

Introduced by

Industry, Business and Labor Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to amend and reenact subsection 31 of section 65-01-02, sections 65-02-06.1,
2 65-02-09, and 65-05-05, subsection 2 of section 65-05-08, subsection 11 of section 65-05-12.2,
3 subsection 3 of section 65-05.1-01, subdivision a of subsection 6 of section 65-05.1-01,
4 subsection 7 of section 65-05.1-02, section 65-05.1-02.1, subsection 1 of section 65-05.1-03,
5 subsections 3, 4, 5, and 6 of section 65-05.1-04, subsection 1 of section 65-05.1-06.1,
6 subdivision f of subsection 2 of section 65-05.1-06.1, subsection 3 of section 65-05.1-06.1, and
7 sections 65-05.1-06.2 and 65-05.1-07 of the North Dakota Century Code, relating to definition of
8 wages and federal wages for national guard employees, biennial report requirements,
9 out-of-state claim filing, discontinuation of benefits during incarceration, permanent partial
10 impairment law for amputations, vocational consultants, and claimants; and to provide for
11 application.

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

13 **SECTION 1. AMENDMENT.** Subsection 31 of section 65-01-02 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 31. a. "Wages" means an:

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

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

21 (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all
22 employees. The term includes all pretax deductions for amounts allocated
23 by the employee for deferred compensation, medical reimbursement,

1 retirement, or any similar program, but may not include dismissal or
2 severance pay.

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

7 **SECTION 2. AMENDMENT.** Section 65-02-06.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **65-02-06.1. Allocated loss adjustment expenses - Continuing appropriation - Annual**
10 **review.**

11 Money in the workforce safety and insurance fund is appropriated on a continuing basis for
12 the payment of all allocated loss adjustment expenses experienced by the organization in its
13 administration of this title. In its annual audit ~~and its biennial report~~, the organization shall
14 include a breakdown of those allocated loss adjustment expenses that reflect the attorney's fees
15 and costs paid to attorneys who represent injured workers, the attorney's fees and costs paid to
16 attorneys with whom it contracts to represent the organization, the amount paid for
17 administrative law judges for hearings, and the court reporter and other legal expenses paid.

18 **SECTION 3. AMENDMENT.** Section 65-02-09 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **65-02-09. General information to public - Biennial report.**

21 The organization, from time to time, may publish and distribute among employers and
22 employees general information as to the business transacted by the organization as in its
23 judgment may be useful. The director shall submit a biennial report to the governor and the
24 secretary of state in accordance with section 54-06-04. The report must include:

- 25 1. A statement of the number of awards made by it.
- 26 2. A general statement of the causes of accidents leading to the injuries for which the
27 awards were made.
- 28 3. A detailed statement of the disbursements from the fund.
- 29 4. A statement of the conditions of the various funds carried by the organization.
- 30 5. A breakdown of those allocated loss adjustment expenses that reflect the attorney's
31 fees and costs paid to attorneys who represent injured workers, the attorney's fees

1 and costs paid to attorneys with whom the organization contracts to represent the
2 organization, the amount paid for administrative law judges for hearings, and the
3 amount paid for the court reporter and any other legal expenses.

4 6. Any other matters which the organization wishes to call to the attention of the
5 governor, including any recommendation for legislation or otherwise which it may have
6 to make.

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

9 **65-05-05. Payments made to insured employees injured in course of employment and**
10 **to their dependents.**

11 1. The organization shall disburse the fund for the payment of compensation and other
12 benefits as provided in this chapter to employees, or to their dependents in case death
13 has ensued, who:

- 14 1. a. Are subject to the provisions of this title;
15 2. b. Are employed by employers who are subject to this title; and
16 3. c. Have been injured in the course of their employment.

17 2. If an employee, or any person seeking benefits because of the death of an employee,
18 applies for benefits from another state for the same injury, the organization will
19 suspend all future benefits pending resolution of the application. If an employee, or
20 any person seeking benefits because of the death of an employee, is determined to be
21 eligible for benefits through some other state act or enters an agreement to resolve a
22 claim through some other state act, no further compensation shall may be allowed
23 under this title and the employee, or any person seeking benefits because of the death
24 of an employee, must reimburse the organization for the entire amount of benefits
25 paid.

