

2025 SENATE INDUSTRY AND BUSINESS

SB 2109

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2109
1/21/2025

A bill relating to the definition of Disability of Electronic Means, Forms and decisions issues by electronic means, requests for rehearing of an administrative order, maximum death benefits, and the scholarship fund; and to provide for application.

9:00 a.m. Chairman Barta called the meeting to order.

Members present: Chairman Barta, Vice-Chairman Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- Electronic mail option
- Email tracking and verification
- Compensable injury definition
- Denied claims process
- Supreme court compliance
- Number of court cases

9:00 a.m. Tim Wahlin, Chief of Injury Services with WSI, testified in favor and submitted testimony #30267.

9:40 a.m. Arik Spencer, President and CEO of the Greater ND Chamber, testified in favor.

9:43 a.m. Chairman Barta closed the hearing.

9:44 a.m. Senator Klein moved to adopt Amendment LC# 25.8012.01002.

9:44 a.m. Senator Boehm seconded the motion.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

9:45 a.m. Senator Klein motioned a Do Pass As Amended.

9:45 a.m. Senator Kessel seconded the motion.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y

Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

Senator Klein will carry the bill.

9:47 a.m. Chairman Barta closed the hearing.

Audrey Oswald, Committee Clerk

January 21, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2109

Introduced by

Industry and Business Committee

(At the request of Workforce Safety and Insurance)

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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.

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- 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.

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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

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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.

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- 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.

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- 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"

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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.

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

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.

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- 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 ~~18-19.~~ "Fee schedule" means the payment formulas established in the organization
- 20 publication entitled "Medical and Hospital Fees".
- 21 ~~19-20.~~ "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;

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- 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.

~~29-30.~~ "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.

~~30-31.~~ "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.

~~31-32.~~ "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.

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

~~33-34.~~ "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.

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- 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.

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- 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.

Definitions. (Effective after August 31, 2028)

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. "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.
5. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
6. "Average weekly wage" means the weekly wages the injured 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 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

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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

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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.
- (3) Any injury caused by the use of intoxicants, including recreational marijuana use, 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

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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.

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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.

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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

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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
5 right to claim workforce safety and insurance benefits for any injury to a
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.

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

6 (7) An employer.

7 ~~17~~18. "Employer" means a person that engages or received the services of another for
8 remuneration unless the person performing the services is an independent contractor
9 under the common-law test. The term includes:

- 10 a. The state and all political subdivisions thereof.
- 11 b. All public and quasi-public corporations in this state.
- 12 c. Every person, partnership, limited liability company, association, and private
13 corporation, including a public service corporation.
- 14 d. The legal representative of any deceased employer.
- 15 e. The receiver or trustee of any person, partnership, limited liability company,
16 association, or corporation having one or more employees as herein defined.
- 17 f. The president, vice presidents, secretary, or treasurer of a business corporation,
18 but not members of the board of directors of a business corporation who are not
19 also officers of the corporation.
- 20 g. The managers of a limited liability company.
- 21 h. The president, vice presidents, secretary, treasurer, or board of directors of an
22 association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15,
23 36-08, or 49-21.
- 24 i. The clerk, assessor, treasurer, or any member of the board of supervisors of an
25 organized township, if the person is not employed by the township in any other
26 capacity.
- 27 j. A multidistrict special education unit.
- 28 k. An area career and technology center.
- 29 l. A regional education association.

30 ~~18~~19. "Fee schedule" means the payment formulas established in the organization
31 publication entitled "Medical and Hospital Fees".

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- 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.

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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.

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- 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.

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1 ~~37-38.~~ a. "Wages" means:

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

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

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

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

16 **SECTION 2. AMENDMENT.** Section 65-01-16 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **65-01-16. Decisions by organization - Disputed decisions.**

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

21 1. The organization shall send a copy of each initial claim form filed with the organization
22 to the claimant's employer, by regular mail or electronic means, along with a form for
23 the employer's response, if the employer's response has not been filed at the time the
24 claim is filed.

25 2. The organization may conduct a hearing on any matter within its jurisdiction by
26 informal internal review of the information of record.

