

Sixty-first  
Legislative Assembly  
of North Dakota

Introduced by

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

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

21 **SECTION 1. AMENDMENT.** Subsection 1 of section 21-10-01 of the North Dakota  
22 Century Code is amended and reenacted as follows:

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

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

19 **SECTION 2.** A new section to chapter 23-01 of the North Dakota Century Code is  
20 created and enacted as follows:

21 **Audits of workforce safety and insurance independent medical examinations -**  
22 **Biennial report - Penalty.**

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

- 1                   treatments, and fees and, if necessary, recommend how the review system  
2                   could be improved; and
- 3                   c. Determine workforce safety and insurance claimant satisfaction and doctor  
4                   satisfaction in the independent medical examination system and, if necessary,  
5                   recommend how to better meet the expectations of claimants and doctors.
- 6                   2. The department shall complete a biennial report of audits performed during the  
7                   biennium and shall present the report to the legislative council's legislative audit  
8                   and fiscal review committee in conjunction with the independent performance  
9                   evaluation received by the legislative audit and fiscal review committee under  
10                   section 65-02-30. The biennial report must include a summary of the audits  
11                   performed during the biennium and recommendations but may not identify specific  
12                   workforce safety and insurance claimants, doctors, or health care providers or  
13                   other confidential information. Information compiled and analysis performed  
14                   pursuant to an audit under this section which relate to the audit, including patterns  
15                   of treatment, cost, or determinations made by doctors are confidential and are not  
16                   open to public inspection to the extent the information and analysis identify a  
17                   specific workforce safety and insurance claimant, doctor, or health care providers.
- 18                   3. For purposes of complying with this section, employees of the state department of  
19                   health and any third party selected by the department to conduct all or a portion of  
20                   the audits may access an injured worker's claim file and records for which an  
21                   independent medical examination is being audited in the same manner as an  
22                   employee of workforce safety and insurance. An employee of the state department  
23                   of health and any third party selected by the department to conduct all or a portion  
24                   of the audits who access an injured employee's claim file under this section are  
25                   subject to the same confidentiality provisions and information disclosure provisions  
26                   under section 65-05-32 as employees of workforce safety and insurance and are  
27                   considered public servants for purposes of section 12.1-13-01.

28                   **SECTION 3. AMENDMENT.** Section 54-57-03 of the North Dakota Century Code is  
29 amended and reenacted as follows:

30                   **54-57-03. Hearings before administrative law judges.**

- 1           1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or  
2           other persons to preside in an administrative proceeding, all adjudicative  
3           proceedings of administrative agencies under chapter 28-32, except those of the  
4           public service commission, the industrial commission, the insurance commissioner,  
5           ~~workforce safety and insurance~~, the state engineer, the department of  
6           transportation, job service North Dakota, and the labor commissioner, must be  
7           conducted by the office of administrative hearings in accordance with the  
8           adjudicative proceedings provisions of chapter 28-32 and any rules adopted  
9           pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22  
10          and drainage appeals from water resource boards to the state engineer pursuant to  
11          chapter 61-32 must be conducted by the office of administrative hearings.  
12          Additionally, hearings of the department of corrections and rehabilitation for the  
13          parole board in accordance with chapter 12-59, regarding parole violations; job  
14          discipline and dismissal appeals to the board of higher education; Individuals With  
15          Disabilities Education Act and section 504 due process hearings of the  
16          superintendent of public instruction; and chapter 37-19.1 veterans' preferences  
17          hearings for any agency must be conducted by the office of administrative hearings  
18          in accordance with applicable laws.
- 19          2. The agency head shall make a written request to the director requesting the  
20          designation of an administrative law judge to preside for each administrative  
21          proceeding or adjudicative proceeding to be held.
- 22          3. Informal disposition of an administrative proceeding or adjudicative proceeding  
23          may be made by an agency at any time before or after the designation of an  
24          administrative law judge from the office of administrative hearings.
- 25          4. If a party to an administrative proceeding or adjudicative proceeding is in default,  
26          the agency may issue a default order and a written notice of default, including a  
27          statement of the grounds for default, prior to the hearing. The agency shall  
28          determine all the issues involved. If issued, the default notice and order must be  
29          served upon all the parties and the administrative law judge, if one has been  
30          designated to preside. After service of the default notice and order, if a hearing is  
31          necessary to complete the administrative action with or without the participation of

1           the party in default, an administrative law judge from the office of administrative  
2           hearings must preside.