26 **SECTION 5. AMENDMENT.** Subsection 2 of section 65-05-08 of the North Dakota Century
27 Code is amended and reenacted as follows:

28 2. All payments of disability and rehabilitation benefits ~~must be suspended during the~~
29 ~~period of confinement in excess of seventy-two consecutive hours~~ of any employee
30 who is eligible for, or receiving, benefits under this title ~~whom~~ must be suspended when
31 the employee is confined in a penitentiary, jail, youth correctional facility, or any other

1 penal institution for a period of between seventy-two consecutive hours and thirty
2 consecutive days. After discharge from the institution, the organization shall pay
3 ~~subsequent disability or rehabilitation benefits as the employee otherwise would be~~
4 ~~entitled under this title.~~ All payments of disability and rehabilitation benefits of any
5 employee who is eligible for, or receiving, benefits under this title must be discontinued
6 when the employee is confined in a penitentiary, jail, youth correctional facility, or any
7 other penal institution for a period in excess of thirty consecutive days.

8 **SECTION 6. AMENDMENT.** Subsection 11 of section 65-05-12.2 of the North Dakota
9 Century Code is amended and reenacted as follows:

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

18 For amputation of a thumb	permanent impairment multiplier of 65
19	
20 For amputation of the second or distal	permanent impairment
21 phalanx of the thumb	multiplier of 28
22 For amputation of the first finger	permanent impairment
23	multiplier of 40
24 For amputation of the middle or second	permanent impairment
25 phalanx of the first finger	multiplier of 28
26 For amputation of the third or distal	permanent impairment
27 phalanx of the first finger	multiplier of 22
28 For amputation of the second finger	permanent impairment
29	multiplier of 30
30 For amputation of the middle or second	permanent impairment
31 phalanx of the second finger	multiplier of 22

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1	For amputation of the third or distal	permanent impairment
2	phalanx of the second finger	multiplier of 14
3	For amputation of the third finger	permanent impairment
4		multiplier of 20
5	For amputation of the middle or second	permanent impairment
6	phalanx of the third finger	multiplier of 16
7	For amputation of the fourth finger	permanent impairment
8		multiplier of 16
9	For amputation of the middle or second	permanent impairment
10	phalanx of the fourth finger	multiplier of 12
11	For amputation of the leg at the hip	permanent impairment
12		multiplier of 234
13	For amputation of the leg at or above	permanent impairment
14	the knee	multiplier of 195
15	For amputation of the leg at or above	permanent impairment
16	the ankle	multiplier of 150
17	For amputation of a great toe	permanent impairment
18		multiplier of 30
19	For amputation of the second or	permanent impairment
20	distal phalanx of the great toe	multiplier of 18
21	For amputation of any other toe	permanent impairment
22		multiplier of 12
23	For loss of an eye	permanent impairment
24		multiplier of 150
25	For the loss of vision of an eye which	permanent impairment
26	equals or exceeds 20/200 corrected	multiplier of 100
27	The award for the amputation of more than one finger of one hand may not exceed an	
28	award for the amputation of a hand. The award for the amputation of more than one	
29	toe of one foot may not exceed an award for the amputation of a foot. If any of the	
30	amputations or losses set out in this subsection combine with other impairments for	
31	the same work-related injury or condition, the organization shall issue an impairment	

1 award based on the greater of the permanent impairment multiplier allowed for the
2 combined rating established under the sixth edition of the American medical
3 association's "Guides to the Evaluation of Permanent Impairment" or the permanent
4 impairment multiplier set forth in this subsection.

5 **SECTION 7. AMENDMENT.** Subsection 3 of section 65-05.1-01 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 3. It is the goal of vocational rehabilitation to return the disabled employee to substantial
8 gainful employment with a minimum of retraining, as soon as possible after an injury
9 occurs. "Substantial gainful employment" means bona fide work, for remuneration,
10 which is reasonably attainable in light of the individual's injury, functional capacities,
11 education, previous occupation, experience, and transferable skills, and which offers
12 an opportunity to restore the employee as soon as practicable and as nearly as
13 possible to ninety percent of the employee's average weekly earnings at the time of
14 injury, or to sixty-six and two-thirds percent of the average weekly wage in this state on
15 the date the rehabilitation consultant's report is issued under section 65-05.1-02.1,
16 whichever is less. The purpose of defining substantial gainful employment in terms of
17 earnings is to determine the first appropriate priority option under subsection 4 which
18 meets this income test set out above.

19 **SECTION 8. AMENDMENT.** Subdivision a of subsection 6 of section 65-05.1-01 of the
20 North Dakota Century Code is amended and reenacted as follows:

21 a. If the ~~vocational consultant~~organization concludes that none of the priority
22 options under subsection 4 are viable, and will not return the employee to the
23 lesser of sixty-six and two-thirds percent of the average weekly wage, or ninety
24 percent of the employee's preinjury earnings, the employee shall continue to
25 minimize the loss of earnings capacity, to seek, obtain, and retain employment:
26 (1) That meets the employee's functional capacities; and
27 (2) For which the employee meets the qualifications to compete.

