

WORKFORCE SAFETY AND INSURANCE

CHAPTER 523

SENATE BILL NO. 2184

(Senators J. Lee, Hogan, Klein)
(Representatives P. Anderson, Keiser, Rohr)

AN ACT to amend and reenact subsection 7 of section 23-07.5-02, sections 65-01-02, 65-01-11, 65-01-15, 65-02-20, 65-02-21.1, 65-05-07, 65-05-08.1, and 65-05-08.3, subsections 5 and 12 of section 65-05-12.2, section 65-05-28, subsection 2 of section 65-05-29, section 65-05-30, subsection 3 of section 65-05-32, subsection 5 of section 65-05.1-01, subsection 6 of section 65-05.1-02, and subsection 1 of section 65-07-03 of the North Dakota Century Code, relating to the definition of allied health care professional and health care provider with respect to workers' compensation claims and benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

7. The exposed individual shall pay the expense of testing. However, if the exposure occurs at an employee's workplace, the worker's employer shall pay the expense of testing unless otherwise provided by subdivision b of subsection ~~4011~~ of section 65-01-02. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

²⁶⁸ **SECTION 2. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions.

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.

²⁶⁸ Section 65-01-02 was also amended by section 1 of House Bill No. 1072, chapter 524, section 1 of House Bill No. 1073, chapter 525, and section 137 of Senate Bill No. 2124, chapter 391.

3. "Allied health care professional" includes a health care provider, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner who provides skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
4. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
- 4-5. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
- 5-6. "Average weekly wage" means the weekly wages the employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
 - a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
- 6-7. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
- 7-8. "Board" means the workforce safety and insurance board of directors.

- 8-9. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
- 9-10. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the employee; or is under eighteen years of age and does not reside with the employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the employee for support. A child does not include a married child unless actually dependent on the employee as shown on the preceding year's income tax returns.
- 10-11. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.
- a. The term includes:
- (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
 - (2) An injury to artificial members.
 - (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
 - (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
 - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
 - (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury.
- b. The term does not include:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.
- (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
- (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
- (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
- (5) An injury that arises out of an illegal act committed by the injured employee.
- (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
- (7) Injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing 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 pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.
- (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
- (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
- (10) A mental injury arising from mental stimulus.

44-12. "Date of first disability" means the first date the employee was unable to work because of a compensable injury.

~~42-13.~~ "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.

~~43-14.~~ "Director" means the director of the organization.

~~44-15.~~ "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.

~~15.~~ "~~Doctor~~" means ~~doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.~~

16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

(1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.

(2) Aliens.

(3) County general assistance workers, except those who are engaged in repaying to counties moneys the counties have been compelled by statute to expend for county general assistance.

(4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

(1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.

(2) An individual who is engaged in an illegal enterprise or occupation.

(3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.

(4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:

- (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.
- (7) An employer.
17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
- a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.

- i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
 - j. A multidistrict special education unit.
 - k. An area career and technology center.
 - l. A regional education association.
18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
 - a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. ~~"Health care provider" includes a doctor, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals~~means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.
22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
23. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
24. "Parent" includes a stepparent and a parent by adoption.

25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
26. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an employee from performing any work and results from any one of the following conditions:
 - a. Total and permanent loss of sight of both eyes;
 - b. Loss of both legs or loss of both feet at or above the ankle;
 - c. Loss of both arms or loss of both hands at or above the wrist;
 - d. Loss of any two of the members or faculties in subdivision a, b, or c;
 - e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
 - f. Third-degree burns that cover at least forty percent of the body and require grafting;
 - g. A medically documented brain injury affecting cognitive and mental functioning which renders an employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
 - h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
28. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
30. "Temporary total disability" means disability that results in the inability of an employee to earn wages as a result of a compensable injury for which

disability benefits may not exceed a cumulative total of one hundred four weeks or the date the employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.

31. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
32. a. "Wages" means:
 - (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 3. AMENDMENT. Section 65-01-11 of the North Dakota Century Code is amended and reenacted as follows:

65-01-11. Burden of proof in compensation matters - Death certificate.

If the organization or an employer claims that an employee is not entitled to the benefits of the North Dakota workforce safety and insurance law because the employee's injury was caused by the employee's willful intention to cause self-injury, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving the exemption or forfeiture is ~~upon~~ the organization or ~~upon~~ the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in the Code of Federal Regulations in effect on August 1, 2011, or a level of an illegally used controlled substance sufficient to cause impairment found by a test conducted by a physician, qualified technician, chemist, or registered nurse at or above the cutoff level in the Code of Federal Regulations in effect on August 1, 2011, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or an employer or a ~~doctor~~health care provider who has

reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated by company policy, the employee forfeits all entitlement to workforce safety and insurance benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to benefits. If a claim for death benefits is filed, the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

SECTION 4. AMENDMENT. Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15. Yearly documentation required for firefighter and law enforcement officer.

Except for benefits for an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician health care provider which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years.

SECTION 5. AMENDMENT. Section 65-02-20 of the North Dakota Century Code is amended and reenacted as follows:

65-02-20. Organization to establish managed care program.

The organization shall establish a managed care program, including utilization review and bill review, to effect the best medical solution for an injured employee in a cost-effective manner upon a finding by the organization that the employee suffered a compensable injury. The program shall operate according to guidelines adopted by the organization and shall provide for medical management of claims within the bounds of workforce safety and insurance law. Information compiled and analysis performed pursuant to a managed care program which relate to patterns of treatment, cost, or outcomes by health care providers and allied health care professionals are confidential and are not open to public inspection to the extent the information and analysis identify a specific health care provider or allied health care professional, except to the specific health care provider, allied health care professional, organization employees, or persons rendering assistance to the organization in the administration of this title. If an employee, employer, or ~~medical provider~~ allied health care professional disputes a managed care decision, the employee, employer, or ~~medical provider~~ allied health care professional shall request binding dispute resolution on the decision. The organization shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-16. A dispute resolution decision under this section requested by a ~~medical provider~~ an allied health care professional concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section

requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion in the dispute resolution process. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

²⁶⁹ **SECTION 6. AMENDMENT.** Section 65-02-21.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-21.1. Licensure required for psychologists and physicians performing utilization review.

Psychologists making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. ~~Physicians~~ Health care providers making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the ~~North Dakota board of medicine~~ appropriate North Dakota licensing board. This requirement does not apply to psychologists or ~~physicians~~ health care providers conducting independent medical examinations or independent medical reviews under section 65-05-28.

