

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 a new section to chapter 65-01 and a new section to  
2 chapter 65-05 of the North Dakota Century Code, relating to a pilot program to assess  
3 alternative forms of dispute resolution and the electronic submission of medical billings; to  
4 amend and reenact section 65-01-02, subsection 3 of section 65-01-15.1, sections 65-02-21.1,  
5 65-05-09 and 65-05-10, and subsection 4 of section 65-05-28 of the North Dakota Century  
6 Code, relating to functional capacity examinations, medical examinations for full-time paid  
7 firefighters and law enforcement officers, licensing required for allied health care professionals,  
8 average weekly wage upon recurrence of disability, combined partial disability benefits, and  
9 medical noncompliance; to repeal section 65-02-07 of the North Dakota Century Code, relating  
10 to the organization seal; to provide a continuing appropriation; and to provide for application.

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

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

14 **65-01-02. Definitions.**

15 In this title:

- 16 1. "Acute care" means a short course of intensive diagnostic and therapeutic services  
17 provided immediately following a work injury with a rapid onset of pronounced  
18 symptoms.
- 19 2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the  
20 injury.
- 21 3. "Artificial members" includes a device that is a substitute for a natural part, organ,  
22 limb, or other part of the body. The term includes a prescriptive device that is an aid for  
23 a natural part, organ, limb, or other part of the body if the damage to the prescriptive

1 device is accompanied by an injury to the body. A prescriptive device includes  
2 prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.

3 4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or  
4 crutches as may be reasonable and necessary due to compensable injury.

5 5. "Average weekly wage" means the weekly wages the injured employee was receiving  
6 from all employments for which coverage is required or otherwise secured at the date  
7 of first disability. The average weekly wage determined under this subsection must be  
8 rounded to the nearest dollar. If the injured employee's wages are not fixed by the  
9 week, they must be determined by using the first applicable formula from the schedule  
10 below:

11 a. For seasonal employment, during the first consecutive days of disability up to  
12 twenty-eight days the average weekly wage is calculated pursuant to the first  
13 applicable formula in subdivisions b through g, and after that are calculated as  
14 one-fiftieth of the total wages from all occupations during the twelve months  
15 preceding the date of first disability or during the tax year preceding the date of  
16 first disability, or an average of the three tax years preceding the date of first  
17 disability, whichever is highest and for which accurate, reliable, and complete  
18 records are readily available.

19 b. The "average weekly wage" of a self-employed employer is determined by the  
20 following formula: one fifty-second of the average annual net self-employed  
21 earnings reported the three preceding tax years or preceding fifty-two weeks  
22 whichever is higher if accurate, reliable, and complete records for those fifty-two  
23 weeks are readily available.

24 c. Hourly or daily rate multiplied by number of hours or days worked per seven-day  
25 week.

26 d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.

27 e. Biweekly rate divided by two.

28 f. The usual wage paid other employees engaged in similar occupations.

29 g. A wage reasonably and fairly approximating the weekly wage lost by the  
30 claimant injured employee during the period of disability.

- 1           6. "Average weekly wage in the state" means the determination made of the average  
2           weekly wage in the state by job service North Dakota on or before July first of each  
3           year, computed to the next highest dollar.
- 4           7. "Board" means the workforce safety and insurance board of directors.
- 5           8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half  
6           sister, and a brother and sister by adoption. The terms do not include a married  
7           brother or sister unless that person actually is dependent.
- 8           9. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate  
9           child, a stepchild, adopted child, posthumous child, foster child, and acknowledged  
10          illegitimate child who is under eighteen years of age and resides with the injured  
11          employee; or is under eighteen years of age and does not reside with the injured  
12          employee but a duty of support is substantiated by an appropriate court order; or is  
13          between eighteen and twenty-two years of age and enrolled as a full-time student in  
14          any accredited educational institution and dependent upon the injured employee for  
15          support; or is eighteen years of age or over and is physically or mentally incapable of  
16          self-support and is actually dependent upon the injured employee for support. A child  
17          does not include a married child unless actually dependent on the injured employee as  
18          shown on the preceding year's income tax returns.
- 19          10. "Compensable injury" means an injury by accident arising out of and in the course of  
20          hazardous employment which must be established by medical evidence supported by  
21          objective medical findings.
- 22          a. The term includes:
- 23               (1) Disease caused by a hazard to which an employee is subjected in the  
24               course of employment. The disease must be incidental to the character of  
25               the business and not independent of the relation of employer and employee.  
26               Disease includes effects from radiation.
- 27               (2) An injury to artificial members.
- 28               (3) Injuries due to heart attack or other heart-related disease, stroke, and  
29               physical injury caused by mental stimulus, but only when caused by the  
30               employee's employment with reasonable medical certainty, and only when it  
31               is determined with reasonable medical certainty that unusual stress is at

