

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2109

Introduced by

Industry and Business Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to amend and reenact sections 65-01-02, 65-01-16, and 65-02-27,
2 subsection 1 of section 65-05-17, and subsection 4 of section 65-05-20.1 of the North Dakota
3 Century Code, relating to the definition of disability, the definition of electronic means, forms and
4 decisions issued by electronic means, requests for rehearing of an administrative order,
5 maximum death benefits, and the scholarship fund; and to provide for application.

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

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

9 **65-01-02. Definitions. (Effective through August 31, 2028)**

10 In this title:

- 11 1. "Acute care" means a short course of intensive diagnostic and therapeutic services
12 provided immediately following a work injury with a rapid onset of pronounced
13 symptoms.
- 14 2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the
15 injury.
- 16 3. "Allied health care professional" includes a health care provider, pharmacist,
17 audiologist, speech language pathologist, or naturopath or any recognized practitioner
18 who provides skilled services pursuant to the prescription of, or under the supervision
19 or direction of any of these individuals.

- 1 4. "Artificial members" includes a device that is a substitute for a natural part, organ,
2 limb, or other part of the body. The term includes a prescriptive device that is an aid for
3 a natural part, organ, limb, or other part of the body if the damage to the prescriptive
4 device is accompanied by an injury to the body. A prescriptive device includes
5 prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
- 6 5. "Artificial replacements" means mechanical aids, including braces, belts, casts, or
7 crutches as may be reasonable and necessary due to compensable injury.
- 8 6. "Average weekly wage" means the weekly wages the injured employee was receiving
9 from all employments for which coverage is required or otherwise secured at the date
10 of first disability. The average weekly wage determined under this subsection must be
11 rounded to the nearest dollar. If the injured employee's wages are not fixed by the
12 week, they must be determined by using the first applicable formula from the schedule
13 below:
 - 14 a. For seasonal employment, during the first consecutive days of disability up to
15 twenty-eight days the average weekly wage is calculated pursuant to the first
16 applicable formula in subdivisions b through g, and after that are calculated as
17 one-fiftieth of the total wages from all occupations during the twelve months
18 preceding the date of first disability or during the tax year preceding the date of
19 first disability, or an average of the three tax years preceding the date of first
20 disability, whichever is highest and for which accurate, reliable, and complete
21 records are readily available.
 - 22 b. The "average weekly wage" of a self-employed employer is determined by the
23 following formula: one fifty-second of the average annual net self-employed
24 earnings reported the three preceding tax years or preceding fifty-two weeks
25 whichever is higher if accurate, reliable, and complete records for those fifty-two
26 weeks are readily available.
 - 27 c. Hourly or daily rate multiplied by number of hours or days worked per seven-day
28 week.
 - 29 d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - 30 e. Biweekly rate divided by two.
 - 31 f. The usual wage paid other employees engaged in similar occupations.

1 g. A wage reasonably and fairly approximating the weekly wage lost by the injured
2 employee during the period of disability.

3 7. "Average weekly wage in the state" means the determination made of the average
4 weekly wage in the state by job service North Dakota on or before July first of each
5 year, computed to the next highest dollar.

6 8. "Board" means the workforce safety and insurance board of directors.

7 9. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half
8 sister, and a brother and sister by adoption. The terms do not include a married
9 brother or sister unless that person actually is dependent.

10 10. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate
11 child, a stepchild, adopted child, posthumous child, foster child, and acknowledged
12 illegitimate child who is under eighteen years of age and resides with the injured
13 employee; or is under eighteen years of age and does not reside with the injured
14 employee but a duty of support is substantiated by an appropriate court order; or is
15 between eighteen and twenty-two years of age and enrolled as a full-time student in
16 any accredited educational institution and dependent upon the injured employee for
17 support; or is eighteen years of age or over and is physically or mentally incapable of
18 self-support and is actually dependent upon the injured employee for support. A child
19 does not include a married child unless actually dependent on the injured employee as
20 shown on the preceding year's income tax returns.

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

24 a. The term includes:

25 (1) Disease caused by a hazard to which an employee is subjected in the
26 course of employment. The disease must be incidental to the character of
27 the business and not independent of the relation of employer and employee.
28 Disease includes effects from radiation.

29 (2) An injury to artificial members.

30 (3) Injuries due to heart attack or other heart-related disease, stroke, and
31 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 that is physiologically 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. Other contributing causes include emotional circumstances that generally accompany work-related injuries, including the loss of function, loss of self-esteem, loss of financial independence, divorce, loss of career or employment position, disruption of lifestyle or family units, anxiousness, uncertainty, or compromised ability to participate in a lifestyle, hobby, or pastime.

