

Introduced by

Representative Keiser

Senator Klein

1 A BILL for an Act to amend and reenact section 65-01-02, subsection 8 of section 65-05-07, and
2 section 65-05-08 of the North Dakota Century Code, relating to the definition of medical
3 marijuana and prohibiting the payment of workers' compensation benefits for medical
4 marijuana; and to provide for application.

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

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

8 **65-01-02. Definitions.**

9 In this title:

- 10 1. "Acute care" means a short course of intensive diagnostic and therapeutic services
11 provided immediately following a work injury with a rapid onset of pronounced
12 symptoms.
- 13 2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the
14 injury.
- 15 3. "Artificial members" includes a device that is a substitute for a natural part, organ,
16 limb, or other part of the body. The term includes a prescriptive device that is an aid for
17 a natural part, organ, limb, or other part of the body if the damage to the prescriptive
18 device is accompanied by an injury to the body. A prescriptive device includes
19 prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
- 20 4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or
21 crutches as may be reasonable and necessary due to compensable injury.
- 22 5. "Average weekly wage" means the weekly wages the employee was receiving from all
23 employments for which coverage is required or otherwise secured at the date of first
24 disability. The average weekly wage determined under this subsection must be

- 1 rounded to the nearest dollar. If the employee's wages are not fixed by the week, they
2 must be determined by using the first applicable formula from the schedule below:
- 3 a. For seasonal employment, during the first consecutive days of disability up to
4 twenty-eight days the average weekly wage is calculated pursuant to the first
5 applicable formula in subdivisions b through g, and after that are calculated as
6 one-fiftieth of the total wages from all occupations during the twelve months
7 preceding the date of first disability or during the tax year preceding the date of
8 first disability, or an average of the three tax years preceding the date of first
9 disability, whichever is highest and for which accurate, reliable, and complete
10 records are readily available.
- 11 b. The "average weekly wage" of a self-employed employer is determined by the
12 following formula: one fifty-second of the average annual net self-employed
13 earnings reported the three preceding tax years or preceding fifty-two weeks
14 whichever is higher if accurate, reliable, and complete records for those fifty-two
15 weeks are readily available.
- 16 c. Hourly or daily rate multiplied by number of hours or days worked per seven-day
17 week.
- 18 d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
- 19 e. Biweekly rate divided by two.
- 20 f. The usual wage paid other employees engaged in similar occupations.
- 21 g. A wage reasonably and fairly approximating the weekly wage lost by the claimant
22 during the period of disability.
- 23 6. "Average weekly wage in the state" means the determination made of the average
24 weekly wage in the state by job service North Dakota on or before July first of each
25 year, computed to the next highest dollar.
- 26 7. "Board" means the workforce safety and insurance board of directors.
- 27 8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half
28 sister, and a brother and sister by adoption. The terms do not include a married
29 brother or sister unless that person actually is dependent.
- 30 9. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate
31 child, a stepchild, adopted child, posthumous child, foster child, and acknowledged

1 illegitimate child who is under eighteen years of age and resides with the employee; or
2 is under eighteen years of age and does not reside with the employee but a duty of
3 support is substantiated by an appropriate court order; or is between eighteen and
4 twenty-two years of age and enrolled as a full-time student in any accredited
5 educational institution and dependent upon the employee for support; or is eighteen
6 years of age or over and is physically or mentally incapable of self-support and is
7 actually dependent upon the employee for support. A child does not include a married
8 child unless actually dependent on the employee as shown on the preceding year's
9 income tax returns.

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

13 a. The term includes:

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

18 (2) An injury to artificial members.

19 (3) Injuries due to heart attack or other heart-related disease, stroke, and
20 physical injury caused by mental stimulus, but only when caused by the
21 employee's employment with reasonable medical certainty, and only when it
22 is determined with reasonable medical certainty that unusual stress is at
23 least fifty percent of the cause of the injury or disease as compared with all
24 other contributing causes combined. Unusual stress means stress greater
25 than the highest level of stress normally experienced or anticipated in that
26 position or line of work.

27 (4) Injuries arising out of employer-required or supplied travel to and from a
28 remote jobsite or activities performed at the direction or under the control of
29 the employer.

30 (5) An injury caused by the willful act of a third person directed against an
31 employee because of the employee's employment.

1 (6) A mental or psychological condition caused by a physical injury, but only
2 when the physical injury is determined with reasonable medical certainty to
3 be at least fifty percent of the cause of the condition as compared with all
4 other contributing causes combined, and only when the condition did not
5 pre-exist the work injury.