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

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

13          **SECTION 4. AMENDMENT.** Section 65-01-01 of the North Dakota Century Code is  
14          amended and reenacted as follows:

15          **65-01-01. Purposes of workforce safety and insurance law - Police power.** The  
16          state of North Dakota, exercising its police and sovereign powers, declares that the prosperity  
17          of the state depends in a large measure upon the well-being of its wage workers, and, hence,  
18          for workers injured in hazardous employments, and for their families and dependents, sure and  
19          certain relief is hereby provided regardless of questions of fault and to the exclusion of every  
20          other remedy, proceeding, or compensation, except as otherwise provided in this title, and to  
21          that end, all civil actions and civil claims for relief for those personal injuries and all jurisdiction  
22          of the courts of the state over those causes are abolished except as is otherwise provided in  
23          this title. ~~A civil action or civil claim arising under this title, which is subject to judicial review,~~  
24          ~~must be reviewed solely on the merits of the action or claim. This title may not be construed~~  
25          ~~liberally on behalf of any party to the action or claim.~~

26          **SECTION 5. AMENDMENT.** Subsections 7 and 13 of section 65-01-02 of the North  
27          Dakota Century Code are amended and reenacted as follows:

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

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

30          **SECTION 6. AMENDMENT.** Section 65-02-01 of the North Dakota Century Code is  
31          amended and reenacted as follows:

1           **65-02-01. Workforce safety and insurance - ~~Director~~ Executive director - Division**  
2 **directors.** The organization must be maintained for the administration of this title. The ~~board~~  
3 governor shall appoint the executive director of the organization. The director is subject to the  
4 supervision and direction of the ~~board~~ governor and serves at the pleasure of the ~~board~~  
5 governor. The appointment must be on a nonpartisan, merit basis, in accordance with chapter  
6 54-42. The governor shall set the compensation and prescribe the duties of the director. The  
7 director may appoint the director of any division established by the director. The appointment of  
8 a division director must be on a nonpartisan, merit basis.

9           **SECTION 7.** A new section to chapter 65-02 of the North Dakota Century Code is  
10 created and enacted as follows:

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

27           **SECTION 8. AMENDMENT.** Section 65-02-27 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29           **65-02-27. Office of independent review.**

30           1. The ~~organization's~~ department of labor's office of independent review is  
31 established. The office of independent review is independent of the claims

1           ~~department of the organization and activities administered through the office must~~  
2           ~~be administered in accordance with this title~~ must be collocated with the office of  
3           the labor commissioner. The organization shall fund the office of independent  
4           review in accordance with legislative appropriation. The office of independent  
5           review ~~must~~ shall provide assistance to ~~a worker~~ an employee who has filed a  
6           claim; which may include acting on behalf of ~~a worker~~ an employee who is  
7           aggrieved by a decision of the organization, communicating with organization staff  
8           regarding claim dispute resolution, and informing ~~a worker~~ an employee of the  
9           effect of decisions made by the organization, the ~~worker~~ employee, or an employer  
10          under this title. ~~The~~ At the request of an employee, the office of independent  
11          review shall provide assistance to ~~workers, upon request, the~~ employee in cases of  
12          constructive denial or after a vocational consultant's report has been issued.

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

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

26          4. The information contained in a file established by the office of independent review  
27          on ~~a worker's~~ an employee's disputed claim, including communications from a  
28          ~~worker~~ an employee, is privileged and may not be released without the ~~worker's~~  
29          employee's permission. Information in the file containing the notes or mental  
30          impressions of office of independent review staff is confidential and may not be  
31          released by the office of independent review.

