

# WORKERS' COMPENSATION

## CHAPTER 566

### SENATE BILL NO. 2042

(Legislative Council)  
(Workers' Compensation Review Committee)

#### WSI PRESUMPTION OF COMPENSABILITY

AN ACT to amend and reenact section 65-01-15.1 of the North Dakota Century Code, relating to the workers' compensation presumption of compensability for firefighters and law enforcement officers; and to provide for retroactive application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.**

1. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence.
2. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter.
3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials,

toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. If a medical examination produces a false positive result for a condition covered under this section, the organization shall consider the condition to be a compensable injury. In the case of a false positive result, neither the coverage of the condition nor the period of disability may exceed fifty-six days. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section.

4. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department.
5. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

**SECTION 2. RETROACTIVE APPLICATION.** This Act applies to all false positive results occurring on or after December 1, 2004.

Approved March 30, 2007  
Filed March 30, 2007

**CHAPTER 567****HOUSE BILL NO. 1460**

(Representatives Skarphol, Carlson, Dosch)  
(Senator Christmann)

**WSI BOARD MEMBERSHIP AND SPENDING  
AUTHORITY**

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to employee awards and incentive spending authority; to amend and reenact section 65-02-03.1 of the North Dakota Century Code, relating to the workforce safety and insurance board membership; to provide for a legislative council study; and to provide for application and transition.

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

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

**65-02-03.1. Workforce safety and insurance board of directors - Appointment.**

1. The board consists of eleven members. The appointment and replacement of the members must ensure that:
  - a. Six board members represent employers in this state which maintain active accounts with the organization; ~~at least one of which must be a participant in the risk management program, at least two.~~ Two of which the employer members must be employers with annual premiums, which at the time of the member's initial appointment were greater than twenty-five thousand dollars; at least; one of which the employer members must be an employer with an annual premium of, which at the time of the member's initial appointment was at least ten thousand dollars but less than twenty-five thousand dollars; at least; one of which the employer members must be an employer with an annual premium of, which at the time of the member's initial appointment was less than ten thousand dollars; and at least one two of the employer members must be employer at large representative representatives. Except for the employer at large ~~representative representatives~~, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.
  - b. Three members represent employees; ~~at least one member must have received workforce safety and insurance benefits; and at least.~~ Of the three employee members, one member must represent organized labor and one other member must have received workforce safety and insurance wage-loss benefits at some time during the ten years before the member's initial appointment.

- c. One member is a member of the North Dakota medical association.
  - d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.
2. Board members shall serve four-year terms; ~~except the initial term of office of the member at large to be appointed on August 1, 2003, expires on December 31, 2006, and the term of office of the medical association member whose term of office became effective January 1, 2003, expires on December 31, 2006.~~ The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each odd-numbered year. ~~Board members~~ A board member whose initial appointment was before August 1, 2007, may not serve more than three consecutive terms and a board member whose initial appointment was after July 31, 2007, may not serve more than two consecutive terms.
- a. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the ~~replacement~~ member for a ~~departing an~~ employer representative ~~or medical association representative~~ from a list of three potential candidates submitted by ~~the board~~. The board shall interview an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the governor a coordinating committee appointed by the governor, composed of representatives from the associated general contractors of North Dakota, the North Dakota petroleum council, the greater North Dakota chamber of commerce, the North Dakota motor carriers association, the North Dakota healthcare association, the national federation of independent business, the lignite energy council, and other statewide business interests.
  - b. The governor shall select the ~~replacement~~ member for the ~~departing~~ organized labor employee representative from a list of three ~~names~~ of potential candidates submitted by an organization that is statewide in scope and which through ~~its~~ the organization's affiliates embraces a cross section and a majority of organized labor in this state.
  - c. The governor shall select the ~~replacement member for a departing nonorganized labor two~~ employee representative. The governor shall appoint the replacement member for representatives who do not represent organized labor and the member at large from a list of three candidates submitted by the board.
  - d. The governor shall select the member representing the North Dakota medical association from a list of three potential candidates submitted by the North Dakota medical association.
  - e. Within the thirty days following receipt of a list of potential candidates representing employers, organized labor, or the North Dakota medical association, the governor may reject the list and

request that the submitting entity submit a new list of potential candidates.

3. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in this ~~subsection~~ section.

**SECTION 2.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

**Spending authority - Limited.** Notwithstanding any other law enacted by the sixtieth legislative assembly, any statement of legislative intent, any statement of purpose of amendment, or other provision of law, the organization may not expend funds for the purpose of providing workers' compensation education or training for public officials other than the director and members of the board, or for providing awards, other than service awards or other awards or incentives allowed under law and applicable to executive branch agencies. For purposes of this section, award does not include a nonwage, cash disbursement to an organization employee through a performance-based system for employee recognition.

**SECTION 3. APPLICATION AND TRANSITION.** Section 1 of this Act applies to all board member appointments occurring after July 31, 2007. The board member serving on August 1, 2007, as the representative of the risk management program shall serve the remainder of the appointed term as the employer at-large representative. The employee board member serving on August 1, 2007, as the employee who has received workforce safety and insurance benefits shall continue to serve through the expiration of the member's appointed term, regardless of the member's wage-loss benefit history.

**SECTION 4. WORKFORCE SAFETY AND INSURANCE - LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2007-08 interim, the workforce safety and insurance governance changes made during the 2007 legislative session. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 568****SENATE BILL NO. 2092**

(Industry, Business and Labor Committee)

(At the request of the Office of Management and Budget)

**WORKERS' COMPENSATION FUND EXPENDITURES**

AN ACT to amend and reenact subsection 2 of section 65-04-03.1 of the North Dakota Century Code, relating to expenditures from the workers' compensation fund.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 65-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Workforce safety and insurance premiums from state entities covered by chapter 32-12.2 must be deposited in the risk management ~~workforce safety and insurance~~ workers' compensation fund. The state investment board shall invest this fund in accordance with chapter 21-10. Funds received as contributions from state entities, all other payments deposited in this fund, and interest and income received on investments are appropriated on a continuing basis for the purposes of this fund. The purposes of this fund are to pay workforce safety and insurance premiums for state agencies ~~and to pay~~ workforce safety and insurance claims costs not covered by the deductible contract, and costs associated with workers' compensation loss control programs. The risk management division of the office of management and budget shall administer this fund. Section 54-44.1-11 does not apply to this fund.

Approved March 7, 2007

Filed March 8, 2007

## CHAPTER 569

### SENATE BILL NO. 2123

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

### WSI PREMIUMS

AN ACT to amend and reenact sections 65-04-04, 65-04-15, 65-04-17, 65-04-19.1, 65-05-28.1, and 65-06.2-04 of the North Dakota Century Code, relating to an employer's certificate of premium payment, release of confidential information, the maximum experience rating of employers, premium discounts in risk management programs, preferred providers, and roughrider industries; and to provide for application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-04. Employers obligated to pay premiums - Premium and certificates to be mailed.** Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the organization for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. The organization shall mail to the employer a certificate specifying that the payment has been made. The certificate, attested by the seal of the organization, is prima facie evidence of the payment of the premium. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum premium and has ~~estimated no wages employees~~ for the period indicated on the certificate. If an employer defaults on premium payments after a certificate has been issued, the organization may revoke that employer's certificate. The organization shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

**SECTION 2. AMENDMENT.** Section 65-04-15 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-15. Information in employer's files confidential - Exceptions - Penalty if employee of organization divulges information.** The information contained in an employer's file is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota; is for the exclusive use and information of the organization or its agents in the discharge of the organization's official duties; and is not open to the public nor usable in any court in any court action or proceeding unless the organization is a party to that court action or proceeding. The information contained in the file, however, may be tabulated and published by the organization in statistical form for the use and information of the state departments and of the public. Upon request, the organization shall disclose the rate classification of an employer to the requester; however, the organization may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. The organization may disclose whether an employer's file is active, canceled, closed, pending, ~~or delinquent,~~ or uninsured. The information in the employer's file may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title ~~or,~~ except upon written authorization by the employer for a specified purpose, or at the discretion of the organization with regard to delinquent and uninsured employers. Disclosure by a public servant of information contained in an employer's report, except as otherwise allowed by law, is a violation of section 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the organization.

