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North Dakota Statutes

Title 65

Workforce Safety and Insurance

CHAPTER 65-01 GENERAL PROVISIONS

TITLE 65
WORKFORCE SAFETY AND INSURANCE
CHAPTER 65-01
GENERAL PROVISIONS

65-01-01. Purposes of workforce safety and insurance law - Police power.

The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wageworkers, and,
hence, for workers injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and
to that end, all civil actions and civil claims for relief for those personal injuries and all jurisdiction
of the courts of the state over those causes are abolished except as is otherwise provided in this
title. A civil action or civil claim arising under this title, which is subject to judicial review, must be
reviewed solely on the merits of the action or claim. This title may not be construed liberally on behalf of any party to the action or claim.

65-01-01.1. Civil liability for intentional injuries.

The sole exception to an employer's immunity from civil liability under this title, except as provided in chapter 65-09, is an action for an injury to an employee caused by an employer's intentional act done with the conscious purpose of inflicting the injury.

65-01-02. Definitions.

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.

3. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
e. Biweekly rate divided by two.
f. The usual wage paid other employees engaged in similar occupations.
g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
7. "Board" means the workforce safety and insurance board of directors.
8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
9. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the employee; or is under eighteen years of age and does not reside with the employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and

twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the employee for support. A child does not include a married child unless actually dependent on the employee as shown on the preceding year's income tax returns.

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

(1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.

(2) An injury to artificial members.

(3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.

(4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.

(5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.

(6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not preexist the work injury.

b. The term does not include:

(1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.

(2) A willfully self-inflicted injury, including suicide or attempted suicide, or an

injury caused by the employee's willful intention to injure or kill another.
(3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
(4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
(5) An injury that arises out of an illegal act committed by the injured employee.
(6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
(7) Injuries attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a preexisting injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.
(8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
(9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
(10) A mental injury arising from mental stimulus.
11. "Date of first disability" means the first date the employee was unable to work because of a compensable injury.
12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
13. "Director" means the director of the organization.
14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.
16. "Employee" means a person who performs hazardous employment for another for remuneration unless the person is an independent contractor under the common-law test.
a. The term includes:
(1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state,

and all elective peace officers of any city.
(2) Aliens.
(3) County general assistance workers, except those who are engaged in repaying to counties moneys that the counties have been compelled by statute to expend for county general assistance.
(4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.
b. The term does not include:
(1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
(2) Any person who is engaged in an illegal enterprise or occupation.
(3) The spouse of an employer or a child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
(4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
(a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
(b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
(c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.
(5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
(6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.
(7) An employer.
c. Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary

coverage and paid the premium for the coverage. This subdivision does not impose any liability upon a general contractor other than liability to the organization for the payment of premiums which are not paid by a subcontractor or independent contractor.

17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:

a. The state and all political subdivisions thereof.

b. All public and quasi-public corporations in this state.

c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.

d. The legal representative of any deceased employer.

e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.

f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.

g. The managers of a limited liability company.

h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.

i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.

j. A multidistrict special education unit.

k. An area career and technology center.

l. A regional education association.

18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".

19. "Fund" means the workforce safety and insurance fund.

20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:

a. Agricultural or domestic service.

b. Any employment of a common carrier by railroad.

c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.

d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.

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

22. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
23. "Parent" includes a stepparent and a parent by adoption.
24. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
25. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an employee from performing any work and results from any one of the following conditions:
a. Total and permanent loss of sight of both eyes;
b. Loss of both legs or loss of both feet at or above the ankle;
c. Loss of both arms or loss of both hands at or above the wrist;
d. Loss of any two of the members or faculties in subdivision a, b, or c;
e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
f. Third-degree burns that cover at least forty percent of the body and require grafting;
g. A medically documented brain injury affecting cognitive and mental functioning which renders an employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.
If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.
26. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
27. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
28. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
29. "Temporary total disability" means disability that results in the inability of an employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
30. "Utilization review" means the initial and continuing evaluation of appropriateness in

terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.

31. a. "Wages" means:

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

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

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

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

65-01-03. Individual performing service for remuneration presumed an employee.

1. Each individual who performs services for another for remuneration is presumed to be an employee of the person for which the services are performed, unless it is proven that the individual is an independent contractor under the common-law test. The person that asserts that an individual is an independent contractor under the common-law test, rather than an employee, has the burden of proving that fact.

2. In the case of commercial motor vehicles whose gross vehicle weight rating is more than twenty-six thousand pounds [11793.40 kilograms], with an individual operating a licensed truck or licensed tractor for a motor carrier of property, the presumption in subsection 1 is successfully rebutted if all of the following factors are present:

a. The individual owns, leases, or enters a purchase agreement to purchase a truck or tractor. The lease or purchase agreement must represent reasonably the value of the lease or purchase of the truck or tractor. The lease or purchase agreement may be with the carrier of property. An unreasonable lease or purchase agreement with a third party, unaffiliated with the carrier, does not affect this factor.

b. The individual is responsible for the maintenance and repair of the truck or tractor.

c. The individual bears the principal burden of operating costs, including fuel, supplies, vehicle insurance, and personal expenses.

d. The individual is responsible for supplying the necessary personal services to operate the truck or tractor.

e. Income taxes are not withheld from the individual's compensation.
f. The individual generally determines the details and means of performing the services, in conformance with statutory or regulatory requirements, operating procedures of the carrier, and specifications of the shipper.
g. The individual enters a written agreement with the motor carrier outlining the nature of the relationship.

65-01-04. Computation of weekly wages in compensation matters.

Repealed by S.L. 1969, ch. 558, § 6.

65-01-05. Employment of those unprotected by insurance unlawful - Effect of failure to secure compensation - Penalty - Injunction.

Repealed by S.L. 2001, ch. 578, § 17.

65-01-06. Exempting certain flying employees.

Pilots, copilots, stewardesses, and other regular flying employees of a regularly established airline operating under a certificate of convenience and necessity granted by the competent authorities of the United States of America and operating regularly scheduled flights in interstate
or foreign commerce shall be exempt from the compulsory provisions of this title while engaged
in work, the duties of which primarily involve interstate or foreign flying operations. Employees not regularly engaged in interstate or foreign flying operations, and the flying employees of any such airline as has its principal operating base in North Dakota, shall not be included in this exemption.

65-01-07. Employer must keep record of injuries to employees - Reports required - Contents - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

65-01-08. Contributing employer and staffing service relieved from liability for injury to employee.

1. If a local or out-of-state employer secured the payment of compensation to that employer's employees by contributing premiums to the fund, the employee, and the parents in the case of a minor employee, or the representatives or beneficiaries of either, do not have a claim for relief against the contributing employer or against any agent, servant, or other employee of the employer for damages for personal injuries, but shall look solely to the fund for compensation.
2. If a client company contracts with a staffing service for an employee's services, the client company and the staffing service are immune from any claim for relief by that employee or by another employee of the client company or staffing service, to the same extent granted under this title to contributing employers if the client company or staffing service secured the payment of compensation in accordance with this title. Although an account must include the name of the staffing service, the employee is considered an employee of the client company and staffing service for purposes of application of immunity for injuries incurred by or caused by that employee.
3. For purposes of this section:
a. "Client company" means a person that contracts to receive services within the course of that person's usual business from a staffing service or that contracts to

lease any or all of that person's employees from a staffing service.
b. "Staffing service" means an employer in the business of providing the employer's employees to persons to perform services within the course of that person's usual businesses. The term includes professional employer organizations' staff leasing companies, employee leasing organizations, and temporary staffing companies. The term "staffing service" must be broadly construed to encompass entities that offer services provided by a professional employer organization, staff leasing company, employee leasing organization, or temporary staffing company regardless of the term used.
(1) Within the meaning of staffing service as used in this section, "temporary staffing" or "temporary staffing service" means an arrangement by which an employer hires its own employees and assigns the employees to a client company to support or supplement the client company's workforce in a special work situation, including:
(a) An employee absence;
(b) A temporary skill shortage;
(c) A seasonal workload; or
(d) A special assignment or project with a targeted end date.
(2) The term does not include arrangements in which the majority of the client company's workforce has been assigned by a temporary staffing service for a period of more than twelve consecutive months.
4. A staffing service that provides only temporary staffing services is the employee's employer. The temporary staffing service shall maintain a workforce safety and insurance account in the temporary staffing service's name and report the wages for those workers annually to the organization. All other staffing services shall:
a. Report annually the payroll detail for each North Dakota client company.
b. Maintain complete and separate records of the payroll of the staffing service's client companies. Claims must be separately identified by the staffing service for each client company.
c. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between a staffing service and a client company is terminated, the employees become the sole employees of the client company.
d. Notify the organization of the client company's name, workforce safety and insurance account number, and the date the staffing service began providing services to the client company. The staffing service shall provide this information upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.
e. Supply the organization with a copy of the agreement between the staffing service and client company.
f. Notify the organization upon termination of any agreement with a client company, but no later than fifteen days from the effective date of termination.
g. Notify the staffing service's client companies of an uninsured status for failure to pay workforce safety and insurance premiums within fifteen days of notice by the

organization.
5. A staffing service that provides both temporary and long-term employees is subject to the reporting requirements associated with the type of employee provided to the client company.
6. a. The organization shall maintain all employer data for each client company requiring coverage under this title. If a client company enters an agreement with a staffing service, the organization shall generate a master billing for the staffing service detailing the staffing service's client companies.
b. Rate classifications for employees provided by a staffing service must be those which would apply as if the work were performed by the employees of the client company. A client company is eligible for organization safety discount and dividend programs. If a client company enters an agreement with a staffing service, the client company shall retain the client company's experience rate, if applicable.
c. Both a staffing service and client company under this section are considered employers for purposes of section 65-04-26.1. A staffing service that provides employees to a client company that has been determined to be uninsured or ineligible for coverage under sections 65-04-27.1 and 65-04-33 may not secure workforce safety and insurance coverage for those employees.
7. a. The organization shall determine whether an entity is a staffing service. If the organization determines an entity is a staffing service, the organization may further determine if the entity is a temporary staffing service. In rendering either determination, the organization may issue a decision under section 65-04-32. If the organization determines an entity is not a staffing service, the client company shall maintain a workforce safety and insurance account and pay the premium for coverage of the employees.
b. The factors the organization may consider in determining whether an entity is a staffing service include the number of client companies handled by the staffing service, the length of time the staffing service has been in existence, the extent to which the staffing service extends services to the general public, the degree to which the client company and staffing service are separate and unrelated business entities, the repetition of officers or managers between the client company and staffing service, and the extent to which a client company has an ownership or other interest in the staffing service. The organization also may consider the scope of the services provided by the staffing service, the relationship between the staffing service and the client company's workers, the written agreement between the staffing service and the client company, and any other factor deemed relevant by the organization.
c. The organization may require information from any staffing service, including a list of current client company accounts, staffing assignments, payroll information, and rate classification information. A client company shall provide any information requested by the organization regarding any staffing service.
8. The organization may adopt rules consistent with this section which further define client company and staffing service and which provide a procedure by which the

organization may determine whether an entity meets these definitions.

65-01-09. Injury through negligence of third person - Option of employee - Organization subrogated when claim filed - Lien created.

When an injury or death for which compensation is payable under provisions of this title shall have been sustained under circumstances creating in some person other than the organization a legal liability to pay damages in respect thereto, the injured employee, or the employee's dependents may claim compensation under this title and proceed at law to recover damages against such other person. The organization is subrogated to the rights of the injured employee or the employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The organization also has a lien to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid in compensation and benefits. The organization's subrogation interest or lien may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or the employee's dependents in the event of the employee's death. Such action shall be brought in the injured employee's or in the employee's dependents' own right and name and as trustee for the organization for the subrogation interest of the organization. However, if the director chooses not to participate in an action, the organization has no subrogation interest and no obligation to pay fees or costs under this section and no lien.

If the injured employee or the employee's dependents do not institute suit within sixty days after date of injury, the organization may bring the action in its own name and as trustee for the injured employee or the employee's dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents and retain as its lien the full amount it has paid in compensation and benefits. Within sixty days after both the injured employee and the organization have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the employee, or both, and in trust for the organization and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or the employee's dependents, or the employer as provided above, the organization shall pay fifty percent of the costs of the action, exclusive of attorney's fees, when such costs are incurred as the action progresses before recovery of damages. If there is no recovery of damages in the action, this shall be a cost of the organization to be paid from the organization's general fund. After recovery of damages in the action, the costs of the action, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the organization recovered to the total recovery in the action. The

organization shall pay attorney's fees to the injured employee's attorney from the organization's
general fund as follows:
1. Twenty-five percent of the subrogation interest recovered for the organization before judgment.
2. Thirty-three and one-third percent of the subrogation interest recovered for the organization when recovered through judgment entered as a result of a trial on the merits or recovered through binding alternative dispute resolution.
The above provisions as to costs of the action and attorney's fees are effective only when the injured employee advises the organization in writing the name and address of the employee's attorney, and that the employee has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If a claimant fails to pay the organization's subrogation interest and lien within thirty days of receipt of a recovery in a third-party action, the organization's subrogation interest is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future
in compensation and benefits to the injured employee or the employee's dependents, no costs or attorney's fees will be paid from the organization's subrogation interest and the organization's
lien is the full amount of the damages recovered up to a maximum of the total amount it has paid. The organization's lien is created upon first payment of benefits. The lien attaches to all claims, demands, settlement proceeds, judgment awards, or insurance payable by reason of a legal liability of a third person. If the organization does not receive payment of its lien amount within thirty days of the payment of any recovery and if the organization has served, by regular mail, written notice of its lien upon the employee or the employee's dependents and upon the third person, the third person, the insurer of the third person, the employee or employee's dependents, and the attorney of the employee or employee's dependents are liable to the organization for the lien amount. A release or satisfaction of any judgment, claim, or demand given by the employee or the employee's dependents is not valid or effective against the lien. An
action to collect the organization's lien amount must be commenced within one year of the organization first possessing actual knowledge of a recovery.

65-01-10. Waiver of rights to compensation void - Deduction of premium from employee prohibited - Penalty.

No agreement by an employee to waive rights to compensation under this title is valid except as provided in section 65-05-25. No agreement by any employee to pay any portion of the premium paid or payable by the employer into the fund is valid, and any employer who deducts any portion of such premium from the wages or salary of any employee entitled to the benefits of this title is guilty of a class A misdemeanor.

65-01-11. Burden of proof in compensation matters - Death certificate.

If the organization or an employer claims that an employee is not entitled to the benefits of the North Dakota workforce safety and insurance law because the employee's injury was caused by the employee's willful intention to cause self-injury, or to injure another, or by reason

of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving the exemption or forfeiture is upon the organization or upon
the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in the Code of Federal Regulations in effect on August 1, 2011, or a level of an illegally used controlled substance sufficient to cause impairment found by a test conducted by a physician, qualified technician, chemist, or registered
nurse at or above the cutoff level in the Code of Federal Regulations in effect on August 1, 2011,
creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or an employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated by company policy, the employee forfeits all entitlement to workforce safety and insurance benefits
arising out of that injury. Any claimant against the fund, however, has the burden of proving by a
preponderance of the evidence that the claimant is entitled to benefits. If a claim for death benefits is filed, the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

65-01-12. Attorney general to represent organization.

Upon the request of the organization, the attorney general shall institute and prosecute the necessary actions or proceedings for the enforcement of this title or for the recovery of any money due the fund or of any penalty provided for in this title, and shall defend all suits, actions,
or proceedings brought against the organization or any of its employees in the attorney general's official capacity.

65-01-13. Information fund - Continuing appropriation.

There is created a fund to be known as the information fund within the workforce safety and insurance fund, to which the organization shall deposit all moneys received from private citizens, businesses, associations, corporations, and limited liability companies for providing these entities with publications and statistical information concerning workforce safety and insurance matters. The information must be provided at cost. The moneys in the fund are appropriated, as a standing and continuing appropriation, to workforce safety and insurance to pay publication and statistical processing expenses incurred by the organization.

65-01-14. Informal decision by organization.

Repealed by S.L. 1997, ch. 532, § 6.

65-01-15. Yearly documentation required for firefighter and law enforcement officer.
Except for benefits for an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement
officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has
not used tobacco for the preceding two years.

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

1. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, is presumed to have been suffered in the line of duty. The presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related.
2. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter.
3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. If a medical examination produces a false positive result for a condition covered under this section, the organization shall consider the condition to be a compensable injury. In the case of a false positive result, neither the coverage of the condition nor the period of disability may exceed fifty-six days. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a

presumption afforded under this section.
4. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.
5. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

65-01-16. Decisions by organization - Disputed decisions.

The following procedures must be followed in claims for benefits, notwithstanding any provisions to the contrary in chapter 28-32:
1. The organization shall send a copy of each initial claim form filed with the organization to the claimant's employer, by regular mail, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed. Failure of the employer to file a response within fourteen days from the day the response form was mailed to the employer constitutes the employer's admission that the information in the claim form is correct.
2. The organization may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of record.
3. The organization may issue a notice of decision for any decision made by informal internal review and shall serve the notice of decision on the parties by regular mail. A notice of decision must include a statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.
4. A party has thirty days from the day the notice of decision was mailed by the organization in which to file a written request for reconsideration. The employer is not required to file the request through an attorney. The request must state the reason for disagreement with the organization's decision and the desired outcome. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.
5. Within sixty days after receiving a request for reconsideration, the organization shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. The organization

may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.
6. An employee has thirty days from the day the administrative order was mailed in which to file a request for assistance from the decision review office under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the decision review office mails its notice that the office's assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section.
9. A party may appeal a posthearing administrative order to district court in accordance with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing to district court a final order issued by a hearing officer under this title.
10. Any notice of decision, administrative order, or posthearing administrative order is subject to review and reopening under section 65-05-04.

65-01-17. Agricultural employment exemption - Custom agricultural operations.

For purposes of the agricultural service exception to hazardous employment under section 65-01-02, an agricultural employer that engages in a custom agricultural operation, which is the planting, care, or harvesting of grain or field crops on a contract-for-hire basis, exclusive of hauling by special contractor, retains the exemption unless the employer's custom agricultural operations are based outside this state or require more than thirty actual working days of operation during the calendar year.

CHAPTER 65-02

WORKFORCE SAFETY AND INSURANCE ORGANIZATION

65-02-01. Workforce safety and insurance - Director - Division directors.

The organization must be maintained for the administration of this title. The director may appoint the director of any division established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

65-02-01.1. Workforce safety and insurance.

The legislative council may delete, where appropriate, "workers compensation bureau", "North Dakota workers compensation bureau", or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever they appear in the North
Dakota Century Code or in the supplements thereto and to insert in lieu of each deletion "workforce safety and insurance". Such changes are to be made when any volume or supplement of the North Dakota Century Code is being reprinted. It is the intent of the legislative
assembly that workforce safety and insurance be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by the workers compensation bureau. The legislative council may replace "bureau", where appropriate,

wherever the term appears in the North Dakota Century Code or in the supplements of the North Dakota Century Code, with the term "organization". These changes are to be made when any volume or supplement is being reprinted.