SECTION 7. AMENDMENT. Section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

65-05-07. Injured employee given medical and hospital service required - Furnished artificial limbs and appliances for rehabilitation - Fee approval.

The fund shall furnish to an injured employee reasonable and appropriate medical, surgical, and hospital service and supplies necessary to treat a compensable injury. The fund may furnish artificial members and replacements the organization determines necessary to rehabilitate an injured employee.

1. The ~~health care provider or doctor~~ allied health care professional must be acting within the scope of the ~~provider's or doctor's~~ allied health care professional's license or fees will be denied.
2. Fees may not be approved for more than one ~~health care provider or doctor~~ allied health care professional in a case wherein which treatment is provided over the same period of time except for the services of a consulting doctor, assistant surgeon, or anesthetist or in an emergency.
3. The organization, in cooperation with professional organizations of ~~doctors and health care providers~~ allied health care professionals, shall establish a system of peer review to determine reasonableness of fees and payment denials for unjustified treatments, hospitalization, or visits. The ~~doctor or health care provider~~ allied health care professional may appeal adverse decisions of the organization in accordance with the medical aid rules adopted by the organization.
4. ~~Health care providers and doctors~~ An allied health care professional may not bill an injured employee for ~~any services~~ a service rendered as a result of the compensable work injury.

²⁶⁹ Section 65-02-21.1 was also amended by section 4 of House Bill No. 1073, chapter 525.

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.
6. If ~~a doctor or health care provider~~an allied health care professional who has treated or provided services to an injured employee fails or refuses without just cause to file with the organization a report required by section 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for the report made by the claimant, the claimant's representative, or the organization, the organization shall assess as a penalty a sum of one hundred dollars. Health care providers and ~~doctors~~allied health care professionals may not bill an injured worker for ~~any~~a penalty assessed by the organization under this subsection.
7. The filing of an accident report or the rendering of treatment to an injured worker who comes under the organization's jurisdiction constitutes acceptance of the organization's medical aid rules and compliance with ~~its~~the organization's rules and fees.
8. The organization may not pay for:
 - a. Personal items ~~that~~ are for the injured employee's personal use or hygiene, including toothbrushes, slippers, shampoo, and soap.
 - b. A product or item including clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating ~~doctor or health care provider~~allied health care professional.

- c. Furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating ~~doctor or health care provider~~ allied health care professional.
- d. Vitamins and food supplements except in those cases in which the injury causes severe dietary problems, the injury results in the employee's paraplegia or quadriplegia, or the employee becomes wheelchair-bound due to the injury.
- e. Eye examinations unless there is a reasonable potential for injury to the employee's eyes as a result of the injury.
- f. Private hospital or nursing home rooms except in cases of extreme medical necessity and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the employee will pay the difference in cost.
- g. Serological tests, including VDRL and RPR, or other tests for venereal disease or pregnancy, or any other routine tests unless clearly necessitated by the injury.
- h. Aids or programs primarily intended to help the employee lose weight or stop smoking unless ordered by the organization.
- i. Home gymnasium or exercise equipment unless ordered by the organization.
- j. Memberships or monthly dues to health clubs, unless ordered by the organization.
- k. Massage, unless ordered by the organization.
- l. Medical marijuana.

SECTION 8. AMENDMENT. Section 65-05-08.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08.1. Verification of disability.

1. An injured employee's ~~doctor~~ health care provider shall certify the period of disability and the extent of the injured worker's abilities and restrictions.
2. A ~~doctor~~ health care provider certifying disability shall include in the report filed with the organization:
 - a. The medical basis established by medical evidence supported by objective medical findings for the certification of disability;
 - b. Whether the employee is totally disabled, or, if the employee is not totally disabled, whether the employee is able to return to any employment, and a statement of the employee's restrictions and physical limitations; and
 - c. A professional opinion as to the expected length of, and reason for, the disability.

- ~~4-3.~~ A ~~doctor~~health care provider may not certify or verify past disability commencing more than sixty days before the ~~doctor's~~health care provider's examination of the employee.
- ~~3-4.~~ The report must be filed on a form furnished by the organization, or on any other form acceptable to the organization.
- ~~4-5.~~ The injured employee shall ensure that the required reports for any period of disability are filed.
- ~~5-6.~~ Prior to the expiration of a period of disability certified by a ~~doctor~~health care provider, if a report certifying an additional period of disability has not been filed, or upon receipt of a report or other evidence indicating an injured employee who is receiving disability benefits has been or will be released to return to work, the organization shall send a notice to that employee of the organization's intention to discontinue benefits, including an explanation of the reason for discontinuing benefits, an explanation of the injured employee's right to respond, and the procedure for filing the required report or challenging the proposed action. Thereafter, if the required certification is not filed, the organization shall discontinue disability benefits, effective twenty-one days after the date the notice of intention to discontinue benefits is mailed or the date on which the injured employee actually returned to work, whichever occurs first.

SECTION 9. 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~~health care provider's opinion.

1. A presumption may not be established in favor of any ~~doctor's~~health care provider's opinion. 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~~health care provider 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~~health care provider is an injured employee's treating ~~doctor~~health care provider.

SECTION 10. AMENDMENT. Subsection 5 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

5. A doctor health care provider evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Subject to rules adopted under this subsection, impairments must be evaluated under the sixth edition of the guides.

SECTION 11. AMENDMENT. Subsection 12 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment, all relevant medical evidence must be submitted to an independent doctor health care provider who has not treated the employee and who has not been consulted by the organization in relation to the injury upon which the impairment is based. The organization shall establish a list of doctors health care providers who have the training and experience necessary to conduct an evaluation of permanent impairment and to apply the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". The organization shall define, by rule, the process by which the organization shall choose an independent doctor health care provider or doctors health care providers to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor health care provider or doctors health care providers chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the organization for an impairment award for a rating of impairment for a body part or condition the organization has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor health care provider or doctors health care providers if the employee disputes the findings of the independent doctor health care provider or doctors health care providers.

²⁷⁰ **SECTION 12. AMENDMENT.** Section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if injured employee refuses to reasonably participate.