28 **SECTION 9. AMENDMENT.** Subsection 7 of section 65-05.1-02 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 7. ~~Appoint one or more vocational consultants, the identity of which must be determined~~
31 ~~by the organization~~Determine and report on a case-by-case basis, as the nature of the

1 injury may require, for the purpose of assessing the worker's transferable skills,
2 employment options, and the physical demand characteristics of the worker's
3 employment options, and determining which option available under subdivisions a
4 through f of subsection 4 of section 65-05.1-01 will enable the worker to return to
5 employment within the physical restrictions and limitations provided by the medical
6 assessment team. ~~The vocational consultant shall issue to the organization a report as
7 provided in section 65-05.1-02.1.~~

8 **SECTION 10. AMENDMENT.** Section 65-05.1-02.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **65-05.1-02.1. Vocational consultant's report.**

11 ~~The vocational consultant~~organization shall review all records, statements, and other
12 pertinent information and prepare a report to the organization and employee.

13 1. The report must:

14 a. Identify the first appropriate rehabilitation option by following the priorities set
15 forth in subsection 4 of section 65-05.1-01.

16 b. Contain findings of why a higher listed priority, if any, is not appropriate.

17 2. Depending on which option the consultant identifies as appropriate, the report also
18 must contain findings that:

19 a. Identify jobs in the local or statewide job pool and the employee's anticipated
20 earnings from each job; or

21 b. Describe an appropriate retraining program, the employment opportunities
22 anticipated upon the employee's completion of the program, and the employee's
23 anticipated earnings.

24 ~~3. The vocational consultant's report is due within sixty days from the date the vocational
25 assessment is performed under this chapter. However, if the vocational consultant
26 determines that retraining options must be evaluated because higher priority options
27 are not viable, the final report is due within ninety days of the vocational assessment
28 to allow the employee to assist in formulating the choice among the qualified training
29 programs.~~

30 **SECTION 11. AMENDMENT.** Subsection 1 of section 65-05.1-03 of the North Dakota
31 Century Code is amended and reenacted as follows:

- 1 1. Direct the implementation of programs for ~~individual workforce safety and insurance-~~
2 ~~claimants~~injured employees in accordance with organization determinations in
3 compliance with the purpose of this chapter.

4 **SECTION 12. AMENDMENT.** Subsections 3, 4, 5, and 6 of section 65-05.1-04 of the North
5 Dakota Century Code are amended and reenacted as follows:

- 6 3. The injured employee shall be available for testing under subsection 6 or 7 of section
7 65-05.1-02, and for any further examinations and testing as may be prescribed by the
8 organization to determine whether or not a program of rehabilitation is necessary. The
9 injured employee also shall participate in remedial or other educational services when
10 those services are determined to be necessary by the organization ~~or the vocational-~~
11 ~~consultant. If the employee is noncompliant with this subsection, the organization shall~~
12 ~~suspend benefits during the period of noncompliance.~~
- 13 4. If the first appropriate rehabilitation option under subsection 4 or 6 of section
14 65-05.1-01 is return to the same, modified, or alternative occupation, or return to an
15 occupation that is suited to the employee's education, experience, and marketable
16 skills, the employee is responsible to make a good-faith work trial or work search. If
17 the employee fails to perform a good-faith work trial or work search, the organization
18 may not pay additional disability benefits unless the employee meets the criteria for
19 reapplying for benefits required under subsection 1 of section 65-05-08. If the
20 employee meets the burden of proving that the employee made a good-faith work trial
21 or work search and that the work trial or work search was unsuccessful due to the
22 injury, the organization shall reevaluate the employee's vocational rehabilitation claim.
23 When the first appropriate vocational rehabilitation option is identified for an employee,
24 the organization shall notify the employee of the obligation to make a good-faith work
25 search or good-faith work trial, and provide information to the employee regarding
26 reinstatement of benefits if the work search or work trial is unsuccessful.
- 27 5. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is
28 retraining, the employee shall cooperate with the necessary testing to determine
29 whether the proposed training program meets the employee's medical limitations and
30 aptitudes. The employee shall attend a qualified rehabilitation training program when
31 ordered by the organization. A qualified training program is a rehabilitation plan that

1 meets the criteria of this title, ~~is the approved option of the rehabilitation consultant,~~
2 and commences within a reasonable period of time such as the next quarter or
3 semester. The organization and the employee, by agreement, may waive the income
4 test applicable under this subsection.

