

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



Sixty-third  
Legislative Assembly

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

1           the same work-related injury or condition, the organization shall issue an impairment  
2           award based on the greater of the permanent impairment multiplier allowed for the  
3           combined rating established under the sixth edition of the American medical  
4           association's "Guides to the Evaluation of Permanent Impairment" or the permanent  
5           impairment multiplier set forth in this subsection.

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

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

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

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

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

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

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

12           **65-05.1-02.1. Vocational consultant's report.**

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

15           1. The report must:

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

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

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

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

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

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

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

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

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

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



1 aptitudes. The employee shall attend a qualified rehabilitation training program when  
2 ordered by the organization. A qualified training program is a rehabilitation plan that  
3 meets the criteria of this title, ~~is the approved option of the rehabilitation consultant,~~  
4 and commences within a reasonable period of time such as the next quarter or  
5 semester. The organization and the employee, by agreement, may waive the income  
6 test applicable under this subsection.

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

1           benefits, regardless of whether the employee sustained a significant change in  
2           medical condition due to the work injury.

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

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

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

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

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

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

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

24           **65-05.1-06.2. Contract for vocational rehabilitation services.**

25           The organization may contract with vocational rehabilitation vendors to provide vocational  
26 rehabilitation services to ~~claimants~~injured employees. The organization shall determine the  
27 criteria that render a vocational rehabilitation vendor qualified. If additional services are  
28 determined to be necessary as a result of failed or inappropriate rehabilitation of an injured  
29 employee through no fault of the employee, the organization may contract with the vendor for  
30 additional services. If the failure or inappropriateness of the rehabilitation of the injured  
31 employee is due to the vendor's failure to provide the necessary services to fulfill the contract,

1 the organization is not obligated to use that vendor for additional services on that claim and the  
2 organization may refuse payment for a service that the vendor failed to perform which was a  
3 material requirement of the contract.

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

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

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

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