27 3. The organization may issue a notice of decision for any decision made by informal
28 internal review and shall ~~serve~~ issue the notice of decision on the parties by regular
29 mail or electronic means. A notice of decision must include a statement of the
30 decision, a short summary of the reason for the decision, and notice of the right to
31 reconsideration.

Jim 23 & 25

- 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.

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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.

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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, except for the amendment to paragraph 6 of subdivision a of subsection 11 of section 65-01-02, applies to claims 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 5 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 cap applies only to those deaths occurring from July first of that odd-numbered year through June thirtieth of the next odd-numbered year.

**REPORT OF STANDING COMMITTEE
SB 2109**

Industry and Business Committee (Sen. Barta, Chairman) recommends **AMENDMENTS** ([25.8012.01002](#)) and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2109 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

2025 Senate Bill No. 2109
Testimony before the Senate Industry and Business Committee
Presented by Tim Wahlin, Workforce Safety and Insurance
Date: January 21, 2025

Mr. Chairman and Members of the Committee: My name is Tim Wahlin, Chief of Injury Services with Workforce Safety & Insurance (WSI). I am here today to provide testimony regarding Senate Bill No. 2109. The WSI Board supports this bill.

SECTION 1 (Amended Definition of Disability):

Workers' compensation systems typically provide an injured employee two basic benefits:

1. medical benefits which pay for the care and treatment costs related to the work injury, and
2. disability benefits which provide wage replacement payments as a result of the injury.

In North Dakota, WSI has historically paid workers' compensation disability benefits to replace wages actually lost as a result of a work injury. This interpretation was altered slightly in a North Dakota Supreme Court decision entitled Houn v. WSI, 2005 ND 115. In the Houn case, the North Dakota Supreme Court ruled the statutes allowed initial applicants to receive disability benefits by simply showing a loss in earnings capacity, and not an actual wage loss. This interpretation has proved problematic in a handful of cases each year and WSI seeks to return to the interpretation in place prior to the Houn case.

Typically, an employee is injured while on the job and earning wages, so there is no issue with providing disability benefits to replace wages if the employee is unable to work. However, cases proving particularly problematic are those in which an injured employee's injury progresses after they have left employment. Some examples include when an employee is terminated for cause or must leave employment due to incarceration. In these instances, should the employee's injury worsen while they are not employed, and disability benefits are sought, under Houn, WSI must begin paying disability benefits, even though there are no actual wages to replace as a result of the work injury.

In these problematic cases, wages would likely be based on the employment which they departed potentially years earlier. These infrequent cases have proved to be costly and very difficult to explain to an employer years after an employee has departed.

Adding the proposed language to the definition of "Disability", which requires actual earnings be lost as a result of the work injury, will rectify these otherwise absurd results. It likewise makes parallel the actual wage loss requirement already present in our reapplication system codified at 65-05-08(1)(b).

SECTION 1 (New Definition of Electronic Means):

WSI is in the process of updating its major business technology applications. This is a large, multi-year initiative with multiple releases. One of the goals of updating WSI's technology is to streamline information processes to and from external stakeholders and partners. As a result, the proposed change in this section adds a definition of the term "Electronic means" to provide WSI with the authority to electronically issue decisions in the dispute resolution process when the technology updates allow us to do so. Currently, only regular mail or service by mail is allowed. In approximately the next year, we expect to have the ability to allow a recipient to opt-in to receive electronic notifications. WSI will electronically track and confirm receipt of the notification.

SECTION 2:

The proposed changes in this section provide WSI with the discretion to issue decisions using either regular mail or electronic means in the claims dispute resolution process.

The last proposed change in subsection 7 is to provide the same clarifying language regarding the filing of an appeal as is found in subsection 4 of this section. In order for an appeal to be considered filed by WSI, it has to be received by WSI. This clarifying language was added in subsection 4 during the 2023 Legislative Assembly. As a matter of consistency, it makes sense to have this same clarification language in this part of the appeal process as well.

SECTION 3:

The proposed amendments in this section allow for the Decision Review Office, a step in the dispute resolution process, to issue a notice to an injured employee by regular mail or electronic means.