- 1 least fifty percent of the cause of the injury or disease as compared with all  
2 other contributing causes combined. Unusual stress means stress greater  
3 than the highest level of stress normally experienced or anticipated in that  
4 position or line of work.
- 5 (4) Injuries arising out of employer-required or supplied travel to and from a  
6 remote jobsite or activities performed at the direction or under the control of  
7 the employer.
- 8 (5) An injury caused by the willful act of a third person directed against an  
9 employee because of the employee's employment.
- 10 (6) A mental or psychological condition caused by a physical injury, but only  
11 when the physical injury is determined with reasonable medical certainty to  
12 be at least fifty percent of the cause of the condition as compared with all  
13 other contributing causes combined, and only when the condition did not  
14 pre-exist the work injury.
- 15 b. The term does not include:
- 16 (1) Ordinary diseases of life to which the general public outside of employment  
17 is exposed or preventive treatment for communicable diseases, except that  
18 the organization may pay for preventive treatment for a health care provider  
19 as defined in section 23-07.5-01, firefighter, peace officer, correctional  
20 officer, court officer, law enforcement officer, emergency medical technician,  
21 or an individual trained and authorized by law or rule to render emergency  
22 medical assistance or treatment who is exposed to a bloodborne pathogen  
23 as defined in section 23-07.5-01 occurring in the course of employment and  
24 for exposure to rabies occurring in the course of employment.
- 25 (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an  
26 injury caused by the employee's willful intention to injure or kill another.
- 27 (3) Any injury caused by the use of intoxicants or the illegal use of controlled  
28 substances.
- 29 (4) An injury that arises out of an altercation in which the injured employee is an  
30 aggressor. This paragraph does not apply to public safety employees,  
31 including law enforcement officers or private security personnel who are

- 1 required to engage in altercations as part of their job duties if the altercation  
2 arises out of the performance of those job duties.
- 3 (5) An injury that arises out of an illegal act committed by the injured employee.
- 4 (6) An injury that arises out of an employee's voluntary nonpaid participation in  
5 any recreational activity, including athletic events, parties, and picnics, even  
6 though the employer pays some or all of the cost of the activity.
- 7 (7) Injuries attributable to a pre-existing injury, disease, or other condition,  
8 including when the employment acts as a trigger to produce symptoms in  
9 the pre-existing injury, disease, or other condition unless the employment  
10 substantially accelerates its progression or substantially worsens its  
11 severity. Pain is a symptom and may be considered in determining whether  
12 there is a substantial acceleration or substantial worsening of a pre-existing  
13 injury, disease, or other condition, but pain alone is not a substantial  
14 acceleration or a substantial worsening.
- 15 (8) A nonemployment injury that, although acting upon a prior compensable  
16 injury, is an independent intervening cause of injury.
- 17 (9) A latent or asymptomatic degenerative condition, caused in substantial part  
18 by employment duties, which is triggered or made active by a subsequent  
19 injury.
- 20 (10) A mental injury arising from mental stimulus.
- 21 11. "Date of first disability" means the first date the injured employee was unable to work  
22 because of a compensable injury.
- 23 12. "Date of maximum medical improvement" or "date of maximum medical recovery"  
24 means the date after which further recovery from, or lasting improvement to, an injury  
25 or disease can no longer reasonably be anticipated based upon reasonable medical  
26 probability.
- 27 13. "Director" means the director of the organization.
- 28 14. "Disability" means loss of earnings capacity and may be permanent total, temporary  
29 total, or partial.

