WORKFORCE SAFETY AND INSURANCE

CHAPTER 506

SENATE BILL NO. 2089

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

AN ACT to amend and reenact section 65-01-11 of the North Dakota Century Code, relating to burden of proof in compensation matters; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-11 of the North Dakota Century Code is amended and reenacted as follows:

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

If the organization or an employer claims that an employee is not entitled to the benefits of the North Dakota workforce safety and insurance law because the employee's injury was caused by the employee's willful intention to cause self-injury, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving the exemption or forfeiture is upon the organization or upon the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in ~~49 CFR 383.51~~the Code of Federal Regulations in effect on August 1, 2011, or a level of an illegally used controlled substance sufficient to cause impairment found by a test ~~required~~conducted by a physician, qualified technician, chemist, or registered nurse ~~and performed as required by the United States secretary of transportation under 49 CFR part 40,~~ at or above the cutoff level in ~~part 40~~the Code of Federal Regulations in effect on August 1, 2011, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or an employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated by company policy, the employee forfeits all entitlement to workforce safety and insurance benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to benefits. If a claim for death benefits is filed, the official death

certificate must be considered as evidence of death and may not be used to establish the cause of death.

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

Approved April 19, 2011
Filed April 20, 2011

CHAPTER 507

SENATE BILL NO. 2205

(Senators Nodland, Klein, Schneider)
(Representatives Gruchalla, Keiser, Vigesaa)

AN ACT to amend and reenact subsections 4 and 6 of section 65-01-16 and subsection 2 of section 65-04-32 of the North Dakota Century Code, relating to attorney representation in a request for workforce safety and insurance reconsideration, who may file a request for assistance from the decision review office, and service of an employer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

4. A party has thirty days from the day the notice of decision was mailed by the organization in which to file a written request for reconsideration. The employer is not required to file the request through an attorney. The request must state the ~~alleged errors in the decision and the relief sought~~reason for disagreement with the organization's decision and the desired outcome. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.

SECTION 2. AMENDMENT. Subsection 6 of section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~A party~~An employee has thirty days from the ~~date of service of an~~day the administrative order was mailed in which to file a request for assistance from the decision review office under section 65-02-27.

[189] **SECTION 3. AMENDMENT.** Subsection 2 of section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

2. An employer has thirty days from the ~~date of service~~day the notice of decision was mailed to file a written petition for reconsideration. The employer is not required to file the request through an attorney. The request must state ~~specifically~~ the ~~alleged errors in the decision and the relief sought~~reason for disagreement with the organization's decision and the desired outcome. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.

Approved April 25, 2011
Filed April 25, 2011

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[189] Section 65-04-32 was also amended by section 2 of Senate Bill No. 2114, chapter 512.

CHAPTER 508

HOUSE BILL NO. 1056

(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-02-30 of the North Dakota Century Code, relating to the independent performance evaluation of workforce safety and insurance; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation.

~~Biennially~~Once every four years, the director shall request the state auditor to select a firm with extensive expertise in workers' compensation practices and standards to complete a performance evaluation of the functions and operations of the organization during that ~~biennium~~evaluation period. This may not be construed to require the firm to be a certified public accounting firm. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director or the director's designee, the chairman of the board or the chairman's designee, and a representative of the firm shall present the evaluation report and any action taken to the legislative management's workers' compensation review committee and to the governor. The director shall provide a copy of the performance evaluation report to the state auditor. Except as otherwise provided in this section, the workers' compensation review committee may select no more than four elements to be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor shall include the elements selected by the committee in the performance evaluation, but the state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the workers' compensation review committee, may not exceed eight. In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements. Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation. The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section.

SECTION 2. APPLICATION. An independent performance evaluation under section 1 of this Act may not be initiated until after December 31, 2013.

