

WORKFORCE SAFETY AND INSURANCE

CHAPTER 498

HOUSE BILL NO. 1163

(Representative Keiser)
(Senator Klein)

AN ACT to amend and reenact paragraph 7 of subdivision b of subsection 10 of section 65-01-02 of the North Dakota Century Code, relating to workers' compensation definitions of compensable injury; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³² **SECTION 1. AMENDMENT.** Paragraph 7 of subdivision b of subsection 10 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

- (7) Injuries attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a preexisting injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.

SECTION 2. APPLICATION. This Act applies to all claims, regardless of the date of injury.

Approved April 26, 2013
Filed April 26, 2013

²³² Section 65-01-02 was also amended by section 1 of House Bill No. 1080, chapter 499.

CHAPTER 499

HOUSE BILL NO. 1080

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact subsection 31 of section 65-01-02, sections 65-02-06.1, 65-02-09, and 65-05-05, subsection 2 of section 65-05-08, subsection 11 of section 65-05-12.2, subsection 3 of section 65-05.1-01, subdivision a of subsection 6 of section 65-05.1-01, subsection 7 of section 65-05.1-02, section 65-05.1-02.1, subsection 1 of section 65-05.1-03, subsections 3, 4, 5, and 6 of section 65-05.1-04, subsection 1 of section 65-05.1-06.1, subdivision f of subsection 2 of section 65-05.1-06.1, subsection 3 of section 65-05.1-06.1, and sections 65-05.1-06.2 and 65-05.1-07 of the North Dakota Century Code, relating to definition of wages and federal wages for national guard employees, biennial report requirements, out-of-state claim filing, discontinuation of benefits during incarceration, permanent partial impairment law for amputations, vocational consultants, and claimants; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³³ **SECTION 1. AMENDMENT.** Subsection 31 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

31. a. "Wages" means an:

(1) An employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.

(2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.

(3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.

b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

SECTION 2. AMENDMENT. Section 65-02-06.1 of the North Dakota Century Code is amended and reenacted as follows:

²³³ Section 65-01-02 was also amended by section 1 of House Bill No. 1163, chapter 498.

65-02-06.1. Allocated loss adjustment expenses - Continuing appropriation - Annual review.

Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of all allocated loss adjustment expenses experienced by the organization in its administration of this title. In its annual audit ~~and its biennial report~~, the organization shall include a breakdown of those allocated loss adjustment expenses that reflect the attorney's fees and costs paid to attorneys who represent injured workers, the attorney's fees and costs paid to attorneys with whom it contracts to represent the organization, the amount paid for administrative law judges for hearings, and the court reporter and other legal expenses paid.

SECTION 3. AMENDMENT. Section 65-02-09 of the North Dakota Century Code is amended and reenacted as follows:

65-02-09. General information to public - Biennial report.

The organization, from time to time, may publish and distribute among employers and employees general information as to the business transacted by the organization as in its judgment may be useful. The director shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must include:

1. A statement of the number of awards made by it.
2. A general statement of the causes of accidents leading to the injuries for which the awards were made.
3. A detailed statement of the disbursements from the fund.
4. A statement of the conditions of the various funds carried by the organization.
5. A breakdown of those allocated loss adjustment expenses that reflect the attorney's fees and costs paid to attorneys who represent injured workers, the attorney's fees and costs paid to attorneys with whom the organization contracts to represent the organization, the amount paid for administrative law judges for hearings, and the amount paid for the court reporter and any other legal expenses.
6. Any other matters which the organization wishes to call to the attention of the governor, including any recommendation for legislation or otherwise which it may have to make.

SECTION 4. AMENDMENT. Section 65-05-05 of the North Dakota Century Code is amended and reenacted as follows:

65-05-05. Payments made to insured employees injured in course of employment and to their dependents.