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 that
9 the organization may pay for preventive treatment for a health care provider
10 as defined in section 23-07.5-01, firefighter, peace officer, correctional
11 officer, court officer, law enforcement officer, emergency medical technician,
12 or an individual trained and authorized by law or rule to render emergency
13 medical assistance or treatment who is exposed to a bloodborne pathogen
14 as defined in section 23-07.5-01 occurring in the course of employment and
15 for exposure to rabies occurring in the course of employment.

16 (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an
17 injury caused by the employee's willful intention to injure or kill another.

18 (3) Any injury caused by the use of intoxicants or the illegal use of controlled
19 substances.

20 (4) An injury that arises out of an altercation in which the injured employee is an
21 aggressor. This paragraph does not apply to public safety employees,
22 including law enforcement officers or private security personnel who are
23 required to engage in altercations as part of their job duties if the altercation
24 arises out of the performance of those job duties.

25 (5) An injury that arises out of an illegal act committed by the injured employee.

26 (6) An injury that arises out of an employee's voluntary nonpaid participation in
27 any recreational activity, including athletic events, parties, and picnics, even
28 though the employer pays some or all of the cost of the activity.

29 (7) Injuries attributable to a pre-existing injury, disease, or other condition,
30 including when the employment acts as a trigger to produce symptoms in
31 the pre-existing injury, disease, or other condition unless the employment

- 1 substantially accelerates its progression or substantially worsens its
2 severity. Pain is a symptom and may be considered in determining whether
3 there is a substantial acceleration or substantial worsening of a pre-existing
4 injury, disease, or other condition, but pain alone is not a substantial
5 acceleration or a substantial worsening.
- 6 (8) A nonemployment injury that, although acting upon a prior compensable
7 injury, is an independent intervening cause of injury.
- 8 (9) A latent or asymptomatic degenerative condition, caused in substantial part
9 by employment duties, which is triggered or made active by a subsequent
10 injury.
- 11 (10) A mental injury arising from mental stimulus.
- 12 11. "Date of first disability" means the first date the employee was unable to work because
13 of a compensable injury.
- 14 12. "Date of maximum medical improvement" or "date of maximum medical recovery"
15 means the date after which further recovery from, or lasting improvement to, an injury
16 or disease can no longer reasonably be anticipated based upon reasonable medical
17 probability.
- 18 13. "Director" means the director of the organization.
- 19 14. "Disability" means loss of earnings capacity and may be permanent total, temporary
20 total, or partial.
- 21 15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist,
22 podiatrist, or psychologist acting within the scope of the doctor's license.
- 23 16. "Employee" means a person who performs hazardous employment for another for
24 remuneration unless the person is an independent contractor under the common-law
25 test.
- 26 a. The term includes:
- 27 (1) All elective and appointed officials of this state and its political subdivisions,
28 including municipal corporations and including the members of the
29 legislative assembly, all elective officials of the several counties of this state,
30 and all elective peace officers of any city.
- 31 (2) Aliens.

- 1 (3) County general assistance workers, except those who are engaged in
2 repaying to counties moneys that the counties have been compelled by
3 statute to expend for county general assistance.
- 4 (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris
5 for the purposes of this title, and no other person has any claim for relief or
6 right to claim workforce safety and insurance benefits for any injury to a
7 minor worker, but in the event of the award of a lump sum of benefits to a
8 minor employee, the lump sum may be paid only to the legally appointed
9 guardian of the minor.
- 10 b. The term does not include:
- 11 (1) Any person whose employment is both casual and not in the course of the
12 trade, business, profession, or occupation of that person's employer.
- 13 (2) Any person who is engaged in an illegal enterprise or occupation.
- 14 (3) The spouse of an employer or a child under the age of twenty-two of an
15 employer. For purposes of this paragraph and section 65-07-01, "child"
16 means any legitimate child, stepchild, adopted child, foster child, or
17 acknowledged illegitimate child.
- 18 (4) Any real estate broker or real estate salesperson, provided the person
19 meets the following three requirements:
- 20 (a) The salesperson or broker must be a licensed real estate agent under
21 section 43-23-05.
- 22 (b) Substantially all of the salesperson's or broker's remuneration for the
23 services performed as a real estate agent must be directly related to
24 sales or other efforts rather than to the number of hours worked.
- 25 (c) A written agreement must exist between the salesperson or broker
26 and the person or firm for whom the salesperson or broker works,
27 which agreement must provide that the salesperson or broker will not
28 be treated as an employee but rather as an independent contractor.
- 29 (5) The members of the board of directors of a business corporation who are
30 not employed in any capacity by the corporation other than as members of
31 the board of directors.