Approved March 9, 2011
Filed March 9, 2011

CHAPTER 509

HOUSE BILL NO. 1453

(Representative Maragos)
(Senator Larsen)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

5. Under this section, the organization may modify real estate and may provide for adaptations and modifications to motor vehicles as follows:

   a. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed ~~fifty~~seventy-five thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary. The dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subdivision does not allow the organization to purchase any real estate.

   b. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed one hundred thousand dollars to provide the most cost-effective, specially equipped motor vehicle or vehicle adaptations the organization determines medically necessary. The organization may establish factors to be used in determining whether a specially equipped motor vehicle or adaptation is necessary. Under this subdivision, the organization may not pay for insurance of or maintenance of the motor vehicle. Within the dollar limit and under this subdivision, the organization may pay for vehicle or adaptation replacement purchases. The dollar limit is for the life of the injured employee, regardless of any subsequent claim.

   c. In the case of an injured employee who has not sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may provide the benefits under subdivisions a and b if the organization determines the benefits would be cost-effective and appropriate because of exceptional circumstances as determined by the organization.

SECTION 2. APPLICATION. Section 1 of this Act applies to all purchases and repairs that take place on or after the effective date of this Act.

Approved March 14, 2011
Filed March 14, 2011

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[190] Section 65-05-07 was also amended by section 3 of Senate Bill No. 2114, chapter 512.

CHAPTER 510

HOUSE BILL NO. 1051

(Legislative Management)
(Workers' Compensation Review Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. An employee who has retired or voluntarily withdrawn from the labor force and who, at that time, was not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits~~,~~ or to receive a rehabilitation allowance from the organization is presumed retired from the labor market. The presumption may be rebutted by a preponderance of the evidence; however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement.

2. An injured employee who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits~~,~~ or who attains retirement age for social security retirement benefits, unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, is considered retired. The organization may not pay any disability benefits, rehabilitation benefits, or supplementary benefits to an employee who is considered retired; however, the employee remains eligible for medical benefits, permanent partial impairment benefits, and the additional benefit payable under section 65-05-09.4.

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

4. If an employee is injured within the two years preceding the employee's presumed retirement date, the organization shall pay disability benefits,

rehabilitation benefits, or a combination of both benefits for no more than two years. If the duration of disability benefits, rehabilitation benefits, or a combination of both benefits extends beyond the presumed retirement date, the organization shall convert the benefit to an additional benefit payable at the date the disability ends or when two years of benefits have been paid, whichever occurs first.

5. This section applies to ~~all persons~~an individual who ~~begin~~begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits~~,~~ or who ~~attain~~attains retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, after July 31, 1995.

SECTION 2. APPLICATION. This Act applies to an injured employee who attains retirement age for purposes of social security retirement on or after the effective date of this Act.

Approved March 9, 2011
Filed March 9, 2011

CHAPTER 511

HOUSE BILL NO. 1055

(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent partial impairment benefits; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-12.2. Permanent impairment - Compensation - Time paid.

A permanent impairment is not intended to be a periodic payment and is not intended to reimburse the employee for specific expenses related to the injury or wage loss. If a compensable injury causes permanent impairment, the organization shall determine a permanent impairment award on the following terms:

1. ~~If the compensable injury causes permanent impairment and the permanent impairment award payable by the organization is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the organization under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the organization. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The organization shall adopt rules implementing any necessary procedures for award payments made under this subsection.~~

~~2.~~ The organization shall calculate the amount of the award by multiplying ~~thirty-three and one-third~~thirty-five percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the permanent impairment multiplier specified in subsection 10.

~~3.~~2. The organization shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the organization has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.

~~4.~~3. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and which were caused by the compensable injury. The organization may not issue an impairment award for impairment findings due to unrelated,

noncompensable, or preexisting conditions, even if these conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.

~~5.~~4. An injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the organization the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. If the report states that the employee is potentially eligible for a permanent impairment award, the organization shall conduct a review and provide notice to the employee as provided by subsection ~~3~~2. If the injured employee files a timely written request under subsection ~~3~~2, the organization shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.

~~6.~~5. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the ~~fifth~~sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Subject to rules adopted under this subsection, impairments must be evaluated under the ~~fifth~~sixth edition of the guides.

~~7.~~6. The organization shall deduct, on a ~~whole body~~permanent impairment multiplier basis, from an award for impairment under this section, any previous impairment award ~~for that same member or body part~~ under the workers' compensation laws of any jurisdiction.

~~8.~~7. An injured employee is not entitled to a permanent impairment award due solely to pain.

8. Other than an award identified in subsection 11, an award may not be issued unless specifically identified and quantified within the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment".