1. The organization shall disburse the fund for the payment of compensation and other benefits as provided in this chapter to employees, or to their dependents in case death has ensued, who:
 4. a. Are subject to the provisions of this title;
 2. b. Are employed by employers who are subject to this title; and

3. c. Have been injured in the course of their employment.
2. If an employee, or any person seeking benefits because of the death of an employee, applies for benefits from another state for the same injury, the organization will suspend all future benefits pending resolution of the application. If an employee, or any person seeking benefits because of the death of an employee, is determined to be eligible for benefits through some other state act or enters an agreement to resolve a claim through some other state act, no further compensation ~~shall~~may be allowed under this title and the employee, or any person seeking benefits because of the death of an employee, must reimburse the organization for the entire amount of benefits paid.

SECTION 5. AMENDMENT. Subsection 2 of section 65-05-08 of the North Dakota Century Code is amended and reenacted as follows:

2. All payments of disability and rehabilitation benefits ~~must be suspended during the period of confinement in excess of seventy-two consecutive hours~~ of any employee who is eligible for, or receiving, benefits under this title ~~whomust be suspended when the employee~~ is confined in a penitentiary, jail, youth correctional facility, or any other penal institution for a period of between seventy-two consecutive hours and one hundred eighty consecutive days. ~~After discharge from the institution, the organization shall pay subsequent disability or rehabilitation benefits as the employee otherwise would be entitled under this title.~~All payments of disability and rehabilitation benefits of any employee who is eligible for, or receiving, benefits under this title must be discontinued when the employee is confined in a penitentiary, jail, youth correctional facility, or any other penal institution for a period in excess of one hundred eighty consecutive days.

SECTION 6. AMENDMENT. Subsection 11 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

11. 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 to result in a whole body impairment of less than ~~sixteen~~fourteen percent and which is not identified in the following schedule, is payable as a ~~sixteen~~fourteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the permanent impairment multiplier identified in the following schedule, the organization shall pay an award equal to the permanent impairment multiplier set out in the following schedule:

For amputation of a thumb	permanent impairment multiplier of 65
For amputation of the second or distal phalanx of the thumb	permanent impairment multiplier of 28
For amputation of the first finger	permanent impairment multiplier of 40
For amputation of the middle or second phalanx of the first finger	permanent impairment multiplier of 28
For amputation of the third or distal phalanx of the first finger	permanent impairment multiplier of 22
For amputation of the second finger	permanent impairment multiplier of 30

For amputation of the middle or second phalanx of the second finger	permanent impairment multiplier of 22
For amputation of the third or distal phalanx of the second finger	permanent impairment multiplier of 14
For amputation of the third finger	permanent impairment multiplier of 20
For amputation of the middle or second phalanx of the third finger	permanent impairment multiplier of 16
For amputation of the fourth finger	permanent impairment multiplier of 16
For amputation of the middle or second phalanx of the fourth finger	permanent impairment multiplier of 12
For amputation of the leg at the hip	permanent impairment multiplier of 234
For amputation of the leg at or above the knee	permanent impairment multiplier of 195
For amputation of the leg at or above the ankle	permanent impairment multiplier of 150
For amputation of a great toe	permanent impairment multiplier of 30
For amputation of the second or distal phalanx of the great toe	permanent impairment multiplier of 18
For amputation of any other toe	permanent impairment multiplier of 12
For loss of an eye	permanent impairment multiplier of 150
For the loss of vision of an eye which equals or exceeds 20/200 corrected	permanent impairment multiplier of 100

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the organization shall issue an impairment award based on the greater of the permanent impairment multiplier allowed for the combined rating established under the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the permanent impairment multiplier set forth in this subsection.

²³⁴ **SECTION 7. AMENDMENT.** Subsection 3 of section 65-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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, functional capacities, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the employee as soon as practicable and as nearly as possible to ninety percent of the employee's average weekly earnings at the time of injury, or to sixty-six and two-thirds percent of the average weekly wage in this state on

²³⁴ Section 65-05.1-01 was also amended by section 8 of House Bill No. 1080, chapter 499.