1           **SECTION 9. AMENDMENT.** Section 65-02-30 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **65-02-30. Independent performance evaluation - Organization development of**  
4 **performance measurements - Continuing appropriation.** Biennially, the director shall  
5 request the state auditor to select a firm with extensive expertise in workforce safety and  
6 insurance practices and standards to complete a performance evaluation of the functions and  
7 operations of the organization during that biennium. This may not be construed to require the  
8 firm to be a certified public accounting firm. As determined necessary by the state auditor, but  
9 at least once every other biennium, the biennial independent performance evaluation must  
10 evaluate departments of the organization to determine whether the organization is providing  
11 quality service in an efficient and cost-effective manner; evaluate the effectiveness of safety  
12 and loss prevention programs under section 65-03-04; and evaluate the board to determine  
13 whether the board is operating within section ~~65-02-03.3~~ and within the board's bylaws 7 of this  
14 Act. The firm's report must contain recommendations for departmental improvement or an  
15 explanation of why no recommendations are being made. The director, ~~the chairman of the~~  
16 ~~board~~, and a representative of the firm shall present the evaluation report and any action taken  
17 to the legislative council's legislative audit and fiscal review committee and to the house and  
18 senate industry, business and labor standing committees during the next regular session of the  
19 legislative session following the performance evaluation. The director shall provide a copy of  
20 the performance evaluation report to the state auditor. The organization shall develop and  
21 maintain comprehensive, objective performance measurements. These measurements must  
22 be evaluated as part of the independent performance evaluation performed under this section.  
23 Money in the workforce safety and insurance fund is appropriated on a continuing basis for the  
24 payment of the expense of conducting the performance evaluation.

25           **SECTION 10. AMENDMENT.** Section 65-04-19.3 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **65-04-19.3. Premium calculation programs - Authority.** ~~Upon approval of its board~~  
28 ~~of directors, the~~ The organization may create and implement actuarially sound employer  
29 premium calculation programs, including dividends, group insurance, premium deductibles, and  
30 reimbursement for medical expense assessments. Programs created or modified under this  
31 section are not subject to title 28-32 and may include requirements or incentives for the early

1 reporting of injuries. An employer with a deductible policy under this section, who chooses to  
2 pursue a third-party action under section 65-01-09 after an injured worker and the organization  
3 have chosen not to pursue the third-party action, may keep one hundred percent of the  
4 recovery obtained, regardless of the expense incurred in covering the injury and regardless of  
5 any contrary provision in section 65-01-09. If the employer pursues the third-party action  
6 pursuant to this section, neither the organization nor the injured worker has any liability for  
7 sharing in the expense of bringing that action.

8 **SECTION 11.** A new section to chapter 65-05 of the North Dakota Century Code is  
9 created and enacted as follows:

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

21 **SECTION 12. AMENDMENT.** Section 65-05-08.1 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **65-05-08.1. Verification of disability.**

- 24 1. An injured employee's doctor shall certify the period of disability and the extent of  
25 the injured worker's abilities and restrictions.
- 26 2. A doctor certifying disability shall include in the report filed with the organization:
- 27 a. The medical basis established by medical evidence supported by objective  
28 medical findings for the certification of disability;
- 29 b. Whether the employee is totally disabled, or, if the employee is not totally  
30 disabled, whether the employee is able to return to any employment, and a  
31 statement of the employee's restrictions and physical limitations; and

- 1 c. A professional opinion as to the expected length of, and reason for, the  
2 disability.
- 3 d. A doctor may not certify or verify past disability commencing more than sixty  
4 days before the doctor's examination of the employee.
- 5 3. The report must be filed on a form furnished by the organization, or on any other  
6 form acceptable to the organization.
- 7 4. The injured employee shall ensure that the required reports for any period of  
8 disability are filed.
- 9 5. If an employee has been determined to be disabled for purposes of the  
10 supplemental security income program under title XVI of the federal Social Security  
11 Act [42 U.S.C. 1381 et seq.] or for purposes of social security disability, the  
12 organization shall accept medical reports related to these determinations and shall  
13 consider the determination as a relevant factor in determining disability under this  
14 title.
- 15 6. Prior to the expiration of a period of disability certified by a doctor, if a report  
16 certifying an additional period of disability has not been filed, or upon receipt of a  
17 report or other evidence indicating an injured employee who is receiving disability  
18 benefits has been or will be released to return to work, the organization shall send  
19 a notice to that employee of the organization's intention to discontinue benefits,  
20 including an explanation of the reason for discontinuing benefits, an explanation of  
21 the employee's right to respond, and the procedure for filing the required report or  
22 challenging the proposed action. A copy of the notice must be mailed to the  
23 employee's doctor. Thereafter, if the required certification is not filed, the  
24 organization shall discontinue disability benefits, effective twenty-one days after the  
25 date the notice of intention to discontinue benefits is mailed or the date on which  
26 the employee actually returned to work, whichever occurs first.