SECTION 4:

This statute establishes WSI's system of indemnity benefits payable to the survivors of a deceased injured employee. It sets forth who receives the benefits, the rates of payment, and establishes the caps on these payments.

Currently, this benefit is capped at three hundred thousand dollars. This rate was established in 2009 when it increased from two hundred and fifty thousand dollars.

The proposed change will increase the cap to four hundred thousand dollars. Our research suggests this increase puts this benefit in line with workers' compensation systems in several other states.

The proposed changes also increase the benefit cap by ten thousand dollars every odd-numbered year moving forward. This will eliminate the need to revisit benefit cap increases and provide a more predictable compensation system for these benefits.

SECTION 5:

This statute establishes the parameters of our scholarship system. North Dakota provides scholarships to the spouses and children of those employees who are catastrophically injured or who have died as a result of those injuries; to those injured employees who have completed a retraining program; or to those who show exceptional circumstances and would benefit by further education.

This is truly a unique benefit. This amendment proposes to adjust the yearly maximum amount paid to a recipient from ten thousand dollars to twelve thousand five hundred dollars. Our data demonstrates nearly eighty percent of our present applicants do not use the full ten thousand dollars, however, in an effort to anticipate increasing need, we are proactively requesting this change.

SECTION 6:

The section provides for the application dates for each section of this bill.

This concludes my testimony. I am happy to answer any questions you may have.

2025 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2109

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2109
3/5/2025

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

10:12 a.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Finley-DeVile, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Members Absent: Representatives Bahl, Brown

Discussion Topics:

- Objective medical evidence
- Earnings capacity/wage loss
- Progresses after employment
- Scholarship parameters
- Persisting medical history
- Cost of living adjustments

10:12 a.m. Tim Wahlin, Chief of Injury Services, Workforce Safety and Insurance, testified in favor and submitted testimony #38741.

11:00 a.m. Arik Spenser, President/CEO, Greater North Dakota Association, testified in support.

11:01 a.m. Russ Hanson, Association of General Contractors, testified in support.

11:03 a.m. Jaclyn Hall, Executive Director, North Dakota Association for Justice, testified in opposition and submitted testimony #38847.

Additional Written Testimony:

Art Thompson, Director Workforce Safety & Insurance (WSI), submitted testimony in favor #39314

11:37 a.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk

2025 Engrossed Senate Bill No. 2109
Testimony before the House Industry, Business & Labor Committee
Presented by Tim Wahlin, Workforce Safety and Insurance
March 5, 2025

Mr. Chairman and Members of the Committee: My name is Tim Wahlin, Chief of Injury Services with Workforce Safety & Insurance (WSI). I am here today to provide testimony regarding Engrossed Senate Bill No. 2109. The WSI Board supports this bill.

SECTION 1 (Amended Definition of Compensable Injury 65-01-02(11)(a)(6)):

The Engrossed Bill contains an amended definition regarding mental or psychological conditions. This amendment was precipitated by a recent Supreme Court ruling invalidating an administrative rule which clarified the existing statutory language. In Reile v. WSI and Core Mark International, Inc., 2025 ND 6, the Court called for the Legislature to act, “to the extent the statute requires clarification, it is not within in the purview of the executive branch to provide it.” (Paragraph 23). WSI echoes this request to clarify the statute. Clarity eliminates most litigation and allows the agency to fairly and consistently administrate benefits.

In North Dakota, “A mental injury arising from mental stimulus” is not a compensable injury. NDCC § 65-01-02(11)(b)(10). These are commonly referred to as “mental-mental” claims. In order for a mental or psychological condition to be compensable, there must be a physical injury. However, a mental or psychological condition is not necessarily compensable just because it is associated with a physical injury. North Dakota law states a compensable injury includes:

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. NDCC § 65-01-02(11)(a)(6).

Determining fifty percent of the cause of a psychological or mental condition and conducting a comparative assessment of the other causes is complicated. Mental conditions often lack clear causes and are diagnosed, in part, based on an individual’s self-reported symptoms which make it harder to objectively verify. This is very different than most physical injuries that can be documented with x-rays, MRI’s, and other objective tests. As a result, in 2017, WSI adopted an administrative rule to provide clarity in applying the statute. Without this definition, arguments to include most any psychological condition exist.