The organization may, upon request of the state tax commissioner or the secretary of state, furnish to them a list of employers showing only the names, addresses, and organization file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The organization may provide any state or federal agency information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of that state or federal agency. Whenever the organization obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the organization shall provide any relevant information to those officials for the purpose of administering their duties. The organization may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

**SECTION 3. AMENDMENT.** Section 65-04-17 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-17. Experience rating of employers.** The organization may establish a system for the experience rating of risks of employers contributing to the fund, and such system shall provide for the credit rating and the penalty rating of individual risks within such limitations as the organization may establish from time to time.

In calculating the experience rating, the organization shall determine the ~~maximum and minimum rates~~ rate for each employment classification by:



- 1- ~~Multiplying the required average premium rate by one and seventy-five hundredths to get the maximum rate assigned to an employer with a negative experience rating; and~~
- 2- ~~Multiplying multiplying the required average premium rate by twenty-five hundredths to get the minimum rate assigned to an employer with a positive experience rating.~~

The organization may not amend its experience rating system by emergency rulemaking.

**SECTION 4. AMENDMENT.** Section 65-04-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-19.1. Premium discount for implementation of ~~preapproved risk management program programs~~.** Any employer who ~~implements or maintains~~ achieves the benchmarks outlined by the organization's risk management programs ~~approved by the organization is entitled to eligible for~~ a discount in the annual premium ~~the employer must pay to the organization~~ for the year following the year in which the risk management ~~programs~~ program's benchmarks are ~~implemented or maintained~~. The organization may not apply the discount to an employer's premium ~~unless the organization has approved the programs implemented by the employer achieved~~.

**SECTION 5. AMENDMENT.** Section 65-05-28.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-28.1. Employer to select preferred provider.** Notwithstanding section 65-05-28, ~~an~~ any employer subject to this title ~~who maintains a risk management program approved by the organization~~ may select a preferred provider to render medical treatment to employees who sustain compensable injuries. "Preferred provider" means a designated provider or group of providers of medical services, including consultations or referral by the provider or providers.

**SECTION 6. AMENDMENT.** Section 65-06.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**65-06.2-04. Workers' compensation coverage for inmates engaged in work programs through roughrider industries.** The director of the department of corrections and rehabilitation may elect to provide and request from the organization a program of modified workers' compensation coverage established under this chapter and according to administrative rules and fee schedules of this chapter. ~~Roughrider industries shall qualify for the organization's risk management program before the organization may provide the modified workers' compensation coverage.~~ The modified workers' compensation coverage ~~would be~~ is for inmates incarcerated at the penitentiary and engaged in work in a prison industries work program through roughrider industries, whether the program is operated by roughrider industries or by contract with another entity or private employer. An inmate who sustains a compensable injury arising out of and in the course of work in a prison industries work program through roughrider industries may only receive workforce safety and insurance benefits under the modified workers' compensation coverage established for that purpose.

**SECTION 7. APPLICATION.** Section 3 of this Act applies to all employer accounts incepting or renewing after July 1, 2008.

Approved April 12, 2007  
Filed April 13, 2007

**CHAPTER 570****HOUSE BILL NO. 1038**

(Legislative Council)

(Workers' Compensation Review Committee)

**WORKERS' COMPENSATION BENEFITS**

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation additional benefits payable; to amend and reenact subsection 5 of section 65-05-07 and sections 65-05-16, 65-05.1-08, and 65-05.2-01 of the North Dakota Century Code, relating to workers' compensation benefits for the catastrophically injured, additional benefits payable, death benefits, supplemental benefits, loans for education; to provide for application; and to declare an emergency.