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 the organization may pay for preventive treatment for an exposure 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.

- 1 (3) Any injury caused by the use of intoxicants, including recreational marijuana
2 use, or the illegal use of controlled substances.
- 3 (4) An injury that arises out of an altercation in which the injured employee is an
4 aggressor. This paragraph does not apply to public safety employees,
5 including law enforcement officers or private security personnel who are
6 required to engage in altercations as part of their job duties if the altercation
7 arises out of the performance of those job duties.
- 8 (5) An injury that arises out of an illegal act committed by the injured employee.
- 9 (6) An injury that arises out of an employee's voluntary nonpaid participation in
10 any recreational activity, including athletic events, parties, and picnics, even
11 though the employer pays some or all of the cost of the activity.
- 12 (7) Injuries attributable to a pre-existing injury, disease, or other condition,
13 including when the employment acts as a trigger to produce symptoms in
14 the pre-existing injury, disease, or other condition unless the employment
15 substantially accelerates its progression or substantially worsens its
16 severity. Pain is a symptom and may be considered in determining whether
17 there is a substantial acceleration or substantial worsening of a pre-existing
18 injury, disease, or other condition, but pain alone is not a substantial
19 acceleration or a substantial worsening.
- 20 (8) A nonemployment injury that, although acting upon a prior compensable
21 injury, is an independent intervening cause of injury.
- 22 (9) A latent or asymptomatic degenerative condition, caused in substantial part
23 by employment duties, which is triggered or made active by a subsequent
24 injury.
- 25 (10) A mental injury arising from mental stimulus.
- 26 12. "Date of first disability" means the first date the injured employee was unable to work
27 because of a compensable injury.
- 28 13. "Date of maximum medical improvement" or "date of maximum medical recovery"
29 means the date after which further recovery from, or lasting improvement to, an injury
30 or disease can no longer reasonably be anticipated based upon reasonable medical
31 probability.

- 1 14. "Director" means the director of the organization.
- 2 15. "Disability" means loss of actual earnings ~~capacity~~ and may be permanent total,
- 3 temporary total, or partial.
- 4 16. "Electronic means" means relating to technology having electrical, digital, magnetic,
- 5 wireless, optical, electromagnetic, or similar capabilities.
- 6 17. "Employee" means an individual who performs hazardous employment for another for
- 7 remuneration unless the individual is an independent contractor under the
- 8 common-law test.
- 9 a. The term includes:
- 10 (1) All elective and appointed officials of this state and its political subdivisions,
- 11 including municipal corporations and including the members of the
- 12 legislative assembly, all elective officials of any county, and all elective
- 13 peace officers of any city.
- 14 (2) Aliens.
- 15 (3) Human service zone general assistance workers, except those who are
- 16 engaged in repaying to human service zones or the department of health
- 17 and human services moneys the human service zones or the department of
- 18 health and human services have been compelled by statute to expend for
- 19 general assistance.
- 20 (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris
- 21 for the purposes of this title, and no other person has any claim for relief or
- 22 right to claim workforce safety and insurance benefits for any injury to a
- 23 minor worker, but in the event of the award of a lump sum of benefits to a
- 24 minor employee, the lump sum may be paid only to the legally appointed
- 25 guardian of the minor.
- 26 b. The term does not include:
- 27 (1) An individual whose employment is both casual and not in the course of the
- 28 trade, business, profession, or occupation of that individual's employer.
- 29 (2) An individual who is engaged in an illegal enterprise or occupation.
- 30 (3) The spouse of an employer or the child under the age of twenty-two of an
- 31 employer. For purposes of this paragraph and section 65-07-01, "child"

1 means any legitimate child, stepchild, adopted child, foster child, or
2 acknowledged illegitimate child.

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

5 (a) The salesperson or broker must be a licensed real estate agent under
6 section 43-23-05.

7 (b) Substantially all of the salesperson's or broker's remuneration for the
8 services performed as a real estate agent must be directly related to
9 sales or other efforts rather than to the number of hours worked.

10 (c) A written agreement must exist between the salesperson or broker
11 and the person for which the salesperson or broker works, which
12 agreement must provide the salesperson or broker will not be treated
13 as an employee but rather as an independent contractor.

14 (5) The members of the board of directors of a business corporation who are
15 not employed in any capacity by the corporation other than as members of
16 the board of directors.