27 **SECTION 13. AMENDMENT.** Section 65-05-09.2 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **65-05-09.2. Retirement offset prohibited.** If an employee is entitled to permanent  
30 total disability benefits and social security retirement benefits under 42 U.S.C. sections 402 and  
31 405, the organization may not decrease the employee's aggregate wage-loss benefits payable

1 under this title ~~must be determined in accordance with this section. The~~ by offsetting the  
2 employee's social security retirement ~~offset must equal forty percent of the calculated ratio of~~  
3 ~~the employee's average weekly wages, as calculated on the commencement of the first, or~~  
4 ~~recurrent, disability under section 65-05-09, to the current state's average weekly wage. Any~~  
5 ~~offset calculated cannot exceed forty percent of the employee's weekly social security~~  
6 ~~retirement benefit. If a claim has been accepted on an aggravation basis and the employee is~~  
7 ~~eligible for social security benefits, the organization's offset must be proportionally calculated.~~  
8 An overpayment must be recouped in the same manner as set forth in section 65-05-09.1. This  
9 section applies to an employee who becomes entitled to and receives social security retirement  
10 benefits after June 30, 1989, or who receives social security retirement benefits that have been  
11 converted from social security disability benefits by the social security administration after  
12 June 30, 1989. A conversion by the organization from offsetting an employee's social security  
13 disability benefits to not offsetting an employee's social security retirement benefits under this  
14 section may not result in a decrease in the aggregate amount of benefits the employee receives  
15 from both sources.

16 **SECTION 14. AMENDMENT.** Section 65-05-09.3 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **65-05-09.3. Retirement presumption - Termination of benefits upon retirement -**  
19 **Application.**

- 20 1. An employee who has retired or voluntarily withdrawn from the labor force and  
21 who, at that time, was not eligible to receive temporary total disability, temporary  
22 partial disability, or permanent total disability benefits, or a rehabilitation allowance  
23 from the organization is presumed retired from the labor market. The presumption  
24 may be rebutted by a preponderance of the evidence; however, the subjective  
25 statement of an employee that the employee is not retired is not sufficient in itself  
26 to rebut objective evidence of retirement.
- 27 2. An injured employee who begins receiving social security retirement benefits or  
28 other retirement benefits in lieu of social security retirement benefits, or who attains  
29 retirement age for social security retirement benefits unless the employee proves  
30 the employee is not eligible to receive social security retirement benefits or other  
31 benefits in lieu of social security retirement benefits is considered retired. The

1 organization may not pay any disability benefits, rehabilitation benefits, or  
2 supplementary benefits to an employee who is considered retired; however, the  
3 employee remains eligible for medical benefits, permanent partial impairment  
4 benefits, and the additional benefit payable under section 65-05-09.4.

5 3. The organization retains liability for disability benefits, rehabilitation benefits,  
6 permanent partial impairment benefits, and medical benefits for an injured  
7 employee who is receiving social security retirement benefits or other retirement  
8 benefits in lieu of social security retirement benefits or who attains retirement age  
9 for social security retirement benefits unless the employee is not eligible to receive  
10 social security retirement benefits or other benefits in lieu of social security  
11 retirement benefits and who is gainfully employed and who suffers an injury arising  
12 out of and in the course of that employment. The organization may not pay  
13 disability or rehabilitation benefits under this subsection for more than three years,  
14 subject to section 65-05-09.2, for injuries occurring after August 1, 1997.