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

<sup>288</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

5. If the injured employee sustained a catastrophic injury, as defined in chapter 65-05.1:
  - a. The organization may not pay more than an amount not to exceed fifty thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary for a worker who sustains a catastrophic injury as defined in chapter 65-05.1. The fifty thousand dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subsection subdivision does not allow the organization to purchase any real estate or motor vehicles.
  - b. 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 it 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.

**SECTION 2.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

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<sup>288</sup> Section 65-05-07 was also amended by section 1 of House Bill No. 1411, chapter 571.

**Additional benefit payable - Alternative calculation.**

1. This section applies to an injured employee who has a claim for which:
  - a. A compensable injury was incurred before August 1, 1995;
  - b. The date of first disability or the date of successful reapplication under subsection 1 of section 65-05-08 was after July 31, 1995; and
  - c. The injured employee received a determination of permanent and total disability before August 1, 2007.
2. An injured employee who meets the requirements of subsection 1 is entitled to an alternative calculation of additional benefits payable instead of the calculation provided for under section 65-05-09.4. For the limited purpose of this alternative calculation, the organization shall use the calculation established under section 65-05-09.4 and shall consider that the injured employee's pre-August 1, 1995, date of injury is also the injured employee's date of first disability.

**SECTION 3. AMENDMENT.** Section 65-05-16 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-16. Death benefits payable.**

1. The organization may pay benefits under this chapter in the case of the death of an injured employee as the direct result of an injury sustained in the course of the injured employee's employment when:
  - a. If there has been no disability preceding death, the death occurs within one year after the date of the injury;
  - b. If there has been disability preceding death, the death occurs within one year after the cessation of disability resulting from the injury; ~~or~~
  - c. If there has been disability ~~which~~ that has continued to the time of death, the death occurs within six years after the date of injury; or
  - d. If there has been disability that has continued to the time of death, the death occurs more than six years after the date of injury, and the injured employee has been designated catastrophically injured as defined under section 65-05.1-06.1.
2. The organization may not pay death benefits unless a claim is submitted within two years of the death and:
  - a. The death is a direct result of an accepted compensable injury; or
  - b. If ~~no~~ a claim was not submitted by the deceased, the claim for death benefits is submitted within two years of the injury.

**SECTION 4. 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 - Continuing appropriation.**

1. The organization may establish a revolving loan fund to provide a low-interest loan to an individual who has suffered a compensable injury 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 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.
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 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 board'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 board, as determined necessary, may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.

**SECTION 5. AMENDMENT.** Section 65-05.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**65-05.2-01. Eligibility for supplementary benefits.**

1. A For claims filed before January 1, 2006, a workforce safety and insurance claimant who is receiving permanent total disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of seven consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this subsection lasts as long as the claimant is entitled to permanent total disability benefits or death benefits.
2. For claims filed after December 31, 2005, a workforce safety and insurance claimant who is receiving permanent total disability benefits or death benefits and who has been receiving disability or death benefits for a period of at least three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this

subsection lasts as long as the claimant is entitled to permanent total disability benefits or death benefits.

**SECTION 6. APPLICATION.** Section 1 of this Act applies to all purchases and repairs that take place on or after the effective date of this Act, and section 3 of this Act applies to claims for death benefits filed on or after the effective date of this Act.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 29, 2007

Filed March 28, 2007

**CHAPTER 571****HOUSE BILL NO. 1411**

(Representative N. Johnson)

**WSI BENEFITS FOR PROPERTY AND VEHICLE  
MODIFICATION**

AN ACT to amend and reenact subsection 5 of section 65-05-07 of the North Dakota Century Code, relating to workers' compensation benefits for modification of real estate and vehicles; to provide for application; and to declare an emergency.