An injured employee may select a doctor health care provider of that injured employee's choice to render initial treatment. Upon a determination that the injured employee's injury is compensable, the organization may require the injured employee to begin treating with another doctor health care provider to better direct the medical aspects of the injured employee's claim. The organization shall provide a list of three doctors health care providers who specialize in the treatment of the type of injury the employee sustained. At the organization's request, the injured employee shall select a doctor health care provider from the list. An injured employee shall follow the directives of the doctor or health care provider who is treating the injured employee as chosen by the injured employee at the request of the organization and comply with all

²⁷⁰ Section 65-05-28 was also amended by section 8 of House Bill No. 1073, chapter 525.

reasonable requests during the time the injured employee is under medical care. Providing further that:

1. ~~No~~An injured employee may not change from one ~~doctor~~health care provider to another while under treatment or after being released, without the prior written authorization of the organization. Failure to obtain approval of the organization renders the injured employee liable for the cost of treatment and the new doctor will not be considered the attending ~~doctor~~health care provider for purposes of certifying temporary disability.
 - a. Any injured employee requesting a change of ~~doctor~~health care provider shall file a written request with the organization stating all reasons for the change. Upon receipt of the request, the organization ~~will~~shall review the injured employee's claim and approve or deny the change of ~~doctor~~health care provider, notifying the injured employee and the requested ~~doctor~~health care provider.
 - b. Emergency care or treatment or referral by the attending ~~doctor~~health care provider does not constitute a change of ~~doctor~~health care provider and does not require prior approval of the organization.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt, when appropriate, and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the organization reimbursement rates in effect on the date of incurred travel or expense. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. A personal reimbursement requested under this subsection is a managed care decision under section 65-02-20, subject to the appeal process as provided for in section 65-02-20. Providing further that:
 - a. Payment for mileage or other travel expenses may not be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
 - b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the organization may pay no more than actual cost of lodging, if actual cost is less;
 - c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
 - d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the injured employee's injury prevents travel alone and the inability is medically substantiated; and
 - e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.

3. The organization may at any time require an injured employee to submit to an independent medical examination or independent medical review by one or more duly qualified ~~doctors~~allied health care professionals designated or approved by the organization. The organization shall make a reasonable effort to designate a duly qualified ~~doctor~~allied health care professional licensed in the state in which the injured employee resides to conduct the examination before designating a duly qualified ~~doctor~~allied health care professional licensed in another state or shall make a reasonable effort to designate a duly qualified ~~doctor~~allied health care professional licensed in a state other than the injured employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the injured employee's residence. An independent medical examination and independent medical review must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. An independent medical examination contemplates an actual examination of an injured employee, either in person or remotely if appropriate. An independent medical review contemplates a file review of an injured employee's records, including treatments and testing. The injured employee may have a duly qualified ~~doctor~~health care provider designated by that employee present at the examination or later review the written report of the ~~doctor~~allied health care professional performing the independent medical examination, if procured and paid for by that injured employee. Providing further that:
 - a. In case of any disagreement between ~~doctors~~allied health care professionals making an examination on the part of the organization and the injured employee's ~~doctor~~allied health care professional, the organization shall appoint an impartial ~~doctor~~allied health care professional duly qualified who shall make an examination and shall report to the organization.
 - b. The injured employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the injured employee is working and loses gross wages from the injured employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
4. If an injured employee, or the injured employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination or treatment, or refuses to reasonably participate in medical or other treatments or examinations, the injured employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the injured employee.
5. If an injured employee undertakes activities, whether or not in the course of employment, which exceed the treatment recommendations of the injured employee's ~~doctor~~health care provider regarding the work injury, and the ~~doctor~~health care provider determines that the employee's injury or condition has been aggravated or has worsened as a result of the injured employee's activities, the organization may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer. An employer's account may not be charged with the expenses of an

aggravation or worsening of a work-related injury or condition unless the employer knowingly required the injured employee to perform activities that exceed the treatment recommendations of the injured employee's doctor/health care provider.

SECTION 13. AMENDMENT. Subsection 2 of section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Notwithstanding paragraph 2 of subdivision c of subsection 1, during the sixty days immediately following the date of injury, if the organization accrues a medical/health care provider expense or makes a payment for a medical expense and the organization later determines the medical expense is for the care and treatment of a noncompensable injury, disease, or other condition, the injured employee is not liable for the medical expense accrued or paid by the organization before the earlier of:
 - (1) The third day following the date the organization makes a determination the medical expense is for a noncompensable injury, disease, or condition; or
 - (2) The third day following the date the injured employee or medical provider reasonably should have known the medical expense is for a noncompensable injury, disease, or condition.
- b. Medical expenses incurred under this subsection may not be charged against an employer's account for purposes of experience rating.

SECTION 14. AMENDMENT. Section 65-05-30 of the North Dakota Century Code is amended and reenacted as follows:

65-05-30. Filing of claim constitutes consent to use of information received by doctor/health care provider.

1. The filing of a claim with the organization constitutes a consent to the use by the organization, in any proceeding by the organization or to which the organization is a party in any court, of any information, including prior and subsequent prognosis reports, medical records, medical bills, and other information concerning any health care or health care services which was received by any health care provider, hospital, or clinic in the course of any examination or treatment of the claimant.
2. The filing of a claim with the organization authorizes a health care provider, hospital, or clinic to disclose to the organization, or authorized representative of the organization, information or render an opinion regarding the injured employee's claim with the organization. As used in this subsection, an opinion may include a statement regarding liability, causation, or a pre-existing condition or other information the organization deems necessary for the administration of this title. The filing of a claim with the organization authorizes a health care provider, hospital, or clinic to disclose any information to the organization deemed necessary for the administration of this title to the organization's representative, or the employer, except any information directly disclosed to the employer must be relevant to the employee's work injury or to return-to-work issues.
3. If a health care provider furnishes information or an opinion under this section:

- a. That health care provider does not incur any liability as a result of furnishing that information or opinion.
- b. The act of furnishing that information or opinion may not be the sole basis for a disciplinary or other proceeding affecting professional licensure. However, the act of furnishing that information or opinion may be considered in conjunction with another action that may subject the health care provider to a disciplinary or other proceeding affecting professional licensure.

SECTION 15. AMENDMENT. Subsection 3 of section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Physicians or health care providers~~Allied health care professionals treating or examining employees claiming benefits under this title, or ~~physicians~~allied health care professionals giving medical advice to the organization regarding any claim may, at the discretion of the organization, inspect the claim files and records of injured employees.

SECTION 16. AMENDMENT. Subsection 5 of section 65-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. If the employee's first appropriate option is an option listed in subdivision c, d, e, or f of subsection 4, the organization may pursue retraining of one hundred four weeks or less. If an option listed in subdivision a, b, c, d, e, or f of subsection 4 has been identified as appropriate for an injured employee and the employee is initially released by the ~~doctor~~health care provider to return to part-time employment with the reasonable expectation of attaining full-time employment, the organization shall pay temporary partial disability benefits under section 65-05-10 until the ~~doctor~~health care provider determines the employee is medically capable of full-time employment.