17 (6) An individual delivering newspapers or shopping news, if substantially all of
18 the individual's remuneration is directly related to sales or other efforts
19 rather than to the number of hours worked and a written agreement exists
20 between the individual and the publisher of the newspaper or shopping
21 news which states the individual is an independent contractor.

22 (7) An employer.

23 (8) An athlete participating in a contact sport. As used in this paragraph,
24 "contact sport" means a team or individual competitive athletic activity that
25 includes significant physical contact between the athletes involved. The
26 term includes football and hockey.

27 ~~17.18.~~ "Employer" means a person that engages or received the services of another for
28 remuneration unless the person performing the services is an independent contractor
29 under the common-law test. The term includes:

30 a. The state and all political subdivisions thereof.

31 b. All public and quasi-public corporations in this state.

- 1 c. Every person, partnership, limited liability company, association, and private
- 2 corporation, including a public service corporation.
- 3 d. The legal representative of any deceased employer.
- 4 e. The receiver or trustee of any person, partnership, limited liability company,
- 5 association, or corporation having one or more employees as herein defined.
- 6 f. The president, vice presidents, secretary, or treasurer of a business corporation,
- 7 but not members of the board of directors of a business corporation who are not
- 8 also officers of the corporation.
- 9 g. The managers of a limited liability company.
- 10 h. The president, vice presidents, secretary, treasurer, or board of directors of an
- 11 association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15,
- 12 36-08, or 49-21.
- 13 i. The clerk, assessor, treasurer, or any member of the board of supervisors of an
- 14 organized township, if the person is not employed by the township in any other
- 15 capacity.
- 16 j. A multidistrict special education unit.
- 17 k. An area career and technology center.
- 18 l. A regional education association.
- 19 ~~48-19.~~ "Fee schedule" means the payment formulas established in the organization
- 20 publication entitled "Medical and Hospital Fees".
- 21 ~~49-20.~~ "Fund" means the workforce safety and insurance fund.
- 22 ~~20-21.~~ "Hazardous employment" means any employment in which one or more employees
- 23 are employed regularly in the same business or in or about the establishment except:
- 24 a. Agricultural or domestic service.
- 25 b. Any employment of a common carrier by railroad.
- 26 c. Any employment for the transportation of property or persons by nonresidents,
- 27 where, in such transportation, the highways are not traveled more than seven
- 28 miles [11.27 kilometers] and return over the same route within the state of North
- 29 Dakota.
- 30 d. All members of the clergy and employees of religious organizations engaged in
- 31 the operation, maintenance, and conduct of the place of worship.

1 ~~21.22.~~ "Health care provider" means a doctor of medicine or osteopathy, chiropractor, dentist,
2 optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, a
3 physical therapist, an advanced practice registered nurse, or a certified physician
4 assistant.

5 ~~22.23.~~ "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the
6 seeds of the plant, the resin extracted from any part of the plant, and every compound,
7 manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the
8 plant, or the resin extracted from any part of the plant as a physician-recommended
9 form of medicine or herbal therapy. The term does not include treatments or
10 preparations specifically approved by the United States food and drug administration
11 as a drug product.

12 ~~23.24.~~ "Noncompliance" means failure to follow the requirements of chapter 65-04. An
13 employer may be in noncompliance regardless of the employer's insured or uninsured
14 status with the organization.

15 ~~24.25.~~ "Organization" means workforce safety and insurance, or the director, or any
16 department head, assistant, or employee of workforce safety and insurance
17 designated by the director, to act within the course and scope of that person's
18 employment in administering the policies, powers, and duties of this title.

19 ~~25.26.~~ "Parent" includes a stepparent and a parent by adoption.

20 ~~26.27.~~ "Payroll report" means the mechanism created by the organization and used by
21 employers to report all employee payroll required by the organization.

22 ~~27.28.~~ "Permanent impairment" means the loss of or loss of use of a member of the body
23 existing after the date of maximum medical improvement and includes disfigurement
24 resulting from an injury.