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

<sup>289</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

5. The 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 not pay more than an amount not to exceed fifty thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary for a worker who sustains a catastrophic injury as defined in chapter 65-05.1. The fifty thousand dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subsection subdivision does not allow the organization to purchase any real estate or motor vehicles.
  - 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

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<sup>289</sup> Section 65-05-07 was also amended by section 1 of House Bill No. 1038, chapter 570.

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.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 23, 2007

Filed March 23, 2007



**CHAPTER 572****HOUSE BILL NO. 1140**

(Representative Keiser)

(Senator Klein)

**WSI INFLATIONARY ADJUSTMENTS**

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to a workers' compensation inflationary adjustment for injured employees with long-term temporary partial disabilities; and to provide for application.

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

**SECTION 1.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Long-term temporary partial disability inflation adjustment.** This benefit only applies to claims with a date of first disability or date of successful reapplication occurring after June 30, 1991. For these claims, beginning on the first day of July immediately following the fifth full year of partial disability and every year thereafter, an injured employee who has received a waiver of the five-year cap on partial disability benefits under section 65-05-10 is eligible for a lump sum inflation adjustment. The organization shall calculate the lump sum inflation adjustment under this section on July first of each year by multiplying the previous year's percent increase in the state's average weekly wage, if any, by the total amount of partial disability payments paid to the injured employee in the preceding twelve months, including the preceding year's inflationary adjustment award.

**SECTION 2. APPLICATION.** This Act applies to all workforce safety and insurance claimants who are eligible for benefits on or after the effective date of this Act, regardless of the date of injury.

Approved March 15, 2007

Filed March 15, 2007

**CHAPTER 573****SENATE BILL NO. 2389**

(Senators Nething, Klein, Robinson)  
(Representatives Amerman, Kasper)

**WSI PERMANENT IMPAIRMENT AWARDS**

AN ACT to amend and reenact section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent impairment awards; 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.** ~~When 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 percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the ~~number of weeks~~ permanent impairment multiplier specified in subsection 10.
3. 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. 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. 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 provide notice to the employee as provided by subsection 3. If the injured employee files a timely written request under subsection 3, the organization shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.
6. 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 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 edition of the guides.
7. The organization shall deduct, on a whole body impairment basis, from an award for impairment under this section, any previous impairment award for that same member or body part under the ~~workforce safety and insurance~~ workers' compensation laws of any jurisdiction.
8. An injured employee is not entitled to a permanent impairment award due solely to pain.
9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under subsection 3, 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 percent impairment	<del>0 weeks</del> permanent impairment multiplier of 0
For sixteen percent impairment	<del>10 weeks</del> permanent impairment multiplier of 10
For seventeen percent impairment	<del>10 weeks</del> permanent impairment multiplier of 10
For eighteen percent impairment	<del>15 weeks</del> permanent impairment multiplier of 15
For nineteen percent impairment	<del>15 weeks</del> permanent impairment multiplier of 15
For twenty percent impairment	<del>20 weeks</del> permanent impairment multiplier of 20
For twenty-one percent impairment	<del>20 weeks</del> permanent impairment multiplier of 20
For twenty-two percent impairment	<del>25 weeks</del> permanent impairment multiplier of 25
For twenty-three percent impairment	<del>25 weeks</del> permanent impairment multiplier of 25
For twenty-four percent impairment	<del>30 weeks</del> permanent impairment multiplier of 30
For twenty-five percent impairment	<del>30 weeks</del> permanent impairment multiplier of 30
For twenty-six percent impairment	<del>35 weeks</del> permanent impairment multiplier of 35
For twenty-seven percent impairment	<del>35 weeks</del> permanent impairment multiplier of 35
For twenty-eight percent impairment	<del>40 weeks</del> permanent impairment multiplier of 40
For twenty-nine percent impairment	<del>45 weeks</del> permanent impairment multiplier of 45
For thirty percent impairment	<del>50 weeks</del> permanent impairment multiplier of 50
For thirty-one percent impairment	<del>50 weeks</del> permanent impairment multiplier of 50
For thirty-two percent impairment	<del>60 weeks</del> permanent impairment multiplier of 60
For thirty-three percent impairment	<del>70 weeks</del> permanent impairment multiplier of 70
For thirty-four percent impairment	<del>80 weeks</del> permanent impairment multiplier of 80
For thirty-five percent impairment	<del>90 weeks</del> permanent impairment multiplier of 90
For thirty-six percent impairment	<del>100 weeks</del> permanent impairment multiplier of 100
For thirty-seven percent impairment	<del>110 weeks</del> permanent impairment multiplier of 110
For thirty-eight percent impairment	<del>120 weeks</del> permanent impairment multiplier of 120
For thirty-nine percent impairment	<del>130 weeks</del> permanent impairment multiplier of 130
For forty percent impairment	<del>140 weeks</del> permanent impairment multiplier of 140
For forty-one percent impairment	<del>150 weeks</del> permanent impairment multiplier of 150
For forty-two percent impairment	<del>160 weeks</del> permanent impairment multiplier of 160
For forty-three percent impairment	<del>170 weeks</del> permanent impairment multiplier of 170
For forty-four percent impairment	<del>180 weeks</del> permanent impairment multiplier of 180
For forty-five percent impairment	<del>190 weeks</del> permanent impairment multiplier of 190
For forty-six percent impairment	<del>200 weeks</del> permanent impairment multiplier of 200
For forty-seven percent impairment	<del>210 weeks</del> permanent impairment multiplier of 210
For forty-eight percent impairment	<del>220 weeks</del> permanent impairment multiplier of 220
For forty-nine percent impairment	<del>230 weeks</del> permanent impairment multiplier of 230
For fifty percent impairment	<del>240 weeks</del> permanent impairment multiplier of 240
For fifty-one percent impairment	<del>260 weeks</del> permanent impairment multiplier of 260
For fifty-two percent impairment	<del>280 weeks</del> permanent impairment multiplier of 280
	<del>300 weeks</del> permanent impairment multiplier of 300