9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under subsection ~~3~~2, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.

10. If the injury causes permanent impairment, the award must be determined based on the percentage of whole body impairment in accordance with the following schedule:

For one to ~~fifteen~~thirteen percent impairment	permanent impairment multiplier of 0
For fourteen percent impairment	permanent impairment multiplier of 10
For fifteen percent impairment	permanent impairment multiplier of 10
For sixteen percent impairment	permanent impairment multiplier of ~~10~~15
For seventeen percent impairment	permanent impairment multiplier of ~~10~~15
For eighteen percent impairment	permanent impairment multiplier of ~~15~~20
For nineteen percent impairment	permanent impairment multiplier of ~~15~~20
For twenty percent impairment	permanent impairment multiplier of ~~20~~25
For twenty-one percent impairment	permanent impairment multiplier of ~~20~~25
For twenty-two percent impairment	permanent impairment multiplier of ~~25~~30
For twenty-three percent impairment	permanent impairment multiplier of ~~25~~30
For twenty-four percent impairment	permanent impairment multiplier of 30
For twenty-five percent impairment	permanent impairment multiplier of ~~30~~35
For twenty-six percent impairment	permanent impairment multiplier of 35
For twenty-seven percent impairment	permanent impairment multiplier of 35
For twenty-eight percent impairment	permanent impairment multiplier of 40
For twenty-nine percent impairment	permanent impairment multiplier of 45
For thirty percent impairment	permanent impairment multiplier of 50
For thirty-one percent impairment	permanent impairment multiplier of 60
For thirty-two percent impairment	permanent impairment multiplier of 70
For thirty-three percent impairment	permanent impairment multiplier of 80
For thirty-four percent impairment	permanent impairment multiplier of 90
For thirty-five percent impairment	permanent impairment multiplier of 100
For thirty-six percent impairment	permanent impairment multiplier of 110
For thirty-seven percent impairment	permanent impairment multiplier of 120
For thirty-eight percent impairment	permanent impairment multiplier of 130
For thirty-nine percent impairment	permanent impairment multiplier of 140

For forty percent impairment	permanent impairment multiplier of 150
For forty-one percent impairment	permanent impairment multiplier of 160
For forty-two percent impairment	permanent impairment multiplier of 170
For forty-three percent impairment	permanent impairment multiplier of 180
For forty-four percent impairment	permanent impairment multiplier of 190
For forty-five percent impairment	permanent impairment multiplier of 200
For forty-six percent impairment	permanent impairment multiplier of 210
For forty-seven percent impairment	permanent impairment multiplier of 220
For forty-eight percent impairment	permanent impairment multiplier of 230
For forty-nine percent impairment	permanent impairment multiplier of 240
For fifty percent impairment	permanent impairment multiplier of 260
For fifty-one percent impairment	permanent impairment multiplier of 280
For fifty-two percent impairment	permanent impairment multiplier of 300
For fifty-three percent impairment	permanent impairment multiplier of 320
For fifty-four percent impairment	permanent impairment multiplier of 340
For fifty-five percent impairment	permanent impairment multiplier of 360
For fifty-six percent impairment	permanent impairment multiplier of 380
For fifty-seven percent impairment	permanent impairment multiplier of 400
For fifty-eight percent impairment	permanent impairment multiplier of 420
For fifty-nine percent impairment	permanent impairment multiplier of 440
For sixty percent impairment	permanent impairment multiplier of 465
For sixty-one percent impairment	permanent impairment multiplier of 490
For sixty-two percent impairment	permanent impairment multiplier of 515
For sixty-three percent impairment	permanent impairment multiplier of 540
For sixty-four percent impairment	permanent impairment multiplier of 565
For sixty-five percent impairment	permanent impairment multiplier of 590
For sixty-six percent impairment	permanent impairment multiplier of 615