SECTION 17. AMENDMENT. Subsection 6 of section 65-05.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6. Establish medical assessment teams, the composition of which must be determined by the organization on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's physical restrictions and limitations. The medical assessment team must be provided the medical records compiled by the worker's treating ~~physicians~~health care providers. The medical assessment team may consult the worker's treating ~~physicians~~health care providers prior to making its final assessment of the worker's functional capacities. The provisions of section 65-05-28 do not apply to the medical findings made under this section.

SECTION 18. AMENDMENT. Subsection 1 of section 65-07-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as outlined in subdivision b of subsection ~~56~~ of section 65-01-02 for purposes of determining the premium for coverage of an employer, an employer's spouse, or a self-employed person. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.

Approved March 28, 2019

Filed March 29, 2019

CHAPTER 524

HOUSE BILL NO. 1072

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

AN ACT to create and enact a new subsection to section 65-04-27.2 of the North Dakota Century Code, relating to cease and desist orders; to amend and reenact section 65-01-02, subsection 4 of section 65-01-08, sections 65-01-10, 65-04-04, 65-04-06, 65-04-19, 65-04-22, 65-04-24, and 65-04-26.2, subsection 3 of section 65-04-32, section 65-04-33, and subsection 1 of section 65-09-01 of the North Dakota Century Code, relating to definitions, the removal of the word "annual", off-setting premiums, the organizational seal, payroll reports, payment of premiums, premiums in default, notice of premium owing, liability of a general contractor, notices of decision, noncompliance of employers, and liability of uninsured employers; to repeal section 65-06.2-09 of the North Dakota Century Code, relating to safety and performance reviews; to provide a penalty; and to provide for an application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷¹ **SECTION 1. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions.

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the injured employee was receiving from all employments for which coverage is required or otherwise

²⁷¹ Section 65-01-02 was also amended by section 1 of House Bill No. 1073, chapter 525, section 137 of Senate Bill No. 2124, chapter 391, and section 2 of Senate Bill No. 2184, chapter 523.

secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the injured employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant injured employee during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
 7. "Board" means the workforce safety and insurance board of directors.
 8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
 9. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the injured employee; or is under eighteen years of age and does not reside with the injured employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the injured employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the injured employee for support. A child does not include a married child unless actually dependent on the injured employee as shown on the preceding year's income tax returns.

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury.

b. The term does not include:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment ~~when~~that is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.
- (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
- (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.

- (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
 - (7) Injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing 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 pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.
 - (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
 - (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
 - (10) A mental injury arising from mental stimulus.
11. "Date of first disability" means the first date the injured employee was unable to work because of a compensable injury.
 12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
 13. "Director" means the director of the organization.
 14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
 15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.
 16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.
- (2) Aliens.
- (3) County general assistance workers, except those who are engaged in repaying to counties moneys the counties have been compelled by statute to expend for county general assistance.
- (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.
- (2) An individual who is engaged in an illegal enterprise or occupation.
- (3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:
 - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other

efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.

(7) An employer.

17. "Employer" means a person ~~who~~that engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
 - a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
 - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
 - j. A multidistrict special education unit.
 - k. An area career and technology center.
 - l. A regional education association.
18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
 - a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.

- c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. "Health care provider" includes a doctor, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
 22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
 23. "Noncompliance" means failure to follow the requirements of chapter 65-04. An employer may be in noncompliance regardless of the employer's insured or uninsured status with the organization.
 - 23-24. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
 - 24-25. "Parent" includes a stepparent and a parent by adoption.
 26. "Payroll report" means the mechanism created by the organization and used by employers to report all employee payroll required by the organization.
 - 25-27. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
 - 26-28. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an injured employee from performing any work and results from any one of the following conditions:
 - a. Total and permanent loss of sight of both eyes;
 - b. Loss of both legs or loss of both feet at or above the ankle;
 - c. Loss of both arms or loss of both hands at or above the wrist;
 - d. Loss of any two of the members or faculties in subdivision a, b, or c;
 - e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;

- f. Third-degree burns that cover at least forty percent of the body and require grafting;
- g. A medically documented brain injury affecting cognitive and mental functioning which renders an injured employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
- h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the injured employee has not reached maximum medical improvement within one hundred four weeks, the injured employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the injured employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

- 27-29. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
- 28-30. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
- 29-31. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
32. "Subcontractor" means a person that agrees to perform all or part of the work for a contractor or another subcontractor.
- 30-33. "Temporary total disability" means disability that results in the inability of an injured employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the injured employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
34. "Uninsured" means failure of an employer to secure mandatory coverage with the organization or failure to pay premium, assessment, penalty, or interest, as calculated by the organization, which is more than forty-five days past due. An uninsured employer is subject to chapter 65-09.
- 34-35. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to

review individual cases for which administrative action may be deemed necessary.

~~32-36~~. a. "Wages" means:

- (1) An injured 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. Subsection 4 of section 65-01-08 of the North Dakota Century Code is amended and reenacted as follows:

4. A staffing service that provides only temporary staffing services is the employee's employer. The temporary staffing service shall maintain a workforce safety and insurance account in the temporary staffing service's name and report the wages for those workers annually to the organization. All other staffing services shall:
 - a. Report ~~annually the payroll detail~~ as directed by the organization for each North Dakota client company.
 - b. Maintain complete and separate records of the payroll of the staffing service's client companies. Claims must be separately identified by the staffing service for each client company.
 - c. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between a staffing service and a client company is terminated, the employees become the sole employees of the client company.
 - d. Notify the organization of the client company's name, workforce safety and insurance account number, and the date the staffing service began providing services to the client company. The staffing service shall provide this information upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.
 - e. Supply the organization with a copy of the agreement between the staffing service and client company.

- f. Notify the organization upon termination of any agreement with a client company, but no later than fifteen days from the effective date of termination.
- g. Notify the staffing service's client companies of an uninsured status for failure to pay workforce safety and insurance premiums within fifteen days of notice by the organization.

SECTION 3. AMENDMENT. Section 65-01-10 of the North Dakota Century Code is amended and reenacted as follows:

65-01-10. Waiver of rights to compensation void - Deduction of premium from employee prohibited - Penalty.