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 which meets this income test set out above.

²³⁵ **SECTION 8. AMENDMENT.** Subdivision a of subsection 6 of section 65-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. If the ~~vocational consultant~~organization concludes that none of the priority options under subsection 4 are viable, and will not return the employee to the lesser of 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:

- (1) That meets the employee's functional capacities; and
- (2) For which the employee meets the qualifications to compete.

SECTION 9. AMENDMENT. Subsection 7 of section 65-05.1-02 of the North Dakota Century Code is amended and reenacted as follows:

7. ~~Appoint one or more vocational consultants, the identity of which must be determined by the organization. Determine and report~~ on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's transferable skills, employment options, and the physical demand characteristics of the worker's employment options, and determining which option available under subdivisions a through f of subsection 4 of section 65-05.1-01 will enable the worker to return to employment within the physical restrictions and limitations provided by the medical assessment team. ~~The vocational consultant shall issue to the organization a report as provided in section 65-05.1-02.1.~~

SECTION 10. AMENDMENT. Section 65-05.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-02.1. Vocational consultant's report.

The ~~vocational consultant~~organization shall review all records, statements, and other pertinent information and prepare a report to the organization and employee.

1. The report must:
 - a. Identify the first appropriate rehabilitation option by following the priorities set forth in subsection 4 of section 65-05.1-01.
 - b. Contain findings of why a higher listed priority, if any, is not appropriate.
2. Depending on which option the consultant identifies as appropriate, the report also must contain findings that:
 - a. Identify jobs in the local or statewide job pool and the employee's anticipated earnings from each job; or

²³⁵ Section 65-05.1-01 was also amended by section 7 of House Bill No. 1080, chapter 499.

- b. Describe an appropriate retraining program, the employment opportunities anticipated upon the employee's completion of the program, and the employee's anticipated earnings.
3. ~~The vocational consultant's report is due within sixty days from the date the vocational assessment is performed under this chapter. However, if the vocational consultant determines that retraining options must be evaluated because higher priority options are not viable, the final report is due within ninety days of the vocational assessment to allow the employee to assist in formulating the choice among the qualified training programs.~~

SECTION 11. AMENDMENT. Subsection 1 of section 65-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Direct the implementation of programs for individual workforce safety and insurance claimants~~injured employees in accordance with organization determinations in compliance with the purpose of this chapter.

SECTION 12. AMENDMENT. Subsections 3, 4, 5, and 6 of section 65-05.1-04 of the North Dakota Century Code are amended and reenacted as follows:

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 organization 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 organization or the vocational consultant. If the employee is noncompliant with this subsection, the organization shall suspend benefits during the period of noncompliance.~~
4. ~~If the first appropriate rehabilitation option under subsection 4 or 6 of section 65-05.1-01 is return to the same, modified, or alternative occupation, or return to an occupation that is suited to the employee's education, experience, and marketable skills, 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 organization may not pay additional disability benefits unless the employee meets the criteria for reapplying for benefits required under subsection 1 of section 65-05-08. 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 organization shall reevaluate the employee's vocational rehabilitation claim. When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good-faith work search or good-faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful.~~
5. ~~If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is retraining, 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 organization. A qualified training program is a rehabilitation plan that meets the criteria of this title, is the approved option of the rehabilitation consultant, and commences within a reasonable period of time such as the next quarter or semester. The~~

organization and the employee, by agreement, may waive the income test applicable under this subsection.