65-02-01.2. Organization to establish personnel system.

Repealed by S.L. 2009, ch. 611, § 13.

65-02-01.3. Workforce safety and insurance - Executive director - Governor to appoint - Personnel.

Notwithstanding any other provisions of law, the governor shall appoint a director of workforce safety and insurance who shall serve at the pleasure of the governor. The governor shall set the compensation and prescribe the duties of the director. Each employee of workforce
safety and insurance must occupy a position in the classified service and must be subject to the provisions of the state personnel system provided in chapter 54-44.3.

65-02-02. Oath of office.

Before commencing to perform the duties of director of the organization, the director shall file an oath of office in the usual form.

65-02-03. Organization - Quorum - Effect of vacancy - Vacancies which must be filled within thirty days.

Repealed by S.L. 1989, ch. 295, § 21.

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

1. The board consists of eleven members. The appointment and replacement of the members must ensure that:

a. Six board members represent employers in this state which maintain active accounts with the organization. Two of the employer members must be employers with annual premiums, which at the time of the member's initial appointment were greater than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was less than twenty-five thousand dollars; one of the employer members must be an employer with an annual premium, which at the time of the member's initial appointment was less than ten thousand dollars; and two of the employer members must be employer at-large representatives. Except for the employer at-large representatives, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.

b. Three members represent employees. Of the three employee members, one member must represent organized labor and one other member must have received workforce safety and insurance wage-loss benefits at some time during the ten years before the member's initial appointment.

c. One member is a member of the North Dakota medical association.

d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.

2. Board members shall serve four-year terms. The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each odd-numbered year. A board member whose initial appointment was before August 1,

2007, may not serve more than three consecutive terms and a board member whose initial appointment was after July 31, 2007, may not serve more than two consecutive terms.

a. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the member for an employer representative from a list of three potential candidates submitted by a coordinating committee appointed by the governor, composed of representatives from the associated general contractors of North Dakota, the North Dakota petroleum council, the greater North Dakota chamber of commerce, the North Dakota motor carriers association, the North Dakota hospital association, the national federation of independent business, the lignite energy council, and other statewide business interests.

b. The governor shall select the member for the organized labor employee representative from a list of three potential candidates submitted by an organization that is statewide in scope and which through the organization's affiliates embraces a cross section and a majority of organized labor in this state.

c. The governor shall select the two employee representatives who do not represent organized labor and the member at large.

d. The governor shall select the member representing the North Dakota medical association from a list of three potential candidates submitted by the North Dakota medical association.

e. Within the thirty days following receipt of a list of potential candidates representing employers, organized labor, or the North Dakota medical association, the governor may reject the list and request that the submitting entity submit a new list of potential candidates.

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

65-02-03.2. Compensation of board members.

A board member is entitled to receive compensation as determined by the board for days spent in attendance at board meetings or other business as approved by the board. A board member is entitled to reimbursement for mileage and expenses as provided for state officers.

65-02-03.3. Board - Powers and duties.

The board shall:

1. Assist the organization in developing and submitting a budget, responding to any audit recommendations, formulating policies, and discussing issues related to the administration of the organization, including the determination of employer premium rates, maintenance of the solvency of the workforce safety and insurance fund, and provision of rehabilitation services, while ensuring impartiality and freedom from political influence.

2. Recommend principles of continuous improvement goalsetting, a procedure for implementing a team-oriented continuous improvement program throughout all operations of the organization. The program must include a number of challenging,

measurable goals to ensure the organization maintains focus on improving those areas most important to its primary mission.
3. Adopt internal management rules creating bylaws for the board and relating to the election of a board chairman, formation of committees, voting procedures, and other procedural matters.
4. Provide annual, formal recommendations to the governor regarding setting premium levels and providing premium dividend distributions.
5. Provide formal recommendations to the governor regarding legislation that affect the organization.
6. Provide formal recommendations to the governor regarding the fund's investment allocation.

65-02-04. Chairman.

Repealed by S.L. 1989, ch. 295, § 21.

65-02-05. Office space for organization - Expenditures from fund for employees and supplies - Travel.

The organization must be provided with office space. The organization, at the expense of the fund, shall provide all necessary equipment, supplies, stationery, and furniture, and all clerical and other help necessary to carry out the provisions of this title. The employees of the organization are entitled to receive from the fund for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty by motor vehicle the same rates in the same manner as other state officials. If travel is by a motor vehicle owned by the state, or by any department or political subdivision thereof, no allowance may be paid for the mileage. Vouchers for travel and other administrative expenses must bear the approval of the organization and the office of management and budget before payment is made therefor. Travel
and other administrative expense payments must be made by warrant-check prepared by the office of management and budget drawn upon the state treasurer against the fund. Expenditures made under this section, however, must be within the limitations designated by the
legislative assembly in appropriation measures adopted from time to time.

65-02-05.1. Building maintenance account - Continuing appropriation.

There is a building maintenance account within the workforce safety and insurance fund, to which the organization shall deposit all building rental proceeds if the organization builds a building that includes rental space for other state entities. The moneys in the account are appropriated on a continuing basis to the organization to pay bond principal and interest payments, operating, maintenance, repair, and payments in lieu of taxes expenses of the building and grounds. This account may be used only for the purposes identified in this section. The organization may either hire or contract for building maintenance and repair services anticipated by this section.

65-02-06. Expenditures by organization from fund - Employment of full-time special assistant attorneys general authorized.

The organization may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this title. The salaries and compensation of

the director of the organization and of all employees of the organization, and all other authorized
expenses of the organization, including the premium on the bond required of the state treasurer
under section 65-04-30, must be paid out of the fund. The organization may employ duly appointed special assistant attorneys general and pay from the fund the entire salary of each special assistant attorney general.

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

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

65-02-06.2. Litigation expenses - Continuing appropriation.

Money in the workforce safety and insurance fund is appropriated to the organization on a continuing basis for payment of organization expenses associated with litigating employer-related issues arising under this title and for payment of organization expenses associated with litigating medical provider-related issues identified under sections 65-02-23 and 65-02-20.

65-02-07. Organization to have seal.

The organization shall have a seal for the purpose of authentication, whenever authentication is required, upon which seal shall be inscribed the words "Workforce Safety and Insurance - North Dakota - Seal".

65-02-08. Rulemaking power of the organization - Fees prescribed by organization.

The organization shall adopt rules necessary to carry out this title. All fees on claims for medical and hospital goods and services provided under this title to an injured employee must be in accordance with schedules of fees adopted by the organization. Before the effective date of any adoption of, or change to, a fee schedule, the organization shall hold a public hearing, which is not subject to chapter 28-32. The organization shall establish, by administrative rule, costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative order reducing or denying benefits. The organization shall issue a decision within sixty days of the date when all elements of initial filing or notice of reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. Satisfaction of elements of filing must be defined by administrative rule. The organization shall pay an injured employee's attorney's fees and costs from the organization's general fund. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The organization shall pay an attorney's fees and costs when:

1. The employee has prevailed in binding dispute resolution under section 65-02-20.
2. The employee has prevailed after an administrative hearing under chapter 28-32.

An injured employee has prevailed only when an additional benefit, previously denied, is paid. An injured employee does not prevail on a remand for further action or proceedings unless that employee ultimately receives an additional benefit as a result of the remand. This section does not prevent an injured employee or an employer from hiring or paying an attorney; however, the
employee's attorney may not seek or obtain costs or attorney's fees from both the organization and the employee relative to the same claim. All disputes relating to payment or denial of an attorney's fees or costs must be submitted to the hearing officer or arbitrator for decision, but a
hearing officer or arbitrator may not order that the maximum fees be exceeded.

65-02-08.1. State advisory council - Composition - Compensation - Duties.

Repealed by S.L. 1997, ch. 528, § 7.

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

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

1. A statement of the number of awards made by it.
2. A general statement of the causes of accidents leading to the injuries for which the awards were made.
3. A detailed statement of the disbursements from the fund.
4. A statement of the conditions of the various funds carried by the organization.
5. A breakdown of those allocated loss adjustment expenses that reflect the attorney's fees and costs paid to attorneys who represent injured workers, the attorney's fees and costs paid to attorneys with whom the organization contracts to represent the organization, the amount paid for administrative law judges for hearings, and the amount paid for the court reporter and any other legal expenses.
6. Any other matters which the organization wishes to call to the attention of the governor, including any recommendation for legislation or otherwise which it may have to make.

65-02-10. Organization to submit budget.

Repealed by S.L. 1959, ch. 372, § 117.

65-02-11. Process and procedure - Investigations - Examination of witnesses - Costs.

Except as otherwise provided by this title, process and procedure under this title is governed by chapter 28-32. The organization may make investigation as in its judgment is best calculated to ascertain the substantial rights of all the parties. Any member of the organization and any person specifically designated by the organization may examine witnesses and records, with or without subpoena, examine, investigate, copy, photograph, and take samples at
any pertinent location or facility, administer oaths to witnesses, require the attendance of witnesses without fee whenever the testimony is taken at the home, office, or place of work of those witnesses, and generally to do anything necessary to facilitate or promote the efficient administration of this title. The organization may issue a subpoena to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and any other

records deemed necessary by the organization. Subpoenas may be enforced by applying to a judge of the district court for an order requiring the attendance of a witness, the production of all
documents and objects described in the subpoena, or otherwise enforcing an order. Failure to comply with the order of the district court is contempt as provided in chapter 27-10. The organization shall pay the costs of any medical examination, scientific investigation, medical or expert witness appearance or report, requested or approved by the organization, relating to a claim for benefits, from the organization's general fund.

65-02-12. Hearings by director.

Any investigation, inquiry, hearing, or decision, and every order by the director is deemed to be the order or decision of the organization.

65-02-13. Organization may reinsure risks.

The organization may reinsure any risk or any part thereof and may enter into agreements of reinsurance.

65-02-13.1. Expenditures by organization for reinsurance and extraterritorial coverage and other states' insurance - Report in annual financial audit.

There is appropriated out of the workforce safety and insurance fund, as a continuing appropriation, an amount necessary to allow the organization to establish a program of reinsurance and a program of extraterritorial coverage and other states' insurance. The organization may execute a contract for reinsurance and a contract for extraterritorial coverage and other states' insurance binding on the organization and the contracting party. The term identified in the contract may extend past the end of the biennium in which a contract under this
section is executed. The independent annual financial audit report on the organization shall report on any contract executed pursuant to this section.

65-02-14. Organization to aid in rehabilitating persons injured in employment.

Repealed by S.L. 1975, ch. 584, § 10.

65-02-15. Workforce safety and insurance binding arbitration.

Repealed by S.L. 2003, ch. 562, § 13.

65-02-16. Removal of a panel member.

Repealed by S.L. 1993, ch. 614, § 13.

65-02-17. Binding arbitration.

Repealed by S.L. 1995, ch. 614, § 6.

65-02-18. Administrative orders - Binding arbitration decisions - Appeals.

Repealed by S.L. 1995, ch. 614, § 6.

65-02-19. Organization to contract for administrative services.

Repealed by S.L. 1999, ch. 554, § 4.

65-02-20. Organization to establish managed care program.

The organization shall establish a managed care program, including utilization review and bill review, to effect the best medical solution for an injured employee in a cost-effective manner
upon a finding by the organization that the employee suffered a compensable injury. The program shall operate according to guidelines adopted by the organization and shall provide for medical management of claims within the bounds of workforce safety and insurance law.

Information compiled and analysis performed pursuant to a managed care program which relate
to patterns of treatment, cost, or outcomes by health care providers are confidential and are not
open to public inspection to the extent the information and analysis identify a specific health care provider, except to the specific health care provider, organization employees, or persons rendering assistance to the organization in the administration of this title. If an employee, employer, or medical provider disputes a managed care decision, the employee, employer, or medical provider shall request binding dispute resolution on the decision. The organization shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-16. A dispute resolution decision under this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion in the dispute resolution process. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

65-02-21. Contract for administration of managed care program.

The organization may contract for the services of a third-party administrator to implement a managed care program by soliciting bids for administrative services, including a description of the program and the services expected of the managed care administrator. The organization shall award an administrative services contract to the bidder who will best serve the interests of the organization and the employees under this title. The contract must be for the period of a biennium. The organization may renew, renegotiate, or rebid a contract based upon contract performance, cost, and the best interests of an employee who suffers a compensable injury.

65-02-21.1. Licensure required for psychologists and physicians performing utilization review.

Psychologists making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the North Dakota board of medicine. This requirement does not apply to psychologists or physicians conducting independent medical examinations or independent medical reviews under section 65-05-28.

65-02-21.2. Ambulance services classifications.

For purposes of classifying ambulance services for benefits provided under this title, the classifications established under section 50-24.1-16 apply.

65-02-22. Hearing officer - Qualifications - Location.

A hearing officer designated by the office of administrative hearings under chapter 28-32 must be an individual licensed to practice law in this state. A hearing officer may not maintain an
office within the organization.

65-02-22.1. Appointment of administrative law judges - Hearings.
Notwithstanding any other provisions of law, workforce safety and insurance shall contract with the office of administrative hearings for the designation of administrative law judges who shall conduct evidentiary hearings and issue final findings of fact, conclusions of law, and orders. Rehearings must be conducted as hearings under chapter 28-32.
65-02-23. Workforce safety and insurance fraud unit - Continuing appropriation.
The organization shall establish a workforce safety and insurance fraud unit. The organization may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost-effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-33 or 65-05-33. The unit shall refer cases of fraud to the organization for the imposition of administrative penalties and may refer them to the
appropriate authorities for prosecution. Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. The organization may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class.
65-02-24. Immunity from civil liability.
A person who notifies the organization or who assists the organization on any matter pertaining to the administration of this title of an alleged violation of section 65-04-33 or 65-05-33, or who provides information in the course of an investigation of an alleged violation of
section 65-04-33 or 65-05-33, is not subject to civil liability for that action if the action was in good faith and without malice. At the request of the person who notifies or assists the organization or who provides information to the organization, the organization may not reveal the identity of that person or disclose any information that may reveal the identity of that person
to any person other than a representative of or a person rendering assistance to the organization.
65-02-25. Amnesty for certain claims and accounts.
After the workforce safety and insurance fraud unit is established, the organization may offer, not more than once every twelve months, a period of amnesty to any person who has willfully made a false claim or false statement or who has willfully misrepresented payroll, to allow that person the opportunity to close and repay the false claim, to close and repay the claim for which a false statement has been made, or to pay the appropriate premium and penalty on an account for which payroll was misrepresented. The amnesty period may not exceed sixty days. A person who receives amnesty under this section is immune from criminal prosecution relating to those acts for which amnesty is received.
65-02-26. Nondisclosure of investigative information.
Any investigative information gathered pursuant to section 65-02-23 is criminal investigative information and may not be disclosed except as provided in section 44-04-18.7. Notwithstanding
sections 65-04-15 and 65-05-32, the fraud unit may provide investigative and claim file

information to other fraud investigative and law enforcement entities, and gather investigative and claim file information from them.

65-02-27. Decision review office.

The organization's decision review office is established. The decision review office is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title. The decision review office shall provide assistance to an employee who has filed a claim, which may include acting on behalf of an employee who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing an employee of the effect of
decisions made by the organization, an employee, or an employer under this title. The decision review office shall provide assistance to employees, upon request, in cases of constructive denial or after a vocational consultant's report has been issued. The organization shall employ a director of the decision review office and other personnel determined to be necessary for the administration of the office. A person employed to administer the decision review office may not
act as an attorney for an employee. The organization may not pay attorney's fees to an attorney
who represents an employee in a disputed claim before the organization unless the employee has first attempted to resolve the dispute through the decision review office. A written request for
assistance by an employee who contacts the decision review office within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on
that order. The period begins upon notice to the employee, sent by regular mail, that the decision review office's assistance to the employee is completed. The information contained in a
file established by the decision review office on an employee's disputed claim, including communications from an employee, is privileged and may not be released without the employee's permission. Information in the file containing the notes or mental impressions of decision review office staff is confidential and may not be released by the decision review office.

65-02-28. Organization claim files - Destruction.

If the organization determines that a person who has a claim for injury on file has been deceased for at least ten years, the organization may destroy any claim files for that person. The organization may not destroy any claim file it specifically has been requested not to destroy.

The organization shall establish a means for maintaining statistical and identifying information for any claim files destroyed under this section.

65-02-29. Independent audit.

Repealed by S.L. 1999, ch. 553, § 8.

65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation.

Once every four years, the director shall request the state auditor to select a firm with

extensive expertise in workers' compensation practices and standards to complete a performance evaluation of the functions and operations of the organization during that evaluation period. This may not be construed to require the firm to be a certified public accounting firm. The firm's report must contain recommendations for departmental improvement
or an explanation of why no recommendations are being made. The director or the director's designee, the chairman of the board or the chairman's designee, and a representative of the firm shall present the evaluation report and any action taken to the legislative management's workers' compensation review committee and to the governor. The director shall provide a copy
of the performance evaluation report to the state auditor. Except as otherwise provided in this section, the workers' compensation review committee may select no more than four elements to
be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor shall include the elements selected by the committee in
the performance evaluation, but the state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the workers' compensation review committee, may not exceed eight. In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements. Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation. The
organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section.

65-02-31. Payments in lieu of taxes by organization.

If a building and associated real property is purchased by the organization pursuant to a legislative grant of authority, the organization shall make payments in lieu of property taxes in the manner and according to the conditions and procedures that would apply if the building and
property were privately owned.

65-02-32. Assessment of property - Notice to organization.

All property subject to valuation must be assessed for the purpose of making the payments under section 65-02-31 in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year, the county auditor of any county in which property subject to valuation is located shall give written notice to workforce safety and insurance and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in that county.

65-02-33. Occupational health and preventive medicine programs - Continuing appropriation.

The organization may establish and implement programs to advance occupational health

and preventive medicine in this state and to protect the integrity of the fund. These programs may include the provision of education or training, consultation, grants, scholarships, or other incentives that promote superior care and treatment of the workforce in this state. Funds in the workforce and insurance fund are appropriated to the organization on a continuing basis for the
purpose of funding the programs implemented under this section.

65-02-34. Spending authority - Limited.

Repealed by S.L. 2009, ch. 611, § 13.

65-02-35. Attorney's fees for legal review in preparation for rehearing of an administrative order.