For sixty-seven percent impairment	permanent impairment multiplier of 640
For sixty-eight percent impairment	permanent impairment multiplier of 665
For sixty-nine percent impairment	permanent impairment multiplier of 690
For seventy percent impairment	permanent impairment multiplier of 715
For seventy-one percent impairment	permanent impairment multiplier of 740
For seventy-two percent impairment	permanent impairment multiplier of 765
For seventy-three percent impairment	permanent impairment multiplier of 790
For seventy-four percent impairment	permanent impairment multiplier of 815
For seventy-five percent impairment	permanent impairment multiplier of 840
For seventy-six percent impairment	permanent impairment multiplier of 865
For seventy-seven percent impairment	permanent impairment multiplier of 890
For seventy-eight percent impairment	permanent impairment multiplier of 915
For seventy-nine percent impairment	permanent impairment multiplier of 940
For eighty percent impairment	permanent impairment multiplier of 965
For eighty-one percent impairment	permanent impairment multiplier of 990
For eighty-two percent impairment	permanent impairment multiplier of 1015
For eighty-three percent impairment	permanent impairment multiplier of 1040
For eighty-four percent impairment	permanent impairment multiplier of 1065
For eighty-five percent impairment	permanent impairment multiplier of 1090
For eighty-six percent impairment	permanent impairment multiplier of 1115
For eighty-seven percent impairment	permanent impairment multiplier of 1140
For eighty-eight percent impairment	permanent impairment multiplier of 1165
For eighty-nine percent impairment	permanent impairment multiplier of 1190
For ninety percent impairment	permanent impairment multiplier of 1215
For ninety-one percent impairment	permanent impairment multiplier of 1240
For ninety-two percent impairment	permanent impairment multiplier of 1265
For ninety-three percent impairment	permanent impairment multiplier of 1290

For ninety-four percent impairment	permanent impairment multiplier of 1320
For ninety-five percent impairment	permanent impairment multiplier of 1350
For ninety-six percent impairment	permanent impairment multiplier of 1380
For ninety-seven percent impairment	permanent impairment multiplier of 1410
For ninety-eight percent impairment	permanent impairment multiplier of 1440
For ninety-nine percent impairment	permanent impairment multiplier of 1470
For one hundred percent impairment	permanent impairment multiplier of 1500

11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the permanent impairment multiplier identified in the following schedule, the organization shall pay an award equal to the permanent impairment multiplier set out in the following schedule:

For amputation of a thumb	permanent impairment multiplier of 65
For amputation of the second or distal phalanx of the thumb	permanent impairment multiplier of 28
For amputation of the first finger	permanent impairment multiplier of 40
For amputation of the middle or second phalanx of the first finger	permanent impairment multiplier of 28
For amputation of the third or distal phalanx of the first finger	permanent impairment multiplier of 22
For amputation of the second finger	permanent impairment multiplier of 30
For amputation of the middle or second phalanx of the second finger	permanent impairment multiplier of 22
For amputation of the third or distal phalanx of the second finger	permanent impairment multiplier of 14
For amputation of the third finger	permanent impairment multiplier of 20
For amputation of the middle or second phalanx of the third finger	permanent impairment multiplier of 16
For amputation of the fourth finger	permanent impairment multiplier of 16
For amputation of the middle or second phalanx of the fourth finger	permanent impairment multiplier of 12
For amputation of the leg at the hip	permanent impairment multiplier of 234
For amputation of the leg at or above the knee	permanent impairment multiplier of 195
For amputation of the leg at or above the ankle	permanent impairment multiplier of 150

For amputation of a great toe	permanent impairment multiplier of 30
For amputation of the second or distal phalanx of the great toe	permanent impairment multiplier of 18
For amputation of any other toe	permanent impairment multiplier of 12
For loss of an eye	permanent impairment multiplier of 150
For the loss of vision of an eye which equals or exceeds 20/200 corrected	permanent impairment multiplier of 100

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

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

13. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.

14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent

impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

15. If an injured employee qualifies for an additional award and the prior award was based upon the number of weeks, the impairment multiplier must be used to compare against the prior award of weeks in determining any additional award.

SECTION 2. APPLICATION. This Act applies to permanent partial impairment evaluations performed on or after the effective date of this Act.