The administrative rule clarified a physical injury must be the direct cause of the mental or psychological condition and must be the physiological product of the physical injury shown by objective medical evidence. Mental or psychological conditions that are a physiological product of the physical injury can be found in such injuries as suffocations, poisonings, or trauma to the brain. These types of injuries, in and of themselves, cause changes in brain function that can be proven by objective medical evidence.

The rule further clarified the “other contributing causes” that are not considered compensable. These contributing causes are not the physiological products of the work injury, rather, they are emotional stressors or mental responses to the work injury. These responses vary widely in

individuals, based on personal experiences and perceptions. The clarification provided in the rule keeps the focus on the physical injury and provides compensability for those mental and psychological conditions that can be verified with objective medical evidence.

The amendment has incorporated terms and will both clarify and simplify application of the standard. Without the clarifying language, ironically, it will be the courts that will clarify the statute through caselaw.

SECTION 1 (Amended Definition of Disability):

Workers' compensation systems typically provide an injured employee two basic benefits:

1. medical benefits which pay for the care and treatment costs related to the work injury, and
2. disability benefits which provide wage replacement payments as a result of the injury.

In North Dakota, WSI has historically paid workers' compensation disability benefits to replace wages actually lost as a result of a work injury. This interpretation was altered slightly in a North Dakota Supreme Court decision entitled Houn v. WSI, 2005 ND 115. In the Houn case, the North Dakota Supreme Court ruled the statutes allowed initial applicants to receive disability benefits by simply showing a loss in earnings capacity, and not an actual wage loss. This interpretation has proved problematic in a handful of cases each year and WSI seeks to return to the interpretation in place prior to the Houn case.

Typically, an employee is injured while on the job and earning wages, so there is no issue with providing disability benefits to replace wages if the employee is unable to work. However, cases proving particularly problematic are those in which an injured employee's injury progresses after they have left employment. Some examples include when an employee is terminated for cause or must leave employment due to incarceration. In these instances, should the employee's injury worsen while they are not employed, and disability benefits are sought, under Houn, WSI must begin paying disability benefits, even though there are no actual wages to replace as a result of the work injury.

In these problematic cases, wages would likely be based on the employment which they departed potentially years earlier. These infrequent cases have proved to be costly and very difficult to explain to an employer years after an employee has departed.

Adding the proposed language to the definition of "Disability", which requires actual earnings be lost as a result of the work injury, will rectify these otherwise absurd results. It likewise makes parallel the actual wage loss requirement already present in our reapplication system codified at 65-05-08(1)(b).

SECTION 1 (New Definition of Electronic Means):

WSI is in the process of updating its major business technology applications. This is a large, multi-year initiative with multiple releases. One of the goals of updating WSI's technology is to streamline information processes to and from external stakeholders and partners. As a result, the proposed change in this section adds a definition of the term "Electronic means" to provide WSI with the authority to electronically issue decisions in the dispute resolution process when the technology updates allow us to do so. Currently, only regular mail or service by mail is allowed. In approximately the next year, we expect to have the ability to allow a recipient to opt-in to receive electronic notifications. WSI will electronically track and confirm receipt of the notification.

SECTION 2:

The proposed changes in this section provide WSI with the discretion to issue decisions using either regular mail or electronic means in the claims dispute resolution process.

The last proposed change in subsection 7 is to provide the same clarifying language regarding the filing of an appeal as is found in subsection 4 of this section. In order for an appeal to be considered filed by WSI, it has to be received by WSI. This clarifying language was added in subsection 4 during the 2023 Legislative Assembly. As a matter of consistency, it makes sense to have this same clarification language in this part of the appeal process as well.

SECTION 3:

The proposed amendments in this section allow for the Decision Review Office, a step in the dispute resolution process, to issue a notice to an injured employee by regular mail or electronic means.

SECTION 4:

This statute establishes WSI's system of indemnity benefits payable to the survivors of a deceased injured employee. It sets forth who receives the benefits, the rates of payment, and establishes the caps on these payments.

Currently, this benefit is capped at three hundred thousand dollars. This rate was established in 2009 when it increased from two hundred and fifty thousand dollars.