1. The organization shall pay an injured employee's attorney for the fees and costs to consult with the injured employee regarding a request for rehearing of an administrative order issued by the organization under section 65-01-16 and chapter 28-32. The attorney's fees and costs under this section are for the purpose of an initial consultation and review of the claimant's case and are separate from and independent of the attorney's fees and costs provided for under section 65-02-08. To be eligible for payment of attorney's fees and costs under this section, before consulting the attorney the injured employee must first receive a certificate of completion from the decision review office, and the attorney consultation must take place after the certificate of completion is issued but before the rehearing is conducted.
2. Payment of attorney's fees and costs under this section is limited as follows:
a. An injured employee may consult with one attorney per administrative order;
b. The payment amount for attorney's fees may not exceed a total of five hundred dollars per injured employee, per administrative order;
c. The payment amount for costs may not exceed a total of one hundred fifty dollars per injured employee, per administrative order;
d. The attorney must be licensed to practice law in North Dakota and must be in good standing; and
e. The organization may deny fees and costs the organization determines to be excessive or frivolous.
3. To obtain payment under this section, an attorney shall submit to the organization a fee statement. The fee statement must be signed by the attorney and must include:
a. The name of the injured employee;
b. The workforce safety and insurance claim number;
c. The date of the billing statement;
d. A summary of the basic legal issue;
e. The date of each service or charge being billed;
f. An itemization and a reasonable description of the legal work performed for each service or charge;
g. The time and amount billed for each item; and
h. The total time and amounts billed.
4. Under this section, the organization shall reimburse the following costs:
a. Actual postage, if postage exceeds three dollars per parcel;
b. Actual toll charges for long-distance telephone calls;

c. Copying charges at eight cents per page;
d. Mileage and other expenses for reasonable and necessary travel, including per diem, all of which are to be paid in the amounts paid state officials as provided under sections 44-08-04 and 54-06-09; and
e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars.
5. Under this section, the organization may not reimburse the following costs:
a. Express mail;
b. Additional copies of transcripts;
c. Costs incurred to obtain medical records;
d. Copy charges for documents provided by the organization; and
e. Costs for typing and clerical or office services.

65-02-36. Attorney's fees for legal review of proposed settlement.

The organization shall pay up to five hundred dollars to an attorney for review of a proposed settlement offered to an injured employee, if the employee to whom the settlement is offered was not represented by an attorney at the time the offer was made. Subdivisions d and e of subsection 2 of section 65-02-35 apply to the payment of fees under this section. The organization may reimburse an attorney for costs under this section according to subsections 3, 4, and 5 of section 65-02-35. Fees and costs under this section are payable regardless of whether the injured employee accepts the settlement proposal.

CHAPTER 65-03
PREVENTION OF INJURIES

65-03-01. Jurisdiction of organization - Safety regulations - Enforcement.

The organization shall have full power and jurisdiction over, and the supervision of, every employment and place of employment subject to the provisions of this title, and whenever necessary adequately to enforce and administer this title, shall issue and enforce all necessary and proper rules and safety regulations. The organization may designate some suitable person to make inspections to determine if safety rules and regulations are being followed or complied with.

65-03-02. Penalty for violation of safety rule or regulation - Fine - Penalty premium rating - Extension of time to comply.

Any employer who shall fail to comply with any reasonable safety rule or regulation made in accordance with the provisions of this chapter, within twenty days after notice from the organization or its authorized agent, shall be guilty of an infraction, and the organization may penalize the premium rating of the employer guilty of such violation in an amount not exceeding
ten percent during the year or years in which such violation continues. Upon application and a proper and sufficient showing that the rule or regulation cannot be complied with within the twenty days herein specified, the organization may extend such time for such period as the facts
in each case warrant, but not to exceed three months.

65-03-03. Mine foremen - Rules regarding.

Repealed by S.L. 2009, ch. 608, § 6.

65-03-04. Safety programs - Continuing appropriation.
The organization shall create and operate work safety and loss prevention programs to protect the health of covered employees and the financial integrity of the fund, including programs promoting safety practices by employers and employees through education, training, consultation, grants, or incentives. As a term of award of a grant under this section, a recipient authorizes the organization to disclose the name of the award recipient and the amount of the award received. Any funds deposited in the workforce safety insurance fund are appropriated to
the organization on a continuing basis for the purpose of funding the programs implemented under this section.
65-03-05. Safety grant programs - Reporting requirements.
The organization shall compile data relating to grants issued under this chapter. The organization shall report biennially to the legislative council.

CHAPTER 65-04
THE FUND AND PREMIUM PAYMENTS THERETO
65-04-01. Classification of employments - Premium rates - Requirements.
1. The organization shall classify employments with respect to their degrees of hazard, determine the risks of different classifications, and fix the rate of premium for each of the classifications sufficiently high to provide for:
a. The payment of the expenses of administration of the organization;
b. The payment of compensation according to the provisions and schedules contained in this title; and
c. The maintenance by the fund of adequate reserves and surplus to the end that it may be kept at all times in an entirely solvent condition.
2. In the exercise of the powers and discretion conferred upon it, the organization shall fix and maintain for each class of occupation, the lowest rate which still will enable it to comply with the other provisions of this section.
3. The organization shall establish premium rates annually on an actuarial basis. The statewide average premium rate level may not deviate by more than five percentage points from the recommended actuarial indicated premium level for that year.
4. Before the effective date of any premium rate change, including a change in the minimum premium, the organization shall hold a public hearing on the rate change. Chapter 28-32 does not apply to a hearing held by the organization under this subsection.
65-04-02. Reserves - Surplus.
1. The organization shall maintain adequate financial reserves to ensure the solvency of the fund and the payment of future benefit obligations, based upon actuarially sound principles. The discount rate used in evaluating the financial reserves may not exceed six percent. The level of financial reserves plus available surplus determined as of June thirtieth of each year must be at least one hundred twenty percent but may not exceed one hundred forty percent of the actuarially established discounted reserve.
2. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established

discounted reserve, the organization may not issue premium dividends and, notwithstanding section 65-04-01, the organization shall modify recommended premium rate levels so that the organization is estimated to come into compliance within the following two years.

3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years. However, premium dividends issued may not exceed fifty percent of the preceding year's premium in any given year.

4. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is between one hundred twenty percent and one hundred thirty percent of the actuarially established discounted reserve, the organization may not issue premium dividends.

5. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is one hundred thirty percent to one hundred forty percent of the actuarially established discounted reserve, the organization may issue premium dividends. However, premium dividends issued may not exceed forty percent of the preceding year's premium in any given year, and the level of financial reserves plus available surplus may not be reduced below one hundred thirty percent.

6. For the purposes of this section, "available surplus" means net assets as stated on the statement of net assets of the organization, but does not include funds designated or obligated to specific programs or projects pursuant to a directive or specific approval by the legislative assembly.

7. The independent annual financial audit of the organization must report the organization's financial reserves.

65-04-03. Accounts to be kept for classifications and employers.

The organization shall keep an accurate account of the moneys paid in premiums by each of the several classes of occupations or industries and of the disbursements on account of injuries to and deaths of employees thereof, and it also shall keep an account of the moneys received from each individual employer and of the amount disbursed from the fund on account of injuries to and deaths of employees of each employer.

65-04-03.1. State entities account - Continuing appropriation - Report to budget section.

1. The organization shall establish a single workforce safety and insurance account for state entities covered by chapter 32-12.2. The organization shall use the combined payroll, premium, and loss history of selected agencies to determine future experience rates, dividends, assessments, and premiums. Classifications and premium rates must be based on the hazards and risks of the different occupations covered by this account. The payroll reporting period for this account is for a fiscal year of July first through June thirtieth. The office of management and budget shall furnish combined payroll information to the organization in a format prescribed by the organization.

2. Workforce safety and insurance premiums from state entities covered by chapter

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

3. A state entity covered by chapter 32-12.2 shall participate in the risk management workforce safety and insurance program unless exempted by the director of the office of management and budget.

4. The risk management division of the office of management and budget shall administer the account's internal workforce safety and insurance return-to-work program. Every state entity is required to participate in the return-to-work program. The program may include assigning employees to agencies other than the agency for which the employee worked on the date of the injury.

5. The office of management and budget may adopt rules to administer the risk management workforce safety and insurance program.

65-04-04. Employers obligated to pay premiums - Premium and certificates to be mailed.

Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the organization for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. The organization shall mail to the employer a certificate specifying that the payment has been made. The certificate, attested by the seal of the organization, is prima facie evidence of the payment of the premium.

Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum premium and has no employees for the period indicated on the certificate. If an employer defaults on premium payments after a certificate has been issued, the organization may revoke that employer's certificate. The organization shall provide that premiums to be paid by school districts, multidistrict special education units, area career and technology centers, and regional education associations, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates, the organization may carry new or

current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance
with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice
of compliance and the toll-free telephone number as required by this section.

65-04-04.1. Determination of weekly wage for premium purposes to veteran-on-the-job trainee.

Repealed by S.L. 1997, ch. 538, § 1.

65-04-04.2. Basis of calculating premiums.

1. For each year, the amount of an employee's wages subject to premium calculations must be determined as an amount equal to seventy percent of the statewide average annual wage, hereafter referred to as limited payroll, rounded to the nearest one hundred dollars, determined by the organization on or before July first as calculated by job service North Dakota under subsection 3 of section 52-04-03.
2. The rates for each classification must be determined by:
a. Estimating the revenue needed by each employment classification;
b. Estimating the total limited payroll to be reported by all employers in each employment classification for the year; and
c. Dividing the estimated revenue needed by an employment classification by the estimated total limited payroll in that classification to determine the required average premium for that classification rate.

65-04-04.3. Employer relief for third-party recovery.

The organization, upon recovery of its subrogation interest after a third-party lawsuit under section 65-01-09, shall give relief to the employer from the date of injury for the amount of the recovery up to the actual amount expended on a claim charged against the employer's account. For purposes of this section, "relief" means the amount of money recovered by the organization
in a third-party action will be deducted from the amount charged against the employer's experience rating.

65-04-05. Employer to furnish payroll information to organization - Determination of status - Report of actual and estimated payrolls.

Repealed by S.L. 2001, ch. 578, § 17.

65-04-05.1. Sections 65-04-04 and 65-04-05 retroactive.

Repealed by S.L. 1951, ch. 344, § 11.

65-04-06. Organization to specify method of providing information - Verification may be required.

Information required by the organization shall be furnished by employers on preprinted forms provided free of charge, or in another manner specified by the organization. If an employer is unable to provide the information required, the employer shall submit to the

organization in writing good and sufficient reason therefor. The organization and its representatives may require any employer to submit information verified under oath within the time period fixed by it or by law.

65-04-07. County superintendents of schools to report school district clerks to organization.

Repealed by S.L. 1995, ch. 176, § 2.

65-04-08. County auditors to report auditors and clerks to organization.

Repealed by S.L. 1997, ch. 538, § 1.

65-04-09. All public contracts involving labor to be reported to organization.

Repealed by S.L. 1997, ch. 538, § 1.

65-04-10. Provision relating to workforce safety and insurance required in contractor's bonds.

There must be inserted in every bond given by a contractor doing work for the state of North Dakota or for any political subdivision thereof, in addition to the general provisions for the faithful
and complete performance of all work required under the contract, this further provision: That the contractor has made, or will make, prior to the commencement of any work by the contractor
or any subcontractor under the contract, full and true report to the organization of the payroll expenditures for the employees to be engaged in the work, and that the contractor has paid, or will pay, the premium thereon prior to the commencement of the work.

65-04-11. Organization may make examinations under oath to secure payroll information.

The director, the organization, or any person employed by the organization for that purpose may examine under oath any employer, or any officer, agent, or employee of any employer, for the purpose of ascertaining any information which the employer is required under this title to furnish to the organization.

65-04-12. Penalties for failure to obtain coverage or to make payroll reports - How collected - Disposition.

Repealed by S.L. 2001, ch. 578, § 17.

65-04-13. Books, records, and payrolls of employers subject to audit and inspection - Penalty for refusal to permit inspection.

All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of the employers, are open always for inspection by the organization or any of its traveling auditors, inspectors, or assistants for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of employees, and any other information necessary for the organization to administer this title. An employer who refuses to submit the employer's books, records, and payrolls for inspection by the organization,
or its auditor, inspector, or assistant presenting written authority from the organization, is subject
to a penalty of five hundred dollars for each offense. The organization shall collect the penalty by civil action in the name of the state and shall deposit a penalty collected under this section to

the credit of the fund.

65-04-14. False payroll report - Liability of employer - Collection and disposition of penalty.

Repealed by S.L. 2001, ch. 578, § 17.

65-04-15. Information in employer's files confidential - Exceptions - Penalty if employee of organization divulges information.

1. The information contained in an employer's file is confidential and not subject to disclosure under chapter 44-04 and section 6 of article XI of the Constitution of North Dakota, is for the exclusive use and information of the organization or its agents in the discharge of the organization's official duties, and is not open to the public nor usable in any court in any court action or proceeding unless the organization is a party to that court action or proceeding. The information contained in the file, however, may be tabulated and published by the organization in statistical form for the use and information of the state departments and of the public.

2. An employer file includes all documents and data pertaining to a person that pays premium to the organization, except for information relating to a grant award under section 65-03-04 which the organization is specifically authorized to disclose or under section 65-03-04 which does not disclose payroll or premium information as provided in subsection 3.

3. Upon request, the organization shall disclose the rate classification of an employer to the requester; however, the organization may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. The organization may disclose whether an employer's file is active, canceled, closed, pending, delinquent, or uninsured. The information in the employer's file may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title, except upon written authorization by the employer for a specified purpose, or at the discretion of the organization with regard to delinquent and uninsured employers. Disclosure by a public servant of information contained in an employer's report, except as otherwise allowed by law, is a violation of section 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the organization.

4. The organization may, upon request of the state tax commissioner or the secretary of state, furnish to them a list of employers showing only the names, addresses, and organization file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The organization may provide any state or federal agency information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of that state or federal agency.

5. Whenever the organization obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the organization shall provide any relevant information to those

officials for the purpose of administering their duties.
6. The organization may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

65-04-16. Adjustment of premium paid on estimated payroll.

In the event that the amount of premium collected from any employer at the beginning of any premium period is ascertained and calculated by using as a basis the estimated expenditures for wages for the period of time covered by such premium payments, an adjustment of the amount of such premiums shall be made at the end of said period, and the actual amount of such premium shall be determined from the actual expenditure of wages for said period.

65-04-17. Experience rating of employers.

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

In calculating the experience rating, the organization shall determine the minimum rate for each employment classification by multiplying the required average premium rate by twenty-five
hundredths to get the minimum rate assigned to an employer with a positive experience rating. The organization may not amend its experience rating system by emergency rulemaking.

65-04-17.1. Retrospective rating program.

The organization may establish a program to provide retrospective rating. The organization may not require an employer to participate in the program, but it may refuse to allow an employer to participate when it determines that refusal is appropriate. The organization shall establish formulas, based on sound actuarial principles, for premium calculation under the program. Sections 65-04-01, 65-04-04, and 65-04-04.2 do not apply to retrospective premiums allowed under this section. Any moneys held by the organization for future claim payments must
accrue interest at a reasonable rate as determined by the organization. The organization may execute a contract with an employer to establish a retrospective rating plan for that employer. The contract is binding on the employer and the organization for the term identified in the contract. The term identified in the contract may extend past the end of the biennium in which the contract is executed but the term may not exceed ten years. The organization shall determine the amount of the deposit premium to be paid by an employer participating in the program. The amount of the deposit premium must be based on current rates, payroll, and experience rate factors. The organization shall establish the maximum premium liability of a participating employer. The maximum premium is not subject to the limitations of section 65-04-17. The organization may provide refunds from the workforce safety and insurance fund when it is determined appropriate under the retrospective rating formula established. The organization shall provide any refund due within thirty days after the date of the retrospective

premium valuation. The organization may impose a penalty if an employer fails to pay additional
premium due within thirty days after the retrospective premium valuation. The organization may
require an employer to provide a bond, letter of credit, or other security approved by the organization to guarantee payment of future employer obligations incurred by a retrospective rating plan. The organization may charge an employer participating in the program a nonrefundable surcharge for the purpose of assisting retirement of any unfunded liability of the fund.

65-04-18. Subsequent injury or aggravation of previous injury or condition of employee - Charge to employer's risk - Charge of part of claim to subsequent injury fund.

Whenever a subsequent injury or aggravation of a previous injury or preexisting condition occurs to an employee, the risk of the employer for whom such person was working at the time of such subsequent injury or aggravation shall be charged only with the amount of the awards resulting from such subsequent injury or aggravation. Whenever such subsequent injury or aggravation results in further disability or an aggravation of a preexisting injury or condition, the
compensation which is in excess of the amount to which the injured employee would have been
entitled solely by reason of the subsequent injury or aggravation shall be charged to the subsequent injury fund and not to the classification or the risk to which the subsequent injury or
aggravation is charged.

65-04-19. Organization to determine premium due from employer - Mailing of premium billing statement as notice of amount due.

The organization shall determine the amount of premium due from every employer subject to this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the organization received information that an employer is subject to the title. The organization shall order the premium to be paid into the fund
and shall mail a copy of the premium billing statement to the employer. Mailing of the premium billing statement constitutes notice to the employer of the amount due.

65-04-19.1. Premium discount for implementation of risk management programs.

Any employer who achieves the benchmarks outlined by the organization's risk management programs is eligible for a discount in the annual premium for the year following the
year in which the risk management program's benchmarks are achieved.

65-04-19.2. State agency participation in risk management program.

Repealed by S.L. 2003, ch. 564, § 14.

65-04-19.3. Premium calculation programs - Authority.

The organization may create and implement actuarially sound employer premium calculation programs, including dividends, group insurance, premium deductibles, and reimbursement for medical expense assessments. Programs created or modified under this section are not subject to title 28-32 and may include requirements or incentives for the early

reporting of injuries. An employer with a deductible policy under this section, who chooses to pursue a third-party action under section 65-01-09 after an injured worker and the organization have chosen not to pursue the third-party action, may keep one hundred percent of the recovery
obtained, regardless of the expense incurred in covering the injury and regardless of any contrary provision in section 65-01-09. If the employer pursues the third-party action pursuant to
this section, neither the organization nor the injured worker has any liability for sharing in the expense of bringing that action.

65-04-20. Installment payment of premiums - Interest required.

An employer, subject to section 65-04-22, may pay the annual premium in installments. Interest must be charged at the prevailing base rate posted by the Bank of North Dakota plus two and one-half percent. The interest charged must be at least six percent per annum. Interest must be charged on all premiums deferred under this section. Upon default in payment of any installment, the penalties apply which are provided in sections 65-04-22 and 65-04-33.

65-04-21. Utilization of public funds for payment of premiums due the fund.

The state of North Dakota or any municipality thereof, whenever necessary, may use any funds of the state or municipality, as the case may be, except such funds as are raised by special levies, for the payment of premiums due the fund for insurance upon employees of such state or municipality. If there are no funds on hand with which the premium payments may be made, the state or a municipality thereof may issue special warrants against its general fund for the payment of such premiums, and such warrants shall be paid in their order the same as any other warrants of the state or municipality.

65-04-22. Organization may make premium due immediately - When premium is in default.