6. If, without good cause, the injured employee fails to make a good-faith work search in return to work utilizing the employee's transferable skills, the employee is in noncompliance with vocational rehabilitation. 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. If, without good cause, the injured employee fails to attend specific vocational testing, remedial, or other vocational services determined necessary by the organization 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, fails to communicate or cooperate with the ~~vocational consultant organization~~, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee is in noncompliance with vocational rehabilitation. If, without good cause, the employee discontinues a training program in which the employee is enrolled, the employee is in noncompliance with vocational rehabilitation. If at any time the employee is noncompliant without good cause, subsequent efforts by the employee to come into compliance with vocational rehabilitation are not considered successful compliance until the employee has successfully returned to the job or training program for a period of thirty days. In all cases of noncompliance by the employee, the organization shall discontinue disability and vocational rehabilitation benefits. If the period of noncompliance continues for thirty days following the date benefits are discontinued, or a second instance of noncompliance occurs without good cause, the organization may not pay any further disability or vocational rehabilitation benefits, regardless of whether the employee sustained a significant change in medical condition due to the work injury.

²³⁶ **SECTION 13. AMENDMENT.** Subsection 1 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Within sixty days of receiving the final vocational consultant's report, the organization shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to disability and vocational rehabilitation services.

²³⁷ **SECTION 14. AMENDMENT.** Subdivision f of subsection 2 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

- f. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the ~~claimant~~injured employee has actually located work.

²³⁶ Section 65-05.1-06.1 was also amended by section 14 of House Bill No. 1080, chapter 499, and section 15 of House Bill No. 1080, chapter 499.

²³⁷ Section 65-05.1-06.1 was also amended by section 13 of House Bill No. 1080, chapter 499, and section 15 of House Bill No. 1080, chapter 499.

²³⁸ **SECTION 15. AMENDMENT.** Subsection 3 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 16. AMENDMENT. Section 65-05.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.2. Contract for vocational rehabilitation services.

The organization may contract with vocational rehabilitation vendors to provide vocational rehabilitation services to claimants/injured employees. The organization shall determine the criteria that render a vocational rehabilitation vendor qualified. If additional services are determined to be necessary as a result of failed or inappropriate rehabilitation of an injured employee through no fault of the employee, the organization may contract with the vendor for additional services. If the failure or inappropriateness of the rehabilitation of the injured employee is due to the vendor's failure to provide the necessary services to fulfill the contract, the organization is not obligated to use that vendor for additional services on that claim and the organization may refuse payment for a service that the vendor failed to perform which was a material requirement of the contract.

SECTION 17. AMENDMENT. Section 65-05.1-07 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-07. Person furnishing training exempt from civil liability - Claimant's/injured employee's remedy.

Any person, partnership, corporation, limited liability company, association, or agency that furnishes on-the-job or other similar training to ~~a workforce safety and insurance claimant~~ an injured employee as the result of a rehabilitation contract, without establishing an employment relationship with the claimant/injured employee, is exempt from all civil liability.

SECTION 18. APPLICATION. Sections 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 apply to all claims regardless of date of injury. Section 6 applies to permanent impairment evaluations performed on or after August 1, 2011.

Approved April 24, 2013
Filed April 24, 2013

²³⁸ Section 65-05.1-06.1 was also amended by section 13 of House Bill No. 1080, chapter 499, and section 14 of House Bill No. 1080, chapter 499.

CHAPTER 500

SENATE BILL NO. 2134

(Senators Lyson, Armstrong, Oehlke)
(Representatives Hatlestad, Porter)

AN ACT to amend and reenact subsection 4 of section 65-01-15.1 of the North Dakota Century Code, relating to definition of law enforcement officers for workforce safety and insurance purposes; to provide for application; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

4. For purposes of this section, "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, or the parks and recreation department pursuant to section 55-08-04.

SECTION 2. APPLICATION. Section 1 of this Act applies only to injuries or conditions initially occurring on or after the effective date of this Act and to expenses related to those injuries and conditions.