- 5 6. If, without good cause, the injured employee fails to make a good-faith work search in
6 return to work utilizing the employee's transferable skills, the employee is in
7 noncompliance with vocational rehabilitation. A good-faith work search that does not
8 result in placement is not, in itself, sufficient grounds to prove the work injury caused
9 the inability to acquire gainful employment. The employee shall show that the injury
10 significantly impacts the employee's ability to successfully compete for gainful
11 employment in that the injury leads employers to favor those without limitations over
12 the employee. If, without good cause, the injured employee fails to attend specific
13 vocational testing, remedial, or other vocational services determined necessary by the
14 organization ~~or the rehabilitation consultant,~~ the employee is in noncompliance with
15 vocational rehabilitation. If, without good cause, the injured employee fails to attend a
16 scheduled medical or vocational assessment, fails to communicate or cooperate with
17 the ~~vocational consultant~~organization, or fails to attend a specific qualified
18 rehabilitation program within ten days from the date the rehabilitation program
19 commences, the employee is in noncompliance with vocational rehabilitation. If,
20 without good cause, the employee discontinues a training program in which the
21 employee is enrolled, the employee is in noncompliance with vocational rehabilitation.
22 If at any time the employee is noncompliant without good cause, subsequent efforts by
23 the employee to come into compliance with vocational rehabilitation are not
24 considered successful compliance until the employee has successfully returned to the
25 job or training program for a period of thirty days. In all cases of noncompliance by the
26 employee, the organization shall discontinue disability and vocational rehabilitation
27 benefits. If the period of noncompliance continues for thirty days following the date
28 benefits are discontinued, or a second instance of noncompliance occurs without good
29 cause, the organization may not pay any further disability or vocational rehabilitation
30 benefits, regardless of whether the employee sustained a significant change in
31 medical condition due to the work injury.

1 **SECTION 13. AMENDMENT.** Subsection 1 of section 65-05.1-06.1 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 1. Within sixty days of receiving the final vocational consultant's report, the organization
4 shall issue an administrative order under chapter 28-32 detailing the employee's
5 entitlement to disability and vocational rehabilitation services.

6 **SECTION 14. AMENDMENT.** Subdivision f of subsection 2 of section 65-05.1-06.1 of the
7 North Dakota Century Code is amended and reenacted as follows:

8 f. If the employee successfully concludes the rehabilitation program, the
9 organization may make, in its sole discretion, additional awards for actual
10 relocation expenses to move the household to the locale where the
11 claimantinjured employee has actually located work.

12 **SECTION 15. AMENDMENT.** Subsection 3 of section 65-05.1-06.1 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 3. If the appropriate priority option is return to the same or modified position, or to a
15 related position, the organization shall determine whether the employee is eligible to
16 receive partial disability benefits pursuant to section 65-05-10. In addition, the
17 organization, when appropriate, shall make an additional award for actual relocation
18 expenses to move the household to the locale where the claimantinjured employee
19 has actually located work.

20 **SECTION 16. AMENDMENT.** Section 65-05.1-06.2 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **65-05.1-06.2. Contract for vocational rehabilitation services.**

23 The organization may contract with vocational rehabilitation vendors to provide vocational
24 rehabilitation services to claimantsinjured employees. The organization shall determine the
25 criteria that render a vocational rehabilitation vendor qualified. If additional services are
26 determined to be necessary as a result of failed or inappropriate rehabilitation of an injured
27 employee through no fault of the employee, the organization may contract with the vendor for
28 additional services. If the failure or inappropriateness of the rehabilitation of the injured
29 employee is due to the vendor's failure to provide the necessary services to fulfill the contract,
30 the organization is not obligated to use that vendor for additional services on that claim and the

1 organization may refuse payment for a service that the vendor failed to perform which was a
2 material requirement of the contract.

3 **SECTION 17. AMENDMENT.** Section 65-05.1-07 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **65-05.1-07. Person furnishing training exempt from civil liability - Claimant's Injured**
6 **employee's remedy.**

7 Any person, partnership, corporation, limited liability company, association, or agency that
8 furnishes on-the-job or other similar training to ~~a workforce safety and insurance claimant an~~
9 injured employee as the result of a rehabilitation contract, without establishing an employment
10 relationship with the ~~claimant~~injured employee, is exempt from all civil liability.

11 **SECTION 18. APPLICATION.** Sections 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 apply
12 to all claims regardless of date of injury. Section 6 applies to permanent impairment evaluations
13 performed on or after August 1, 2011.