The organization may require payment of a premium, including an advance premium, security deposit, or any other instrument that is mutually acceptable to the organization and the
employer, within any time which, in the judgment of the organization, is reasonable and necessary to secure the payment of the premium by any employer. The premium, whether paid in full or in installments, shall be in default one month from the payment due date specified in the premium billing statement.

Default of any installment payment will, at the option of the organization, make the entire remaining balance of the premium due and payable. The organization may declare an employer uninsured at any time after forty-five days have passed from the due date specified in the premium billing statement and the employer has failed to make a payment to the organization. The organization may decline coverage to any employer that has been determined to be uninsured under this section or where a premium delinquency remains unresolved.

65-04-22.1. Retroactive payment not required.

When the organization reviews a potential employment relationship involving an independent contractor who has a valid identification number issued under section 34-05-01.4 and determines that the party described as an independent contractor is an employee for purposes of workforce safety and insurance premiums, rather than an independent contractor, the organization may not require the party determined to be the employer to pay premiums for

that employee, or any interest, penalty, or delinquency fee with respect to those premiums, retroactive to the date the relationship with the employee began, unless, however, the organization determines that the employer willfully and intentionally entered the relationship with
the purpose of avoiding workforce safety and insurance premium payments. The organization may require the payment of premiums for that employee as of the date the order declaring an employment relationship becomes final.

65-04-23. Penalties for default in payment of premiums, penalties, and interest.

Repealed by S.L. 2001, ch. 578, § 17.

65-04-24. Organization to bring suit for premiums in default.

When an employer defaults on payment of premium, penalties, or interest, the organization may bring suit for the collection of premium, accrued penalties and interest, and any additional penalties and interest that may accrue. The organization may adjust or compromise the account. The organization may retain counsel on a contingent fee basis to represent the organization in any proceeding relating to the collection of amounts due under this title. The organization shall charge attorney's fees and costs to the organization's general fund. In any action for the collection of amounts due the organization under this title, the court may not review or consider the action of the organization regarding the acceptance or payment of any claim.

65-04-25. Service of nonresident employer in suit for premium or in suit against an uninsured employer.

If the employer in an action to collect delinquent premiums or for injuries sustained in the employer's employment for which the employer did not carry the required insurance is a nonresident of this state, or a foreign corporation or limited liability company doing business in this state, service of the summons may be made upon any agent, representative, or foreman of said employer in this state, or in the case of a foreign corporation, its director, and if there is no agent, representative, or foreman, or in the case of a foreign corporation, director, upon whom service can be made in this state, service upon the secretary of state constitutes personal service upon that nonresident employer or corporation's director who has either failed to secure
the necessary coverage or who is delinquent in the employer's premiums, or service may be made in any other manner designated by law. The organization may retain counsel who is licensed in another state to represent the organization on a contingent fee basis in any proceeding relating to the collection of amounts due the organization under this title. All attorney's fees and costs incurred under this section are a charge to the general fund.

65-04-26. Lien priority and filing - Remedies available in action for delinquent premiums - Exemptions restricted.

The claim of the organization in bankruptcy, probate, insolvency, and receivership proceedings for premiums in default and penalties is a lien with the same priority as prior income tax liens, except that this lien is not enforceable against a purchaser, including a lien creditor, of real estate or personal property for valuable consideration without notice. Notice of this lien must be filed in the place and manner provided for in section 57-38-49. A certificate of the organization that premiums and penalties are due for the period stated in the certificate is prima facie evidence of this fact. In any action brought for the recovery of premiums in default

and penalties, the remedies of garnishment or attachment, or both, are available. No exemptions except absolute exemptions under section 28-22-02 may be allowed against any levy under execution pursuant to judgment recovered in the action.

65-04-26.1. Corporate officer personal liability.

1. An officer or director of a corporation, or manager or governor of a limited liability company, or partner of a limited liability partnership, or employee of a corporation or limited liability company having twenty percent stock ownership who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums or reimbursements under this title and who fails to file the reports or to make payments as required, is personally liable for premiums under this chapter and reimbursement under section 65-05-07.2, including interest, penalties, and costs if the corporation or limited liability company does not pay to the organization those amounts for which the corporation or limited liability company is liable.
2. The personal liability of any person as provided in this section survives dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation or limited liability company must be considered earned from any person determined to be personally liable.
3. After review of the evidence in the employer's file, the organization shall determine personal liability under this section. The organization shall issue a decision under this section pursuant to section 65-04-32.

65-04-27. Payment of claims - Employers in default.

The payment of a judgment rendered in an action brought against an employer for the collection of defaulted premiums or the voluntary payment of the amount of premium, penalties,
and costs prior to judgment entitles the employer and that employer's employees to the benefits
provided in this title from the date of the payment. The organization shall pay an employee who
sustains an injury while working for an employer whose premium is in default the same as the employee would receive if the employee were working for an employer whose premium is not in
default.

65-04-27.1. Injunctive relief - Procedure.

1. a. To protect the lives, safety, and well-being of wageworkers, to ensure fair and equitable contributions to the workforce safety and insurance fund among all employers, and to protect the workforce safety and insurance fund, the organization may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title:
(1) When it has been brought to the attention of the organization that the employer has unlawfully employed uninsured workers in violation of section 65-04-33;

(2) When the employer defaults in the payment of insurance premiums, reimbursements, penalties, or interest into the fund; or
(3) When the organization, in exercise of the authority granted it by section 65-03-01, finds that it is necessary to enjoin and restrain certain employers and employments to protect the lives and safety of the employees because of the employer's failure or refusal to comply with necessary and proper safety rules.
b. The courts of this state have jurisdiction to grant preventive relief under the circumstances described in subdivision a.
2. Chapter 32-06 as it relates to injunction applies to proceedings instituted under this section to the extent that chapter is applicable.
3. In addition to chapter 32-06, when the court has granted an immediate temporary injunction at the time of the commencement of the action, the defendant employer may have a hearing by the court on the merits of the case without delay. Upon three days' written notice to the organization, the court shall proceed to hearing on the merits and render its decision.
4. In addition to chapter 32-06, when the court has not granted an immediate temporary injunction at the time of the commencement of the action and the time for answer has expired, either party may have a hearing by the court on the merits of the case. Upon ten days' notice by either party to the other, the court shall proceed to hearing on the merits and render its decision.
5. Any court of competent jurisdiction in this state shall impose a fine of at least one thousand dollars against an employer who has violated an injunction granted under this section. The court shall impose a fine for each violation, in addition to any other penalty provided by law.

65-04-28. Complying employers not liable for injuries to or deaths of employees - Common-law actions barred.

Employers who comply with the provisions of this chapter shall not be liable to respond in damages at common law or by statute for injury to or death of any employee, wherever occurring, during the period covered by the premiums paid into the fund.

65-04-29. Employers carrying on nonhazardous employment may come under law - Employee's option.

Any employer carrying on any employment not defined as hazardous under section 65-01-02 who complies with this title and who pays into the fund the premiums provided for under this chapter is covered under the fund and is not liable to respond in damages at common
law or by statute for injuries to or the death of any employee, wherever occurring, during the period covered by such premiums. Any employee who elects before injury not to come under workforce safety and insurance may do so by notifying the organization and the employer of such election in writing.

65-04-30. State treasurer is custodian of fund - Deposit - Disbursement on vouchers.

The state treasurer is the custodian of the fund and all payments of awards of the organization for disbursements other than travel and administrative expenses must be paid by

the state treasurer upon warrant-checks authorized and prepared by the organization. Warrants
drawn upon the fund and paid by the state treasurer must be returned to the organization and must be kept in the files of the organization. The organization shall submit to the office of management and budget once each month a monthly financial statement showing the receipts, disbursements, investments, and status of the fund. The treasurer may deposit any portion of the fund not needed for immediate use in the manner and subject to the requirements prescribed by law for the deposit by the treasurer of state funds. Any interest earned by any portion of the fund which is deposited by the state treasurer under this section must be collected
by the state treasurer and placed to the credit of the fund.

65-04-31. Investment of fund.

Investment of the fund must be under the supervision of the state investment board in accordance with chapter 21-10. For purposes of this section, the director is the official signatory for the organization on any check, document, or other legal instrument relating to or resulting from the investment of organization funds.

65-04-32. Decisions by organization - Disputed decisions.

Notwithstanding any provisions to the contrary in chapter 28-32, the following procedures apply when the organization issues a decision under this chapter or section 65-05-07.2:

1. The organization may issue a notice of decision based on an informal internal review of the record and shall serve notice of the decision on the parties by regular mail. The organization shall include with the decision a notice of the employer's right to reconsideration.
2. An employer has thirty days from the day the notice of decision was mailed to file a written petition for reconsideration. The employer is not required to file the request through an attorney. The request must state the reason for disagreement with the organization's decision and the desired outcome. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.
3. Within sixty days after receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by certified mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration. The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.
4. A party has thirty days from the date of service of an administrative order to file a written request for rehearing. The request must state specifically each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that chapter does not conflict with this section.
6. An employer may appeal a posthearing administrative order to district court in

accordance with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing to district court a final order issued by a hearing officer under this title.

65-04-33. Failure to secure coverage - Noncompliance - Failure to submit necessary reports - Penalty.

1. An employer may not employ any person, or receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first applying for workforce safety and insurance coverage for the protection of employees by notifying the organization of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming twelve-month period.
2. An employer who willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or who willfully fails to secure coverage for employees, is liable to the state in the amount of two thousand dollars plus three times the difference between the premium paid and the amount of premium the employer should have paid. The organization shall collect a penalty imposed under this subsection in a civil action in the name of the state, and the organization shall deposit a penalty collected under this subsection to the credit of the workforce safety and insurance fund. An employer who willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or who willfully fails to secure coverage for employees, is guilty of a class A misdemeanor. If the premium due exceeds five hundred dollars, the penalty for willful failure to secure coverage or willful misrepresentation to the organization or its representative is a class C felony. If the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workforce safety and insurance coverage under this subsection. In addition to the penalties prescribed by this subsection, the organization may initiate injunction proceedings as provided for in this title to enjoin an employer from unlawfully employing uninsured workers. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.
3. An employer who is uninsured is liable for any premiums plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of noncompliance. An additional five percent penalty is due for each year of noncompliance before the most recent year beginning on the date the organization became aware of the employer's uninsured status, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent. In addition, the organization may assess a penalty of five thousand dollars for each premium period the employer was uninsured. The organization may not assess a penalty for more than six years of past noncompliance. The organization may assess additional penalties, from the date the organization became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. In addition, the organization may assess an employer the actual cost and reserves of any claim attributable to the

employer during the time the employer was uninsured. The penalties for employers are in addition to any other penalties by law. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.

4. An employer who fails or refuses to furnish to the organization the annual payroll report and estimate or who fails or refuses to furnish other information required by the organization under this chapter is subject to a penalty established by the organization of two thousand dollars. Upon the request of the organization, the employer shall furnish the organization any of that employer's payroll records, annual payroll reports, and other information required by the organization under this chapter and an estimate of payroll for the advance premium year. If the employer fails or refuses to provide the records within thirty days of a written request from the organization, the employer is subject to a penalty not to exceed one hundred dollars for each day until the organization receives the records, in addition to the five thousand dollar penalty set forth above. The organization may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township. The organization may reduce penalties for employers under this subsection. However, an employer may not appeal an organization decision not to reduce a penalty. The organization shall notify an employer by regular mail of the amount of premium and penalty due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the organization regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.

5. When an employer defaults in the payment of any premium, any installment of the premium, any penalty or interest, or in the filing of any bond required under this chapter, the employer at the time of default is subject to a penalty not to exceed two hundred fifty dollars plus two percent of the amount of premiums, penalties, and interest in default, and beginning one month after default, a penalty of two percent of the amount of premiums, penalties, and interest in default for each month or fraction of a month the premium, penalty, or interest remains unpaid.

CHAPTER 65-05
CLAIMS AND COMPENSATION

65-05-01. Claims for benefits - When and where filed.

All original claims for benefits must be filed by the injured employee, or someone on the injured employee's behalf, within one year after the injury or within two years after the death. The date of injury for purposes of this section is the first date that a reasonable person knew or should have known that the employee suffered a work-related injury and has either lost wages because of a resulting disability or received medical treatment. Notwithstanding a statute of

limitations assertion, the claimant bears the burden of proving any entitlement to benefits. If the
organization is estopped from applying the statute of limitations in this section because an employer's willful conduct prevented an injured employee from filing a claim in a timely manner,
that employer shall reimburse the organization for the full amount of all benefits paid during the
first five years of that claim. Benefits may not be allowed under this title to any person, except as provided in section 65-05-04, unless that person, or someone on that person's behalf, files a written claim for benefits within the time specified in this section. A claim must be filed by:
1. Delivering it at the office of the organization or to any person the organization designates by rule; or
2. Depositing it in the mail properly stamped and addressed to the organization or to any person the organization designates by rule.

65-05-01.1. Pneumoconiosis claims - Rules - Agreements.

The organization shall provide such additional coverage, allow such additional time for claims to be filed, and pay such additional compensation and other benefits in excess of the coverage, filing time, and benefits otherwise provided in this title, as may be required by the Federal Coal Mine Health and Safety Act of 1969 and amendments thereto, for any coal miner, coal miner's surviving spouse, or dependents who, due to the disability or death of such coal miner as the result of pneumoconiosis, would be entitled to claim benefits under such federal Act; provided, however, that such claim is first filed with the federal agency designated in the federal Act and adjudicated and found compensable by them; and provided that such pneumoconiosis was contracted or aggravated as the result of employment as a coal miner in the state of North Dakota. The organization shall adopt such reasonable rules and enter into such agreements necessary to comply with section 421 of said federal Act.

65-05-01.2. Notice to employer.

When an employee is involved in an accident while on the job, the employee shall take steps immediately to notify the employer that the accident occurred and what is the general nature of the injury to the employee, if apparent. Notice may be either oral or written. The notice
must be given to the employee's immediate supervisor or another supervisor authorized to receive notice. Absent good cause, notice may not be given later than seven days after the accident occurred or the general nature of the employee's injury became apparent.

65-05-01.3. Failure to comply with notice and filing provisions.

If an employee fails to notify the employer of an accident and the general nature of the employee's injury, the organization may consider that failure to notify in determining whether the
employee's injury is compensable.

65-05-01.4. Employer to file first report of notice of injury.

The employer shall file a first report of notice of injury with the organization within seven days from the date the employer receives the notice of injury from the employee. Failure of the employer to file a first report of notice of injury is an admission by the employer that the alleged

injury may be compensable. The organization may make or reopen a determination made without an employer's first report of notice of injury on its own motion pursuant to section 65-05-04 on the grounds determined by the organization to be sufficient.

65-05-01.5. Organization to notify employee of receipt of employer's first report of notice of injury.

If a claim for compensation has not been received by the organization but the organization has received an employer's first report of notice of injury, the organization shall notify the employee that the employer's first report has been received and shall advise the employee of the claim filing requirements of section 65-05-01.

65-05-02. Form in which claim must be filed.

Every claim must be made on forms to be furnished by the organization and must contain all the information required by it. Each claim must be signed by the person entitled to compensation or by the person acting on that person's behalf and, except in case of death, must be accompanied by a certificate of the employee's doctor stating that the employee was physically examined, stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown, the organization may waive the provisions of this section.

65-05-03. Jurisdiction of organization to hear questions within its jurisdiction - Finality of determination.

The organization shall have full power and authority to hear and determine all questions within its jurisdiction, and its decisions, except as provided in chapter 65-10, are final and are entitled to the same faith and credit as a judgment of a court of record.

65-05-04. Organization has continuing jurisdiction over claims properly filed.

If the original claim for compensation has been made within the time specified in section 65-05-01, the organization at any time, on its own motion or on application, may review the award, and in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation. There is no appeal from an organization decision not to reopen a claim after the organization's order on the claim has become final.

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

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

a. Are subject to the provisions of this title;

b. Are employed by employers who are subject to this title; and

c. Have been injured in the course of their employment.

2. If an employee, or any person seeking benefits because of the death of an employee, applies for benefits from another state for the same injury, the organization will suspend all future benefits pending resolution of the application. If an employee, or any person seeking benefits because of the death of an employee, is determined to be eligible for benefits through some other state act or enters an agreement to resolve a claim through some other state act, no further compensation may be allowed under this title and the employee, or any person seeking benefits because of the death of an

employee, must reimburse the organization for the entire amount of benefits paid.

65-05-06. Payment of compensation in lieu of claim for relief against employer.

The payment of compensation or other benefits by the organization to an injured employee, or to the injured employee's dependents in case death has ensued, are in lieu of any and all claims for relief whatsoever against the employer of the injured or deceased employee.

65-05-07. Injured employee given medical and hospital service required - Furnished artificial limbs and appliances for rehabilitation - Fee approval.

The fund shall furnish to an injured employee reasonable and appropriate medical, surgical, and hospital service and supplies necessary to treat a compensable injury. The fund may furnish artificial members and replacements the organization determines necessary to rehabilitate an injured employee.

1. The health care provider or doctor must be acting within the scope of the provider's or doctor's license or fees will be denied.
2. Fees may not be approved for more than one health care provider or doctor in a case where treatment is provided over the same period of time except for the services of a consulting doctor, assistant surgeon, or anesthetist or in an emergency.
3. The organization, in cooperation with professional organizations of doctors and health care providers, shall establish a system of peer review to determine reasonableness of fees and payment denials for unjustified treatments, hospitalization, or visits. The doctor or health care provider may appeal adverse decisions of the organization in accordance with the medical aid rules adopted by the organization.
4. Health care providers and doctors may not bill an injured employee for any services rendered as a result of the compensable work injury.
5. Under this section, the organization may modify real estate and may provide for adaptations and modifications to motor vehicles as follows:

a. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed seventy-five thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary. The dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subdivision does not allow the organization to purchase any real estate.

b. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed one hundred fifty thousand dollars to provide the most cost-effective, specially equipped motor vehicle or vehicle adaptations the organization determines medically necessary. The organization may establish factors to be used in determining whether a specially equipped motor vehicle or adaptation is necessary. Under this subdivision, the organization may not pay for insurance of or maintenance of the motor vehicle. Within the dollar limit and under this subdivision, the organization may pay for vehicle or adaptation replacement purchases. The dollar limit is for the life of the injured employee, regardless of any subsequent claim.

c. In the case of an injured employee who has not sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may provide the benefits under

subdivisions a and b if the organization determines the benefits would be cost-effective and appropriate because of exceptional circumstances as determined by the organization.
6. If a doctor or health care provider who has treated or provided services to an injured employee fails or refuses without just cause to file with the organization a report required by section 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for the report made by the claimant, the claimant's representative, or the organization, the organization shall assess as a penalty a sum of one hundred dollars. Health care providers and doctors may not bill an injured worker for any penalty assessed by the organization under this subsection.
7. The filing of an accident report or the rendering of treatment to an injured worker who comes under the organization's jurisdiction constitutes acceptance of the organization's medical aid rules and compliance with its rules and fees.
8. The organization may not pay for:
a. Personal items that are for the injured employee's personal use or hygiene, including toothbrushes, slippers, shampoo, and soap.
b. Any product or item such as clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating doctor or health care provider.
c. Any furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating doctor or health care provider.
d. Vitamins and food supplements except in those cases in which the injury causes severe dietary problems, the injury results in the employee's paraplegia or quadriplegia, or the employee becomes wheelchair-bound due to the injury.
e. Eye examinations unless there is a reasonable potential for injury to the employee's eyes as a result of the injury.
f. Private hospital or nursing home rooms except in cases of extreme medical necessity and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the employee will pay the difference in cost.
g. Serological tests, including VDRL and RPR, or other tests for venereal disease or pregnancy, or any other routine tests unless clearly necessitated by the injury.
h. Aids or programs primarily intended to help the employee lose weight or stop smoking unless ordered by the organization.
i. Home gymnasium or exercise equipment unless ordered by the organization.
j. Memberships or monthly dues to health clubs, unless ordered by the organization.
k. Massage, unless ordered by the organization.