The proposed change will increase the cap to four hundred thousand dollars. Our research suggests this increase puts this benefit in line with workers' compensation systems in several other states.

The proposed changes also increase the benefit cap by ten thousand dollars every odd-numbered year moving forward. This will eliminate the need to revisit benefit cap increases and provide a more predictable compensation system for these benefits.

SECTION 5:

This statute establishes the parameters of our scholarship system. North Dakota provides scholarships to the spouses and children of those employees who are catastrophically injured or who have died as a result of those injuries; to those injured employees who have completed a retraining program; or to those who show exceptional circumstances and would benefit by further education.

This is truly a unique benefit. This amendment proposes to adjust the yearly maximum amount paid to a recipient from ten thousand dollars to twelve thousand five hundred dollars. Our data demonstrates nearly eighty percent of our present applicants do not use the full ten thousand dollars, however, in an effort to anticipate increasing need, we are proactively requesting this change.

SECTION 6:

This section provides for application dates of the Engrossed Bill. On Page 25, Lines 24 and 25, refers to claims for indemnity benefits filed on or after August 1, 2025. Further, on Page 25, Line 28, there is a typographical error which should indicate Section 4, not Section 5.

This concludes my testimony. I am happy to answer any questions you may have.



North Dakota Association for Justice

PO Box 365

Mandan, ND 58554

The Trial Lawyers of North Dakota

Jaclyn Hall, Executive Director

jaclyn@ndaj.org

Chairman Warrey and members of the House Industry, Business and Labor Committee, my name is Jaci Hall, Executive Director of the North Dakota Association for Justice. I am here today opposed to SB2109 in its amended form.

In January of this year, the ND Supreme Court reversed a WSI decision for Mr. Oak Reile. Mr. Reile was a delivery driver who fell off a loading ramp and fractured his cervical spine. He suffered spinal cord injuries and received months of treatment in North Dakota and in Colorado.

Mr. Reile applied for benefits with WSI and was approved for his physical medical benefits but was denied for his mental health claim based on a diagnosis of adjustment disorder with depression.

During his appeal, WSI sought an independent medical review for his mental diagnosis and informed the doctor of the statutory requirements for his psychological condition to be compensable. The letter stated that to assist the doctor with his application, WSI would also include the administrative code, where they defined the statute. This was Admin Code 92-01-02-02.5. The letter went on to instruct the physician that other contributing causes – those included in the amended version of SB2109 – cannot be the source of a compensable psychological condition.

Since the administrative rule does not allow other contributing factors, the physician determined that the depressive disorder could not be caused by the spinal cord injury – instead it was the significant grief related to the loss of sensory and motor function related to the spinal cord injury. The physician admitted Reile's condition is "one hundred percent" the result of the "work injury and the spinal cord damage," but later clarified his answer was not regarding the "physiological basis of the spinal cord injury," but



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instead the “depression is one hundred percent the cause of the, of his emotional reaction to the overwhelming stress.”

The ALJ determined Reile’s condition is compensable under the statute but, because his condition does not meet the requirements of the administrative rule promulgated by WSI, he is not entitled to benefits. Ultimately, Mr. Reile continued to appeal to the ND Supreme Court. The Court reversed the decision and determined that WSI overreached with their interpretation of the statute (65-01-02) and the definition of compensable injury.

SB2109 looks to take the administrative interpretation of the statute, that did not approve a mental disability and make it law after this decision in January. This change would be detrimental to injured workers in North Dakota. Currently, WSI only covers physical disability and relies on this administrative rule to deny mental diagnoses that are a result of a physical disability even though the statute allows for physical / mental diagnoses.

For example, if a police officer is shot in the line of duty and suffers physical impairment along with PTSD, the officer will receive benefits to heal from the physical disability but will not receive coverage to overcome the PTSD. Without healing them mentally, the officer may never be fit for duty again. Nothing physical prevents them from returning, except the mental disability.