25 ~~28.29.~~ "Permanent total disability" means disability that is the direct result of a compensable
26 injury that prevents an injured employee from performing any work and results from
27 any one of the following conditions:

- 28 a. Total and permanent loss of sight of both eyes;
29 b. Loss of both legs or loss of both feet at or above the ankle;
30 c. Loss of both arms or loss of both hands at or above the wrist;
31 d. Loss of any two of the members or faculties in subdivision a, b, or c;

- 1 e. Permanent and complete paralysis of both legs or both arms or of one leg and
2 one arm;
- 3 f. Third-degree burns that cover at least forty percent of the body and require
4 grafting;
- 5 g. A medically documented brain injury affecting cognitive and mental functioning
6 which renders an injured employee unable to provide self-care and requires
7 supervision or assistance with a majority of the activities of daily living; or
- 8 h. A compensable injury that results in a permanent partial impairment rating of the
9 whole body of at least twenty-five percent pursuant to section 65-05-12.2.

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

15 ~~29-30.~~ "Rehabilitation services" means nonmedical services reasonably necessary to restore
16 a disabled employee to substantial gainful employment as defined by section
17 65-05.1-01 as near as possible. The term may include vocational evaluation,
18 counseling, education, workplace modification, vocational retraining including training
19 for alternative employment with the same employer, and job placement assistance.

20 ~~30-31.~~ "Seasonal employment" includes occupations that are not permanent or that do not
21 customarily operate throughout the entire year. Seasonal employment is determined
22 by what is customary with respect to the employer at the time of injury.

23 ~~31-32.~~ "Spouse" includes only the decedent's husband or wife who was living with the
24 decedent or was dependent upon the decedent for support at the time of injury.

25 ~~32-33.~~ "Subcontractor" means a person that agrees to perform all or part of the work for a
26 contractor or another subcontractor.

27 ~~33-34.~~ "Temporary total disability" means disability that results in the inability of an injured
28 employee to earn wages as a result of a compensable injury for which disability
29 benefits may not exceed a cumulative total of one hundred four weeks or the date the
30 injured employee reaches maximum medical improvement or maximum medical
31 recovery, whichever occurs first.

1 ~~34.35.~~ "Uninsured" means failure of an employer to secure mandatory coverage with the
2 organization or failure to pay premium, assessment, penalty, or interest, as calculated
3 by the organization, which is more than forty-five days past due. An uninsured
4 employer is subject to chapter 65-09.

5 ~~35.36.~~ "Utilization review" means the initial and continuing evaluation of appropriateness in
6 terms of both the level and the quality of health care and health services provided a
7 patient, based on medically accepted standards. The evaluation must be
8 accomplished by means of a system that identifies the utilization of medical services,
9 based on medically accepted standards, and which refers instances of possible
10 inappropriate utilization to the organization to obtain opinions and recommendations of
11 expert medical consultants to review individual cases for which administrative action
12 may be deemed necessary.

13 ~~36.37.~~ "Valid functional capacities examination" means:

- 14 a. The results of a physical examination consisting of a battery of standardized
15 assessments that offer reliable results in performance-based measures and
16 demonstrate the level and duration an injured employee may return to work.
17 b. The conclusions of medical experts, following observations of other activities the
18 medical expert determines similarly predictive, when the results of the physical
19 examination in subdivision a are not obtained or reliable.

20 ~~37.38.~~ a. "Wages" means:

- 21 (1) An injured employee's remuneration from all employment reportable to the
22 internal revenue service as earned income for federal income tax purposes.
23 (2) For members of the national guard who sustain a compensable injury while
24 on state active duty, "wages" includes income from federal employment and
25 may be included in determining the average weekly wage.
26 (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all
27 employees. The term includes all pretax deductions for amounts allocated
28 by the employee for deferred compensation, medical reimbursement,
29 retirement, or any similar program, but may not include dismissal or
30 severance pay.

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

5 **Definitions. (Effective after August 31, 2028)**

6 In this title:

- 7 1. "Acute care" means a short course of intensive diagnostic and therapeutic services
8 provided immediately following a work injury with a rapid onset of pronounced
9 symptoms.
- 10 2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the
11 injury.
- 12 3. "Allied health care professional" includes a health care provider, pharmacist,
13 audiologist, speech language pathologist, or naturopath or any recognized practitioner
14 who provides skilled services pursuant to the prescription of, or under the supervision
15 or direction of any of these individuals.
- 16 4. "Artificial members" includes a device that is a substitute for a natural part, organ,
17 limb, or other part of the body. The term includes a prescriptive device that is an aid for
18 a natural part, organ, limb, or other part of the body if the damage to the prescriptive
19 device is accompanied by an injury to the body. A prescriptive device includes
20 prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
- 21 5. "Artificial replacements" means mechanical aids, including braces, belts, casts, or
22 crutches as may be reasonable and necessary due to compensable injury.
- 23 6. "Average weekly wage" means the weekly wages the injured employee was receiving
24 from all employments for which coverage is required or otherwise secured at the date
25 of first disability. The average weekly wage determined under this subsection must be
26 rounded to the nearest dollar. If the injured employee's wages are not fixed by the
27 week, they must be determined by using the first applicable formula from the schedule
28 below:
- 29 a. For seasonal employment, during the first consecutive days of disability up to
30 twenty-eight days the average weekly wage is calculated pursuant to the first
31 applicable formula in subdivisions b through g, and after that are calculated as