65-05-07.1. Organization to adopt fee schedule.

Repealed by S.L. 1999, ch. 554, § 4.

65-05-07.2. Payment to organization for certain claims.

The employer shall reimburse the organization for all medical expenses related to a

compensable injury to an employee if the expenses are not more than two hundred fifty dollars and shall reimburse the organization for the first two hundred fifty dollars of medical expenses when the expenses are more than two hundred fifty dollars. If a claim for benefits is filed with the organization by midnight central time on the first business day following the workplace injury,
the organization shall pay the first two hundred fifty dollars of medical expenses. A claim is filed by submitting a form furnished by the organization or by another method designated by the organization. If a claim for benefits is filed with the organization more than fourteen days from the date the employer received notice of the workplace injury from the employee, the employer
shall reimburse the organization for the first three hundred fifty dollars of medical expenses when the expenses are greater than three hundred fifty dollars. If an employee's compensable injury is determined through a civil action to have been sustained through the fault or negligence
of a third person, or if a settlement has been entered between the employee and a third person through which the third person agrees to compensate the employee for the injury, the organization, upon receipt of its subrogation interest, shall credit the account of the employer to
the extent of the payment made by the employer to the organization under this section. Upon the organization's determination that the claim is compensable, the organization shall pay the medical expenses associated with the claim and notify the employer of payments to be made by
the employer under this section. If the employer does not pay the organization within thirty days
of notice by the organization, the organization may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five percent of the payment owed by the employer.
The organization shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for any payment the employer makes on a claim. Except as otherwise provided, if the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the organization shall pay all further medical expenses. This section is effective for all compensable injuries that occur after July 31, 1995. Compensable injuries paid under sections 65-06.2-04 through 65-06.2-08 are not subject to this section.

65-05-08. Disability benefits - Not paid unless period of disability is of five days' duration or more - Application required - Suspended during confinement - Duty to report wages.

No benefits may be paid for disability, the duration of which is less than five consecutive calendar days. An employer may not require an employee to use sick leave or annual leave, or other employer-paid time off work, before applying for benefits under this section, in lieu of receiving benefits under this section, or in conjunction with benefits provided under this section,
but may allow an employee to use sick leave or annual leave to make up the difference between

the employee's wage-loss benefits and the employee's regular pay. If the period of disability is five consecutive calendar days' duration or longer, benefits must be paid for the period of disability provided that:

1. When disability benefits are discontinued, the organization may not begin payment again unless the injured employee files a reapplication for disability benefits on a form supplied by the organization. In case of reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon proof by the injured employee that:

a. The employee has sustained a significant change in the compensable medical condition;

b. The employee has sustained an actual wage loss caused by the significant change in the compensable medical condition; and

c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.

2. All payments of disability and rehabilitation benefits of any employee who is eligible for, or receiving, benefits under this title must be suspended when the employee is confined in a penitentiary, jail, youth correctional facility, or any other penal institution for a period of between seventy-two consecutive hours and one hundred eighty consecutive days. All payments of disability and rehabilitation benefits of any employee who is eligible for, or receiving, benefits under this title must be discontinued when the employee is confined in a penitentiary, jail, youth correctional facility, or any other penal institution for a period in excess of one hundred eighty consecutive days.

3. Any employee who is eligible for, or receiving disability or rehabilitation benefits under this title shall report any wages earned, from part-time or full-time work from any source. If an employee fails to report wages earned, the employee shall refund to the organization any disability or vocational rehabilitation benefits overpaid by the organization for that time period. To facilitate recovery of those benefits, the organization may offset future benefits payable, under section 65-05-29. If the employee willfully fails to report wages earned, the employee is subject to the penalties in section 65-05-33. An employee shall report whether the employee has performed work or received wages. The organization periodically shall provide a form to all injured employees receiving disability or rehabilitation benefits which the injured employee must complete to retain eligibility for further disability or rehabilitation benefits, regardless of the date of injury or claim filing. The form will advise the injured employee of the possible penalties for failure to report any work or activities as required by this section. An injured employee who is receiving disability or vocational rehabilitation benefits must report any work activities to the organization whether or not the injured employee receives any wages. An injured employee who is receiving disability or vocational rehabilitation benefits also must report any other activity if the injured employee receives any money, including prize winnings, from undertaking that activity, regardless of expenses or whether there is a net profit. For purposes of this subsection, "work" does not include routine daily activities of self-care or family care, or routine maintenance of the home and yard, and "activities" does not include recreational gaming or passive investment endeavors.

4. An employee shall request disability benefits on a claim form furnished by the organization. Disability benefits may not commence more than one year prior to the date of filing of the initial claim for disability benefits.
5. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, 1991, irrespective of injury date.
6. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.
7. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, the employee is not entitled to any disability or vocational rehabilitation benefits during the limitation of income or refusal to accept employment unless the organization determines the limitation or refusal is justified.
8. The organization may not pay disability benefits unless the loss of earning capacity exceeds ten percent. The injured employee may earn up to ten percent of the employee's preinjury average gross weekly earnings with no reduction in total disability benefits. The employee must report any earnings to the organization for a determination of whether the employee is within the limit set in this subsection.
9. Upon securing suitable employment, the injured employee shall notify the organization of the name and address of the employer, the date the employment began, and the amount of wages being received. If the injured employee is receiving disability benefits, the injured employee shall notify the organization whenever there is a change in work status or wages received.
10. The organization shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of fifteen dollars per week per child.
11. Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the organization.

65-05-08.1. Verification of disability.

1. An injured employee's doctor shall certify the period of disability and the extent of the injured worker's abilities and restrictions.
2. A doctor certifying disability shall include in the report filed with the organization:
a. The medical basis established by medical evidence supported by objective medical findings for the certification of disability;
b. Whether the employee is totally disabled, or, if the employee is not totally disabled, whether the employee is able to return to any employment, and a statement of the employee's restrictions and physical limitations; and
c. A professional opinion as to the expected length of, and reason for, the disability.
d. A doctor may not certify or verify past disability commencing more than sixty days before the doctor's examination of the employee.
3. The report must be filed on a form furnished by the organization, or on any other form acceptable to the organization.
4. The injured employee shall ensure that the required reports for any period of disability

are filed.
5. Prior to the expiration of a period of disability certified by a doctor, if a report certifying an additional period of disability has not been filed, or upon receipt of a report or other evidence indicating an injured employee who is receiving disability benefits has been or will be released to return to work, the organization shall send a notice to that employee of the organization's intention to discontinue benefits, including an explanation of the reason for discontinuing benefits, an explanation of the employee's right to respond, and the procedure for filing the required report or challenging the proposed action. A copy of the notice must be mailed to the employee's doctor. Thereafter, if the required certification is not filed, the organization shall discontinue disability benefits, effective twenty-one days after the date the notice of intention to discontinue benefits is mailed or the date on which the employee actually returned to work, whichever occurs first.

65-05-08.2. Preacceptance disability benefits.

If, after receiving a claim for benefits, the organization determines that more information is needed to process the claim, but that the information in the file indicates the injured employee is
more likely than not entitled to disability benefits, the organization may pay preacceptance disability benefits equal to the weekly disability benefit allowed under section 65-05-09. The organization may continue to pay preacceptance disability benefits to the employee during the period the claim is pending, unless the injured employee is not cooperating with requests from the organization for additional information needed to process the claim. The organization may not pay more than sixty days of preacceptance benefits. The organization may only recover a payment made to an injured employee under this section if that recovery is allowed under section 65-05-33. There is no appeal from an organization decision not to pay preacceptance disability benefits.

65-05-08.3. Treating doctor's opinion.

1. A presumption may not be established in favor of any doctor's opinion. The organization shall resolve conflicting medical opinions and in doing so the organization shall consider the following factors:
a. The length of the treatment relationship and the frequency of examinations;
b. The nature and extent of the treatment relationship;
c. The amount of relevant evidence in support of the opinion;
d. How consistent the opinion is with the record as a whole;
e. Appearance of bias;
f. Whether the doctor specializes in the medical issues related to the opinion; and
g. Other relevant factors.
2. This section does not apply to managed care programs under section 65-02-20. For purposes of this section, the organization shall determine whether a doctor is an injured employee's treating doctor.

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

If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during that disability a weekly benefit equal to sixty-six and two-thirds

percent of the gross weekly wage of the employee, subject to a minimum of sixty percent and a maximum of one hundred twenty-five percent of the average weekly wage in the state. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage and the organization benefit rates in effect on the date of first disability.
1. If an employee suffers disability but is able to return to employment for a period of three consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher. The organization benefit rates are those in effect at the time of that recurrence.
2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the employee after deductions for social security and federal income tax.
3. When an employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that employee's weekly benefit as is necessary may be used by the organization to help defray the cost of the nursing home care.

65-05-09.1. Social security offset.

When an injured employee, or spouse or dependent of an injured employee, is eligible for and is receiving permanent total or temporary total disability benefits under section 65-05-09, and is also eligible for, is receiving, or will receive, benefits under title II of the Social Security Act [42 U.S.C. 423], the aggregate benefits payable under section 65-05-09 must be reduced, but not below zero, by an amount equal as nearly as practicable to one-half of such federal benefit. The federal benefit, or primary insurance amount, must be determined by the social security administration. The amount to be offset must equal the primary insurance amount rounded to the next lowest dollar less credit for either the entire amount of attorney's fees and costs, or the fees and costs paid to an authorized representative of the employee as allowed by the social security administration, withheld from past-due social security benefits or paid directly
by the claimant for representation before the social security administration. The amount of the offset computed by the organization initially must remain the same throughout the period of eligibility and may not be affected by any increase or decrease in federal benefits.
Any injured employee, or dependent of an injured employee, receiving permanent total or temporary total disability benefits under section 65-05-09 and whose benefits are offset as provided herein, is not eligible for any escalation of benefits which would adversely affect the organization's right to offset workforce safety and insurance benefits against social security benefits, as provided for in this chapter. This offset will become effective on January 1, 1980, provided that it meets the criteria necessary to allow states to offset federal benefits under title II
of the Social Security Act [42 U.S.C. 424a]. Providing further that:
1. If the receipt of social security benefits results in an overpayment of temporary or permanent total disability benefits by the organization, a refund of any overpayment must be made by the injured worker or that overpayment must be taken from future temporary total or permanent total disability benefits or permanent partial impairment awards, on the current claim or any future claim filed, at a recovery rate to be

determined by the organization.
2. If a claim has been accepted on an aggravation basis and the injured worker is eligible for social security benefits, the organization's offset must be proportionally calculated.
3. If any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under the Social Security Act, the organization's estimate of the amount is deemed to be correct until the actual amount is established and no adjustment may be made for any period of time covered by the refusal.

65-05-09.2. Retirement offset.

If an employee is entitled to permanent total disability benefits and social security retirement benefits under 42 U.S.C. sections 402 and 405, the aggregate wage-loss benefits payable under this title must be determined in accordance with this section. The employee's social security retirement offset must equal forty percent of the calculated ratio of the employee's average weekly wages, as calculated on the commencement of the first, or recurrent, disability under section 65-05-09, to the current state's average weekly wage. Any offset calculated cannot exceed forty percent of the employee's weekly social security retirement benefit. If a claim has been accepted on an aggravation basis and the employee is eligible for social security benefits, the organization's offset must be proportionally calculated. An overpayment must be recouped in the same manner as set forth in section 65-05-09.1. This section applies to an employee who becomes entitled to and receives social security retirement benefits after June 30, 1989, or who receives social security retirement benefits that have been converted from social security disability benefits by the social security administration after June 30, 1989. A conversion by the organization from offsetting an employee's social security disability benefits to offsetting an employee's social security retirement benefits under this section may not result in a decrease in the aggregate amount of benefits the employee receives from both sources.

65-05-09.3. Retirement presumption - Termination of benefits upon retirement.

1. An employee who has retired or voluntarily withdrawn from the labor force and who, at that time, was not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits or to receive a rehabilitation allowance from the organization is presumed retired from the labor market. The presumption may be rebutted by a preponderance of the evidence; however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement.
2. An injured employee who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits, unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, is considered retired. The organization may not pay any disability benefits, rehabilitation benefits, or supplementary benefits to an employee who is considered retired; however, the employee remains eligible for medical benefits, permanent partial impairment benefits, and the additional benefit

payable under section 65-05-09.4.
3. The organization retains liability for disability benefits, rehabilitation benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits, unless the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, and who is gainfully employed and who suffers an injury arising out of and in the course of that employment. The organization may not pay disability or rehabilitation benefits under this subsection for more than three years, subject to section 65-05-09.2, for injuries occurring after August 1, 1997.
4. If an employee is injured within the two years preceding the employee's presumed retirement date, the organization shall pay disability benefits, rehabilitation benefits, or a combination of both benefits for no more than two years. If the duration of disability benefits, rehabilitation benefits, or a combination of both benefits extends beyond the presumed retirement date, the organization shall convert the benefit to an additional benefit payable at the date the disability ends or when two years of benefits have been paid, whichever occurs first.
5. This section applies to an individual who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, after July 31, 1995.

65-05-09.4. Additional benefit payable.

If an injured employee's benefits cease under subsection 2 of section 65-05-09.3, the organization shall pay to that employee every twenty-eight days a benefit based on the length of
time the injured employee received disability benefits during the term of that claim. The organization shall pay the injured employee's additional benefits until the employee's death or for a period of time not to exceed the total length of time the employee received disability benefits under sections 65-05-08, 65-05-08.1, 65-05-09, and 65-05-10, and a vocational rehabilitation allowance under chapter 65-05.1, for that claim, whichever occurs first. The benefit
is based on the injured employee's compensation rate before any applicable social security offset. The percentage of that final payment payable as the additional benefit is:
At least 1 year and less than 3 years of disability 5 percent of weekly benefit.
At least 3 years and less than 5 years of disability 10 percent of weekly benefit.
At least 5 years and less than 7 years of disability 15 percent of weekly benefit.
At least 7 years and less than 9 years of disability 20 percent of weekly benefit.
At least 9 years and less than 11 years of disability 25 percent of weekly benefit.
At least 11 years and less than 13 years of disability 30 percent of weekly benefit.
At least 13 years and less than 15 years of disability 35 percent of weekly benefit.
At least 15 years and less than 17 years of disability 40 percent of weekly benefit.
At least 17 years and less than 20 years of disability 45 percent of weekly benefit.

Twenty or more years of disability 50 percent of weekly benefit.
However, the organization shall pay to an injured employee who has been determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee, equal to one hundred percent of the final payment of the disability benefit that was discontinued under subsection 2 or 3 of section 65-05-09.3.

65-05-09.5. Additional benefit payable - Alternative calculation.

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

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

If the injury causes temporary partial disability resulting in decrease of earning capacity, the disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage-earning capacity after the injury in the same or another employment. Partial disability benefits are subject to a maximum of one hundred twenty-five percent of the average weekly wage in the state. The combined partial disability benefits, dependency allowance, and postinjury wage-earning capacity may not exceed ninety percent of the preinjury weekly wage of the employee after deductions for social security and federal income tax.
1. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the organization.
2. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The organization may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity if the job employs the employee to full work capacity in terms of hours worked per week, and if the job is in a

field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

65-05-10.1. Long-term temporary partial disability inflation adjustment.

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

65-05-11. Maximum and minimum compensation allowances - Total and partial disability.

Repealed by S.L. 1969, ch. 558, § 6.

65-05-12. Permanent impairment - Compensation - Time paid.

Repealed by S.L. 1995, ch. 624, § 2.

65-05-12.1. Permanent impairment.

Repealed by S.L. 1995, ch. 624, § 2.

65-05-12.2. Permanent impairment - Compensation - Time paid.

A permanent impairment is not intended to be a periodic payment and is not intended to reimburse the employee for specific expenses related to the injury or wage loss. If a compensable injury causes permanent impairment, the organization shall determine a permanent impairment award on the following terms:

1. The organization shall calculate the amount of the award by multiplying thirty-five percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the permanent impairment multiplier specified in subsection 10.
2. The organization shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the organization has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.
3. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and which were caused by the compensable injury. The organization may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions, even if these conditions were made symptomatic by the compensable work

injury, and regardless of whether section 65-05-15 applies to the claim.
4. An injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the organization the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. If the report states that the employee is potentially eligible for a permanent impairment award, the organization shall conduct a review and provide notice to the employee as provided by subsection 2. If the injured employee files a timely written request under subsection 2, the organization shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.
5. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Subject to rules adopted under this subsection, impairments must be evaluated under the sixth edition of the guides.
6. The organization shall deduct, on a permanent impairment multiplier basis, from an award for impairment under this section, any previous impairment award under the workers' compensation laws of any jurisdiction.
7. An injured employee is not entitled to a permanent impairment award due solely to pain.
8. Other than an award identified in subsection 11, an award may not be issued unless specifically identified and quantified within the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment".
9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under subsection 2, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
10. If the injury causes permanent impairment, the award must be determined based on the percentage of whole body impairment in accordance with the following schedule:
Permanent impairment
Impairment: multiplier of:
1 to 13 percent 0
14 percent 10
15 percent 10

16 percent 15
17 percent 15
18 percent 20
19 percent 20
20 percent 25
21 percent 25
22 percent 30
23 percent 30
24 percent 30
25 percent 35
26 percent 35
27 percent 35
28 percent 40
29 percent 45
30 percent 50
31 percent 60
32 percent 70
33 percent 80
34 percent 90
35 percent 100
36 percent 110
37 percent 120
38 percent 130
39 percent 140
40 percent 150
41 percent 160
42 percent 170
43 percent 180
44 percent 190
45 percent 200
46 percent 210
47 percent 220
48 percent 230
49 percent 240
50 percent 260
51 percent 280
52 percent 300
53 percent 320
54 percent 340
55 percent 360
56 percent 380
57 percent 400
58 percent 420
59 percent 440

60 percent 465
61 percent 490
62 percent 515
63 percent 540
64 percent 565
65 percent 590
66 percent 615
67 percent 640
68 percent 665
69 percent 690
70 percent 715
71 percent 740
72 percent 765
73 percent 790
74 percent 815
75 percent 840
76 percent 865
77 percent 890
78 percent 915
79 percent 940
80 percent 965
81 percent 990
82 percent 1015
83 percent 1040
84 percent 1065
85 percent 1090
86 percent 1115
87 percent 1140
88 percent 1165
89 percent 1190
90 percent 1215
91 percent 1240
92 percent 1265
93 percent 1290
94 percent 1320
95 percent 1350
96 percent 1380
97 percent 1410
98 percent 1440
99 percent 1470
100 percent 1500

11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less

than fourteen percent and which is not identified in the following schedule, is payable as a fourteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the permanent impairment multiplier identified in the following schedule, the organization shall pay an award equal to the permanent impairment multiplier set out in the following schedule:

Permanent impairment For amputation of:	multiplier of:
A thumb	65
The second or distal phalanx of the thumb	28
The first finger	40
The middle or second phalanx of the first finger	22
The second finger	30
The middle or second phalanx of the second finger	22
The third or distal phalanx of the second finger	14
The third finger	20
The middle or second phalanx of the third finger	16
The fourth finger	16
The middle or second phalanx of the fourth finger	12
The leg at the hip	234
The leg at or above the knee	195
The leg at or above the ankle	150
A great toe	30
The second or distal phalanx of the great toe	18
Any other toe	12

Permanent impairment For loss of:	multiplier of:
An eye	150
Vision of an eye which equals or exceeds 20/200 corrected	100

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the organization shall issue an impairment award based on the greater of the permanent impairment multiplier allowed for the combined rating established under the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the permanent impairment multiplier set forth in this subsection.

