

HOUSE BILL NO. 1102
with Senate Amendments
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Introduced by

Industry, Business and Labor Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to create and enact subsection 9 to section 65-05-32 of the North Dakota
2 Century Code, relating to privacy of records; to amend and reenact subsection 21 of section
3 65-01-02, subsection 1 of section 65-01-15.1, sections 65-05-10 and 65-05-20.1, subsection 1
4 of section 65-05.1-06.1, and sections 65-05.1-06.3, 65-05.1-08, and 65-06-03 of the North
5 Dakota Century Code, relating to definition of a health care provider, presumption of
6 compensability for full-time paid firefighters and law enforcement, payment of temporary partial
7 disability benefits, rules for the workforce safety and insurance scholarship fund, issuance of
8 vocational rehabilitation decisions, rehabilitation pilot programs, rules for the educational
9 revolving loan fund, and average weekly wages for volunteer firefighters, volunteer health
10 practitioners, and volunteer emergency responders; and to provide for application.

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

12 **SECTION 1. AMENDMENT.** Subsection 21 of section 65-01-02 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 21. "Health care provider" ~~means~~includes a doctor, qualified nurse, pharmacist,
15 audiologist, speech language pathologist, or naturopath or any recognized practitioner
16 providing skilled services pursuant to the prescription of, or under the supervision or
17 direction of, ~~a doctor~~ any of these individuals.

18 **SECTION 2. AMENDMENT.** Subsection 1 of section 65-01-15.1 of the North Dakota
19 Century Code is amended and reenacted as follows:

20 1. Any condition or impairment of health of a full-time paid firefighter or law enforcement
21 officer caused by lung or respiratory disease, hypertension, heart disease, or an
22 exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the
23 course of employment, or occupational cancer in a full-time paid firefighter, ~~resulting in~~
24 ~~total or partial disability or death~~ is presumed to have been suffered in the line of duty.

1 The presumption may be rebutted by clear and convincing evidence the condition or
2 impairment is not work-related.

3 **SECTION 3. AMENDMENT.** Section 65-05-10 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **65-05-10. Partial disability - Weekly benefit.**

6 If the injury causes temporary partial disability resulting in decrease of earning capacity, the
7 disability benefit is sixty-six and two-thirds percent of the difference between the injured
8 employee's average weekly wages before the injury and the employee's wage-earning capacity
9 after the injury in the same or another employment. Partial disability benefits are subject to a
10 maximum of one hundred twenty-five percent of the average weekly wage in the state. The
11 combined partial disability benefits, dependency allowance, and postinjury wage-earning
12 capacity may not exceed ninety percent of the preinjury weekly wage of the employee after
13 deductions for social security and federal income tax.

- 14 1. The benefits provided by this section are available to any otherwise eligible worker,
15 providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning
16 capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the
17 organization.
- 18 2. Benefits must be paid during the continuance of partial disability, not to exceed a
19 period of five years. The organization may waive the five-year limit on the duration of
20 partial disability benefits in cases of catastrophic injury as defined in section
21 65-05.1-06.1 or when the injured worker is working and has long-term restrictions
22 verified by clear and convincing objective medical and vocational evidence that limits
23 the injured worker to working less than twenty-eight hours per week because of the
24 compensable work injury. This subsection is effective for partial loss of earnings
25 capacity occurring after June 30, 1991.
- 26 3. The employee's earnings capacity may be established by expert vocational evidence
27 of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury
28 earnings are presumptive evidence of earnings capacity if the job employs the
29 employee to full work capacity in terms of hours worked per week, and if the job is in a
30 field related to the employee's transferable skills. The presumption may be rebutted by
31 competent evidence from a vocational expert that the employee's actual earnings do

1 not fairly reflect the employee's earnings capacity in the statewide job pool,
2 considering the employee's capabilities, education, experience, and skills.

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

5 **65-05-20.1. Scholarship fund - Rules.**

6 1. The organization may establish a scholarship fund ~~to provide scholarships for the~~
7 Scholarships may be awarded to:

8 a. The spouse and child of a worker who dies as a result of a compensable
9 work-related injury, if the spouse and child have received benefits under section
10 65-05-17. The organization may also grant scholarships for the spouse and child
11 of an injured worker;

12 b. The spouse and child of a worker who is deemed to be catastrophically injured as
13 defined in subdivision c of subsection 2 of section 65-05.1-06.1 and the child
14 meets the definition of child at the time of the initial scholarship application. The
15 organization may also grant scholarships to injured; and

16 c. Injured workers for whom the organization determines a scholarship would be
17 beneficial and appropriate because of exceptional circumstances, or upon
18 successful completion of a rehabilitation program contemplated under subdivision
19 g of subsection 4 of section 65-05.1-01, as determined by the organization.