No agreement by an employee to waive rights to compensation under this title is valid except as provided in section 65-05-25. No agreement by any employee to pay any portion of the premium paid or payable by the employer into the fund is valid, and any employer who deducts any portion of ~~such~~the premium from the wages or salary of any employee ~~entitled to the~~eligible for benefits ~~of~~under this title is guilty of a class A misdemeanor and is subject to a penalty of up to five thousand dollars. The organization may reduce the penalties provided under this section. An employer may not appeal an organization decision not to reduce a penalty under this section.

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

65-04-04. Employers obligated to pay premiums and assessments - Premium and certificates to be mailed Certificate provided.

1. Each employer subject to this title shall pay into the fund ~~annually~~ the amount of ~~premiums~~premium and assessment determined ~~and fixed~~ by the organization ~~for the employment or occupation of the employer.~~ The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title.
2. The organization shall ~~mail~~provide to the employer a certificate specifying that the payment has been made. The certificate, ~~attested by the seal of the organization,~~ is prima facie evidence of the payment of the premium.
3. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum ~~premium~~due and has no employees for the period indicated on the certificate. If an employer defaults on premium or assessment payments after a certificate has been issued, the organization may revoke that employer's certificate.
4. The organization shall provide that premiums ~~to be paid~~ or assessments payable by school districts, multidistrict special education units, area career and technology centers, and regional education associations, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums ~~to be paid~~ or assessments payable by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums or assessments of other employers fall due on different or specified dates.

5. For the purpose of effectuating different or specified due dates, the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization.
6. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud.
7. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

SECTION 5. AMENDMENT. Section 65-04-06 of the North Dakota Century Code is amended and reenacted as follows:

65-04-06. Employer obligated to file payroll reports - Organization to specify method of providing information - Verification may be required.

~~Information required by the organization shall be furnished by employers on preprinted forms provided free of charge, or in another manner specified by the organization. Each employer subject to this title shall provide at least annually a payroll report to the organization. The organization may require an employer to file a payroll report with the organization more frequently during the premium year.~~

~~Each employer required to file a payroll report must file the report by an electronic method approved by the organization. An employer that does not comply with the requirements to file the payroll report electronically is deemed to have failed to submit the payroll report. If an employer is unable to provide the information required, the employer shall submit to the organization in writing good and sufficient the reason therefor. The organization and its representatives may require any employer to submit information verified under oath within the time period fixed by it or by law.~~

SECTION 6. AMENDMENT. Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19. Organization to assign rate classifications, calculate premium, and determine premium due from employer - Mailing Notification of premium billing statement as notice of amount due.

1. The organization shall assign rate classifications based on information provided to the organization by the employer or information gathered through the organization's investigative process.
2. The organization shall determine the amount of premium due from every employer subject to this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the organization received information an employer is subject to the title.
3. If the organization does not receive the annual payroll report or, in the case of a noncompliant employer, the organization does not receive reliable and accurate payroll information, the organization may calculate premium using the wage cap in effect per employee reported in the previous payroll report,

using information obtained through the organization's investigative process, or using data obtained from job service North Dakota.

4. The organization shall ~~mail~~send a copy of the ~~premium~~ billing statement to the employer. ~~Mailing of~~Sending the ~~premium~~ billing statement, by mail or electronically, constitutes notice to the employer of the amount due.

SECTION 7. 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 - Penalty.

The organization may require payment of a premium, including an advance premium, a security deposit, or any other instrument that is acceptable to the organization, within any time which, in the judgment of the organization, is reasonable and necessary to secure the payment of the premium by any employer. The organization may require advance payment of the premium, whether paid either in full or in installments. Any payment 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 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 or where a premium delinquency remains unresolved.

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

SECTION 8. AMENDMENT. Section 65-04-24 of the North Dakota Century Code is amended and reenacted as follows:

65-04-24. Notice of premium or assessment owing - Organization to bring suit for premiums in default.

~~When an employer defaults on payment of premium, penalties, or interest, the organization may bring suit for the collection of premium, accrued penalties and interest, and any additional penalties and interest that may accrue. The organization shall notify an employer of the amount of premium, assessment, penalty, and interest due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, assessment, penalties, and interest due by civil action. In any action for the collection of amounts due the organization under this title, the court may not review or consider the action of the organization regarding the acceptance or payment of any claim. The organization may adjust or compromise the account. The organization may retain counsel on a contingent fee basis to represent the organization in any proceeding relating to the collection of amounts due under this title. The organization shall charge attorney's fees and costs to the organization's general fund. In any action for the collection of~~

amounts due the organization under this title, the court may not review or consider the action of the organization regarding the acceptance or payment of any claim.

SECTION 9. AMENDMENT. Section 65-04-26.2 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26.2. General contractor liability for subcontractors and independent contractors.

1. An individual employed by a subcontractor or by an independent contractor operating under an agreement with a general contractor is deemed to be an employee of the general contractor ~~if and any subcontractor that supplied work to the subcontractor or independent contractor does not secure coverage as required under this title.~~ A general contractor ~~is and a subcontractor are~~ liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage ~~or pay the premium owing.~~ The general contractor ~~is and a subcontractor are~~ liable for payment of this premium and penalty until the subcontractor or independent contractor pays this premium and penalty. The liability imposed on a general contractor ~~and a subcontractor~~ under this section for the payment of premium and penalties under this title which are not paid by a subcontractor or independent contractor is limited to work performed under that general contractor.
2. Upon request of the organization, a person the organization determines may have information that may assist the organization in determining the amount of wages expended by the subcontractor or independent contractor shall provide this information to the organization.
3. If the organization is unable to obtain complete and reliable payroll information for a subcontractor or independent contractor, the organization may calculate premium using the available payroll information of the subcontractor or independent contractor for work performed under the liable general contractor ~~or a subcontractor~~ as permitted in section 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure coverage ~~or pay the premium owing~~ arises from a single project with a general contractor, the liability of the general contractor ~~and subcontractor~~ is one hundred percent of the amount of premium and penalty owed by the subcontractor or independent contractor. If there is evidence showing the subcontractor or independent contractor was working on multiple projects during the period the subcontractor or independent contractor failed to secure coverage, the organization shall set the amount of ~~the the general contractor's~~ ~~contractor and subcontractor's~~ liability which may not exceed seventy percent of the total premium and penalty owed by the subcontractor or independent contractor.
4. The definition of the term "contractor" under section 43-07-01 applies to this section.

SECTION 10. A new subsection to section 65-04-27.2 of the North Dakota Century Code is created and enacted as follows:

A general contractor or a subcontractor that willfully uses the services of a subcontractor precluded from operating under a cease and desist order is subject to a penalty of five thousand dollars and one hundred dollars per day for each day the violation occurs. The organization shall provide notice to the general contractor or subcontractor by regular mail before assessing penalties

under this section. The organization may reduce the penalties under this section.