SECTION 3. EFFECTIVE DATE. This Act becomes effective July 1, 2013.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 1, 2013
Filed April 1, 2013

CHAPTER 501**HOUSE BILL NO. 1081**

(Industry, Business and Labor Committee)
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact subsection 5 of section 65-04-03.1 of the North Dakota Century Code, relating to the reporting requirements to the budget section of the legislative management on the single state entities account program with workforce safety and insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 65-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

5. The office of management and budget may adopt rules to administer the risk management workforce safety and insurance program. ~~The organization and the risk management division of the office of management and budget periodically shall report to the budget section of the legislative management on the success of this program.~~

Approved March 26, 2013
Filed March 27, 2013

CHAPTER 502

SENATE BILL NO. 2080

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact sections 65-04-20 and 65-04-22, subsection 3 of section 65-04-33, subsection 1 of section 65-05-29, sections 65-06-03 and 65-06-04, subsection 2 of section 65-07-03, section 65-07.1-02, and subsection 5 of section 65-08-01 of the North Dakota Century Code, relating to premium payments, workers' compensation premiums, penalties for failure to secure coverage, assignment of claims, and volunteer health practitioner benefits; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

An employer, subject to section 65-04-22, may pay the annual premium in installments.

Interest must be charged at the prevailing base rate posted by the Bank of North Dakota plus two and one-half percent. The interest charged must be at least six percent per annum. Interest must be charged on all premiums deferred under this section. Upon default in payment of any installment, the penalties apply which are provided in sections 65-04-22 and 65-04-33.

SECTION 2. AMENDMENT. Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

65-04-22. Organization may make premium due immediately - When premium is in default.

The organization, ~~by its proper order, and notification upon the premium billing statement sent to an employer,~~ may require payment of a premium, including an advance premium, within any time ~~less than one month~~ which, in the judgment of the organization, is reasonable and necessary to secure the payment of the premium by any employer whose employment within this state is likely to continue for ~~less than one month,~~ and in such case, default shall begin at the end of the time allowed by the organization for the payment of the premium. ~~In the absence of an order and notification, the~~ The premium, whether the same is to be paid in full or in installments, shall be in default one month from the payment due date specified in the premium billing statement.

Default of any installment payment will, at the option of the organization, make the entire remaining balance of the premium due and payable. The organization may declare an employer ~~to be~~ uninsured at any time after forty-five days have passed from the due date specified in the premium billing statement and the employer has failed to make a payment to the organization. The organization may decline coverage

to any employer that has been determined to be uninsured under this section and ~~there where~~ a premium delinquency remains unresolved.

SECTION 3. AMENDMENT. Subsection 3 of section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

3. An employer who is uninsured is liable for any premiums plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of noncompliance. An additional five percent penalty is due for each year of noncompliance before the most recent year beginning on the date the organization became aware of the employer's uninsured status, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent. In addition, the organization may assess a penalty of two thousand dollars for each premium period the employer was uninsured. The organization may not assess a penalty for more than six years of past noncompliance. The organization may assess additional penalties, from the date the organization became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. The penalties for employers are in addition to any other penalties provided by law. The organization may reduce these penalties. However, the amount due from an employer may not be less than the actual cost and reserves of any claim attributable to the employer during the time the employer was uninsured, unless authorized by the director. An employer may not appeal an organization decision not to reduce a penalty under this subsection.

SECTION 4. AMENDMENT. Subsection 1 of section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

1. Any assignment of a claim for compensation under this title is void. All compensation and claims therefor are exempt from claims of creditors except any of the following:
 - a. A child support obligation ordered by a court of competent jurisdiction.
 - b. A claim by job service North Dakota for reimbursement of unemployment benefits, for the amount that was paid by job service North Dakota during the period for which the claimant is found eligible for temporary total or permanent total disability benefits, not to exceed the disability award actually made by the organization.
 - c. A claim by the organization for any payments made due to:
 - (1) Clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient, or any other circumstance of a similar nature, all not induced by fraud, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;
 - (2) An adjudication by the organization or by order of any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment

of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;

- (3) Fraud, in which case the recipient shall repay the payment or the unpaid amount of the sum may be recouped from any future payments due to the recipient on any claim with the organization; ~~or~~
- (4) Overpayment due to application of section 65-05-09.1; ~~or~~
- (5) A claim by the organization for premiums, penalties, and interest under chapter 65-04.