For fifty-three percent impairment	<del>320 weeks</del> permanent impairment multiplier of 320
For fifty-four percent impairment	<del>340 weeks</del> permanent impairment multiplier of 340
For fifty-five percent impairment	<del>360 weeks</del> permanent impairment multiplier of 360
For fifty-six percent impairment	<del>380 weeks</del> permanent impairment multiplier of 380
For fifty-seven percent impairment	<del>400 weeks</del> permanent impairment multiplier of 400
For fifty-eight percent impairment	<del>420 weeks</del> permanent impairment multiplier of 420
For fifty-nine percent impairment	<del>440 weeks</del> permanent impairment multiplier of 440
For sixty percent impairment	<del>465 weeks</del> permanent impairment multiplier of 465
For sixty-one percent impairment	<del>490 weeks</del> permanent impairment multiplier of 490
For sixty-two percent impairment	<del>515 weeks</del> permanent impairment multiplier of 515
For sixty-three percent impairment	<del>540 weeks</del> permanent impairment multiplier of 540
For sixty-four percent impairment	<del>565 weeks</del> permanent impairment multiplier of 565
For sixty-five percent impairment	<del>590 weeks</del> permanent impairment multiplier of 590
For sixty-six percent impairment	<del>615 weeks</del> permanent impairment multiplier of 615
For sixty-seven percent impairment	<del>640 weeks</del> permanent impairment multiplier of 640
For sixty-eight percent impairment	<del>665 weeks</del> permanent impairment multiplier of 665
For sixty-nine percent impairment	<del>690 weeks</del> permanent impairment multiplier of 690
For seventy percent impairment	<del>715 weeks</del> permanent impairment multiplier of 715
For seventy-one percent impairment	<del>740 weeks</del> permanent impairment multiplier of 740
For seventy-two percent impairment	<del>765 weeks</del> permanent impairment multiplier of 765
For seventy-three percent impairment	<del>790 weeks</del> permanent impairment multiplier of 790
For seventy-four percent impairment	<del>815 weeks</del> permanent impairment multiplier of 815
For seventy-five percent impairment	<del>840 weeks</del> permanent impairment multiplier of 840
For seventy-six percent impairment	<del>865 weeks</del> permanent impairment multiplier of 865
For seventy-seven percent impairment	<del>890 weeks</del> permanent impairment multiplier of 890
For seventy-eight percent impairment	<del>915 weeks</del> permanent impairment multiplier of 915
For seventy-nine percent impairment	<del>940 weeks</del> permanent impairment multiplier of 940
For eighty percent impairment	<del>965 weeks</del> permanent impairment multiplier of 965
For eighty-one percent impairment	<del>990 weeks</del> permanent impairment multiplier of 990
For eighty-two percent impairment	<del>1015 weeks</del> permanent impairment multiplier of 1015
For eighty-three percent impairment	<del>1040 weeks</del> permanent impairment multiplier of 1040
For eighty-four percent impairment	<del>1065 weeks</del> permanent impairment multiplier of 1065
For eighty-five percent impairment	<del>1090 weeks</del> permanent impairment multiplier of 1090
For eighty-six percent impairment	<del>1115 weeks</del> permanent impairment multiplier of 1115
For eighty-seven percent impairment	<del>1140 weeks</del> permanent impairment multiplier of 1140
For eighty-eight percent impairment	<del>1165 weeks</del> permanent impairment multiplier of 1165