1 one-fiftieth of the total wages from all occupations during the twelve months
2 preceding the date of first disability or during the tax year preceding the date of
3 first disability, or an average of the three tax years preceding the date of first
4 disability, whichever is highest and for which accurate, reliable, and complete
5 records are readily available.

6 b. The "average weekly wage" of a self-employed employer is determined by the
7 following formula: one fifty-second of the average annual net self-employed
8 earnings reported the three preceding tax years or preceding fifty-two weeks
9 whichever is higher if accurate, reliable, and complete records for those fifty-two
10 weeks are readily available.

11 c. Hourly or daily rate multiplied by number of hours or days worked per seven-day
12 week.

13 d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.

14 e. Biweekly rate divided by two.

15 f. The usual wage paid other employees engaged in similar occupations.

16 g. A wage reasonably and fairly approximating the weekly wage lost by the injured
17 employee during the period of disability.

18 7. "Average weekly wage in the state" means the determination made of the average
19 weekly wage in the state by job service North Dakota on or before July first of each
20 year, computed to the next highest dollar.

21 8. "Board" means the workforce safety and insurance board of directors.

22 9. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half
23 sister, and a brother and sister by adoption. The terms do not include a married
24 brother or sister unless that person actually is dependent.

25 10. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate
26 child, a stepchild, adopted child, posthumous child, foster child, and acknowledged
27 illegitimate child who is under eighteen years of age and resides with the injured
28 employee; or is under eighteen years of age and does not reside with the injured
29 employee but a duty of support is substantiated by an appropriate court order; or is
30 between eighteen and twenty-two years of age and enrolled as a full-time student in
31 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.

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 that is physiologically 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. Other contributing

1 causes include emotional circumstances that generally accompany
2 work-related injuries, including the loss of function, loss of self-esteem, loss
3 of financial independence, divorce, loss of career or employment position,
4 disruption of lifestyle or family units, anxiousness, uncertainty, or
5 compromised ability to participate in a lifestyle, hobby, or pastime.

6 b. The term does not include:

- 7 (1) Ordinary diseases of life to which the general public outside of employment
8 is exposed or preventive treatment for communicable diseases, except the
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11 course of employment and for exposure to rabies occurring in the course of
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- 13 (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an
14 injury caused by the employee's willful intention to injure or kill another.
- 15 (3) Any injury caused by the use of intoxicants, including recreational marijuana
16 use, or the illegal use of controlled substances.
- 17 (4) An injury that arises out of an altercation in which the injured employee is an
18 aggressor. This paragraph does not apply to public safety employees,
19 including law enforcement officers or private security personnel who are
20 required to engage in altercations as part of their job duties if the altercation
21 arises out of the performance of those job duties.
- 22 (5) An injury that arises out of an illegal act committed by the injured employee.
- 23 (6) An injury that arises out of an employee's voluntary nonpaid participation in
24 any recreational activity, including athletic events, parties, and picnics, even
25 though the employer pays some or all of the cost of the activity.
- 26 (7) Injuries attributable to a pre-existing injury, disease, or other condition,
27 including when the employment acts as a trigger to produce symptoms in
28 the pre-existing injury, disease, or other condition unless the employment
29 substantially accelerates its progression or substantially worsens its
30 severity. Pain is a symptom and may be considered in determining whether
31 there is a substantial acceleration or substantial worsening of a pre-existing

1 injury, disease, or other condition, but pain alone is not a substantial
2 acceleration or a substantial worsening.

3 (8) A nonemployment injury that, although acting upon a prior compensable
4 injury, is an independent intervening cause of injury.

5 (9) A latent or asymptomatic degenerative condition, caused in substantial part
6 by employment duties, which is triggered or made active by a subsequent
7 injury.

8 (10) A mental injury arising from mental stimulus.

9 12. "Date of first disability" means the first date the injured employee was unable to work
10 because of a compensable injury.

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

15 14. "Director" means the director of the organization.