- 1       15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist,  
2       podiatrist, or psychologist acting within the scope of the doctor's license, or an  
3       advanced practice registered nurse or certified physician assistant.
- 4       16. "Employee" means an individual who performs hazardous employment for another for  
5       remuneration unless the individual is an independent contractor under the  
6       common-law test.
- 7       a. The term includes:
- 8           (1) All elective and appointed officials of this state and its political subdivisions,  
9           including municipal corporations and including the members of the  
10          legislative assembly, all elective officials of any county, and all elective  
11          peace officers of any city.
- 12          (2) Aliens.
- 13          (3) County general assistance workers, except those who are engaged in  
14          repaying to counties moneys the counties have been compelled by statute  
15          to expend for county general assistance.
- 16          (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris  
17          for the purposes of this title, and no other person has any claim for relief or  
18          right to claim workforce safety and insurance benefits for any injury to a  
19          minor worker, but in the event of the award of a lump sum of benefits to a  
20          minor employee, the lump sum may be paid only to the legally appointed  
21          guardian of the minor.
- 22       b. The term does not include:
- 23           (1) An individual whose employment is both casual and not in the course of the  
24           trade, business, profession, or occupation of that individual's employer.
- 25           (2) An individual who is engaged in an illegal enterprise or occupation.
- 26           (3) The spouse of an employer or the child under the age of twenty-two of an  
27           employer. For purposes of this paragraph and section 65-07-01, "child"  
28           means any legitimate child, stepchild, adopted child, foster child, or  
29           acknowledged illegitimate child.
- 30           (4) A real estate broker or real estate salesperson, provided the individual  
31           meets the following three requirements:

- 1 (a) The salesperson or broker must be a licensed real estate agent under  
2 section 43-23-05.
- 3 (b) Substantially all of the salesperson's or broker's remuneration for the  
4 services performed as a real estate agent must be directly related to  
5 sales or other efforts rather than to the number of hours worked.
- 6 (c) A written agreement must exist between the salesperson or broker  
7 and the person for which the salesperson or broker works, which  
8 agreement must provide the salesperson or broker will not be treated  
9 as an employee but rather as an independent contractor.
- 10 (5) The members of the board of directors of a business corporation who are  
11 not employed in any capacity by the corporation other than as members of  
12 the board of directors.
- 13 (6) An individual delivering newspapers or shopping news, if substantially all of  
14 the individual's remuneration is directly related to sales or other efforts  
15 rather than to the number of hours worked and a written agreement exists  
16 between the individual and the publisher of the newspaper or shopping  
17 news which states the individual is an independent contractor.
- 18 (7) An employer.
- 19 17. "Employer" means a person who engages or received the services of another for  
20 remuneration unless the person performing the services is an independent contractor  
21 under the common-law test. The term includes:
- 22 a. The state and all political subdivisions thereof.
- 23 b. All public and quasi-public corporations in this state.
- 24 c. Every person, partnership, limited liability company, association, and private  
25 corporation, including a public service corporation.
- 26 d. The legal representative of any deceased employer.
- 27 e. The receiver or trustee of any person, partnership, limited liability company,  
28 association, or corporation having one or more employees as herein defined.
- 29 f. The president, vice presidents, secretary, or treasurer of a business corporation,  
30 but not members of the board of directors of a business corporation who are not  
31 also officers of the corporation.

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



1 form of medicine or herbal therapy. The term does not include treatments or  
2 preparations specifically approved by the United States food and drug administration  
3 as a drug product.