12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment, all relevant medical evidence must be submitted to an independent doctor who has not treated the employee and who has not been consulted by the organization in relation to the injury upon which the impairment is based. The organization shall establish a list of doctors who have the training and experience necessary to conduct an evaluation of permanent impairment and to apply the sixth edition of the American medical association's "Guides to the Evaluation of

Permanent Impairment". The organization shall define, by rule, the process by which the organization shall choose an independent doctor or doctors to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor or doctors chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the organization for an impairment award for a rating of impairment for a body part or condition the organization has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor or doctors if the employee disputes the findings of the independent doctor or doctors.

13. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.

14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

15. If an injured employee qualifies for an additional award and the prior award was based upon the number of weeks, the impairment multiplier must be used to compare against the prior award of weeks in determining any additional award.

65-05-13. Scheduled injuries - Permanent loss of member - Compensation - Time compensation payable.

Repealed by S.L. 1995, ch. 624, § 2.

65-05-14. Scheduled injuries - Partial loss of use of member - Weekly compensation time - Compensation payable.

Repealed by S.L. 1995, ch. 624, § 2.

65-05-15. Aggravation awards.

When a compensable injury combines with a noncompensable injury, disease, or other condition, the organization shall award benefits on an aggravation basis, on the following terms:

1. In cases of a prior injury, disease, or other condition, known in advance of the work injury, which has caused previous work restriction or interference with physical function the progression of which is substantially accelerated by, or the severity of which is substantially worsened by, a compensable injury, the organization shall pay benefits during the period of acute care in full. The period of acute care is presumed to be sixty days immediately following the compensable injury, absent clear and convincing evidence to the contrary. Following the period of acute care, the organization shall pay benefits on an aggravation basis.

2. If the progression of a prior compensable injury is substantially accelerated by, or the severity of the compensable injury is substantially worsened by a noncompensable

injury, disease, or other condition, the organization shall pay benefits on an aggravation basis.
3. The organization shall pay benefits on an aggravation basis as a percentage of the benefits to which the injured worker would otherwise be entitled, equal to the percentage of cause of the resulting condition that is attributable to the compensable injury. Benefits payable on an aggravation basis are presumed to be payable on a fifty percent basis. The party asserting a percentage other than the presumed fifty percent may rebut the presumption with clear and convincing evidence to the contrary.
4. When an injured worker is entitled to benefits on an aggravation basis, the organization shall still pay costs of vocational rehabilitation, burial expenses under section 65-05-26, travel, other personal reimbursement for seeking and obtaining medical care under section 65-05-28, and dependency allowance on a one hundred percent basis.

65-05-16. Death benefits payable.

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

65-05-17. Weekly compensation allowances for death claims.

If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified:
1. To the decedent's spouse or to the guardian of the children of the decedent, an amount equal to the benefit rate for total disability under section 65-05-09. All recipients of benefits under this subsection are eligible for benefits at the rate provided in this section, regardless of the date of death of the deceased employee. These benefits continue until the death of the decedent's spouse; or, if the surviving children of the decedent are under the care of a guardian, until those children no longer meet the definition of child in this title. If there is more than one guardian for the children who survive the decedent, the organization shall divide the death benefits equally among the children and shall pay benefits to the children's guardians. Total death benefits, including supplementary benefits, paid on any one claim may not exceed

three hundred thousand dollars.
2. To each child of the deceased employee, the amount of fifteen dollars per week. This rate must be paid to each eligible child regardless of the date of death. The organization may pay the benefit directly to the child of the deceased employee or to the surviving parent or guardian of the child. Dependency allowance may not be reduced by the percentage of aggravation.
3. In addition to the payments provided under subsections 1 and 2, a payment in the sum of two thousand five hundred dollars to the decedent's spouse or the guardian of the children of the decedent and eight hundred dollars for each dependent child. If there is more than one guardian of the decedent's surviving children, the two thousand five hundred dollars must be divided equally among the children and paid to the children's guardians.

65-05-18. Provisions of section 65-05-17 retroactive.

Repealed by omission from this code.

65-05-19. Providing nondependency payments in certain cases.

If the death of an employee with no surviving spouse or dependent children results from an injury within the time specified in section 65-05-16, the organization shall pay a lump sum equal to five percent of the maximum total death benefits specified in subsection 1 of section 65-05-17
to the surviving nondependent child, or in equal shares to the surviving nondependent children. In the event that no nondependent child is living, the sum provided under this section must be paid in equal shares to the surviving parents of the deceased, and if there are none, then to the deceased employee's living brothers and sisters. If there are no living brothers or sisters, the sum under this section must be paid in equal shares to the surviving grandparents, if any, of the deceased employee.

65-05-20. Dependents have option of accepting amount of nondependency payments in lieu of dependency compensation.

Repealed by S.L. 1969, ch. 565, § 2.

65-05-20.1. Scholarship fund - Rules.

1. The organization may establish a scholarship fund. Scholarships may be awarded to:
a. The spouse and child of a worker who dies as a result of a compensable work-related injury, if the spouse and child have received benefits under section 65-05-17;
b. The spouse and child of a worker who is deemed to be catastrophically injured as defined in subdivision c of subsection 2 of section 65-05.1-06.1; and
c. Injured workers for whom the organization determines a scholarship would be beneficial and appropriate because of exceptional circumstances, or upon successful completion of a rehabilitation program contemplated under subdivision g of subsection 4 of section 65-05.1-01, as determined by the organization.
2. For purposes of this section, child includes a legitimate child, a step child, adopted child, posthumous child, foster child, and acknowledged illegitimate child between twenty-three and twenty-six years of age who is enrolled as a full-time student in any accredited educational institution and is dependent upon the employee for support.
3. Scholarships are payable to an accredited institution of higher education or an

institution of technical education on behalf of a student attending that institution.
4. The total amount awarded annually in scholarships may not exceed five hundred thousand dollars. The maximum amount payable on behalf of an applicant is ten thousand dollars per year for no more than five years, except that the combined retraining and scholarship periods for applicants successfully completing a rehabilitation program under subdivision g of subsection 4 of section 65-05.1-01 may not exceed five years.
5. Scholarships must be awarded by a panel chosen by the organization. The organization shall adopt rules establishing selection criteria and obligations associated with the program and identifying information an applicant is required to submit to determine an appropriate scholarship award. Scholarships may be awarded at the sole discretion of the organization. There is no right to reconsideration, rehearing, or appeal from any decision regarding the award, denial, or amount of a scholarship.

65-05-21. Marriage settlement to spouse.

If a spouse who receives compensation under the provisions of subsection 1 of section 65-05-17 remarries, there shall be paid to such spouse a lump sum equal to one hundred four weeks' compensation. If, prior to such marriage, such spouse has received a partial lump sum settlement which covers all or any portion of the said one hundred four weeks following such spouse's marriage, the amount of such partial lump sum settlement which covers all or any part of the said one hundred four weeks following such spouse's marriage shall be deducted from such marriage settlement, and the spouse shall receive only the remainder, if any, over and above such deduction. Any judgment annulling such marriage shall not reinstate the right of such spouse to compensation if the action for annulment is instituted more than six months after
the marriage. The provisions of this section apply only to remarriages that occur before August 1, 2003, regardless of the date of injury or date of death of the decedent.

65-05-22. Adjustment on cessation of compensation for death to one beneficiary.

Upon the cessation of compensation payable to a beneficiary under the provisions of this chapter, the compensation of the remaining persons entitled to compensation for the unexpired
part of the period during which their compensation is payable, shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

65-05-23. Organization may modify apportionment of benefits in certain cases.

Repealed by S.L. 1997, ch. 545, § 6.

65-05-24. Accepting compensation after marriage - Penalty.

Repealed by S.L. 2003, ch. 562, § 13.

65-05-25. Lump sum settlements - Granted in discretion of organization - How computed.

1. If an employee is determined to be permanently and totally disabled, the organization may pay the employee a lump sum equal to the present value of all future payments of compensation. The probability of the employee's death before the expiration of the period during which the employee is entitled to compensation must be determined by generally accepted mortality studies. The organization may not pay the employee a

lump sum unless it has first determined that there is clear and convincing evidence that the lump sum payment is in the best interest of the employee. Best interest of the employee may not be deemed to exist because the employee can invest the lump sum in another manner to realize a better yield. The employee must show a specific plan of rehabilitation which will enable the employee to return as a productive member of society.

2. The organization and an employee may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The contract may provide that the employee shall utilize the funds to engage in certain rehabilitation programs. If the employee breaches the contract, the organization may require the employee to repay the benefits received under the agreement. In cases in which the extent of disability is disputed and resolved by agreement, the concept of reopening a disability claim due to significant change in medical condition is inapplicable.

3. If death results from an injury under the conditions specified in section 65-05-16, the organization may pay the decedent's spouse or the guardian of the decedent's children a lump sum equal to the present value of all future payments of compensation.

4. Notwithstanding any other provision of law, structured settlements may be used to resolve a dispute or to provide for payment of ongoing future benefits. The organization may contract with a third-party vendor to provide structured settlement payments.

65-05-26. Burial expenses.

If death benefits are payable under section 65-05-16, the fund shall pay to the facility handling the funeral arrangements of the deceased employee burial expenses not to exceed ten thousand dollars.

65-05-27. Organization without probate proceedings may pay spouse of deceased claimant sum due deceased - Maximum payment.

If a compensation claimant dies, the organization, without probate proceedings, may pay to the spouse of such claimant, if living, or in the event of the claimant's spouse's death or incompetency, to any adult person who has assumed or paid the expenses of the last illness or funeral expense of the said claimant, the amount actually due claimant's estate, not to exceed the sum of one thousand dollars.

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate.

Every employee who sustains an injury may select a doctor of that employee's choice to render initial treatment. Upon a determination that the employee's injury is compensable, the organization may require the employee to begin treating with another doctor to better direct the medical aspects of the injured employee's claim. The organization shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the organization's request, the employee shall select a doctor from the list. An injured employee shall follow the directives of the doctor or health care provider who is treating the employee as chosen by the employee at the request of the organization and comply with all reasonable

requests during the time the employee is under medical care. Providing further that:
1. No employee may change from one doctor to another while under treatment or after being released, without the prior written authorization of the organization. Failure to obtain approval of the organization renders the employee liable for the cost of treatment and the new doctor will not be considered the attending doctor for purposes of certifying temporary disability.
a. Any employee requesting a change of doctor shall file a written request with the organization stating all reasons for the change. Upon receipt of the request, the organization will review the employee's case and approve or deny the change of doctor, notifying the employee and the requested doctor.
b. Emergency care or treatment or referral by the attending doctor does not constitute a change of doctor and does not require prior approval of the organization.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt, when appropriate, and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the organization reimbursement rates in effect on the date of incurred travel or expense. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. Providing further that:
a. Payment for mileage or other travel expenses may not be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the organization may pay no more than actual cost of lodging, if actual cost is less;
c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and
e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.
3. The organization may at any time require an injured employee to submit to an independent medical examination or independent medical review by one or more duly qualified doctors designated or approved by the organization. The organization shall make a reasonable effort to designate a duly qualified doctor licensed in the state in which the employee resides to conduct the examination before designating a duly qualified doctor licensed in another state or shall make a reasonable effort to

designate a duly qualified doctor licensed in a state other than the employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the employee's residence. An independent medical examination and independent medical review must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. An independent medical examination contemplates an actual examination of an injured employee, either in person or remotely if appropriate. An independent medical review contemplates a file review of an injured employee's records, including treatments and testing. The injured employee may have a duly qualified doctor designated by that employee present at the examination or later review the written report of the doctor performing the independent medical examination, if procured and paid for by that employee. Providing further that:
a. In case of any disagreement between doctors making an examination on the part of the organization and the injured employee's doctor, the organization shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the organization.
b. The injured employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the injured employee is working and loses gross wages from the injured employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
4. If an employee, or the employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination or treatment, or refuses to reasonably participate in medical or other treatments or examinations, the employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the employee.
5. If an employee undertakes activities, whether or not in the course of employment, which exceed the treatment recommendations of the employee's doctor regarding the work injury, and the doctor determines that the employee's injury or condition has been aggravated or has worsened as a result of the employee's activities, the organization may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer. An employer's account may not be charged with the expenses of an aggravation or worsening of a work-related injury or condition unless the employer knowingly required the employee to perform activities that exceed the treatment recommendations of the employee's doctor.

65-05-28.1. Employer to select preferred provider.

Notwithstanding section 65-05-28, any employer subject to this title may select a preferred provider to render medical treatment to employees who sustain compensable injuries. "Preferred provider" means a designated provider or group of providers of medical services, including consultations or referral by the provider or providers.

65-05-28.2. Preferred provider - Use required - Exceptions - Notice.

1. During the first thirty days after a work injury, an employee of an employer that has

selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the organization may not pay for treatment by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a work injury.

2. An employee of an employer that has selected a preferred provider may elect to be treated by a different provider provided the employee makes the election and notifies the employer in writing before the occurrence of an injury.

3. After thirty days have passed following the injury, the employee may make a written request to the organization to change providers. The employee shall make the request and serve it on the employer and the organization at least thirty days before treatment by the provider. The employee shall state the reasons for the request and the employee's choice of provider.

4. If the employer objects to the provider selected by the employee under subsection 2 or 3, the employer may file an objection to the change of provider. The employer shall detail in the objection the grounds for the objection and shall serve the objection on the employee and the organization within five days of service of the request. The employee may serve, within five days of service of the employer's objection, a written response on the employer and the organization in support of the request for change of provider. Within fifteen days after receipt of the response or of the expiration of the time for filing the response, the organization shall rule on the request. Failure of the organization to rule constitutes approval of the request. Treatment by the employee's chosen provider is not compensable until the organization approves the request. The preferred provider remains the treating provider until the organization approves the employee's request to change providers.

5. An employer that selects a preferred provider shall give notice and post notice as required under this subsection.

a. An employer shall give written notice of the identity and the terms of the preferred provider program:

(1) To the employer's employees when the employer makes an initial selection of a preferred provider.

(2) To the employer's employees when the employer changes the selection of the preferred provider.

(3) To an employee at the time of hire.

(4) To the employer's employees at least annually after the initial notice.

b. An employer that has selected a preferred provider shall display notice of the identity of the preferred provider and the terms of the preferred provider program in a conspicuous manner at fixed worksites, and wherever feasible at mobile worksites, and in a sufficient number of places to reasonably inform employees of the identity of the preferred provider and of the terms of the preferred provider

program.
c. Failure to give written notice, to properly post notice, or to reasonably inform employees of the terms of the preferred provider program as required under this subsection invalidates the selection for the employee's claim.

65-05-29. Assignment of claims void - Claims exempt.

1. Any assignment of a claim for compensation under this title is void. All compensation and claims therefor are exempt from claims of creditors except any of the following:
a. A child support obligation ordered by a court of competent jurisdiction.
b. A claim by job service North Dakota for reimbursement of unemployment benefits, for the amount that was paid by job service North Dakota during the period for which the claimant is found eligible for temporary total or permanent total disability benefits, not to exceed the disability award actually made by the organization.
c. A claim by the organization for any payments made due to:
(1) Clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient, or any other circumstance of a similar nature, all not induced by fraud, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;
(2) An adjudication by the organization or by order of any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;
(3) Fraud, in which case the recipient shall repay the payment or the unpaid amount of the sum may be recouped from any future payments due to the recipient on any claim with the organization;
(4) Overpayment due to application of section 65-05-09.1; or
(5) A claim by the organization for premiums, penalties, and interest under chapter 65-04.
2. a. Notwithstanding paragraph 2 of subdivision c of subsection 1, during the sixty days immediately following the date of injury, if the organization accrues a medical expense or makes a payment for a medical expense and the organization later determines the medical expense is for the care and treatment of a noncompensable injury, disease, or other condition, the injured employee is not liable for the medical expense accrued or paid by the organization before the earlier of:
(1) The third day following the date the organization makes a determination the medical expense is for a noncompensable injury, disease, or condition; or
(2) The third day following the date the injured employee or medical provider reasonably should have known the medical expense is for a noncompensable injury, disease, or condition.
b. Medical expenses incurred under this subsection may not be charged against an employer's account for purposes of experience rating.

65-05-30. Filing of claim constitutes consent to use of information received by doctor.

1. The filing of a claim with the organization constitutes a consent to the use by the organization, in any proceeding by the organization or to which the organization is a party in any court, of any information, including prior and subsequent prognosis reports, medical records, medical bills, and other information concerning any health care or health care services which was received by any health care provider, hospital, or clinic in the course of any examination or treatment of the claimant.
2. The filing of a claim with the organization authorizes a health care provider, hospital, or clinic to disclose to the organization, or authorized representative of the organization, information or render an opinion regarding the injured employee's claim with the organization. As used in this subsection, an opinion may include a statement regarding liability, causation, or a preexisting condition or other information the organization deems necessary for the administration of this title. The filing of a claim with the organization authorizes a health care provider, hospital, or clinic to disclose any information to the organization deemed necessary for the administration of this title to the organization's representative, or the employer, except any information directly disclosed to the employer must be relevant to the employee's work injury or to return-to-work issues.
3. If a health care provider furnishes information or an opinion under this section:
a. That health care provider does not incur any liability as a result of furnishing that information or opinion.
b. The act of furnishing that information or opinion may not be the sole basis for a disciplinary or other proceeding affecting professional licensure. However, the act of furnishing that information or opinion may be considered in conjunction with another action that may subject the health care provider to a disciplinary or other proceeding affecting professional licensure.