Approved April 4, 2011
Filed April 4, 2011

CHAPTER 512

SENATE BILL NO. 2114

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

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to background checks for potential workforce safety and insurance job applicants; to amend and reenact subsection 3 of section 65-04-32, subdivision h of subsection 8 of section 65-05-07, section 65-05-20.1, subsection 2 of section 65-05-28, subsection 4 of section 65-05.1-04, subdivision b of subsection 2 of section 65-05.1-06.1, and subsection 1 of section 65-05.1-08 of the North Dakota Century Code, relating to service of administrative orders by regular mail, nonpayment of weight loss and smoking programs unless ordered by the organization, eligibility for the scholarship program, travel reimbursements for injured workers, work trial and work search, payment of mileage during training programs, and eligibility for the revolving loan fund; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[191] **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

> Workforce safety and insurance for a final applicant for a specified occupation with workforce safety and insurance as designated by the director, or for contractors who may have access to confidential information as designated by the director.

[192] **SECTION 2. AMENDMENT.** Subsection 3 of section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

3. Within sixty days after receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by certified mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration. The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.

[193] **SECTION 3. AMENDMENT.** Subdivision h of subsection 8 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

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[191] Section 12-60-24 was also amended by section 1 of House Bill No. 1081, chapter 94, section 1 of Senate Bill No. 2097, chapter 328, and section 1 of Senate Bill No. 2199, chapter 327.

[192] Section 65-04-32 was also amended by section 3 of Senate Bill No. 2205, chapter 507.

[193] Section 65-05-07 was also amended by section 1 of House Bill No. 1453, chapter 509.

h. Aids or programs primarily intended to help the employee lose weight or stop smoking unless ordered by the organization.

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

65-05-20.1. Scholarship fund - Rules.

The organization may establish a scholarship fund to provide scholarships for the spouse and ~~dependent children~~child of a worker who dies as a result of a compensable work-related injury, if the spouse and ~~children~~child have received benefits under section 65-05-17. The organization may also grant scholarships for the spouse and child of an injured worker deemed to be catastrophically injured as defined in subdivision c of subsection 2 of section 65-05.1-06.1 and the child meets the definition of child at the time of the initial scholarship application. The organization may also grant scholarships to injured workers for whom the organization determines a scholarship would be beneficial and appropriate because of exceptional circumstances, or upon successful completion of a rehabilitation program contemplated under subdivision g of subsection 4 of section 65-05.1-01, as determined by the organization. Scholarships are payable to an accredited institution of higher education or an institution of technical education on behalf of a student attending that institution. The total amount awarded annually in scholarships may not exceed ~~three~~five hundred thousand dollars. The maximum amount payable on behalf of an applicant is ~~four~~ten thousand dollars per year for no more than five years, except that ~~scholarships awarded on the basis of exceptional circumstances may not exceed ten thousand dollars per year for more than five years, per applicant~~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. Scholarships must be awarded by a panel chosen by the organization. The organization shall adopt rules establishing selection criteria and obligations associated with the program and identifying information an applicant is required to submit to determine an appropriate scholarship award. There is no right to reconsideration, rehearing, or appeal from any decision regarding the award, denial, or amount of a scholarship.

SECTION 5. AMENDMENT. Subsection 2 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt, when appropriate, and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the organization reimbursement rates in effect on the date of incurred travel or expense. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. Providing further that:

   a. Payment for mileage or other travel expenses may not be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;

   b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the organization

may pay no more than actual cost of ~~meals and~~ lodging, if actual cost is less;

c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;

d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and

e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.

SECTION 6. AMENDMENT. Subsection 4 of section 65-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same, modified, or alternative occupation, or return to an occupation that is suited to the employee's education, experience, and marketable skills, the employee is responsible to make a good-faith work trial or work search. If the employee fails to perform a good-faith work trial <u>or work search</u>, the organization may not pay additional disability benefits unless the employee meets the criteria for reapplying for benefits required under subsection 1 of section 65-05-08. If the employee meets the burden of proving that the employee made a good-faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the organization shall reevaluate the employee's vocational rehabilitation claim. When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good-faith work search or good-faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful.