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

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

25 **SECTION 15. AMENDMENT.** Section 65-05-09.4 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **65-05-09.4. Additional benefit payable.** If an injured employee's benefits cease  
28 under subsection 2 of section 65-05-09.3, the organization shall pay to that employee every  
29 twenty-eight days a benefit based on the length of time the injured employee received disability  
30 benefits during the term of that claim. The organization shall pay the injured employee's  
31 additional benefits until the employee's death or for a period of time not to exceed the total

1 length of time the employee received disability benefits under sections 65-05-08, 65-05-08.1,  
2 65-05-09, and 65-05-10, and a vocational rehabilitation allowance under chapter 65-05.1, for  
3 that claim, whichever occurs first. The benefit is based on the injured employee's  
4 compensation rate before any applicable social security offset. The percentage of that final  
5 payment payable as the additional benefit is:

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

16 thirty percent of the employee's compensation rate if the total length of disability is at least one  
17 year and less than ten years and is sixty percent of the employee's compensation rate if the  
18 total length of disability is at least ten years. However, the organization shall pay to an injured  
19 employee who has been determined to be catastrophically injured as defined by subdivision c  
20 of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee,  
21 equal to one hundred percent of the final payment of the disability benefit that was discontinued  
22 under subsection 2 or 3 of section 65-05-09.3.

23 **SECTION 16.** A new section to chapter 65-05 of the North Dakota Century Code is  
24 created and enacted as follows:

25 **Death of permanently and totally disabled employee - Surviving spouse.** In the  
26 case of the death of a workforce safety and insurance claimant who is receiving permanent total  
27 disability benefits, supplementary benefits, or additional benefits payable, the claimant's  
28 surviving spouse is eligible to receive the claimant's permanent total disability benefits,  
29 supplementary benefits, and additional benefits payable in the same manner as the deceased  
30 claimant would have been entitled to receive the benefits. The eligibility of the surviving spouse  
31 to receive benefits under this section terminates upon the remarriage of the surviving spouse.

1           **SECTION 17. AMENDMENT.** Subdivision b of subsection 3 of section 65-05-29 of the  
2 North Dakota Century Code is amended and reenacted as follows:

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

8           **SECTION 18. AMENDMENT.** Subsection 4 of section 65-05-32 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10          4. Other persons, including the labor commissioner and employees of the office of  
11 independent review, may have access to and make inspections of the files, if such  
12 persons are rendering assistance to the organization at any stage of the  
13 proceedings on any matter pertaining to the administration of this title or such  
14 persons are conducting audits under section \_\_\_\_\_ of this Act.

15          **SECTION 19. AMENDMENT.** Section 65-05.1-08 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17          **65-05.1-08. Workforce safety and insurance educational revolving loan fund -**  
18 **Continuing appropriation.**

19          1. The organization may establish a revolving loan fund to provide a low-interest loan  
20 to an injured employee or to a surviving spouse or dependent child of an injured  
21 employee whose death resulted from a compensable injury under section  
22 65-05-16. The loan must be used to pursue an education at an accredited  
23 institution of higher education or an institution of technical education. In order to be  
24 eligible for a loan under this section, an individual must have obtained a high  
25 school diploma or its equivalent and either must be ineligible for retraining under  
26 this chapter or must have exhausted training and education benefits. The Bank of  
27 North Dakota and the organization shall establish eligibility requirements and make  
28 application determinations based on the established criteria. The application must  
29 require an applicant to demonstrate a viable education plan that will enable the  
30 individual to achieve gainful employment.

1           2.    The total amount loaned annually under this section may not exceed two million  
2                    five hundred thousand dollars. The maximum amount payable on behalf of an  
3                    applicant may not exceed fifty thousand dollars and must be payable within five  
4                    years. A loan must be repaid within a period not to exceed twenty years. A loan  
5                    must be repaid at an interest rate established by the organization which may not  
6                    exceed the rate of one percent below the Bank of North Dakota's prime interest  
7                    rate. The organization shall pay the Bank of North Dakota a negotiated fee for  
8                    administering and servicing loans under this section. At the ~~board's~~ director's  
9                    discretion, moneys to establish and maintain the revolving loan fund must be  
10                    appropriated from the organization's workforce safety and insurance fund. The  
11                    revolving loan fund is a special fund and must be invested pursuant to section  
12                    21-10-06. Investment income and collections of interest and principal on loans  
13                    made from the revolving loan fund are appropriated on a continuing basis to  
14                    maintain the fund and provide loans in accordance with this section. The ~~board~~  
15                    director, as determined necessary, may transfer uncommitted moneys of the  
16                    revolving loan fund to the workforce safety and insurance fund.