4 23. "Organization" means workforce safety and insurance, or the director, or any  
5 department head, assistant, or employee of workforce safety and insurance  
6 designated by the director, to act within the course and scope of that person's  
7 employment in administering the policies, powers, and duties of this title.

8 24. "Parent" includes a stepparent and a parent by adoption.

9 25. "Permanent impairment" means the loss of or loss of use of a member of the body  
10 existing after the date of maximum medical improvement and includes disfigurement  
11 resulting from an injury.

12 26. "Permanent total disability" means disability that is the direct result of a compensable  
13 injury that prevents an injured employee from performing any work and results from  
14 any one of the following conditions:

15 a. Total and permanent loss of sight of both eyes;

16 b. Loss of both legs or loss of both feet at or above the ankle;

17 c. Loss of both arms or loss of both hands at or above the wrist;

18 d. Loss of any two of the members or faculties in subdivision a, b, or c;

19 e. Permanent and complete paralysis of both legs or both arms or of one leg and  
20 one arm;

21 f. Third-degree burns that cover at least forty percent of the body and require  
22 grafting;

23 g. A medically documented brain injury affecting cognitive and mental functioning  
24 which renders an injured employee unable to provide self-care and requires  
25 supervision or assistance with a majority of the activities of daily living; or

26 h. A compensable injury that results in a permanent partial impairment rating of the  
27 whole body of at least twenty-five percent pursuant to section 65-05-12.2.

28 If the injured employee has not reached maximum medical improvement within one  
29 hundred four weeks, the injured employee may receive a permanent partial  
30 impairment rating if a rating will assist the organization in assessing the injured

1           employee's capabilities. Entitlement to a rating is solely within the discretion of the  
2           organization.

3       27. "Rehabilitation services" means nonmedical services reasonably necessary to restore  
4           a disabled employee to substantial gainful employment as defined by section  
5           65-05.1-01 as near as possible. The term may include vocational evaluation,  
6           counseling, education, workplace modification, vocational retraining including training  
7           for alternative employment with the same employer, and job placement assistance.

8       28. "Seasonal employment" includes occupations that are not permanent or that do not  
9           customarily operate throughout the entire year. Seasonal employment is determined  
10          by what is customary with respect to the employer at the time of injury.

11       29. "Spouse" includes only the decedent's husband or wife who was living with the  
12          decedent or was dependent upon the decedent for support at the time of injury.

13       30. "Temporary total disability" means disability that results in the inability of an injured  
14          employee to earn wages as a result of a compensable injury for which disability  
15          benefits may not exceed a cumulative total of one hundred four weeks or the date the  
16          injured employee reaches maximum medical improvement or maximum medical  
17          recovery, whichever occurs first.

18       31. "Utilization review" means the initial and continuing evaluation of appropriateness in  
19          terms of both the level and the quality of health care and health services provided a  
20          patient, based on medically accepted standards. The evaluation must be  
21          accomplished by means of a system that identifies the utilization of medical services,  
22          based on medically accepted standards, and which refers instances of possible  
23          inappropriate utilization to the organization to obtain opinions and recommendations of  
24          expert medical consultants to review individual cases for which administrative action  
25          may be deemed necessary.

26       32. "Valid functional capacities examination" means:

27          a. The results of a physical examination consisting of a battery of standardized  
28             assessments that offer reliable results in performance-based measures and  
29             demonstrate the level and duration an injured employee may return to work.

1           b. The conclusions of medical experts, following observations of other activities the  
2           medical expert determines similarly predictive, when the results of the physical  
3           examination in subsection a are not obtained or reliable.

4 ~~32-33.~~ a. "Wages" means:

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

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

10          (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all  
11          employees. The term includes all pretax deductions for amounts allocated  
12          by the employee for deferred compensation, medical reimbursement,  
13          retirement, or any similar program, but may not include dismissal or  
14          severance pay.