SECTION 11. AMENDMENT. Subsection 3 of section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Within sixty days after~~After receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by ~~certified~~regular mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration. The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration. If the organization does not issue an order within sixty days of receiving a request for reconsideration, a party may request, and the organization shall promptly issue, an appealable determination.

SECTION 12. AMENDMENT. Section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

65-04-33. Intentional acts - Failure to secure coverage - Uninsured - Noncompliance - Failure to submit necessary reports - Penalty.

1. An employer may not employ any person, or receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first applying for workforce safety and insurance coverage for the protection of employees by notifying the organization of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming twelve-month period.
2.
 - a. An employer ~~who~~that willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or ~~who~~that willfully fails to secure coverage for employees, is liable to the state in the amount of five thousand dollars plus three times the difference between the premium paid and the amount of premium the employer should have paid.
 - b. The organization shall collect a penalty imposed under this subsection in a civil action in the name of the state, and the organization shall deposit a penalty collected under this subsection to the credit of the workforce safety and insurance fund.
 - c. An employer ~~who~~that willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or ~~who~~that willfully fails to secure coverage for employees, is guilty of a class A misdemeanor. If the premium due exceeds one thousand dollars, the penalty for willful failure to secure coverage or willful misrepresentation to the organization or its representative is a class C felony. If the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workforce safety and insurance coverage under this subsection.
 - d. In addition to the penalties prescribed by this subsection, the organization may initiate injunction proceedings as provided for in this title to enjoin an employer from unlawfully employing uninsured workers.

- e. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.
3. An employer ~~who~~that willfully makes a false statement in an attempt to preclude an injured worker from securing benefits or payment for services, ~~or that willfully discharges or threatens to discharge an employee for seeking or making known the intention to seek workforce safety and insurance benefits~~ is liable to the state in the amount of five thousand dollars. The organization shall collect a civil penalty imposed under this section in a civil action in the name of the state, and the organization shall deposit a penalty collected under this section to the credit of the workforce safety and insurance fund. A willful violation of this section is a class A misdemeanor. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.
4. a. An employer ~~who~~that is uninsured for failure to secure coverage is liable for any premiums, assessments 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~~failure to secure coverage.
- b. An additional five percent penalty is due for each year of ~~noncompliance~~failure to secure coverage before the most recent year beginning on the date the organization became aware of the employer's ~~uninsured status~~failure to secure coverage, 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.
- c. In addition, the organization may assess a penalty of up to five thousand dollars for each premium period the employer was ~~uninsured~~failed to secure coverage. The organization may not assess a penalty for more than six years of ~~past noncompliance~~failure to secure coverage.
- d. ~~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. In addition, the~~The organization may assess an employer the actual cost and reserves of any claim attributable to the employer during the time the employer was ~~uninsured~~failed to secure coverage.
- e. The penalties for employers are in addition to any other penalties by law. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.
5. a. An employer in noncompliance is subject to a penalty of up to five thousand dollars for each premium period the employer was in noncompliance.
- b. The organization may not assess a penalty for more than six years of past noncompliance.

- c. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.
- 5-6. a. An employer whothat fails or refuses to furnish to the organization the annual payroll report andor estimate, or whothat fails or refuses to furnish other information required by the organization under this chapter is subject to a penalty established by the organization of tweup to five thousand dollars.
- b. Upon the request of the organization, the employer shall furnish the organization any of that employer's payroll records, annual payroll reports, and other information required by the organization under this chapter and an estimate of payroll for the advance premium year.
- c. If the employer fails or refuses to provide the records within thirty days of a written request from the organization, the employer is subject to a penalty of five thousand dollars and a penalty not to exceed one hundred dollars for each day until the organization receives the records, in addition to the five thousand dollar penalty set forth in subsection 4.
- d. The organization may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township.
- e. The organization may reduce penalties for employers under this subsection. However, an employer may not appeal an organization decision not to reduce a penalty. The organization shall notify an employer by regular mail of the amount of premium and penalty due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the organization regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.
6. When an employer defaults in the payment of any premium, any installment of the premium, any penalty or interest, or in the filing of any bond required under this chapter, the employer at the time of default is subject to a penalty not to exceed two hundred fifty dollars plus two percent of the amount of premiums, penalties, and interest in default, and beginning one month after default, a penalty of two percent of the amount of premiums, penalties, and interest in default for each month or fraction of a month the premium, penalty, or interest remains unpaid.

SECTION 13. AMENDMENT. Subsection 1 of section 65-09-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Any employer subject to this title whothat is in violation of subsection 1 or 2 of section 65-04-33 or declared uninsured pursuant to section 65-04-22 is not protected by the immunity from civil liability granted to employers under this title for injuries to that employer's employees for damages suffered by reason of injuries sustained in the course of employment and to the dependents and legal representatives of an employee whose death results from injuries sustained in the course of employment. The employer is liable for the premiums, reimbursements, penalties, and interest provided for in this title.

SECTION 14. REPEAL. Section 65-06.2-09 of the North Dakota Century Code is repealed.

SECTION 15. APPLICATION. Section 5 of this Act applies to employer payroll periods ending on or after August 31, 2019.

SECTION 16. APPLICATION. Section 9 of this Act applies to all employer accounts regardless of the date the employer did not secure coverage or did not pay the premium owing.

Approved March 6, 2019

Filed March 6, 2019

CHAPTER 525

HOUSE BILL NO. 1073

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

AN ACT to create and enact a new section to chapter 65-01 and a new section to chapter 65-05 of the North Dakota Century Code, relating to a pilot program to assess alternative forms of dispute resolution and the electronic submission of medical billings; to amend and reenact section 65-01-02, subsection 3 of section 65-01-15.1, sections 65-02-21.1, 65-05-09 and 65-05-10, and subsection 4 of section 65-05-28 of the North Dakota Century Code, relating to functional capacity examinations, medical examinations for full-time paid firefighters and law enforcement officers, licensing required for allied health care professionals, average weekly wage upon recurrence of disability, combined partial disability benefits, and medical noncompliance; to repeal section 65-02-07 of the North Dakota Century Code, relating to the organization seal; to provide a continuing appropriation; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷² **SECTION 1. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions.