17           **SECTION 20.** A new section to chapter 65-05.1 of the North Dakota Century Code is  
18 created and enacted as follows:

19           **Rehabilitation services - Pilot programs - Reports.**

20           1.    The organization shall implement an ongoing system of pilot programs to allow the  
21                    organization to assess alternative methods of providing rehabilitation services.  
22                    The pilot programs may address one or more of the organization's comprehensive  
23                    rehabilitation services, including vocational, medical, psychological, economic, and  
24                    social rehabilitation services. The purpose of each pilot program must be to  
25                    improve the outcome of the services offered by the organization to the injured  
26                    employee and the injured employee's family in the adjustments required by the  
27                    employee's injury and to improve the effectiveness of vocational rehabilitation in  
28                    returning a disabled employee to substantial gainful employment. Pilot programs  
29                    may address a broad range of approaches, including return-to-work trial periods  
30                    during which cash benefits are suspended; intensive job search assistance;

- 1           recognition of and focused services for injured employees who are at risk; and  
2           coordination of services of other state agencies, such as job service North Dakota.  
3           2. Each pilot program must include a cost-benefit analysis; a strengths, weaknesses,  
4           and opportunities analysis; and employer and employee satisfaction information.  
5           The organization shall include in its annual reports to the legislative council's  
6           legislative audit and fiscal review committee under section 65-02-03.3:  
7           a. Preliminary reports on future pilot programs;  
8           b. Status reports on current pilot programs; and  
9           c. Final reports on completed pilot programs, including recommendations.

10           **SECTION 21. AMENDMENT.** Section 65-05.2-01 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **65-05.2-01. Eligibility for supplementary benefits.**

- 13           ~~1. For claims filed before January 1, 2006, a workforce safety and insurance claimant~~  
14           ~~who is receiving permanent total disability benefits, or death benefits, and who has~~  
15           ~~been receiving disability or death benefits for a period of seven consecutive years~~  
16           ~~is eligible for supplementary benefits. Eligibility for supplementary benefits under~~  
17           ~~this subsection lasts as long as the claimant is entitled to permanent total disability~~  
18           ~~benefits or death benefits.~~  
19           2. ~~For claims filed after December 31, 2005, a~~ A workforce safety and insurance  
20           claimant who is receiving permanent total disability benefits or death benefits and  
21           who has been receiving disability or death benefits for a period of at least three  
22           consecutive years is eligible for supplementary benefits. Eligibility for  
23           supplementary benefits under this subsection lasts as long as the claimant is  
24           entitled to permanent total disability benefits or death benefits.

25           **SECTION 22. AMENDMENT.** Section 65-10-01 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **65-10-01. Appeal from decision of organization.**

- 28           1. If the final action of the organization denies the right of the claimant to participate at  
29           all in the fund on the ground that the injury was self-inflicted, or on the ground that  
30           the accident did not arise in the course of employment, or upon any other ground  
31           going to the basis of the claim, or if the organization allows the claimant to

1           participate in the fund to a lesser degree than that claimed by the claimant, if such  
2           allowance is less than the maximum allowance provided by this title, the claimant  
3           may appeal to the district court of the county wherein the injury was inflicted or of  
4           the county in which the claimant resides. An employer may also appeal a decision  
5           of the organization in any injury case or an organization decision issued under  
6           chapter 65-04, in the manner prescribed in this section. An appeal involving  
7           injuries allegedly covered by insurance provided under contracts with  
8           extraterritorial coverage shall be triable in the district court of Burleigh County. ~~Any~~  
9           2. Except as otherwise provided, an appeal under this section shall must be taken in  
10           the manner provided in chapter 28-32. ~~Any~~ If a claimant is appealing an order of  
11           the organization for which the organization did not accept the administrative law  
12           judge's recommended findings of fact, conclusions of law, and order, the burden of  
13           proof shifts to the organization to prove by a preponderance of the evidence the  
14           claimant is not entitled to the benefits sought. An appeal to the district court shall  
15           must be heard on the record, transmitted from the organization, and; in the  
16           discretion of the court, additional evidence may be presented pertaining to the  
17           questions of law involved in the appeal.

18           **SECTION 23. REPEAL.** Sections 65-02-03.1, 65-02-03.2, and 65-02-03.3 of the North  
19           Dakota Century Code are repealed.