SECTION 5. AMENDMENT. Section 65-06-03 of the North Dakota Century Code is amended and reenacted as follows:

65-06-03. Compensation benefits - How determined.

The basis of compensation and benefits to be paid to a volunteer firefighter, an emergency or disaster volunteer, volunteer health practitioner, or a community emergency response team member under the terms of this chapter shall be determined in accordance with the provisions of section 65-05-09; provided, however, that the weekly wage of the claimant shall be determined from a computation of income derived from the claimant's business or employment.

SECTION 6. AMENDMENT. Section 65-06-04 of the North Dakota Century Code is amended and reenacted as follows:

65-06-04. Assessment of premiums.

For the purpose of making assessments of premiums to be charged against municipalities for protection of volunteer firefighters, emergency or disaster volunteers, volunteer health practitioners, and community emergency response team members, the organization shall make such survey as may seem advisable to ascertain the probable annual expenditures necessary to be paid out of the fund to carry out ~~the provisions of~~ this chapter, and shall fix the annual charges and assessments which ~~shall~~must be made against municipalities employing volunteer firefighters, emergency or disaster volunteers, volunteer health practitioners, and community emergency response team members. ~~Such~~The charge ~~shall~~must be a fixed sum for each one hundred of the population of the municipality involved, ~~the same to be and~~ uniform as to all such involved municipalities but in proportion to the population ~~thereof of the municipality~~. In determining the amount of premium charge, the organization may apply the system of experience rating provided in this title, as applied to other risks. The organization may also establish a minimum charge or assessment to be applicable to ~~municipalities where~~any municipality for which the fixed rate or charge multiplied by the number of hundreds of the population thereof of the municipality would amount to less than the amount of such ~~the~~ minimum charge or assessment. The population of a municipality shall be that shown by the latest official North Dakota state or United States government census, whichever may be the later.

SECTION 7. AMENDMENT. Subsection 2 of section 65-07-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A reasonable wage or fee as determined by the organization for employees in the same class of industry that the volunteer organization is engaged.

SECTION 8. AMENDMENT. Section 65-07.1-02 of the North Dakota Century Code is amended and reenacted as follows:

65-07.1-02. Vocational training or work evaluation programs - Organization may contract.

Whenever an agency or organization has been approved as an employer under subsection 2 of section 65-07.1-01, the organization may contract with the agency or organization for the coverage of participants in a program of vocational training or work evaluation. The premium for the coverage ~~shall~~must be computed ~~at the rate in which each participant is engaged and shall be based on a reasonable weekly wage as established in the contract~~based on a reasonable wage or fee as determined by the organization for employees in the same class of industry that the employer is engaged.

SECTION 9. AMENDMENT. Subsection 5 of section 65-08-01 of the North Dakota Century Code is amended and reenacted as follows:

5. An employer who opens an employer account with the organization under this section is obligated to report all wages ~~paid~~earned in this state, regardless of whether the significant contacts factors set forth in subsection 4 have been met.

SECTION 10. APPLICATION. Section 3 applies to all accounts in noncompliance on or after the effective date of this Act. Section 4 applies to all claims by the organization for premiums, penalties, and interest after the effective date of this Act.

Approved April 1, 2013

Filed April 1, 2013

CHAPTER 503

SENATE BILL NO. 2178

(Senators Klein, Krebsbach, Larsen)
(Representatives Maragos, Ruby, Streyle)

AN ACT to amend and reenact subsection 5 of section 65-05-07 of the North Dakota Century Code, relating to the workers' compensation vehicle allowance; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

