee, the bureau, by administrative order, shall discontinue lost-time benefits. If, ~~upon~~ after the bureau order ~~becoming becomes~~ final, the period of noncompliance continues for sixty days, or a second instance of noncompliance occurs without good cause, the bureau has no further jurisdiction in awarding any further temporary total disability, temporary partial disability, permanent total disability, or vocational rehabilitation benefits.

<sup>291</sup> SECTION 4. AMENDMENT. Subdivision b of subsection 2 of section 65-05.1-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. The rehabilitation allowance must include an additional twenty-five percent ~~while~~ when it is necessary for the employee maintains to maintain two ~~domiciles~~ 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 bureau by rule.

Approved March 29, 1995

Filed March 29, 1995

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<sup>291</sup> Section 65-05.1-06.1 was also amended by section 4 of House Bill No. 1208, chapter 614.