

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2072

Introduced by

Industry, Business and Labor Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to create and enact a new subsection to section 28-32-50 of the North Dakota
2 Century Code, relating to awarding of attorney's fees in actions involving workforce safety and
3 insurance; to amend and reenact sections 39-01-02 and 65-02-28, subsection 10 of section
4 65-05-08, section 65-05-19, subsection 1 of section 65-05-28, and sections 65-05.1-06.1 and
5 65-10-03 of the North Dakota Century Code, relating to exceptions to the requirement of the
6 state name display on motor vehicles, claim file destruction, dependency allowances,
7 nondependency payments upon death, change of doctors, notices of rehabilitation awards and
8 retraining, and attorney's fees under the workers' compensation system; and to provide for
9 application.

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

11 **SECTION 1.** A new subsection to section 28-32-50 of the North Dakota Century Code
12 is created and enacted as follows:

13 This section does not apply to an administrative or civil judicial proceeding that
14 stems from a notice of decision or order or dispute resolution decision of workforce
15 safety and insurance.

16 **SECTION 2. AMENDMENT.** Section 39-01-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **39-01-02. Motor vehicles owned or leased by the state to display name on side of**
19 **vehicles - Exceptions - Penalty.** All motor vehicles owned and operated by the state, except
20 vehicles under the control of the central vehicle management system and the official vehicle for
21 use by the governor, must have displayed on each front door the words NORTH DAKOTA.
22 The words must be in letters four inches [10.16 centimeters] in height. Two and one-half
23 inches [6.35 centimeters] directly below those words there must be printed in letters one and
24 one-half inches [3.81 centimeters] in height the name of the state agency owning or leasing the

1 motor vehicle. The width of the display required by this section must be proportionate to the
2 required height. The color of the lettering must be in clear and sharp contrast to the
3 background. The state auditor shall include in the auditor's report to the governor and the
4 legislative assembly any instance of noncompliance with this section. The above requirements
5 do not apply to vehicles operated by the attorney general's office, the highway patrol, or
6 vehicles used principally in juvenile, parole, and placement service. The central vehicle
7 management system vehicles must display a window decal designed by the director. The
8 requirements of this section do not apply to special investigative unit vehicles operated by
9 workforce safety and insurance. The state highway patrol and all peace officers of this state
10 shall enforce this section.

11 **SECTION 3. AMENDMENT.** Section 65-02-28 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **65-02-28. Organization claim files - Destruction.** ~~If the organization determines that~~
14 ~~a person who has a claim for injury on file has been deceased for at least ten years, the~~ The
15 organization may destroy any claim files for that person wherein no benefits have been paid for
16 at least thirty years. The organization may not destroy any claim file it specifically has been
17 requested not to destroy. The organization shall establish a means for maintaining statistical
18 and identifying information for any claim files destroyed under this section.

19 **SECTION 4. AMENDMENT.** Subsection 10 of section 65-05-08 of the North Dakota
20 Century Code is amended and reenacted as follows:

- 21 10. a. The organization shall pay to an employee receiving disability benefits a
22 dependency allowance for each child of the employee at the rate of ~~ten~~ fifteen
23 dollars per week per child. ~~Effective July 1, 1989, this rate must be paid to~~
24 ~~each eligible employee regardless of the date of injury.~~
- 25 b. The organization shall pay a dependency allowance only if an employee
26 submits proof of a child that meets the definition of child in this title. The
27 organization shall pay a dependency allowance only for time periods that
28 follow the date that an employee has proved entitlement to the allowance.

29 **SECTION 5. AMENDMENT.** Section 65-05-19 of the North Dakota Century Code is
30 amended and reenacted as follows:

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

11 **SECTION 6. AMENDMENT.** Subsection 1 of section 65-05-28 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 1. No employee may change from one doctor to another while under treatment or
14 after being released, without the prior written authorization of the organization.
15 Failure to obtain approval of the organization nullifies any preferred provider status
16 of the new doctor for that claim and renders the employee liable for the cost of
17 treatment and the new doctor will not be considered the attending doctor for
18 purposes of certifying temporary disability.
- 19 a. Any employee requesting a change of doctor shall file a written request with
20 the organization stating all reasons for the change. Upon receipt of the
21 request, the organization will review the employee's case and approve or
22 deny the change of doctor, notifying the employee and the requested doctor.
- 23 b. Emergency care or treatment or referral by the attending doctor does not
24 constitute a change of doctor and does not require prior approval of the
25 organization.

26 **SECTION 7. AMENDMENT.** Section 65-05.1-06.1 of the North Dakota Century Code
27 is amended and reenacted as follows:

28 **65-05.1-06.1. Rehabilitation award.**

- 29 1. Within sixty days of receiving the final vocational consultant's report, the
30 organization shall issue ~~an administrative order under chapter 28-32~~ a notice of

- 1 decision detailing the employee's entitlement to disability and vocational
2 rehabilitation services.
- 3 2. If the appropriate priority option is ~~short-term or long-term training~~ retraining, the
4 vocational rehabilitation award must be within the following terms:
- 5 a. For the employee's lost time, and in lieu of further disability benefits, the
6 organization shall award a rehabilitation allowance. The rehabilitation
7 allowance must be limited to the amount and purpose specified in the award,
8 and must be equal to the disability and dependent benefits the employee was
9 receiving, or was entitled to receive, prior to the award.
- 10 b. The rehabilitation allowance must include an additional twenty-five percent
11 when it is necessary for the employee to maintain two households, when it is
12 necessary for the employee to maintain two households and the employee
13 elects to commute to and from school on a daily basis rather than maintain a
14 second household and the distance from the employee's residence to the
15 school or training institution is at least thirty miles, or when the employee
16 meets other criteria established by the organization by rule.
- 17 c. The rehabilitation allowance must be limited to one hundred four weeks
18 except in cases of catastrophic injury, in which case additional rehabilitation
19 benefits may be awarded in the discretion of the organization. Catastrophic
20 injury includes:
- 21 (1) Paraplegia; quadriplegia; severe closed head injury; total blindness in
22 both eyes; or amputation of an arm proximal to the wrist or a leg
23 proximal to the ankle, caused by the compensable injury, which renders
24 an employee permanently and totally disabled without further
25 vocational retraining assistance; or
- 26 (2) Those employees the organization so designates, in its sole discretion,
27 provided that the organization finds the employee to be permanently
28 and totally disabled without further vocational retraining assistance.
29 There is no appeal from an organization decision to designate, or fail to
30 designate, an employee as catastrophically injured under this
31 subsection.