20 2. For purposes of this section, child includes a legitimate child, a step child, adopted
21 child, posthumous child, foster child, and acknowledged illegitimate child between
22 twenty-three and twenty-six years of age who is enrolled as a full-time student in any
23 accredited educational institution and is dependent upon the employee for support.

24 3. Scholarships are payable to an accredited institution of higher education or an
25 institution of technical education on behalf of a student attending that institution.

26 4. The total amount awarded annually in scholarships may not exceed five hundred
27 thousand dollars. The maximum amount payable on behalf of an applicant is ten
28 thousand dollars per year for no more than five years, except that the combined
29 retraining and scholarship periods for applicants successfully completing a
30 rehabilitation program under subdivision g of subsection 4 of section 65-05.1-01 may
31 not exceed five years.

1 5. Scholarships must be awarded by a panel chosen by the organization. The
2 organization shall adopt rules establishing selection criteria and obligations associated
3 with the program and identifying information an applicant is required to submit to
4 determine an appropriate scholarship award. Scholarships may be awarded at the
5 sole discretion of the organization. There is no right to reconsideration, rehearing, or
6 appeal from any decision regarding the award, denial, or amount of a scholarship.

7 **SECTION 5.** Subsection 9 to section 65-05-32 of the North Dakota Century Code is created
8 and enacted as follows:

9 9. The organization may provide any state or federal agency any information obtained
10 pursuant to the administration of this title. Any information so provided must be used
11 for the purpose of administering the duties of that state or federal agency.

12 **SECTION 6. AMENDMENT.** Subsection 1 of section 65-05.1-06.1 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 1. Within sixty days of receiving the final vocational report, the organization shall issue an
15 ~~administrative order under chapter 28-32a~~ notice of decision under section 65-01-16
16 detailing the employee's entitlement to disability and vocational rehabilitation services.

17 **SECTION 7. AMENDMENT.** Section 65-05.1-06.3 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **65-05.1-06.3. Rehabilitation services pilot programs - Reports - ~~Data collection.~~**

20 4. The organization ~~shall~~ may implement a system of pilot programs to allow the
21 organization to assess alternative methods of providing rehabilitation services. A pilot
22 program may address one or more of the organization's comprehensive rehabilitation
23 services, including vocational, medical, psychological, economic, and social
24 rehabilitation services. The goal of a pilot program must be to improve the outcome of
25 the rehabilitation services offered by the organization to assist the employee in making
26 adjustments necessitated from the employee's injury and to improve the effectiveness
27 of vocational rehabilitation services in returning an employee to substantial gainful
28 employment. Notwithstanding laws to the contrary, a pilot program may address a
29 broad range of approaches, including collaborative efforts between the organization
30 and the employee through which there are variances from the rehabilitation services
31 hierarchy; return-to-work trial periods during which cash benefits are suspended;

- 1 intensive job search assistance; recognition of and focused services for injured
2 employees who are at risk; and coordination of services of public and private entities.
3 If a pilot program utilizes coordination of services of other state agencies, such as job
4 service North Dakota, department of human services, North Dakota university system,
5 or department of public instruction, the organization shall consult with the state agency
6 in establishing the relevant portions of the pilot program and the state agency shall
7 cooperate with the organization in implementing the pilot program.
- 8 ~~2. Each pilot program must include a cost-benefit analysis; a strengths, weaknesses,~~
9 ~~opportunities, and threats analysis; and employer and employee satisfaction~~
10 ~~information. The organization shall include in its annual report to the workers'~~
11 ~~compensation review committee under section 54-35-22:~~
- 12 a. ~~Preliminary reports on future pilot programs;~~
13 b. ~~Status~~status reports on current pilot programs; and
14 c. ~~Final reports on completed pilot programs, including recommendations and~~
15 ~~proposed legislative changes necessary to implement recommendations.~~
- 16 ~~3. The organization shall collect data regarding the status of claims that receive~~
17 ~~rehabilitation services. The data must include:~~
- 18 a. ~~The stage of rehabilitation services at which closure occurs;~~
19 b. ~~The reason for the closure; and~~
20 c. ~~Followup data to determine the effectiveness of job searches and returns to work,~~
21 ~~including postinjury earnings.~~