- 1 (6) Any 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 that the individual is an independent contractor.
- 6 (7) An employer.
- 7 c. Persons employed by a subcontractor, or by an independent contractor operating
8 under an agreement with the general contractor, for the purpose of this chapter
9 are deemed to be employees of the general contractor who is liable and
10 responsible for the payments of premium for the coverage of these employees
11 until the subcontractor or independent contractor has secured the necessary
12 coverage and paid the premium for the coverage. This subdivision does not
13 impose any liability upon a general contractor other than liability to the
14 organization for the payment of premiums which are not paid by a subcontractor
15 or independent contractor.
- 16 17. "Employer" means a person who engages or received the services of another for
17 remuneration unless the person performing the services is an independent contractor
18 under the common-law test. The term includes:
- 19 a. The state and all political subdivisions thereof.
- 20 b. All public and quasi-public corporations in this state.
- 21 c. Every person, partnership, limited liability company, association, and private
22 corporation, including a public service corporation.
- 23 d. The legal representative of any deceased employer.
- 24 e. The receiver or trustee of any person, partnership, limited liability company,
25 association, or corporation having one or more employees as herein defined.
- 26 f. The president, vice presidents, secretary, or treasurer of a business corporation,
27 but not members of the board of directors of a business corporation who are not
28 also officers of the corporation.
- 29 g. The managers of a limited liability company.

- 1 h. The president, vice presidents, secretary, treasurer, or board of directors of an
2 association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15,
3 36-08, or 49-21.
- 4 i. The clerk, assessor, treasurer, or any member of the board of supervisors of an
5 organized township, if the person is not employed by the township in any other
6 capacity.
- 7 j. A multidistrict special education unit.
- 8 k. An area career and technology center.
- 9 l. A regional education association.
- 10 18. "Fee schedule" means the payment formulas established in the organization
11 publication entitled "Medical and Hospital Fees".
- 12 19. "Fund" means the workforce safety and insurance fund.
- 13 20. "Hazardous employment" means any employment in which one or more employees
14 are employed regularly in the same business or in or about the establishment except:
15 a. Agricultural or domestic service.
16 b. Any employment of a common carrier by railroad.
17 c. Any employment for the transportation of property or persons by nonresidents,
18 where, in such transportation, the highways are not traveled more than seven
19 miles [11.27 kilometers] and return over the same route within the state of North
20 Dakota.
21 d. All members of the clergy and employees of religious organizations engaged in
22 the operation, maintenance, and conduct of the place of worship.
- 23 21. "Health care provider" includes a doctor, qualified nurse, pharmacist, audiologist,
24 speech language pathologist, or naturopath or any recognized practitioner providing
25 skilled services pursuant to the prescription of, or under the supervision or direction of
26 any of these individuals.
- 27 22. "Medical marijuana" means the use of cannabis or marijuana, including constituents of
28 cannabis, tetrahydrocannabinol, and other cannabinoids, as a
29 physician-recommended form of medicine or herbal therapy.
- 30 ~~22-23.~~ "Organization" means workforce safety and insurance, or the director, or any
31 department head, assistant, or employee of workforce safety and insurance

1 designated by the director, to act within the course and scope of that person's
2 employment in administering the policies, powers, and duties of this title.

3 ~~23-24.~~ "Parent" includes a stepparent and a parent by adoption.

4 ~~24-25.~~ "Permanent impairment" means the loss of or loss of use of a member of the body
5 existing after the date of maximum medical improvement and includes disfigurement
6 resulting from an injury.

7 ~~25-26.~~ "Permanent total disability" means disability that is the direct result of a compensable
8 injury that prevents an employee from performing any work and results from any one
9 of the following conditions:

- 10 a. Total and permanent loss of sight of both eyes;
- 11 b. Loss of both legs or loss of both feet at or above the ankle;
- 12 c. Loss of both arms or loss of both hands at or above the wrist;
- 13 d. Loss of any two of the members or faculties in subdivision a, b, or c;
- 14 e. Permanent and complete paralysis of both legs or both arms or of one leg and
15 one arm;
- 16 f. Third-degree burns that cover at least forty percent of the body and require
17 grafting;
- 18 g. A medically documented brain injury affecting cognitive and mental functioning
19 which renders an employee unable to provide self-care and requires supervision
20 or assistance with a majority of the activities of daily living; or
- 21 h. A compensable injury that results in a permanent partial impairment rating of the
22 whole body of at least twenty-five percent pursuant to section 65-05-12.2.