I ask you today to remove the underlined amendment on page 4 lines 10-19 and lines 27 and 31 on page 14 and lines 1-5 on page 15 to support physical / mental claims by injured workers. These claims are determined on a case-by-case basis, so not all claims will be approved. This change will just provide the opportunity for cases to be reviewed. With the amended language, the mental diagnosis will be denied 100% because the



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physical injury does not cause the mental diagnosis, it is a result of the changes in lifestyle after the physical injury.

The ND Supreme Court made great strides to support injured workers when they reversed the decision in *Reile vs WSI* last January. They determined that claimants must prove a “causal connection” between the work injury and the condition for which benefits are sought. They concluded that the Legislative Assembly may not delegate to another body the power to make law—to legislate—but it may bestow authority to execute the laws it enacts. Thus, current administrative interpretation of what a compensable injury is is not equivalent to the legislative intent. By passing SB2109, it will take their interpretation and make it law.

SB2109 is not needed, and we ask the amended version be removed and the bill receive a Do Not Pass recommendation by the committee.

Thank you for your time and I will stand for questions.

Thank you for all the time this morning debating SB 2109. I know there are some complex issues included in it.

I wanted to follow up with a few things.

- There were more conversations behind the scenes with the Association of Justice (Formerly the ND Trial Lawyers Assoc) regarding a variety of issues related to this bill and its contents. I and Jodi Bjornson, general counsel, met with them at length on at least 3 occasions. However, talks broke down because the Assoc. of Justice was set on changing the law to make WSI pay attorney fees regardless of whether the attorney representing an injured worker loses or wins their appeal. They wanted a \$10,000 guarantee for attorneys – win or lose. The law states that we pay up to \$7,800 in attorney fees is an Injured Worker **prevails**. This helps to reduce the number of claims that proceed to litigation by making sure attorneys are only bringing cases they believe they can win. ND has the lowest litigation rates in the nation in terms of worker's compensation.
- We are fine with removing the escalator clause on the death benefit if that is causing some concern. I am fully aware of Rep. Ruby's stance on automatic escalators. The recommendation of a built-in escalator came from our legislative review with the prior administration.
- As Tim mentioned, our system functions well when we have clearly defined laws so that all claims are adjudicated under one understanding. Ms. Hall's suggestion that there should be some "discretion" in how we adjudicate claims will cause inconsistency and only lead to increased litigation.
- And yes, the amendment to move language from Admin Rule to Statute was reactionary to the ND Supreme Court decision that came in January. The Court had previously upheld the administrative rule, so we were floored when they gave their ruling on the Riley case and provided guidance that if WSI is to continue adjudicating claims in the manner it has been that needs to be spelled out in Title 65.

If you have any questions prior to your committee work on 2109, please feel free to reach out. Also, we would welcome the opportunity to be present during committee work in the event your members have additional questions.

Thank you again,

Art

Art Thompson | WSI Director
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2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2109
3/19/2025

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

2:31 p.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, C. Brown, T. Brown, Finley-DeVile, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Discussion Topics:

- Rejected injury claim
- Appeal process
- Conflicting medical opinions

2:31 p.m. Senator Larry Luick, District 25, Fairmount, ND, presented an amendment and additional information #43087 and #43099.

2:45 p.m. Jaclyn Hall, Executive Director, ND Association of Justice, answered questions regarding the amendment.

3:05 p.m. Tim Wahlin, Chief of Injury Services, ND Workforce Safety and Insurance (WSI), available to discuss the amendment.

3:54 p.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk

25.8012.02002
Title.

Prepared by the Legislative Council
staff for Senator Luick
March 19, 2025

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, and
2 65-05-08.3, subsection 1 of section 65-05-17, and subsection 4 of section 65-05-20.1 of the
3 North Dakota Century Code, relating to the definition of disability, the definition of electronic
4 means, forms and decisions issued by electronic means, requests for rehearing of an
5 administrative order, health care provider opinions, maximum death benefits, and the
6 scholarship fund; and to provide for application.

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

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

10 **65-01-02. Definitions. (Effective through August 31, 2028)**

11 In this title:

- 12 1. "Acute care" means a short course of intensive diagnostic and therapeutic services
13 provided immediately following a work injury with a rapid onset of pronounced
14 symptoms.
- 15 2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the
16 injury.
- 17 3. "Allied health care professional" includes a health care provider, pharmacist,
18 audiologist, speech language pathologist, or naturopath or any recognized practitioner
19 who provides skilled services pursuant to the prescription of, or under the supervision
20 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

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.
- (3) Any injury caused by the use of intoxicants, including recreational marijuana use, 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

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
5 right to claim workforce safety and insurance benefits for any injury to a
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.