For eighty-nine percent impairment	<del>4490 weeks</del> permanent impairment multiplier of 1190
For ninety percent impairment	<del>4215 weeks</del> permanent impairment multiplier of 1215
For ninety-one percent impairment	<del>4240 weeks</del> permanent impairment multiplier of 1240
For ninety-two percent impairment	<del>4265 weeks</del> permanent impairment multiplier of 1265
For ninety-three percent impairment	<del>4290 weeks</del> permanent impairment multiplier of 1290
For ninety-four percent impairment	<del>4320 weeks</del> permanent impairment multiplier of 1320
For ninety-five percent impairment	<del>4350 weeks</del> permanent impairment multiplier of 1350
For ninety-six percent impairment	<del>4380 weeks</del> permanent impairment multiplier of 1380
For ninety-seven percent impairment	<del>4440 weeks</del> permanent impairment multiplier of 1410
For ninety-eight percent impairment	<del>4440 weeks</del> permanent impairment multiplier of 1440
For ninety-nine percent impairment	<del>4470 weeks</del> permanent impairment multiplier of 1470
For one hundred percent impairment	<del>4500 weeks</del> 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 ~~number of weeks permanent impairment multiplier~~ identified in the following schedule, the organization shall pay an award equal to the ~~number of weeks permanent impairment multiplier~~ set out in the following schedule:

For amputation of a thumb	<del>65 weeks</del> permanent impairment multiplier of 65
For amputation of the second or distal phalanx of the thumb	<del>28 weeks</del> permanent impairment multiplier of 28
For amputation of the first finger	<del>40 weeks</del> permanent impairment multiplier of 40
For amputation of the middle or second phalanx of the first finger	<del>28 weeks</del> permanent impairment multiplier of 28
For amputation of the third or distal phalanx of the first finger	<del>22 weeks</del> permanent impairment multiplier of 22
For amputation of the second finger	<del>30 weeks</del> permanent impairment multiplier of 30
For amputation of the middle or second phalanx of the second finger	<del>22 weeks</del> permanent impairment multiplier of 22
For amputation of the third or distal phalanx of the second finger	<del>14 weeks</del> permanent impairment multiplier of 14
For amputation of the third finger	<del>20 weeks</del> permanent impairment multiplier of 20
For amputation of the middle or second phalanx of the third finger	<del>16 weeks</del> permanent impairment multiplier of 16
For amputation of the fourth finger	<del>16 weeks</del> permanent impairment multiplier of 16
For amputation of the middle or second phalanx of the fourth finger	<del>12 weeks</del> permanent impairment multiplier of 12
For amputation of the leg at the hip	<del>234 weeks</del> permanent impairment multiplier of 234
For amputation of the leg at or above the knee	<del>405 weeks</del> permanent impairment multiplier of 195
For amputation of the leg at or above the ankle	<del>450 weeks</del> permanent impairment multiplier of 150
For amputation of a great toe	<del>30 weeks</del> permanent impairment multiplier of 30
For amputation of the second or distal phalanx of the great toe	<del>18 weeks</del> permanent impairment multiplier of 18
For amputation of any other toe	<del>12 weeks</del> permanent impairment multiplier of 12
For loss of an eye	<del>450 weeks</del> permanent impairment multiplier of 150