5. Under this section, the organization may modify real estate and may provide for adaptations and modifications to motor vehicles as follows:
 - a. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed seventy-five thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary. The dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subdivision does not allow the organization to purchase any real estate.
 - b. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed one hundred fifty thousand dollars to provide the most cost-effective, specially equipped motor vehicle or vehicle adaptations the organization determines medically necessary. The organization may establish factors to be used in determining whether a specially equipped motor vehicle or adaptation is necessary. Under this subdivision, the organization may not pay for insurance of or maintenance of the motor vehicle. Within the dollar limit and under this subdivision, the organization may pay for vehicle or adaptation replacement purchases. The dollar limit is for the life of the injured employee, regardless of any subsequent claim.
 - c. In the case of an injured employee who has not sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may provide the benefits under subdivisions a and b if the organization determines the benefits would be cost-effective and appropriate because of exceptional circumstances as determined by the organization.

SECTION 2. APPLICATION. This Act applies to all vehicle purchases and adaptations that take place on or after the effective date of this Act.

Approved April 2, 2013
Filed April 2, 2013

CHAPTER 504

SENATE BILL NO. 2298

(Senators Kilzer, Carlisle)
(Representatives Hawken, Karls)

AN ACT to amend and reenact section 65-05-08.3 of the North Dakota Century Code, relating to workers' compensation consideration of treating doctor's opinions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-08.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08.3. Treating doctor's opinion.

1. ~~If the organization does not give an injured employee's treating~~A presumption may not be established in favor of any doctor's opinion controlling weight, the organization shall establish that the treating doctor's opinion is not well supported by medically acceptable clinical and laboratory diagnostic techniques or is inconsistent with the other substantial evidence in the injured employee's record based on one or more of. The organization shall resolve conflicting medical opinions and in doing so the organization shall consider the following factors:
 - a. The length of the treatment relationship and the frequency of examinations;
 - b. The nature and extent of the treatment relationship;
 - c. The amount of relevant evidence in support of the opinion;
 - d. How consistent the opinion is with the record as a whole;
 - e. Appearance of bias;
 - f. Whether the doctor specializes in the medical issues related to the opinion; and
 - g. Other relevant factors.
2. This section does not apply to managed care programs under section 65-02-20. For purposes of this section, the organization shall determine whether a doctor is an injured employee's treating doctor.

Approved May 3, 2013
Filed May 7, 2013

CHAPTER 505

HOUSE BILL NO. 1052

(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-05-28.2 of the North Dakota Century Code, relating to the workers' compensation preferred provider program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-28.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-28.2. Preferred provider - Use required - Exceptions - Notice.

1. During the first thirty days after a work injury, an employee of an employer ~~who~~that 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 organization 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 work injury.
2. An employee of an employer ~~who~~that 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~~before the occurrence of an injury.
3. After thirty days have passed following the injury, the employee may make a written request to the organization to change providers. The employee shall make the request and serve it on the employer and the organization at least thirty days ~~prior to~~before 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 organization 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 organization 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 organization shall rule on the request. Failure of the organization to rule constitutes approval of the request. Treatment by the employee's chosen provider is not compensable until the organization approves the request. The preferred provider remains the treating provider until the organization approves the employee's request to change providers.

5. An employer that selects a preferred provider shall give notice and post notice as required under this subsection.
- a. An employer shall give written notice of the identity and the terms of the preferred provider program:
- (1) To the employer's employees when the employer makes an initial selection of a preferred provider or,
 - (2) To the employer's employees when the employer changes the selection of the preferred provider. An employer shall give written notice identifying the selected preferred provider to every
 - (3) To an employee hired after the selection was made at the time of hire.
 - (4) To the employer's employees at least annually after the initial notice.
- b. An employer ~~who that~~ has selected a preferred provider shall display notice of the identity of the preferred provider and the terms of the preferred provider program 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 identity of the preferred provider and of the requirements of this section terms of the preferred provider program.
- c. Failure to give written notice ~~or,~~ to properly post notice, or to reasonably inform employees of the terms of the preferred provider program as required under this subsection invalidates the selection, ~~allowing the employee to make the initial selection of a medical provider for the employee's claim.~~

Approved April 15, 2013
Filed April 16, 2013