1 ~~37.38.~~ a. "Wages" means:

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

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

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

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

16 **SECTION 2. AMENDMENT.** Section 65-01-16 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **65-01-16. Decisions by organization - Disputed decisions.**

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

21 1. The organization shall send a copy of each initial claim form filed with the organization
22 to the claimant's employer, by regular mail or electronic means, along with a form for
23 the employer's response, if the employer's response has not been filed at the time the
24 claim is filed.

25 2. The organization may conduct a hearing on any matter within its jurisdiction by
26 informal internal review of the information of record.

27 3. The organization may issue a notice of decision for any decision made by informal
28 internal review and shall ~~serve~~issue the notice of decision on the parties by regular
29 mail or electronic means. A notice of decision must include a statement of the
30 decision, a short summary of the reason for the decision, and notice of the right to
31 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. Section 65-05-08.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08.3. Treating health care provider's opinion.

1. A presumption may not be established in favor of any 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 health care provider specializes in the medical issues related to the opinion; and
 - g. Other relevant factors.
2. The organization may not rely solely on the medical opinion of an employee of the organization to deny a claim for benefits and shall inquire and give deference to the treating health care provider.
3. 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 health care provider is an injured employee's treating health care provider.

SECTION 5. 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 6. 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 7. 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 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 5 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 cap applies only to those deaths occurring from July
first of that odd-numbered year through June thirtieth of the next odd-numbered year.

January 15, 2025

Senator Larry Luick
17945 101st St. SE
Fairmount, ND 58030-9522

Re: Workforce Safety & Insurance

I am writing in regard to legislative oversight for state agency Workforce Safety & Insurance. Specifically, WSI's process for unfairly denying claims.

WSI used to follow the pattern of workers compensation providers by writing to an injured worker's treating doctor if there were questions if a work injury caused a condition. WSI now hires family medicine doctors on a contract basis to do anonymous reviews to deny claims. After the anonymous "WSI Physician Advisor" has unfairly framed a denial the WSI claims adjuster *might* decide to ask the treating doctor their opinion. But the doctor is not asked for a straight forward opinion, they are just asked if they agree with the "WSI Physician Advisor".

In the end it doesn't matter if the treating doctor disagrees with WSI, how many treating doctors might disagree, or the specialty of a treating doctor's disagreement. WSI will always artificially weigh the conflicting medical evidence in their biased contracted employee's favor and continue on with denying any and all appeals. Shouldn't the treating doctor and especially a surgeon be trusted over a nameless bureaucrat hired to do paper review denials? Doesn't the treating doctor deserve to know the name of the "WSI Physician Advisor" who is supposedly professionally disagreeing with their expert medical opinion and advice?

Please change the law to level the playing field for injured workers! I suggest 65-05-08.3 be changed.

65-05-08.3 Treating health care provider' opinion

1. A presumption may not be established in favor of any health care provider's opinion. The organization shall resolve conflicting medical opinions and in doing so the organization shall consider the following factors: Providing further that the organization may not rely on the medical opinion of an organization employee to deny a claim for benefits and must inquire initially with the treating doctor.

Thank you for your time. WSI needs some serious guardrails in this area.

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2109
3/24/2025

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

3:05 p.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, C. Brown, T. Brown, Finley-DeVile, Grindberg, Kasper, Koppelman, D. Ruby, Schauer, Vollmer

Member Absent: Representative Schatz

Discussion Topics:

- Increase death benefit
- Increase scholarship
- Retirement benefits

3:05 p.m. Tim Wahlin, Chief of Injury Services, Workforce Safety & Insurance (WSI), was available for questions.

3:19 p.m. Representative D. Ruby moved to adopt amendment #43689.

3:19 p.m. Representative Schauer seconded the motion.

Voice vote.

Motion passed.