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 ~~number of weeks~~ permanent impairment multiplier allowed for the combined rating established under the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the ~~number of weeks~~ 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 of doctors who are qualified by the doctor's training, experience, and area of practice to rate permanent impairments caused by various types of injuries. The organization shall define, by rule, the process by which the organization and the injured employee 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 impairment award determinations made after July 30, 2007.

Approved April 11, 2007

Filed April 13, 2007



**CHAPTER 574****HOUSE BILL NO. 1517**

(Representatives Schneider, Wall)

(Senator Holmberg)

**WSI INFORMATION RELEASE**

AN ACT to amend and reenact section 65-05-32 of the North Dakota Century Code, relating to release of information by workforce safety and insurance; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-32. Privacy of records and hearings - Penalty.** Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to organization employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the organization.
2. Employers or their duly authorized representatives who are required to have access to an injured ~~worker's~~ employee's claim file for the performance of their duties may review and have access to any files of their own injured ~~workers~~ employees. An employer or an employer's duly authorized representative who willfully communicates information contained in an employee's claim file to any person who does not need the information in the performance of that person's duties is guilty of a class B misdemeanor.
3. Physicians or health care providers treating or examining ~~workers~~ employees claiming benefits under this title, or physicians giving medical advice to the organization regarding any claim may, at the discretion of the organization, inspect the claim files and records of injured ~~workers~~ employees.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the organization at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the organization for exchange of information

pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.

6. At the request of a claimant, the organization may close the medical portion of a hearing to the public.
7. The organization may release the social security number of an individual claiming entitlement to benefits under this title to health care providers or health care facilities for the purpose of adjudicating a claim for benefits.
8. The organization may provide an injured employee's insurer information regarding the injured employee's claim.

Approved March 19, 2007  
Filed March 19, 2007

**CHAPTER 575****SENATE BILL NO. 2294**  
(Senators Nething, Robinson, Triplett)  
(Representatives Amerman, DeKrey, Kasper)**REOPENING WSI CLAIMS PRESUMED CLOSED**

AN ACT to amend and reenact section 65-05-35 of the North Dakota Century Code, relating to reopening of workforce safety and insurance claims that are presumed closed.

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

**SECTION 1. AMENDMENT.** Section 65-05-35 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-35. Closed claim - Presumption.**

1. A claim for benefits under this title is presumed closed if the organization has not paid any benefit or received a demand for payment of any benefit for a period of four years.
2. A claim that is presumed closed may not be reopened for payment of any further benefits unless the presumption is rebutted by clear and convincing evidence that the work injury is the ~~sole~~ primary cause of the current symptoms.
3. With respect to a claim that has been presumed closed, the employee shall provide the organization written notice of reapplication for benefits under that claim. In case of award of lost-time benefits, the award may commence no more than thirty days before the date of reapplication. In case of award of medical benefits, the award may be for medical services incurred no more than thirty days before the date of reapplication.
4. This section applies to all claims for injury, irrespective of injury date.

Approved March 13, 2007  
Filed March 14, 2007