SECTION 7. AMENDMENT. Subdivision b of subsection 2 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

b. The rehabilitation allowance must include, as chosen by the employee, an additional thirty percent of the rehabilitation allowance for expenses associated with maintaining a second domicile or for travel associated with attendance at a school or training institution when it is necessary for the employee to travel at least twenty-five miles [40.23 kilometers] one way. Travel must be calculated from the employee's residence to the school or training institution. If it is necessary for an employee to travel less than twenty-five miles one way to a school or training institution, the employee may qualify for an additional rehabilitation allowance as determined in accordance with the following schedule:

Round-trip mileage	Percentage increase in rehabilitation allowance
Under 10 miles	0
10 to 30 miles	10
31 to ~~50~~<u>49</u> miles	20

Travel must be calculated from the employee's residence to the school or training institution.

[194] **SECTION 8. AMENDMENT.** Subsection 1 of section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

1. The organization may establish a revolving loan fund to provide a low-interest loan to an injured employee or to a surviving spouse or ~~dependent~~ child of an injured employee whose death resulted from a compensable injury under section 65-05-16; or to the spouse or child of an injured employee deemed to be catastrophically injured as defined in subdivision c of subsection 2 of section 65-05.1-06.1 and the child meets the definition of child at the time of the initial loan application; or to the spouse or child of an injured employee deemed to be eligible for permanent total disability benefits as defined in section 65-01-02 and the child meets the definition of child at the time of the initial loan application. The loan must be used to pursue an education at an accredited institution of higher education or an institution of technical education. In order to be eligible for a loan under this section, an individual must have obtained a high school diploma or its equivalent and either must be ineligible for retraining under this chapter or must have exhausted training and education benefits. The Bank of North Dakota and the organization shall establish eligibility requirements and make application determinations based on the established criteria. The application must require an applicant to demonstrate a viable education plan that will enable the individual to achieve gainful employment.

SECTION 9. APPLICATION. Scholarships granted and increased amounts payable as provided for in section 4 of this Act apply to all applications received and rehabilitation programs completed on or after the effective date of this Act.

The amendment provided for in section 5 of this Act applies to expenses submitted on or after the effective date of this Act.

The amendment provided for in section 6 of this Act applies to all claims regardless of date of injury.

The amendment provided for in section 8 of this Act pertaining to applications for low-interest educational loans for the spouse or child of an injured worker deemed to be catastrophically injured applies to all applications received on or after the effective date of this Act.

The amendment provided for in section 8 of this Act pertaining to applications for low-interest educational loans applies to the spouse or child of an injured employee whose claim was filed on or after January 1, 2006, and has been deemed permanently and totally disabled.

Approved April 27, 2011
Filed April 27, 2011

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[194] Section 65-05.1-08 was also amended by section 1 of House Bill No. 1050, chapter 513.

CHAPTER 513

HOUSE BILL NO. 1050

(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-05.1-08 of the North Dakota Century Code, relating to a workers' compensation grant program for vocational rehabilitation; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[195] **SECTION 1. AMENDMENT.** Section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-08. Workforce safety and insurance educational revolving loan fund - Vocational rehabilitation grants - Continuing appropriation.

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

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

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[195] Section 65-05.1-08 was also amended by section 8 of Senate Bill No. 2114, chapter 512.

3. The organization may implement a grant program to promote and provide necessary educational opportunities for injured employees within the vocational rehabilitation process. The organization may award a grant to promote necessary skills upgrading and to provide for the completion of remedial educational requirements which allow for optimal transition into the labor force. The total annual amount the organization may grant under this subsection may not exceed one hundred thousand dollars. The organization shall establish grant eligibility requirements and make grant determinations based on the established criteria. Moneys are appropriated on a continuing basis from uncommitted moneys in the educational revolving loan fund for the purpose of funding the grants under this subsection.

Approved March 9, 2011
Filed March 9, 2011

CHAPTER 514

HOUSE BILL NO. 1037

(Legislative Management)
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact section 65-06.2-09 of the North Dakota Century Code, relating to the safety and performance audit of work programs of roughrider industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

65-06.2-09. Safety and performance ~~audit~~review.

The organization shall perform a biennial safety ~~audit~~review of the roughrider industries work programs covered under this chapter and a biennial performance ~~audit~~review of the program of modified workers' compensation coverage. ~~The~~If the organization makes any recommendation for a change in either program as a result of the review, the organization shall submit a report with ~~recommendations based on the safety and performance audit~~the recommendation to the legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.

Approved March 9, 2011
Filed March 9, 2011