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

19           **SECTION 2. AMENDMENT.** Subsection 3 of section 65-01-15.1 of the North Dakota  
20 Century Code is amended and reenacted as follows:

21          3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit  
22          provided under this section unless that full-time paid firefighter or law enforcement  
23          officer has completed five years of continuous service and has successfully passed a  
24          medical examination which fails to reveal any evidence of such a condition. An  
25          employer shall require a medical examination upon employment, for any employee  
26          subject to this section. After the initial medical examination, an employer shall require  
27          at least a periodic medical examination as follows: for one to ten years of service,  
28          every five years; for eleven to twenty years of service, every three years; and for  
29          twenty-one or more years of service, every year. The periodic medical examination, at  
30          a minimum, must consist of a general medical history of the individual and the  
31          individual's family; an occupational history including contact with and an exposure to

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

14 **SECTION 3.** A new section to chapter 65-01 of the North Dakota Century Code is created  
15 and enacted as follows:

16 **Alternative dispute resolution - Pilot program - Continuing appropriation.**

17 Notwithstanding any other provision of law, the organization may develop and implement  
18 pilot programs to allow the organization to assess alternative forms of dispute resolution to  
19 resolve disputes with injured employees. The goal of the pilot program must be to develop  
20 timely, cost-effective, and amicable options to resolve disputes during any stage in the claim  
21 adjudication or appeal process. A pilot program may address a broad range of approaches,  
22 including collaborative efforts between the organization and other public or private entities.  
23 Participation of an injured employee in the pilot program is voluntary. Money in the workforce  
24 safety and insurance fund is appropriated to the organization on a continuing basis for payment  
25 of organization expenses associated with the pilot program.

26 **SECTION 4. AMENDMENT.** Section 65-02-21.1 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **65-02-21.1. Licensure required for ~~psychologists and physicians~~ allied health care**  
29 **professionals performing utilization review.**

30 Psychologists Allied health care professionals making utilization review determinations  
31 under sections 65-02-20 and 65-02-21 ~~shall have current licenses from the state board of~~

1 ~~psychologist examiners. Physicians making utilization review determinations under sections~~  
2 ~~65-02-20 and 65-02-21 shall have current licenses from the North Dakota board of medicine.~~  
3 ~~This requirement does not apply to psychologists or physicians or~~ conducting independent  
4 medical examinations or independent medical reviews under section 65-05-28 shall have  
5 current licenses from a state licensing agency within the United States.

6 **SECTION 5.** A new section to chapter 65-05 of the North Dakota Century Code is created  
7 and enacted as follows:

8 **Medical bills - Electronic acceptance.**

9 The organization shall establish guidelines, systems, and procedures for the acceptance of  
10 medical bills and supporting documentation by electronic methods. Health care providers shall  
11 submit medical bills and supporting documentation to the organization by this electronic method  
12 no later than July 1, 2021.

13 **SECTION 6. AMENDMENT.** Section 65-05-09 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **65-05-09. Temporary total or permanent total disability - Weekly and aggregate**  
16 **benefit.**

17 If an injury causes temporary total or permanent total disability, the fund shall pay to the  
18 ~~disabled~~injured employee during that disability a weekly benefit equal to sixty-six and two-thirds  
19 percent of the gross weekly wage of the injured employee, subject to a minimum of sixty  
20 percent and a maximum of one hundred twenty-five percent of the average weekly wage in the  
21 state. If an injured employee is disabled due to an injury, that injured employee's benefits will be  
22 based upon the injured employee's wage and the organization benefit rates in effect on the date  
23 of first disability.

24 1. ~~Unless otherwise provided in this subsection, if an injured employee suffers disability~~  
25 but is able to return to employment for a period of three consecutive calendar months  
26 or more, that injured employee's benefits will be based upon the wage ~~in~~  
27 ~~effect~~received at the time of the recurrence of the disability ~~or upon the wage that~~  
28 ~~employee received prior to the injury, whichever is higher. If the wage received at the~~  
29 time of the recurrence of the disability is lower than the wage received before the  
30 injury and the lower wage is due to the physical limitations of the compensable injury,  
31 the injured employee's benefits must be based upon the wage the injured employee

1           received before the injury. It is the burden of the injured employee to show the inability  
2           to earn as much as the injured employee earned before the injury is due to the  
3           physical limitation related to the injury. The organization benefit rates are those in  
4           effect at the time of that recurrence.