16 15. "Disability" means loss of actual earnings capacity and may be permanent total,
17 temporary total, or partial.

18 16. "Electronic means" means relating to technology having electrical, digital, magnetic,
19 wireless, optical, electromagnetic, or similar capabilities.

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

23 a. The term includes:

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

28 (2) Aliens.

29 (3) Human service zone general assistance workers, except those who are
30 engaged in repaying to human service zones or the department of health
31 and human services moneys the human service zones or the department of

1 health and human services have been compelled by statute to expend for
2 general assistance.

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

9 b. The term does not include:

- 10 (1) An individual whose employment is both casual and not in the course of the
11 trade, business, profession, or occupation of that individual's employer.
12 (2) An individual who is engaged in an illegal enterprise or occupation.
13 (3) The spouse of an employer or the child under the age of twenty-two of an
14 employer. For purposes of this paragraph and section 65-07-01, "child"
15 means any legitimate child, stepchild, adopted child, foster child, or
16 acknowledged illegitimate child.
17 (4) A real estate broker or real estate salesperson, provided the individual
18 meets the following three requirements:
19 (a) The salesperson or broker must be a licensed real estate agent under
20 section 43-23-05.
21 (b) Substantially all of the salesperson's or broker's remuneration for the
22 services performed as a real estate agent must be directly related to
23 sales or other efforts rather than to the number of hours worked.
24 (c) A written agreement must exist between the salesperson or broker
25 and the person for which the salesperson or broker works, which
26 agreement must provide the salesperson or broker will not be treated
27 as an employee but rather as an independent contractor.
28 (5) The members of the board of directors of a business corporation who are
29 not employed in any capacity by the corporation other than as members of
30 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.

~~47-18.~~ "Employer" means a person 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.

~~48-19.~~ "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".

1 ~~19.20.~~ "Fund" means the workforce safety and insurance fund.

2 ~~20.21.~~ "Hazardous employment" means any employment in which one or more employees
3 are employed regularly in the same business or in or about the establishment except:

4 a. Agricultural or domestic service.

5 b. Any employment of a common carrier by railroad.

6 c. Any employment for the transportation of property or persons by nonresidents,
7 where, in such transportation, the highways are not traveled more than seven
8 miles [11.27 kilometers] and return over the same route within the state of North
9 Dakota.

10 d. All members of the clergy and employees of religious organizations engaged in
11 the operation, maintenance, and conduct of the place of worship.

12 ~~21.22.~~ "Health care provider" means a doctor of medicine or osteopathy, chiropractor, dentist,
13 optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, a
14 physical therapist, an advanced practice registered nurse, or a certified physician
15 assistant.

16 ~~22.23.~~ "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the
17 seeds of the plant, the resin extracted from any part of the plant, and every compound,
18 manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the
19 plant, or the resin extracted from any part of the plant as a physician-recommended
20 form of medicine or herbal therapy. The term does not include treatments or
21 preparations specifically approved by the United States food and drug administration
22 as a drug product.

23 ~~23.24.~~ "Noncompliance" means failure to follow the requirements of chapter 65-04. An
24 employer may be in noncompliance regardless of the employer's insured or uninsured
25 status with the organization.

26 ~~24.25.~~ "Organization" means workforce safety and insurance, or the director, or any
27 department head, assistant, or employee of workforce safety and insurance
28 designated by the director, to act within the course and scope of that person's
29 employment in administering the policies, powers, and duties of this title.

30 ~~25.26.~~ "Parent" includes a stepparent and a parent by adoption.

1 ~~26-27.~~ "Payroll report" means the mechanism created by the organization and used by
2 employers to report all employee payroll required by the organization.

3 ~~27-28.~~ "Permanent impairment" means the loss of or loss of use of a member of the body
4 existing after the date of maximum medical improvement and includes disfigurement
5 resulting from an injury.

6 ~~28-29.~~ "Permanent total disability" means disability that is the direct result of a compensable
7 injury that prevents an injured employee from performing any work and results from
8 any one of the following conditions:

9 a. Total and permanent loss of sight of both eyes;

10 b. Loss of both legs or loss of both feet at or above the ankle;

11 c. Loss of both arms or loss of both hands at or above the wrist;

12 d. Loss of any two of the members or faculties in subdivision a, b, or c;

13 e. Permanent and complete paralysis of both legs or both arms or of one leg and
14 one arm;

15 f. Third-degree burns that cover at least forty percent of the body and require
16 grafting;

17 g. A medically documented brain injury affecting cognitive and mental functioning
18 which renders an injured employee unable to provide self-care and requires
19 supervision or assistance with a majority of the activities of daily living; or

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

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

27 ~~29-30.~~ "Rehabilitation services" means nonmedical services reasonably necessary to restore
28 a disabled employee to substantial gainful employment as defined by section
29 65-05.1-01 as near as possible. The term may include vocational evaluation,
30 counseling, education, workplace modification, vocational retraining including training
31 for alternative employment with the same employer, and job placement assistance.