3:24 p.m. Representative Koppelman further amended to include amendment LC #25.8012.02002 (presented as testimony 3/19/25, #43087).

3:24 p.m. Representative Kasper seconded the motion.

3:42 p.m. Representative Koppelman withdrew motion to further amend.

4:05 p.m. Representative D. Ruby moved Do Pass as amendment.

4:05 p.m. Representative Schauer seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	N
Representative Jorin Johnson	Y
Representative Landon Bahl	Y
Representative Collette Brown	Y
Representative Timothy Brown	Y
Representative Lisa Finley-DeVille	Y
Representative Karen Grindberg	Y
Representative Jim Kasper	N
Representative Ben Koppelman	N
Representative Dan Ruby	Y
Representative Mike Schatz	AB
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	Y

Motion passed 10-3-1.

4:08 p.m. Representative D. Ruby will carry the bill.

4:08 p.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk

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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.

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- 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.

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- 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

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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.

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- 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.

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- 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"

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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.

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- 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.

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- 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;

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- 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.

~~29-30.~~ "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.

~~30-31.~~ "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.

~~31-32.~~ "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.

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

~~33-34.~~ "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.

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- 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.

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- 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

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- 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

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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

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- 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
9 organization may pay for preventive treatment for an exposure to a
10 bloodborne pathogen as defined in section 23-07.5-01 occurring in the
11 course of employment and for exposure to rabies occurring in the course of
12 employment.
- 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

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- 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

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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
5 right to claim workforce safety and insurance benefits for any injury to a
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.

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

6 (7) An employer.

7 ~~17-18.~~ "Employer" means a person that engages or received the services of another for
8 remuneration unless the person performing the services is an independent contractor
9 under the common-law test. The term includes:

- 10 a. The state and all political subdivisions thereof.
- 11 b. All public and quasi-public corporations in this state.
- 12 c. Every person, partnership, limited liability company, association, and private
13 corporation, including a public service corporation.
- 14 d. The legal representative of any deceased employer.
- 15 e. The receiver or trustee of any person, partnership, limited liability company,
16 association, or corporation having one or more employees as herein defined.
- 17 f. The president, vice presidents, secretary, or treasurer of a business corporation,
18 but not members of the board of directors of a business corporation who are not
19 also officers of the corporation.
- 20 g. The managers of a limited liability company.
- 21 h. The president, vice presidents, secretary, treasurer, or board of directors of an
22 association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15,
23 36-08, or 49-21.
- 24 i. The clerk, assessor, treasurer, or any member of the board of supervisors of an
25 organized township, if the person is not employed by the township in any other
26 capacity.
- 27 j. A multidistrict special education unit.
- 28 k. An area career and technology center.
- 29 l. A regional education association.

30 ~~18-19.~~ "Fee schedule" means the payment formulas established in the organization
31 publication entitled "Medical and Hospital Fees".

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- 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.

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- 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.

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- 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.

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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.

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- 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 ~~mailed~~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.

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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.

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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 ~~5~~ 4 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~~

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- 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.~~

**REPORT OF STANDING COMMITTEE
ENGROSSED SB 2109**

Industry, Business and Labor Committee (Rep. Warrey, Chairman) recommends **AMENDMENTS** ([25.8012.02003](#)) and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). SB 2109 was placed on the Sixth order on the calendar.

Good afternoon.

I sense that Rep. Ruby is contemplating a push to remove the benefit escalator in Section 4 of Engrossed SB2109. In the event an amendment is offered, WSI would ask for consideration to also clean up a couple issues within the Application section. In my opinion neither are absolutely necessary and do not warrant the complexity of an amendment, but if we are in anyways, here are our requests.

Page 25, beginning line 24.

SECTION 6. APPLICATION. Section 1, except for the amendment to paragraph 6 of subdivision a of subsection 11 of section 65-01-02, applies to claims filed for indemnity benefits 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 cap applies only to those deaths occurring from July first of that odd-numbered year through June thirtieth of the next odd-numbered year

Our stand alone requests are in yellow. Those being precipitated by the anticipated amendments are in green.

Tim Wahlin | WSI Chief of Injury Services
701.328.7201 | 800.440.3796 ext 328-7201