5           2. The disability benefit or the combined disability benefit and dependency award may  
6           not exceed the weekly wage of the injured employee after deductions for social  
7           security and federal income tax.

8           3. When an injured employee is permanently and totally disabled, must be maintained in  
9           a nursing home or similar facility, and has no dependent parent, spouse, or children,  
10           as much of that injured employee's weekly benefit as is necessary may be used by the  
11           organization to help defray the cost of the nursing home care.

12           **SECTION 7. AMENDMENT.** Section 65-05-10 of the North Dakota Century Code is  
13           amended and reenacted as follows:

14           **65-05-10. Partial disability - Weekly benefit.**

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

23           1. The benefits provided by this section are available to any otherwise eligible worker,  
24           providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning  
25           capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the  
26           organization.

27           2. Benefits must be paid during the continuance of partial disability, not to exceed a  
28           period of five years. The organization may waive the five-year limit on the duration of  
29           partial disability benefits in cases of catastrophic injury as defined in section  
30           65-05.1-06.1 or when the injured worker is working and has long-term restrictions  
31           verified by clear and convincing objective medical and vocational evidence that limits

1 the injured worker to working less than twenty-eight hours per week because of the  
2 compensable work injury. This subsection is effective for partial loss of earnings  
3 capacity occurring after June 30, 1991.

- 4 3. The employee's earnings capacity may be established by expert vocational evidence  
5 of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury  
6 earnings are presumptive evidence of earnings capacity if the job employs the  
7 employee to full work capacity in terms of hours worked per week, and if the job is in a  
8 field related to the employee's transferable skills. The presumption may be rebutted by  
9 competent evidence from a vocational expert that the employee's actual earnings do  
10 not fairly reflect the employee's earnings capacity in the statewide job pool,  
11 considering the employee's capabilities, education, experience, and skills.

12 **SECTION 8. AMENDMENT.** Subsection 4 of section 65-05-28 of the North Dakota Century  
13 Code is amended and reenacted as follows:

- 14 4. If an injured employee, or the injured employee's representative, refuses to submit to,  
15 or in any way intentionally obstructs, any examination or treatment, or refuses to  
16 reasonably participate in medical or other treatments or examinations, ~~the injured~~  
17 ~~employee's right to claim compensation under this title is suspended until the refusal~~  
18 ~~or obstruction ceases. No compensation is payable while the refusal or obstruction~~  
19 ~~continues, and the injured employee is medically noncompliant. If the organization~~  
20 determines an injured employee is medically noncompliant without good cause, the  
21 organization shall discontinue disability and vocational rehabilitation benefits. At any  
22 time the injured employee is medically noncompliant, efforts by the injured employee  
23 to come into compliance are not considered successful compliance until the injured  
24 employee has been compliant for a period of at least sixty days. If the period of  
25 medical noncompliance continues for sixty days following the date disability and  
26 vocational rehabilitation benefits are discontinued, or a second instance of medical  
27 noncompliance occurs without good cause, the organization may not pay any further  
28 disability and vocational rehabilitation benefits, regardless of whether the injured  
29 employee sustained a significant change in medical condition due to the work injury.  
30 The period of the refusal or obstruction noncompliance must be deducted from the  
31 period for which compensation is payable to the injured employee.

- 1       **SECTION 9. REPEAL.** Section 65-02-07 of the North Dakota Century Code is repealed.
- 2       **SECTION 10. APPLICATION.** Sections 1, 2, 4, 6, 7, and 8 of this Act apply to all claims
- 3 regardless of date of injury.