- 1 d. The rehabilitation award must include the cost of books, tuition, fees, and
2 equipment, tools, or supplies required by the educational institution. The
3 award may not exceed the cost of attending a public college or university in
4 the state in which the employee resides, provided an equivalent program
5 exists in the public college or university.
- 6 e. If the employee successfully concludes the rehabilitation program, the
7 organization may make, in its sole discretion, additional awards for actual
8 relocation expenses to move the household to the locale where the claimant
9 has actually located work.
- 10 f. If the employee successfully concludes the rehabilitation program, the
11 organization may make, in its sole discretion, an additional award, not to
12 exceed two months' disability benefit, to assist the employee with work
13 search.
- 14 g. If the employee successfully concludes the rehabilitation program, the
15 employee is not eligible for further vocational retraining or total disability
16 benefits unless the employee establishes a significant change in medical
17 condition attributable to the work injury which precludes the employee from
18 performing the work for which the employee was trained, or any other work
19 for which the employee is suited. The organization may waive this section in
20 cases of catastrophic injury defined by subdivision c.
- 21 h. If the employee successfully concludes the rehabilitation program, the
22 employee remains eligible to receive partial disability benefits, as follows:
- 23 (1) Beginning the date at which the employee completes retraining, until
24 the employee acquires and performs substantial gainful employment,
25 the partial disability benefit is sixty-six and two-thirds percent of the
26 difference between the injured employee's average weekly wages
27 before the injury, and the employee's wage-earning capacity after
28 retraining, as measured by the average wage in the employee's
29 occupation, according to criteria established by job service North
30 Dakota in its statewide labor market survey, or such other criteria the
31 organization, in its sole discretion, deems appropriate. The average

1 weekly wage must be determined on the date the employee completes
2 retraining. The benefit continues until the employee acquires
3 substantial gainful employment.

4 (2) Beginning the date at which the employee acquires substantial gainful
5 employment, the partial disability benefit is sixty-six and two-thirds
6 percent of the difference between the injured employee's weekly wages
7 before the injury, and the employee's wage-earning capacity after
8 retraining, as determined under paragraph 1, or the employee's actual
9 postinjury wage earnings, whichever is higher.

10 (3) The partial disability benefit payable under paragraphs 1 and 2 may not
11 exceed the limitation on partial disability benefits contained in section
12 65-05-10.

13 (4) The partial disability benefits paid under paragraphs 1 and 2 may not
14 together exceed one year's duration.

15 (5) For purposes of paragraphs 1 and 2, "substantial gainful employment"
16 means full-time bona fide work, for a remuneration, other than
17 make-work. "Full-time work" means employment for twenty-eight or
18 more hours per week, on average.

19 (6) The organization may waive the one-year limit on the duration of partial
20 disability benefits, in cases of catastrophic injury under subdivision c.

21 3. If the appropriate priority option is return to the same or modified position, or to a
22 related position, the organization shall determine whether the employee is eligible
23 to receive partial disability benefits pursuant to section 65-05-10. In addition, the
24 organization, when appropriate, shall make an additional award for actual
25 relocation expenses to move the household to the locale where the claimant has
26 actually located work.

27 **SECTION 8. AMENDMENT.** Section 65-10-03 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **65-10-03. Cost of appeal and attorney's fee fixed by the organization.** The
30 organization shall pay the cost of the judicial appeal and the attorney's fee for an injured
31 employee's attorney when the employee prevails. The employee has prevailed when any part

1 of the decision of the organization is reversed and the employee receives an additional benefit
2 as a result. An injured employee does not prevail on a remand for further action or proceedings
3 unless the injured employee ultimately receives an additional benefit. The organization shall
4 pay the attorney's fee from the organization's general fund. The amount of the attorney's fee
5 must be determined in the same manner as prescribed by the organization for attorney's fees,
6 and the amount of attorney's fee already allowed in administrative proceedings before the
7 organization must be taken into consideration. The organization shall establish, pursuant to
8 section 65-02-08, a maximum fee to be paid in an appeal. ~~The maximum fee may be exceeded~~
9 ~~upon application of the injured employee to the organization, upon a finding that the claim had~~
10 ~~clear and substantial merit, and that the legal or factual issues involved in the appeal were~~
11 ~~unusually complex, but a~~ A court may not order that the maximum fee be exceeded.
12 Notwithstanding the foregoing, the organization is liable for its costs on appeal if the decision of
13 the organization is affirmed.

14 **SECTION 9. APPLICATION.** The rate in subdivision a of subsection 10 of section
15 65-05-08 contained in section 4 of this Act applies to each eligible employee on or after the
16 effective date of this Act. Subdivision b of subsection 10 of section 65-05-08 contained in
17 section 4 of this Act applies to dependencies claimed on or after the effective date of this Act
18 regardless of the date of injury. Section 5 of this Act applies to deaths occurring on or after the
19 effective date of this Act. Section 7 of this Act applies retroactively to all claims filed on or after
20 January 1, 2006.