65-05-31. False statement - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

65-05-32. Privacy of records and hearings - Penalty.

Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to organization employees or agents in the performance of their official duties. Providing further that:
1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the organization.
2. Employers or their duly authorized representatives who are required to have access to an injured employee's claim file for the performance of their duties may review and have access to any files of their own injured employees. An employer or an employer's duly authorized representative who willfully communicates information contained in an employee's claim file to any person who does not need the information in the performance of that person's duties is guilty of a class B misdemeanor.
3. Physicians or health care providers treating or examining employees claiming benefits

under this title, or physicians giving medical advice to the organization regarding any claim may, at the discretion of the organization, inspect the claim files and records of injured employees.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the organization at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.
6. At the request of a claimant, the organization may close the medical portion of a hearing to the public.
7. The organization may release the social security number of an individual claiming entitlement to benefits under this title to health care providers or health care facilities for the purpose of adjudicating a claim for benefits.
8. The organization may provide an injured employee's insurer information regarding the injured employee's claim.
9. The organization may provide any state or federal agency any information obtained pursuant to the administration of this title. Any information so provided must be used for the purpose of administering the duties of that state or federal agency.

65-05-33. Filing false claim or false statement - Penalty.

1. A person who claims benefits or payment for services under this title or the employer of a person who claims benefits or payments for services is guilty of a class A misdemeanor if the person or employer does any one or more of the following:
a. Willfully files a false claim or makes a false statement in an attempt to secure payment of benefits or payment for services.
b. Willfully misrepresents that person's physical condition, including deceptive conduct which misrepresents that person's physical ability.
c. Has a claim for disability benefits that has been accepted by the organization and willfully fails to notify the organization of:
(1) Work or other activities as required under subsection 3 of section 65-05-08;
(2) The receipt of income from work; or
(3) An increase in income from work.
2. If any of the acts in subsection 1 are committed to obtain, or pursuant to a scheme to obtain, more than five hundred dollars in benefits or payment for services, the offense is a class C felony.
3. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall reimburse the organization for any benefits paid based upon the false claim or false statement and, if applicable, under section 65-05-29 and shall forfeit any additional benefits relative to that injury.
4. For purposes of this section, "statement" includes any testimony, claim form, notice, proof of injury, proof of return-to-work status, bill for services, diagnosis, prescription,

hospital or doctor records, x-ray, test results, or other evidence of loss, injury, or expense.

65-05-34. False statement on employment application.

A false statement in an employment application made by an employee bars all benefits under this title if:

1. The employee knowingly and willfully made a false representation as to the employee's physical condition;
2. The employer relied upon the false representation and this reliance was a substantial factor in the hiring; and
3. There was a causal connection between the false representation and the injury.

65-05-35. Closed claim - Presumption.

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

65-05-36. Preferred worker program - Continuing appropriation.

For purposes of this section, "preferred worker" means a worker who has incurred a compensable injury that resulted in a disability that poses a substantial obstacle to employment.

The organization may provide assistance as determined appropriate to preferred workers or employers who employ a preferred worker. In addition, employers who apply for and are approved as a preferred worker employer may not be assessed premiums on a preferred worker's salary for three years from the date of hiring. The organization may not charge claims costs incurred as a result of an injury sustained by a preferred worker against the preferred worker's employer's account during the first three years after the worker is hired. The organization shall charge those claims costs to the general fund. The organization may adopt rules to regulate and manage the preferred worker program authorized by this section. An employer or preferred worker may not appeal an organization decision not to provide assistance
to that employer or preferred worker under this section. Money in the workforce safety and insurance fund is appropriated on a continuing basis to provide the assistance authorized under this section.

65-05-37. Retaliation by employer prohibited - Action for damages - Penalty.

An employer who willfully discharges or willfully threatens to discharge an employee for seeking or making known the intention to seek workforce safety and insurance benefits is liable in a civil action for damages incurred by the employee, including reasonable attorney's fees. Damages awarded under this section may not be offset by any workforce safety and insurance

benefits to which the employee is entitled. A willful violation of this section is a class A misdemeanor.

65-05-38. Death of permanently and totally disabled employee - Surviving spouse.

In the case of the death of an injured employee who is receiving permanent total disability benefits, or additional benefits payable, if the injured employee was permanently and totally disabled for at least ten years and was married to the surviving spouse for at least ten years, the
decedent's surviving spouse is eligible to receive no more than six months of the decedent's permanent total disability benefits, supplementary benefits, and additional benefits payable in the same manner as the deceased spouse would have been entitled to receive the benefits. A surviving spouse is eligible for benefits under this section if the organization approved the decedent for home health care services and reimbursed the surviving spouse for providing the home health care services. The surviving spouse is not eligible for benefits under this section if the surviving spouse is eligible for benefits under section 65-05-16. The eligibility of the surviving spouse to receive benefits under this section terminates upon the remarriage of the surviving spouse.

65-05-39. Chronic opioid therapy coverage and monitoring.

1. As used in this section, "chronic opioid therapy" is opioid treatment extending beyond ninety days from initiation which is for the treatment of pain resulting from a nonmalignant, compensable condition or therapies for another nonterminal compensable condition.
2. In order to qualify for payment for chronic opioid therapy:
a. Chronic opioid therapy must result in an increase in function, enable an injured employee to resume working, or improve pain control without debilitating side effects;
b. Chronic opioid therapy must treat an injured employee:
(1) Who has been nonresponsive to non-opioid treatment;
(2) Who is not using illegal substances or abusing alcohol; and
(3) Who is compliant with the treatment protocol; and
c. The prescriber of chronic opioid therapy shall provide to the organization:
(1) At least every ninety days, documentation of the effectiveness of the chronic opioid therapy, including documentation of improvements in function or improvements in pain control without debilitating side effects; and
(2) A treatment agreement between the injured employee and the prescriber which restricts treatment access and limits prescriptions to one identified single prescriber. This paragraph does not preclude temporary coverage within a single clinic by an identified prescriber when the prescriber of record is unavailable and does not preclude a referral to a pain specialist.
3. At the prescriber's or organization's request, an injured employee on chronic opioid therapy is subject to random drug testing for the presence of prescribed and illicit substances. Failure of the test or of timely compliance with the request may result in termination of chronic opioid therapy coverage.
4. Failure to comply with any of the conditions under this section may result in the termination of coverage for chronic opioid therapy.

CHAPTER 65-05.1
REHABILITATION SERVICES
65-05.1-01. Rehabilitation services.

1. The state of North Dakota exercising its police and sovereign powers declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. The purpose of this chapter is to ensure that injured employees covered by this title receive services, so far as possible, necessary to assist the employee and the employee's family in the adjustments required by the injury to the end that the employee receives comprehensive rehabilitation services, including medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled employee to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, functional capacities, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the employee as soon as practicable and as nearly as possible to ninety percent of the employee's average weekly earnings at the time of injury, or to sixty-six and two-thirds percent of the average weekly wage in this state on the date the rehabilitation report is issued under section 65-05.1-02.1, whichever is less. The purpose of defining substantial gainful employment in terms of earnings is to determine the first appropriate priority option under subsection 4 which meets this income test set out above.
4. The first appropriate option among the following, calculated to return the employee to substantial gainful employment, must be chosen for the employee:
a. Return to the same position.
b. Return to the same occupation, any employer.
c. Return to a modified position.
d. Return to a modified or alternative occupation, any employer.
e. Return to an occupation within the local job pool of the locale in which the claimant was living at the date of injury or of the employee's current address which is suited to the employee's education, experience, and marketable skills.
f. Return to an occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
g. Retraining of one hundred four weeks or less.
5. If the employee's first appropriate option is an option listed in subdivision c, d, e, or f of subsection 4, the organization may pursue retraining of one hundred four weeks or less. If an option listed in subdivision a, b, c, d, e, or f of subsection 4 has been identified as appropriate for an injured employee and the employee is initially released by the doctor to return to part-time employment with the reasonable expectation of attaining full-time employment, the organization shall pay temporary partial disability

benefits under section 65-05-10 until the doctor determines the employee is medically capable of full-time employment.
6. a. If the organization concludes that none of the priority options under subsection 4 are viable, and will not return the employee to the lesser of sixty-six and two-thirds percent of the average weekly wage, or ninety percent of the employee's preinjury earnings, the employee shall continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:
(1) That meets the employee's functional capacities; and
(2) For which the employee meets the qualifications to compete.
b. Under section 65-05-10, the organization shall award partial disability based on retained earnings capacity calculated under this section.
c. For purposes of calculating partial disability based on a retained earnings capacity, an employee is presumed to be capable of earning the greater of the state's hourly minimum wage times the hours of release based on a valid functional capacities examination or the wages payable within the appropriate labor market. This presumption is rebuttable only upon a finding of clear and convincing medical and vocational evidence to the contrary. If the presumption is successfully rebutted, the employee may receive partial disability benefits based on a retained earnings capacity of zero.
7. The income test in subsection 3 must be waived when an employer offers the employee a return-to-work option at a wage lower than the income test as defined under subsection 3 or when the organization and the employee agree to waive the income test and the priority options.
8. Vocational rehabilitation services may be initiated by:
a. The organization on its own motion; or
b. The employee or the employer if proof exists:
(1) That the employee has reached maximum medical recovery;
(2) That the employee is not working and is not voluntarily retired or removed from the labor force; and
(3) That the employee has made good-faith efforts to seek, obtain, and retain employment.
9. Chapter 50-06.1 does not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.
10. If retraining is the first appropriate vocational rehabilitation option identified for an employee, the employee shall notify the organization of the acceptance of the retraining option on a form provided by the organization within thirty days from the date the employee receives notice of eligibility for retraining. If the employee fails to notify the organization of the acceptance of the retraining option within the thirty-day period, the organization shall calculate a retained earnings capacity as provided in subdivision c of subsection 6. A vocational rehabilitation allowance does not accrue as weeks of temporary total disability as defined in section 65-01-02 if the employee successfully completes a retraining program approved by the organization. If the employee fails to successfully complete a retraining program approved by the organization, the vocational rehabilitation allowance paid accrues against the

maximum number of weeks of temporary total disability allowed pursuant to section 65-01-02. If an employee attempts and withdraws from an approved retraining program within the first twenty weeks following commencement of the retraining program, the employee, upon request, may receive no more than one hundred eighty-two weeks of temporary partial disability benefits calculated pursuant to subdivision c of subsection 6.

65-05.1-02. Organization responsibility.

The organization shall:

1. Appoint a director of rehabilitation services and such other staff as necessary to fulfill the purposes of this chapter.
2. Cooperate with such federal or state agency as shall be charged with vocational education, vocational rehabilitation, and job placement in order that any duplication of effort can be avoided, as far as possible, in any individual claim.
3. Make determinations on individual claims as to the extent and duration of the organization involvement under this chapter.
4. Enter into such agreements with other agencies and promulgate any rules or regulations as may be necessary or advantageous in order to carry out the purpose of this chapter.
5. Provide such rehabilitation services and allowances as may be determined by the organization to be most beneficial to the worker within the limits of this chapter.
6. Establish medical assessment teams, the composition of which must be determined by the organization on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's physical restrictions and limitations. The medical assessment team must be provided the medical records compiled by the worker's treating physicians. The medical assessment team may consult the worker's treating physicians prior to making its final assessment of the worker's functional capacities. The provisions of section 65-05-28 do not apply to the medical findings made under this section.
7. Determine and report on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's transferable skills, employment options, and the physical demand characteristics of the worker's employment options, and determining which option available under subdivisions a through f of subsection 4 of section 65-05.1-01 will enable the worker to return to employment within the physical restrictions and limitations provided by the medical assessment team.

65-05.1-02.1. Vocational report.

The organization shall review all records, statements, and other pertinent information and prepare a report to the organization and employee.

1. The report must:

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

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

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

a. Identify jobs in the local or statewide job pool and the employee's anticipated

earnings from each job; or
b. Describe an appropriate retraining program, the employment opportunities anticipated upon the employee's completion of the program, and the employee's anticipated earnings.

65-05.1-03. Director of rehabilitation services - Duties.

The director of rehabilitation services shall:
1. Direct the implementation of programs for injured employees in accordance with organization determinations in compliance with the purpose of this chapter.
2. Cooperate, contact, and assist any government or private organization or agency or group of individuals or business or individual necessary or advantageous in carrying out the purpose of this chapter.
3. Keep such records, for statistical purposes, and provide such training necessary for the organization staff as is necessary to keep pace with future developments in the area of rehabilitation services.

65-05.1-04. Injured employee responsibility.

1. The injured employee shall seek, obtain, and retain reasonable and substantial employment to reduce the period of temporary disability to a minimum. The employee has the burden of establishing that the employee has met this responsibility.
2. If the injured employee is unable to obtain substantial employment as a direct result of injury, the employee shall promptly notify the organization under subdivision b of subsection 8 of section 65-05.1-01.
3. The injured employee shall be available for testing under subsection 6 or 7 of section 65-05.1-02, and for any further examinations and testing as may be prescribed by the organization to determine whether or not a program of rehabilitation is necessary. The injured employee also shall participate in remedial or other educational services when those services are determined to be necessary by the organization.
4. If the first appropriate rehabilitation option under subsection 4 or 6 of section 65-05.1-01 is return to the same, modified, or alternative occupation, or return to an occupation that is suited to the employee's education, experience, and marketable skills, the employee is responsible to make a good-faith work trial or work search. If the employee fails to perform a good-faith work trial or work search, the organization may not pay additional disability benefits unless the employee meets the criteria for reapplying for benefits required under subsection 1 of section 65-05-08. If the employee meets the burden of proving that the employee made a good-faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the organization shall reevaluate the employee's vocational rehabilitation claim. When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good-faith work search or good-faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful.
5. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is retraining, the employee shall cooperate with the necessary testing to determine whether the proposed training program meets the employee's medical limitations and aptitudes. The employee shall attend a qualified rehabilitation training program when

ordered by the organization. A qualified training program is a rehabilitation plan that meets the criteria of this title and commences within a reasonable period of time such as the next quarter or semester. The organization and the employee, by agreement, may waive the income test applicable under this subsection.

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

65-05.1-05. Rehabilitation contract.

Repealed by S.L. 1989, ch. 771, § 6.

65-05.1-06. Rehabilitation allowance.

Repealed by S.L. 1989, ch. 771, § 6.

65-05.1-06.1. Rehabilitation award.

1. Within sixty days of receiving the final vocational report, the organization shall issue a notice of decision under section 65-01-16 detailing the employee's entitlement to disability and vocational rehabilitation services.

2. If the appropriate priority option is short-term or long-term training, the vocational rehabilitation award must be within the following terms:

a. For the employee's lost time, and in lieu of further disability benefits, the organization shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the employee was receiving, or

was entitled to receive, prior to the award.
b. The rehabilitation allowance must include, as chosen by the employee, an additional thirty percent of the rehabilitation allowance for expenses associated with maintaining a second domicile or for travel associated with attendance at a school or training institution when it is necessary for the employee to travel at least twenty-five miles [40.23 kilometers] one way. Travel must be calculated from the employee's residence to the school or training institution. If it is necessary for an employee to travel less than twenty-five miles one way to a school or training institution, the employee may qualify for an additional rehabilitation allowance as determined in accordance with the following schedule:

Round-trip mileage	Percentage increase in rehabilitation allowance
Under 10 miles	0
10 to 30 miles	10
31 to 49 miles	20

Travel must be calculated from the employee's residence to the school or training institution.
c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the organization. Catastrophic injury includes:
(1) Paraplegia; quadriplegia; severe closed head injury; total blindness in both eyes; or amputation of an arm proximal to the wrist or a leg proximal to the ankle, caused by the compensable injury, which renders an employee permanently and totally disabled without further vocational retraining assistance; or
(2) Those employees the organization so designates, in its sole discretion, provided that the organization finds the employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from an organization decision to designate, or fail to designate, an employee as catastrophically injured under this subsection.
d. Notwithstanding the one hundred four-week limit of subdivision c to facilitate the completion of a retraining program, the organization may award a rehabilitation extension allowance that may not exceed twenty weeks.
e. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the employee resides, provided an equivalent program exists in the public college or university.
f. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the injured employee has actually located work.
g. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, an additional award, not to exceed

two months' disability benefit, to assist the employee with work search.
h. If the employee successfully concludes the rehabilitation program, the employee is not eligible for further vocational retraining or total disability benefits unless the employee establishes a significant change in medical condition attributable to the work injury which precludes the employee from performing the work for which the employee was trained, or any other work for which the employee is suited. The organization may waive this section in cases of catastrophic injury defined by subdivision c.
i. If the employee successfully concludes the rehabilitation program, the employee remains eligible to receive partial disability benefits, as follows:
(1) Beginning the date at which the employee completes retraining, until the employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining, as measured by the average wage in the employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the organization, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the employee completes retraining. The benefit continues until the employee acquires substantial gainful employment.
(2) Beginning the date at which the employee acquires substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's weekly wages before the injury, and the employee's wage-earning capacity after retraining, as determined under paragraph 1, or the employee's actual postinjury wage earnings, whichever is higher.
(3) The partial disability benefit payable under paragraphs 1 and 2 may not exceed the limitation on partial disability benefits contained in section 65-05-10.
(4) The partial disability benefits paid under paragraphs 1 and 2 may not together exceed one year's duration.
(5) For purposes of paragraphs 1 and 2, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
(6) The organization may waive the one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the organization shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the organization, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the injured employee has actually located work.

4. If the appropriate priority option is subdivision e or f of subsection 4 of section 65-05.1-01 or subsection 6 of section 65-05.1-01, to assist with work search the organization may award an additional award. The additional award under this subsection is awarded at the organization's sole discretion and may not exceed an amount equal to two months of the employee's total disability benefits calculated under section 65-05-09.

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

The organization may contract with vocational rehabilitation vendors to provide vocational rehabilitation services to injured employees. The organization shall determine the criteria that render a vocational rehabilitation vendor qualified. If additional services are determined to be necessary as a result of failed or inappropriate rehabilitation of an injured employee through no fault of the employee, the organization may contract with the vendor for additional services. If the failure or inappropriateness of the rehabilitation of the injured employee is due to the vendor's failure to provide the necessary services to fulfill the contract, the organization is not obligated to use that vendor for additional services on that claim and the organization may refuse payment for a service that the vendor failed to perform which was a material requirement
of the contract.