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the injured employee was receiving from all employments for which coverage is required or otherwise

²⁷² Section 65-01-02 was also amended by section 1 of House Bill No. 1072, chapter 524, section 137 of Senate Bill No. 2124, chapter 391, and section 2 of Senate Bill No. 2184, chapter 523.

secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the injured employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimantinjured employee during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
 7. "Board" means the workforce safety and insurance board of directors.
 8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
 9. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the injured employee; or is under eighteen years of age and does not reside with the injured employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the injured employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the injured employee for support. A child does not include a married child unless actually dependent on the injured employee as shown on the preceding year's income tax returns.

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury.

b. The term does not include:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.
- (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
- (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.

- (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
 - (7) Injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing 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 pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.
 - (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
 - (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
 - (10) A mental injury arising from mental stimulus.
11. "Date of first disability" means the first date the injured employee was unable to work because of a compensable injury.
 12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
 13. "Director" means the director of the organization.
 14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
 15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.
 16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.
- (2) Aliens.
- (3) County general assistance workers, except those who are engaged in repaying to counties moneys the counties have been compelled by statute to expend for county general assistance.
- (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.
- (2) An individual who is engaged in an illegal enterprise or occupation.
- (3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:
 - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other

efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.

(7) An employer.

17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
 - a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
 - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
 - j. A multidistrict special education unit.
 - k. An area career and technology center.
 - l. A regional education association.
18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
 - a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.

- c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. "Health care provider" includes a doctor, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
23. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
24. "Parent" includes a stepparent and a parent by adoption.
25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
26. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an injured employee from performing any work and results from any one of the following conditions:
- a. Total and permanent loss of sight of both eyes;
 - b. Loss of both legs or loss of both feet at or above the ankle;
 - c. Loss of both arms or loss of both hands at or above the wrist;
 - d. Loss of any two of the members or faculties in subdivision a, b, or c;
 - e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
 - f. Third-degree burns that cover at least forty percent of the body and require grafting;
 - g. A medically documented brain injury affecting cognitive and mental functioning which renders an injured employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or

- h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the injured employee has not reached maximum medical improvement within one hundred four weeks, the injured employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the injured employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
28. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
30. "Temporary total disability" means disability that results in the inability of an injured employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the injured employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
31. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
32. "Valid functional capacities examination" means:
- a. The results of a physical examination consisting of a battery of standardized assessments that offer reliable results in performance-based measures and demonstrate the level and duration an injured employee may return to work.
 - b. The conclusions of medical experts, following observations of other activities the medical expert determines similarly predictive, when the results of the physical examination in subdivision a are not obtained or reliable.

- 32-33. a. "Wages" means:

- (1) An injured 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. Subsection 3 of section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test ~~and a papicolaou smear for women~~. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. If a medical examination produces a false positive result for a condition covered under this section, the organization shall consider the condition to be a compensable injury. In the case of a false positive result, neither the coverage of the condition nor the period of disability may exceed fifty-six days. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section.

SECTION 3. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Alternative dispute resolution - Pilot program - Continuing appropriation.

Notwithstanding any other provision of law, the organization may develop and implement pilot programs to allow the organization to assess alternative forms of dispute resolution to resolve disputes with injured employees. The goal of the pilot program must be to develop timely, cost-effective, and amicable options to resolve disputes during any stage in the claim adjudication or appeal process. A pilot program may address a broad range of approaches, including collaborative efforts between the organization and other public or private entities. Participation of an injured employee in the pilot program is voluntary. No more than fifty thousand dollars per biennium from the workforce safety and insurance fund is appropriated to the organization on a continuing basis for payment of organization expenses associated with the pilot program.

²⁷³ **SECTION 4. AMENDMENT.** Section 65-02-21.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-21.1. Licensure required for psychologists and physiciansallied health care professionals performing utilization review.

PsychologistsAllied health care professionals making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the North Dakota board of medicine. This requirement does not apply to psychologists or physiciansor conducting independent medical examinations or independent medical reviews under section 65-05-28 shall have current licenses from a state licensing agency within the United States.

SECTION 5. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Medical bills - Electronic acceptance.

The organization shall establish guidelines, systems, and procedures for the acceptance of medical bills and supporting documentation by electronic methods. Health care providers shall submit medical bills and supporting documentation to the organization by this electronic method no later than July 1, 2021.

SECTION 6. AMENDMENT. Section 65-05-09 of the North Dakota Century Code is amended and reenacted as follows:

65-05-09. Temporary total or permanent total disability - Weekly and aggregate benefit.

If an injury causes temporary total or permanent total disability, the fund shall pay to the disabledinjured employee during that disability a weekly benefit equal to sixty-six and two-thirds percent of the gross weekly wage of the injured employee, subject to a minimum of sixty percent and a maximum of one hundred twenty-five percent of the average weekly wage in the state. If an injured employee is disabled due to an injury, that injured employee's benefits will be based upon the injured employee's wage and the organization benefit rates in effect on the date of first disability.

1. ~~Unless otherwise provided in this subsection, if an injured employee suffers disability but is able to return to employment for a period of three consecutive~~

²⁷³ Section 65-02-21.1 was also amended by section 6 of Senate Bill No. 2184, chapter 523.

calendar months or more, that injured employee's benefits will be based upon the wage in effect received at the time of the recurrence of the disability ~~or upon the wage that employee received prior to the injury, whichever is higher.~~ If the wage received at the time of the recurrence of the disability is lower than the wage received before the injury and the lower wage is due to the physical limitations of the compensable injury, the injured employee's benefits must be based upon the wage the injured employee received before the injury. It is the burden of the injured employee to show the inability to earn as much as the injured employee earned before the injury is due to the physical limitation related to the injury. The organization benefit rates are those in effect at the time of that recurrence.

2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the injured employee after deductions for social security and federal income tax.
3. When an injured employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that injured employee's weekly benefit as is necessary may be used by the organization to help defray the cost of the nursing home care.

SECTION 7. AMENDMENT. Section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

65-05-10. Partial disability - Weekly benefit.

If the injury causes temporary partial disability resulting in decrease of earning capacity, the disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the injured employee's wage-earning capacity after the injury in the same or another employment. Partial disability benefits are subject to a maximum of one hundred twenty-five percent of the average weekly wage in the state. The combined partial disability benefits, dependency allowance, and postinjury wage-earning capacity may not exceed ninety percent of the preinjury weekly wage of the injured employee after deductions for social security and federal income tax.

1. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the organization.
2. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The organization may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity if the job employs the employee to full work capacity in terms of

hours worked per week, and if the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

274 **SECTION 8. AMENDMENT.** Subsection 4 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

4. If an injured employee, or the injured employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination or treatment, or refuses to reasonably participate in medical or other treatments or examinations, ~~the injured employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the injured employee is medically noncompliant. If the organization determines an injured employee is medically noncompliant without good cause, the organization shall discontinue disability and vocational rehabilitation benefits. At any time the injured employee is medically noncompliant, efforts by the injured employee to come into compliance are not considered successful compliance until the injured employee has been compliant for a period of at least sixty days. If the period of medical noncompliance continues for sixty days following the date disability and vocational rehabilitation benefits are discontinued, or a second instance of medical noncompliance occurs without good cause, the organization may not pay any further disability and vocational rehabilitation benefits, regardless of whether the injured employee sustained a significant change in medical condition due to the work injury. The period of the refusal or obstruction noncompliance~~ must be deducted from the period for which compensation is payable to the injured employee.

SECTION 9. REPEAL. Section 65-02-07 of the North Dakota Century Code is repealed.

SECTION 10. APPLICATION. Sections 1, 2, 4, 6, 7, and 8 of this Act apply to all claims regardless of date of injury.

Approved March 13, 2019

Filed March 14, 2019

274 Section 65-05-28 was also amended by section 12 of Senate Bill No. 2184, chapter 523.

CHAPTER 526

HOUSE BILL NO. 1240

(Representatives Mitskog, Becker, Boschee, Roers Jones, D. Ruby)
(Senators Burckhard, Oban, J. Roers)

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to workforce safety and insurance pilot program; to amend and reenact section 65-05.1-06.3 of the North Dakota Century Code, relating to rehabilitation services pilot programs; and to provide for a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Pilot programs - Report to legislative management.

Annually the organization shall report to the legislative management on the status of any current pilot programs and pilot programs completed within the previous twelve months. The report must include a summary of findings and recommendations on each pilot program, together with any legislation required to implement the recommendations.

SECTION 2. AMENDMENT. Section 65-05.1-06.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.3. Rehabilitation services pilot programs - Reports.

The organization may implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services. A pilot program may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the outcome of the rehabilitation services offered by the organization to assist the injured employee in making adjustments necessitated from the employee's injury and to improve the effectiveness of vocational rehabilitation services in returning an employee to substantial gainful employment. Notwithstanding laws to the contrary, a pilot program may address a broad range of approaches, including collaborative efforts between the organization and the injured employee through which there are variances from the rehabilitation services hierarchy; return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of public and private entities. If a pilot program utilizes coordination of services of other state agencies, such as job service North Dakota, department of human services, North Dakota university system, or department of public instruction, the organization shall consult with the state agency in establishing the relevant portions of the pilot program and the state agency shall cooperate with the organization in implementing the pilot program. ~~The organization shall include in its biennial report to the workers' compensation review committee under section 54-35-22~~ provide status reports on current pilot programs in accordance with section 1 of this Act.

Approved March 13, 2019

Filed March 14, 2019

CHAPTER 527

HOUSE BILL NO. 1062

(Representative Keiser)
(Senator Klein)

AN ACT to amend and reenact subsection 2 of section 65-02-03.1 of the North Dakota Century Code, relating to the appointment of workforce safety and insurance board members; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Board members shall serve four-year terms. The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each ~~odd-numbered~~even-numbered year. A board member whose initial appointment was before August 1, 2007, may not serve more than three consecutive terms and a board member whose initial appointment was after July 31, 2007, may not serve more than two consecutive terms.
 - a. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the member for an employer representative from a list of three potential candidates submitted by a coordinating committee appointed by the governor, composed of representatives from the associated general contractors of North Dakota, the North Dakota petroleum council, the greater North Dakota chamber of commerce, the North Dakota motor carriers association, the North Dakota hospital association, the national federation of independent business, the lignite energy council, and other statewide business interests.
 - b. The governor shall select the member for the organized labor employee representative from a list of three potential candidates submitted by an organization that is statewide in scope and which through the organization's affiliates embraces a cross section and a majority of organized labor in this state.
 - c. The governor shall select the two employee representatives who do not represent organized labor and the member at large.
 - d. The governor shall select the member representing the North Dakota medical association from a list of three potential candidates submitted by the North Dakota medical association.
 - e. Within the thirty days following receipt of a list of potential candidates representing employers, organized labor, or the North Dakota medical association, the governor may reject the list and request that the submitting entity submit a new list of potential candidates.

SECTION 2. APPLICATION. This Act applies to board members appointed or reappointed after July 31, 2019. The term of a board member whose term is scheduled to end on December 31, 2020, or December 31, 2022, must be extended for one year to transition all board terms to begin in even-numbered years.

Approved March 13, 2019

Filed March 14, 2019

CHAPTER 528

HOUSE BILL NO. 1188

(Representatives Keiser, Jones)

AN ACT to amend and reenact section 65-05-09.3 of the North Dakota Century Code, relating to the termination of benefits upon retirement; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. An employee who has retired or voluntarily withdrawn from the labor force and who, at that time, was not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits or to receive a rehabilitation allowance from the organization is presumed retired from the labor market. The presumption may be rebutted by a preponderance of the evidence; however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement.
2. An injured employee who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits, unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, is considered retired. The organization may not pay any disability benefits, rehabilitation benefits, or supplementary benefits to an employee who is considered retired; however, the employee remains eligible for medical benefits, permanent partial impairment benefits, and the additional benefit payable under section 65-05-09.4.
3. The organization retains liability for disability benefits, rehabilitation benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits, unless the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, and who is gainfully employed and who suffers an injury arising out of and in the course of that employment. The organization may not pay disability or rehabilitation benefits under this subsection for more than three years, subject to section 65-05-09.2, for injuries occurring after August 1, 1997.
4. If an employee is injured within the two years preceding the employee's presumed retirement date, the organization shall pay disability benefits, rehabilitation benefits, or a combination of both benefits for no more than two

years. If the duration of disability benefits, rehabilitation benefits, or a combination of both benefits extends beyond the presumed retirement date, the organization shall convert the benefit to an additional benefit payable at the date the disability ends or when two years of benefits have been paid, whichever occurs first.

5. This section applies to an individual who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, after July 31, 1995.
6. An injured employee who has received disability benefits that have been discontinued before retirement in accordance with this section is eligible to receive disability benefits after retirement if the injured employee meets the reapplication criteria under subsection 1 of section 65-05-08. Disability and rehabilitation benefits received under this subsection may not exceed three years.

SECTION 2. APPLICATION. This Act applies to reapplications filed after July 31, 2019.

Approved March 13, 2019

Filed March 14, 2019