- 1 ~~30:31.~~ "Seasonal employment" includes occupations that are not permanent or that do not
2 customarily operate throughout the entire year. Seasonal employment is determined
3 by what is customary with respect to the employer at the time of injury.
- 4 ~~31:32.~~ "Spouse" includes only the decedent's husband or wife who was living with the
5 decedent or was dependent upon the decedent for support at the time of injury.
- 6 ~~32:33.~~ "Subcontractor" means a person that agrees to perform all or part of the work for a
7 contractor or another subcontractor.
- 8 ~~33:34.~~ "Temporary total disability" means disability that results in the inability of an injured
9 employee to earn wages as a result of a compensable injury for which disability
10 benefits may not exceed a cumulative total of one hundred four weeks or the date the
11 injured employee reaches maximum medical improvement or maximum medical
12 recovery, whichever occurs first.
- 13 ~~34:35.~~ "Uninsured" means failure of an employer to secure mandatory coverage with the
14 organization or failure to pay premium, assessment, penalty, or interest, as calculated
15 by the organization, which is more than forty-five days past due. An uninsured
16 employer is subject to chapter 65-09.
- 17 ~~35:36.~~ "Utilization review" means the initial and continuing evaluation of appropriateness in
18 terms of both the level and the quality of health care and health services provided a
19 patient, based on medically accepted standards. The evaluation must be
20 accomplished by means of a system that identifies the utilization of medical services,
21 based on medically accepted standards, and which refers instances of possible
22 inappropriate utilization to the organization to obtain opinions and recommendations of
23 expert medical consultants to review individual cases for which administrative action
24 may be deemed necessary.
- 25 ~~36:37.~~ "Valid functional capacities examination" means:
- 26 a. The results of a physical examination consisting of a battery of standardized
27 assessments that offer reliable results in performance-based measures and
28 demonstrate the level and duration an injured employee may return to work.
- 29 b. The conclusions of medical experts, following observations of other activities the
30 medical expert determines similarly predictive, when the results of the physical
31 examination in subdivision a are not obtained or reliable.

~~37.38.~~ 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. Section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

65-01-16. Decisions by organization - Disputed decisions.

The following procedures must be followed in ~~claims~~a claim for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

1. The organization shall send a copy of each initial claim form filed with the organization to the claimant's employer, by regular mail or electronic means, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed.
2. The organization may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of record.
3. The organization may issue a notice of decision for any decision made by informal internal review and shall ~~serve~~issue the notice of decision on the parties by regular mail or electronic means. A notice of decision must include a statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.

- 1 4. A party has forty-five days from the day the notice of decision was ~~mailed~~issued by the
2 organization by regular mail or electronic means to file a written request for
3 reconsideration. The request for reconsideration is considered filed only upon receipt
4 by the organization. The employer is not required to file the request through an
5 attorney. The request must state the reason for disagreement with the organization's
6 decision and the desired outcome. The request may be accompanied by additional
7 evidence not previously submitted to the organization. The organization shall
8 reconsider the matter by informal internal review of the information of record. Absent a
9 timely and sufficient request for reconsideration, the notice of decision is final and may
10 not be reheard or appealed.
- 11 5. After receiving a request for reconsideration, the organization shall ~~serve on~~issue to
12 the parties by regular mail or electronic means, a notice of decision reversing the
13 previous decision or, ~~in accordance with the North Dakota Rules of Civil Procedure~~, an
14 administrative order that includes its findings, conclusions, and order. The organization
15 may ~~serve~~issue an administrative order on any decision made by informal internal
16 review without first issuing a notice of decision and receiving a request for
17 reconsideration. If the organization does not issue an order within sixty days of
18 receiving a request for reconsideration, any interested party may request, and the
19 organization shall promptly issue, an appealable determination.
- 20 6. An employee has forty-five days from the day the administrative order was mailed in
21 which to file a request for assistance from the decision review office under section
22 65-02-27.
- 23 7. A party has forty-five days, from the date of ~~service~~issuance of an administrative order
24 or from the day the decision review office ~~mails~~issues its notice by regular mail or
25 electronic means that the office's assistance is complete, in which to file a written
26 request for rehearing. The request must specifically state each alleged error of fact
27 and law to be reheard and the relief sought. The request for rehearing is considered
28 filed only upon receipt by the organization. Absent a timely and sufficient request for
29 rehearing, the administrative order is final and may not be reheard or appealed.
- 30 8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the
31 provisions of that chapter do not conflict with this section.