22 **SECTION 8. AMENDMENT.** Section 65-05.1-08 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **65-05.1-08. Workforce safety and insurance educational revolving loan fund -**
25 **Vocational rehabilitation grants - Continuing appropriation.**

- 26 1. The organization may establish a revolving loan fund to provide a low-interest loan to
27 an injured employee or to a surviving spouse or child of an injured employee whose
28 death resulted from a compensable injury under section 65-05-16; or to the spouse or
29 child of an injured employee deemed to be catastrophically injured as defined in
30 subdivision c of subsection 2 of section 65-05.1-06.1 ~~and the child meets the definition~~
31 ~~of child at the time of the initial loan application;~~ or to the spouse or child of an injured

1 employee deemed to be eligible for permanent total disability benefits as defined in
2 section 65-01-02 and the child meets the definition of child at the time of the initial loan
3 application.

4 2. The loan must be used to pursue an education at an accredited institution of higher
5 education or an institution of technical education. In order to be eligible for a loan
6 under this section, an individual must have obtained a high school diploma or its
7 equivalent and either must be ineligible for retraining under this chapter or must have
8 exhausted training and education benefits. A child of an injured employee must meet
9 the definition of child at the time of the initial loan application in order to be eligible for
10 a loan. The Bank of North Dakota and the organization shall establish loan eligibility
11 requirements and make application determinations based on the established criteria.
12 The loan application must require an applicant to demonstrate a viable education plan
13 that will enable the individual to achieve gainful employment.

14 ~~2.3.~~ The total amount loaned annually under this section may not exceed two million five
15 hundred thousand dollars. The maximum amount payable on behalf of a loan
16 applicant may not exceed fifty thousand dollars and must be payable within five years.
17 A loan must be repaid within a period not to exceed twenty years. A loan must be
18 repaid at an interest rate established by the organization which may not exceed the
19 rate of one percent below the Bank of North Dakota's prime interest rate. The
20 organization shall pay the Bank of North Dakota a negotiated fee for administering and
21 servicing loans under this section. At the organization's discretion, moneys to establish
22 and maintain the revolving loan fund must be appropriated from the organization's
23 workforce safety and insurance fund. The revolving loan fund is a special fund and
24 must be invested pursuant to section 21-10-06. Investment income and collections of
25 interest and principal on loans made from the revolving loan fund are appropriated on
26 a continuing basis to maintain the fund and provide loans in accordance with this
27 section. As determined necessary, the organization may transfer uncommitted moneys
28 of the revolving loan fund to the workforce safety and insurance fund.

29 ~~3.4.~~ The organization may implement a grant program to promote and provide necessary
30 educational opportunities for injured employees within the vocational rehabilitation
31 process. The organization may award a grant to promote necessary skills upgrading

1 and to provide for the completion of remedial educational requirements which allow for
2 optimal transition into the labor force. The total annual amount the organization may
3 grant under this subsection may not exceed one hundred thousand dollars. The
4 organization shall establish grant eligibility requirements and make grant
5 determinations based on the established criteria. Moneys are appropriated on a
6 continuing basis from uncommitted moneys in the educational revolving loan fund for
7 the purpose of funding the grants under this subsection.

8 **SECTION 9. AMENDMENT.** Section 65-06-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **65-06-03. Compensation benefits - How determined.**

11 The basis of compensation and benefits to be paid to a volunteer firefighter, an emergency
12 or disaster volunteer, volunteer health practitioner, or a community emergency response team
13 member under the terms of this chapter shall be determined in accordance with the provisions
14 of section 65-05-09; provided, however, that the average weekly wage of the claimant shall be
15 determined from a computation of income derived from the claimant's business or employment
16 for which coverage is required or otherwise secured at the date of first disability.

17 **SECTION 10. APPLICATION.** Section 3 of this Act applies to all claims regardless of date
18 of injury with a loss of earnings or recurrent loss of earnings commencing after July 31, 2015.
19 Sections 6 and 9 of this Act apply to all claims regardless of date of injury.