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

27 ~~26-27.~~ "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 ~~27-28.~~ "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 ~~28-29.~~ "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 ~~29-30.~~ "Temporary total disability" means disability that results in the inability of an employee
7 to earn wages as a result of a compensable injury for which disability benefits may not
8 exceed a cumulative total of one hundred four weeks or the date the employee
9 reaches maximum medical improvement or maximum medical recovery, whichever
10 occurs first.
- 11 ~~30-31.~~ "Utilization review" means the initial and continuing evaluation of appropriateness in
12 terms of both the level and the quality of health care and health services provided a
13 patient, based on medically accepted standards. The evaluation must be
14 accomplished by means of a system that identifies the utilization of medical services,
15 based on medically accepted standards, and which refers instances of possible
16 inappropriate utilization to the organization to obtain opinions and recommendations of
17 expert medical consultants to review individual cases for which administrative action
18 may be deemed necessary.
- 19 ~~31-32.~~ a. "Wages" means:
- 20 (1) An employee's remuneration from all employment reportable to the internal
21 revenue service as earned income for federal income tax purposes.
- 22 (2) For members of the national guard who sustain a compensable injury while
23 on state active duty, "wages" includes income from federal employment and
24 may be included in determining the average weekly wage.
- 25 (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all
26 employees. The term includes all pretax deductions for amounts allocated
27 by the employee for deferred compensation, medical reimbursement,
28 retirement, or any similar program, but may not include dismissal or
29 severance pay.
- 30 b. The organization may consider postinjury wages for which coverage was not
31 required or otherwise secured in North Dakota for purposes of determining

1 appropriate vocational rehabilitation options or entitlement to disability benefits
2 under this title.

3 **SECTION 2. AMENDMENT.** Subsection 8 of section 65-05-07 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 8. The organization may not pay for:

6 a. Personal items that are for the injured employee's personal use or hygiene,
7 including toothbrushes, slippers, shampoo, and soap.

8 b. ~~Any~~A product or item ~~such as including~~ clothing or footwear unless the items are
9 considered orthopedic devices and are prescribed by the treating doctor or health
10 care provider.

11 c. ~~Any furniture~~Furniture except hospital beds, shower stools, wheelchairs, or
12 whirlpools if prescribed by the treating doctor or health care provider.

13 d. Vitamins and food supplements except in those cases in which the injury causes
14 severe dietary problems, the injury results in the employee's paraplegia or
15 quadriplegia, or the employee becomes wheelchair-bound due to the injury.

16 e. Eye examinations unless there is a reasonable potential for injury to the
17 employee's eyes as a result of the injury.

18 f. Private hospital or nursing home rooms except in cases of extreme medical
19 necessity and only when directed by the attending doctor. If the employee desires
20 better accommodations than those ordered by the attending doctor, the employee
21 will pay the difference in cost.

22 g. Serological tests, including VDRL and RPR, or other tests for venereal disease or
23 pregnancy, or any other routine tests unless clearly necessitated by the injury.

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

26 i. Home gymnasium or exercise equipment unless ordered by the organization.

27 j. Memberships or monthly dues to health clubs, unless ordered by the
28 organization.

29 k. Massage, unless ordered by the organization.

30 l. Medical marijuana.

1 **SECTION 3. AMENDMENT.** Section 65-05-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **65-05-08. Disability benefits - Not paid unless period of disability is of five days'**
4 **duration or more - Application required - Suspended during confinement - Duty to report**
5 **wages.**

6 ~~No benefits~~Benefits may not be paid for disability, the duration of which is less than five
7 consecutive calendar days. An employer may not require an employee to use sick leave or
8 annual leave, or other employer-paid time off work, before applying for benefits under this
9 section, in lieu of receiving benefits under this section, or in conjunction with benefits provided
10 under this section, but may allow an employee to use sick leave or annual leave to make up the
11 difference between the employee's wage-loss benefits and the employee's regular pay. If the
12 period of disability is five consecutive calendar days' duration or longer, benefits must be paid
13 for the period of disability provided that:

- 14 1. When disability benefits are discontinued, the organization may not begin payment
15 again unless the injured employee files a reapplication for disability benefits on a form
16 supplied by the organization. In case of reapplication, the award may commence no
17 more than thirty days before the date of reapplication. Disability benefits must be
18 reinstated upon proof by the injured employee that:
 - 19 a. The employee has sustained a significant change in the compensable medical
20 condition;
 - 21 b. The employee has sustained an actual wage loss caused by the significant
22 change in the compensable medical condition; and
 - 23 c. The employee has not retired or voluntarily withdrawn from the job market as
24 defined in section 65-05-09.3.
- 25 2. ~~All payments~~Payments of disability and rehabilitation benefits of ~~any~~an employee who
26 is eligible for, or receiving, benefits under this title must be suspended when the
27 employee is confined in a penitentiary, jail, youth correctional facility, or any other
28 penal institution for a period of between seventy-two consecutive hours and one
29 hundred eighty consecutive days. ~~All payments~~Payments of disability and
30 rehabilitation benefits of ~~any~~an employee who is eligible for, or receiving, benefits
31 under this title must be discontinued when the employee is confined in a penitentiary,

- 1 jail, youth correctional facility, or any other penal institution for a period in excess of
2 one hundred eighty consecutive days.
- 3 3. ~~Any~~An employee who is eligible for, or receiving disability or rehabilitation benefits
4 under this title shall report any wages earned, from part-time or full-time work from any
5 source. If an employee fails to report wages earned, the employee shall refund to the
6 organization ~~any~~all disability or vocational rehabilitation benefits overpaid by the
7 organization for that time period. To facilitate recovery of those benefits, the
8 organization may offset future benefits payable, under section 65-05-29. If the
9 employee willfully fails to report wages earned, the employee is subject to the
10 penalties in section 65-05-33. An employee shall report whether the employee has
11 performed work or received wages. The organization periodically shall provide a form
12 to all injured employees receiving disability or rehabilitation benefits which the injured
13 employee must complete to retain eligibility for further disability or rehabilitation
14 benefits, regardless of the date of injury or claim filing. The form will advise the injured
15 employee of the possible penalties for failure to report any work or activities as
16 required by this section. An injured employee who is receiving disability or vocational
17 rehabilitation benefits must report any work activities to the organization whether or
18 not the injured employee receives any wages. An injured employee who is receiving
19 disability or vocational rehabilitation benefits ~~also~~ must also report any other activity if
20 the injured employee receives any money, including prize winnings, from undertaking
21 that activity, regardless of expenses or whether there is a net profit. For purposes of
22 this subsection, "work" does not include routine daily activities of self-care or family
23 care, or routine maintenance of the home and yard, and "activities" does not include
24 recreational gaming or passive investment endeavors.
- 25 4. An employee shall request disability benefits on a claim form furnished by the
26 organization. Disability benefits may not commence more than one year prior to the
27 date of filing of the initial claim for disability benefits.
- 28 5. The provisions of this section apply to ~~any~~an disability claim asserted against the fund
29 on or after July 1, 1991, irrespective of injury date.
- 30 6. It is the burden of the employee to show that the inability to obtain employment or to
31 earn as much as the employee earned at the time of injury is due to physical limitation

1 related to the injury, and that any wage loss claimed is the result of the compensable
2 injury.

3 7. If the employee voluntarily limits income or refuses to accept employment suitable to
4 the employee's capacity, offered to or procured for the employee, the employee is not
5 entitled to any disability or vocational rehabilitation benefits during the limitation of
6 income or refusal to accept employment unless the organization determines the
7 limitation or refusal is justified.

8 8. The organization may not pay disability benefits unless the loss of earning capacity
9 exceeds ten percent. The injured employee may earn up to ten percent of the
10 employee's preinjury average gross weekly earnings with no reduction in total
11 disability benefits. The employee must report any earnings to the organization for a
12 determination of whether the employee is within the limit set in this subsection.

13 9. Upon securing suitable employment, the injured employee shall notify the organization
14 of the name and address of the employer, the date the employment began, and the
15 amount of wages being received. If the injured employee is receiving disability
16 benefits, the injured employee shall notify the organization whenever there is a change
17 in work status or wages received.

18 10. The organization shall pay to an employee receiving disability benefits a dependency
19 allowance for each child of the employee at the rate of fifteen dollars per week per
20 child.

21 11. Dependency allowance for the children may be made directly to either parent or
22 guardian at the discretion of the organization.

23 12. The organization may not pay wage loss benefits if the wage loss is related to the use
24 or presence of medical marijuana.

25 **SECTION 4. APPLICATION.** Sections 2 and 3 of this Act apply to all claims regardless of
26 date of injury.