1 9. A party may appeal a posthearing administrative order to district court in accordance
2 with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing
3 to district court a final order issued by a hearing officer under this title.

4 10. Any notice of decision, administrative order, or posthearing administrative order is
5 subject to review and reopening under section 65-05-04.

6 **SECTION 3. AMENDMENT.** Section 65-02-27 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **65-02-27. Decision review office.**

9 The organization's decision review office is established. The decision review office is
10 independent of the claims department of the organization and activities administered through
11 the office must be administered in accordance with this title. The decision review office shall
12 provide assistance to an injured employee who has filed a claim, which may include acting on
13 behalf of an injured employee who is aggrieved by a decision of the organization,
14 communicating with organization staff regarding claim dispute resolution, and informing an
15 injured employee of the effect of decisions made by the organization, an injured employee, or
16 an employer under this title. The organization shall employ a director of the decision review
17 office and other personnel determined to be necessary for the administration of the office. An
18 individual employed to administer the decision review office may not act as an attorney for an
19 injured employee. The organization may not pay attorney's fees to an attorney who represents
20 an injured employee in a disputed claim before the organization unless the injured employee
21 has first attempted to resolve the dispute through the decision review office. A written request
22 for assistance by an injured employee who contacts the decision review office within the period
23 for requesting a hearing on an administrative order tolls the time period for requesting a hearing
24 on that order. The period begins upon notice to the injured employee, sent~~issued~~ by regular mail
25 or electronic means, that the decision review office's assistance to the injured employee is
26 completed. The information contained in a file established by the decision review office on an
27 injured employee's disputed claim, including communications from an injured employee, is
28 privileged and may not be released without the injured employee's permission. Information in
29 the file containing the notes or mental impressions of decision review office staff is confidential
30 and may not be released by the decision review office.

SECTION 4. AMENDMENT. Subsection 1 of section 65-05-17 of the North Dakota Century Code is amended and reenacted as follows:

1. To the decedent's spouse or to the guardian of the children of the decedent, an amount equal to the benefit rate for total disability under section 65-05-09. All recipients of benefits under this subsection are eligible for benefits at the rate provided in this section, regardless of the date of death of the deceased employee. These benefits continue until the death of the decedent's spouse; or, if the surviving children of the decedent are under the care of a guardian, until those children no longer meet the definition of child in this title. If there is more than one guardian for the children who survive the decedent, the organization shall divide the death benefits equally among the children and shall pay benefits to the children's guardians. Total death benefits, including supplementary benefits, paid on any one claim may not exceed ~~three hundred thousand~~ four hundred thousand dollars. ~~On July first of each odd-numbered year, the organization shall increase the cap on total death benefits, including supplementary benefits, by ten thousand dollars.~~

SECTION 5. AMENDMENT. Subsection 4 of section 65-05-20.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The total amount awarded annually in scholarships may not exceed five hundred thousand dollars. The maximum amount payable on behalf of an applicant is ~~ten thousand~~ twelve thousand five hundred dollars per year for no more than five years, except that the combined retraining and scholarship periods for applicants successfully completing a rehabilitation program under subdivision g of subsection 4 of section 65-05.1-01 may not exceed five years.

SECTION 6. APPLICATION. Section 1 of this Act, except for the amendment to paragraph 6 of subdivision a of subsection 11 of section 65-01-02, applies to claims for indemnity benefits filed on or after August 1, 2025. The amendment to paragraph 6 of subdivision a of subsection 11 of section 65-01-02 applies to all claims regardless of date of injury. The increase in the death benefit cap from \$300,000 to \$400,000 ~~and the biennial increase of \$10,000~~ in section 54 of this Act applies to employee deaths resulting from injuries that occur on or after the effective date of this Act. ~~Each biennial increase in the death benefit~~

- 1 | ~~cap applies only to those deaths occurring from July first of that odd-numbered year through~~
- 2 | ~~June thirtieth of the next odd-numbered year.~~