65-05.1-06.3. Rehabilitation services pilot programs - Reports.

The organization may implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services. A pilot program may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the outcome of the rehabilitation services offered by the organization to assist the employee in making adjustments necessitated from the employee's injury and to improve the effectiveness of vocational rehabilitation services in returning an employee to substantial gainful employment. Notwithstanding laws to the contrary, a pilot program may address a broad range of approaches, including collaborative efforts between the organization and the employee through which there are variances from the rehabilitation services hierarchy; return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of public and private entities. If a pilot program utilizes coordination of services of other state agencies, such as job service North Dakota, department of human services, North Dakota university system, or department of public instruction, the organization shall consult with the state agency in establishing the relevant portions of the pilot program and the state agency shall cooperate with the organization in implementing the pilot program. The organization shall include in its annual report to the workers' compensation review committee under section 54-35-22 status reports on current pilot programs.

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

Any person, partnership, corporation, limited liability company, association, or agency that furnishes on-the-job or other similar training to an injured employee as the result of a

rehabilitation contract, without establishing an employment relationship with the injured employee, is exempt from all civil liability.

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

1. The organization may establish a revolving loan fund to provide a low-interest loan to an injured employee or to a surviving spouse or child of an injured employee whose death resulted from a compensable injury under section 65-05-16; or to the spouse or child of an injured employee deemed to be catastrophically injured as defined in subdivision c of subsection 2 of section 65-05.1-06.1; or to the spouse or child of an injured employee deemed to be eligible for permanent total disability benefits as defined in section 65-01-02.

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

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

4. The organization may implement a grant program to promote and provide necessary educational opportunities for injured employees within the vocational rehabilitation process. The organization may award a grant to promote necessary skills upgrading and to provide for the completion of remedial educational requirements which allow for optimal transition into the labor force. The total annual amount the organization may grant under this subsection may not exceed one hundred thousand dollars. The organization shall establish grant eligibility requirements and make grant determinations based on the established criteria. Moneys are appropriated on a

continuing basis from uncommitted moneys in the educational revolving loan fund for the purpose of funding the grants under this subsection.

CHAPTER 65-05.2
SUPPLEMENTARY BENEFITS

65-05.2-01. Eligibility for supplementary benefits.

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

65-05.2-02. Supplementary benefits - Amount.

1. A claimant whose weekly benefit rate is less than sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit that, when added to the weekly temporary total disability benefit, permanent total disability benefit, or death benefit, equals the ratio of that claimant's weekly benefit to the state's average weekly wage on the date of the claimant's first disability, times the state's average weekly wage in effect at the date eligibility for supplementary benefits is achieved. The organization shall determine on an annual basis, for a claimant who receives a supplementary benefit under this subsection, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. For purposes of this section, combined weekly benefit means the weekly benefit for which the claimant is eligible before any applicable social security offset plus the amount of weekly supplementary benefits for which the claimant is eligible.
2. A claimant whose weekly benefit rate is greater than or equal to sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit equal to a percentage of that claimant's weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. The organization shall determine on an annual basis, for that claimant, supplementary benefit increases equal to a percentage of that claimant's combined

weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage.

3. An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

65-05.2-03. Payment of supplementary benefits from the supplementary benefit fund.

The payment of supplementary benefits to eligible recipients shall be made by the organization from the supplementary benefit fund. If the supplementary benefit fund is inadequate to pay the full amount of supplementary benefits to an eligible recipient, the levels of supplementary benefits shall be prorated for all eligible recipients. The organization shall not be required to provide a reserve in the fund to pay liability incurred as a result of such supplementary benefits.

65-05.2-04. Supplementary benefit fund.

The organization periodically shall determine the amount of money earned on reserves in the workforce safety and insurance fund necessary to provide for the payment of supplementary benefits under this chapter and periodically shall transfer an adequate amount from the earnings on the reserves of the workforce safety and insurance fund to the supplementary benefit fund.

CHAPTER 65-06
VOLUNTEER FIREMEN

65-06-01. Volunteer firefighter, emergency or disaster volunteer, community emergency response team member, in training defined.

The term "volunteer firefighter" means any active member of an organized volunteer fire department of this state and any other individual performing services as a volunteer firefighter for a municipality at the request of the chief or other individual in command of the fire department of that municipality or of any other officer of that municipality having authority to demand service as a firefighter. Firefighters who are paid a regular wage or stipend by the municipality for serving as a firefighter, or whose entire time is devoted to service as a firefighter for the municipality, for the purpose of this chapter, are not volunteer firefighters.

The term "emergency or disaster volunteer" means any individual serving without remuneration who is actively engaged in training to qualify as a disaster emergency worker or is responding to a hazard, emergency disaster, or enemy attack on this country, and who is registered with the disaster emergency organization of a municipality, which has been officially recognized by the director of the state division of homeland security.

The term "in training" means only those periods of time, during which an emergency or disaster volunteer is receiving instruction, or is engaged in exercises or operations, in preparation for qualification as a disaster emergency worker in the event of a hazard, emergency, disaster, or enemy attack on this country.

The term "community emergency response team member" means an individual registered as a community emergency response team member with the appropriate authority. For purposes of this chapter, a community emergency response team member is acting as a community emergency response team member only when the individual is receiving approved community emergency response team training or is acting as a member of a community emergency response team in an emergency or disaster.

Upon request of the organization, the disaster emergency organization of a municipality shall provide the organization with its roster of registered community emergency response team members.

The term "municipality" when used in reference to emergency or disaster volunteer means the state, cities, counties, municipalities, districts, or any other geographical entity of this state. This definition is not in any way intended to alter any interpretation or ruling in regard to the use of the term municipality when used in reference to volunteer firefighters.

65-06-02. Volunteer firefighter, emergency or disaster volunteer, and community emergency response team member declared employees - Covered by workforce safety and insurance - Termination.

Volunteer firefighters, emergency or disaster volunteers, and community emergency response team members are employees of the municipalities which they serve and are entitled to the same protection and rights under the provisions of this title as are full-time paid employees of those municipalities.

65-06-02.1. Uniform Emergency Volunteer Health Practitioners Act - Health practitioners.

A volunteer health practitioner under subsection 2 of section 37-17.4-11 is eligible for benefits as provided under this chapter.

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

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

65-06-04. Assessment of premiums.

For the purpose of making assessments of premiums to be charged against municipalities for protection of volunteer firefighters, emergency or disaster volunteers, volunteer health practitioners, and community emergency response team members, the organization shall make such survey as may seem advisable to ascertain the probable annual expenditures necessary to be paid out of the fund to carry out this chapter, and shall fix the annual charges and assessments which must be made against municipalities employing volunteer firefighters, emergency or disaster volunteers, volunteer health practitioners, and community emergency response team members. The charge must be a fixed sum for each one hundred of the population of the municipality involved and uniform as to all such involved municipalities but in

proportion to the population of the municipality. In determining the amount of premium charge,
the organization may apply the system of experience rating provided in this title, as applied to other risks. The organization may establish a minimum charge or assessment to be applicable to any municipality for which the fixed rate or charge multiplied by the number of hundreds of the population of the municipality would amount to less than the amount of the minimum charge
or assessment. The population of a municipality shall be that shown by the latest official North Dakota state or United States government census, whichever may be the later.

65-06-05. Reimbursement by state for liability in excess of premiums collected.

Whenever liability on claims against the fund credited to the classification of emergency or disaster volunteers and trainees or volunteer health practitioners as defined under chapter 37-17.4 exceeds the amount of premiums paid into the fund, such excess liabilities are a general obligation of the state of North Dakota and must be reimbursed to the organization for credit to the workforce safety and insurance fund by legislative appropriation.

CHAPTER 65-06.1
CIVIL AIR PATROL MEMBERS

65-06.1-01. Civil air patrol member defined.

"Civil air patrol member" means a volunteer civilian member of the civil air patrol engaged in official state activities authorized under chapter 54-45.

65-06.1-02. Civil air patrol members declared employees - Covered by workforce safety and insurance.

Civil air patrol members are deemed employees of the civil air patrol and eligible for coverage under this title when engaged in official state activities authorized under chapter 54-45.

65-06.1-03. Compensation benefits - How determined.

The basis for compensation and benefits for civil air patrol members under this chapter shall be determined under section 65-05-09, except that the claimant's weekly wage shall be determined through computation of income derived from the claimant's business or employment.

65-06.1-04. Reimbursement for liability in excess of collected premiums.

Whenever claim liability against the fund credited to the classification of civil air patrol members exceeds the amount of premiums paid into the fund, the excess liabilities are a general obligation of the state of North Dakota and must be reimbursed to the organization for credit to the workforce safety and insurance fund through legislative appropriation. The adjutant
general may use the funds available to the adjutant general under the Federal Employment Compensation Act liability coverage to satisfy the obligation under this section.

CHAPTER 65-06.2
INMATES OF PENAL INSTITUTIONS

65-06.2-01. Inmate defined.

For the purposes of sections 65-06.2-02 and 65-06.2-03, an "inmate" is a person who is confined against the inmate's will in a city or county penal institution or is a person who, as a criminal defendant before a court, is ordered or elects to perform public service for a city or county in conjunction with or in lieu of a jail sentence. The term "inmate" does not include an individual injured while incarcerated in the North Dakota state penitentiary or any of its affiliated
facilities or an individual injured in a fight, riot, recreational activity, or other incident not directly
related to the inmate's work assignment.

65-06.2-02. Coverage of inmates - Conditions.

1. If an inmate in performance of work in connection with the maintenance of the institution, or with any industry maintained within the institution, or with any public service activity, sustains a compensable injury, the inmate may be awarded and paid benefits under the provisions of this title, upon being released from the institution or after discharge from public service.
2. Claims under this chapter must be filed and processed pursuant to section 65-05-01, except that an inmate also has one year from the date of first release from the institution or discharge from public service to file a claim.
3. Workforce safety and insurance benefits under this chapter accrue and are payable from the time of the inmate's release from the institution or after discharge from public service. Disability benefits must be computed according to the methods provided in chapter 65-05. The inmate's weekly wage must be computed using either the actual wage paid to the inmate or the federal minimum wage as of the date of injury, whichever is higher.
4. If a former inmate receiving disability benefits under the provisions of this chapter is recommitted or sentenced by a court to imprisonment in a penal institution, the disability benefits are payable pursuant to subsection 2 of section 65-05-08.

65-06.2-03. Workers' compensation coverage of inmates.

Any county or city, by resolution of the governing body, may elect to cover its inmates with workforce safety and insurance benefits in accordance with this chapter. Any county or city that makes this election is not liable to respond in damages at common law or by statute for injuries to or the death of any inmate whenever the provisions of this chapter have been met and the premiums as set by the organization are not in default.

65-06.2-04. Workers' compensation coverage for inmates engaged in work programs through roughrider industries.

The director of the department of corrections and rehabilitation may elect to provide and request from the organization a program of modified workers' compensation coverage established under this chapter and according to administrative rules and fee schedules of this chapter. The modified workers' compensation coverage is for inmates incarcerated at the penitentiary and engaged in work in a prison industries work program through roughrider industries, whether the program is operated by roughrider industries or by contract with another
entity or private employer. An inmate who sustains a compensable injury arising out of and in

the course of work in a prison industries work program through roughrider industries may only receive workforce safety and insurance benefits under the modified workers' compensation coverage established for that purpose.

65-06.2-05. Modified coverage of inmates engaged in work programs through roughrider industries - Conditions.

Except as otherwise provided in this chapter, all claims for workforce safety and insurance benefits under this section and sections 65-06.2-04, 65-06.2-06, and 65-06.2-08 are subject to title 65. A claim under this section and sections 65-06.2-04, 65-06.2-06, and 65-06.2-08 must be filed according to section 65-05-01. While an inmate is incarcerated at the penitentiary, the penitentiary shall pay the reasonable medical expenses of that inmate at penitentiary medical payment levels, if that inmate incurs a compensable injury while working in a prison industries work program through roughrider industries. If an inmate sustains a compensable injury while working in a prison industries work program through roughrider industries, disability, vocational rehabilitation allowance, and permanent partial impairment benefits may not accrue or be paid while the inmate is incarcerated and may only be paid after the inmate is discharged from the penitentiary. If the director of the department of corrections and rehabilitation and the organization determine that an inmate who suffers a compensable injury under this chapter is in need of vocational rehabilitation services while the inmate is incarcerated, the penitentiary and the organization may provide vocational rehabilitation services to the inmate. An injury resulting from a fight, riot, recreational activity, or other activity or incident other than the inmate's actual performance of work duties in a prison industries work program through roughrider industries is not compensable under this title.

65-06.2-06. Rulemaking - Participation in state entities account.

The organization, in cooperation with the department of corrections and rehabilitation and the risk management division of the office of management and budget, shall adopt administrative rules and fee schedules for a program of modified workers' compensation coverage established and provided under this section and sections 65-06.2-04, 65-06.2-05, and 65-06.2-08. The administrative rules and fee schedules must provide for the classification of inmates engaged in work in a prison industries work program through roughrider industries, the computation of premium, the payment of claims charges against the classification, the payment of medical bills, coverage under the workforce safety and insurance account for state entities under section 65-04-03.1, and the reimbursement by roughrider industries to the organization for all claim benefit costs charged against that classification, as well as any allocated loss adjustment expense and all administrative expenses, including the expense of issuing the coverage, for the life of the claim in excess of premiums, coverage under the workforce safety and insurance account for state entities, and medical expenses paid by roughrider industries. Roughrider industries shall contribute to the risk management workers' compensation fund and participate in the workforce safety and insurance account for state entities under section 65-04-03.1 to cover the costs in excess of premiums and medical expenses paid. The

organization shall determine and the risk management division shall assess a premium against roughrider industries for the cost of coverage under the workforce safety and insurance account
for state entities and roughrider industries shall pay that premium.

65-06.2-07. State reimbursement for liability in excess of collected premiums.

Whenever total costs and expenses charged to the classification of the modified workers' compensation program established under this chapter exceeds the amount of premiums paid into the fund and any payments from the risk management workers' compensation fund under the workforce safety and insurance state entities account under section 65-04-03.1, those excess costs and expenses are a general obligation of the state and the state shall reimburse the organization for credit to the workforce safety and insurance fund through legislative appropriation to the extent not covered by any program of excess coverage or reinsurance. This modified workers' compensation coverage may not be effective unless the organization has, in its sole discretion, purchased excess coverage or reinsurance that does not exclude claims under this section.

65-06.2-08. No liability for damages - Inmates are not employees.

The state and its employees and the department of corrections and rehabilitation and its divisions, departments, and employees may not be held liable for damages at common law or by statute if an inmate covered under a program of modified workers' compensation coverage under this chapter sustains a compensable injury while working in a prison industries work program through roughrider industries. An inmate covered under a program of modified workers'
compensation coverage under this chapter is not an employee of the state or the department of
corrections and rehabilitation and its divisions and departments, except for the purpose of modified workers' compensation coverage under this chapter.

65-06.2-09. Safety and performance review.

The organization shall perform a biennial safety review of the roughrider industries work programs covered under this chapter and a biennial performance review of the program of modified workers' compensation coverage. If the organization makes any recommendation for a
change in either program as a result of the review, the organization shall submit a report with the recommendation to the legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.

CHAPTER 65-07
EMPLOYER'S COVERAGE

65-07-01. Employer, spouse and children of employer, self-employed, and volunteers may secure coverage.

Any employer, by special contract with the organization, may secure workforce safety and insurance coverage for injuries to the employer's own person or for the employer's own death. Any employer also may secure coverage for that employer's spouse and children.
Self-employed persons may contract with the organization for workforce safety and insurance

coverage for themselves. In addition, any volunteer organization, not otherwise provided for under this title, may contract with the organization for workforce safety and insurance coverage
for its own members while its members are engaged in the specific activity provided for in the contract.

65-07-02. Organization may refuse to contract for coverage.

The organization, on receipt of an application for insurance, shall determine whether the applicant is a good insurance risk and may deny such special contract if the organization determines it is in the best interests of the organization to do so.

65-07-03. Determination of weekly wage for premium purposes.

If the organization enters a contract for insurance under this chapter, the premium for the protection must be based on:

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as outlined in subdivision b of subsection 5 of section 65-01-02 for purposes of determining the premium for coverage of an employer, an employer's spouse, or a self-employed person. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.
2. A reasonable wage or fee as determined by the organization for employees in the same class of industry that the volunteer organization is engaged.
3. Actual wages paid to a clerk, an assessor, a treasurer, or a member of the board of supervisors of an organized township, if the contract for insurance is to provide protection for a person mentioned in this subsection and that person is not employed by the township in any other capacity.
4. Actual wages paid to an employer's child if that child is under the age of twenty-two.

65-07-04. Benefits.

Repealed by S.L. 1999, ch. 550, § 5.

CHAPTER 65-07.1
VOCATIONAL TRAINING AND WORK EVALUATION PROGRAMS

65-07.1-01. Definitions.

For purposes of this chapter:

1. "Employee" means a participant in a vocational training or work evaluation program when the request of the sponsoring agency or organization has been approved by the organization under subsection 2. The participant shall not be deemed to be employed in hazardous employment.
2. "Employer" means any agency or organization that sponsors a participant in a vocational training or work evaluation program when such designation has been requested by the agency or organization and has been approved by the organization.
3. "Workstation" means any person, corporation, limited liability company, or agency who through a formal contract with a sponsoring agency or organization is furnishing facilities, tools, or instruction to any participant in a vocational training or work

evaluation program.

65-07.1-02. Vocational training or work evaluation programs - Organization may contract.

Whenever an agency or organization has been approved as an employer under subsection 2 of section 65-07.1-01, the organization may contract with the agency or organization for the coverage of participants in a program of vocational training or work evaluation. The premium for the coverage must be based on a reasonable wage or fee as determined by the organization for employees in the same class of industry that the employer is engaged.

65-07.1-03. Employer and workstation not liable for civil damages - Employee may elect.

Any employer or workstation, as defined in this chapter, shall not be liable to respond in damages at common law or by statute for injuries to or the death of any employee, as defined in this chapter, whenever the employer has complied with the provisions of this chapter and during the period for which premiums, as set by the organization, have been paid. Any employee who elects, before injury or death, not to come under the provisions of this chapter may do so by notifying the organization, employer, and workstation of such election in writing.

65-07.1-04. Benefits - Filing procedures.

In the event that the organization has contracted with a sponsoring agency or organization to provide such coverage, any participant in a vocational training or work evaluation program who suffers an injury or disease as defined in section 65-01-02, while in the course of such participation shall be entitled to such medical, surgical, and hospital benefits and supplies as the nature of the injury may require. In addition, the organization shall provide such other benefits, to the extent as provided or limited by this title, as are specifically set out in the contract with the sponsoring agency or organization. All original claims shall be filed within such time and in accordance with such procedures as provided in chapter 65-05.

CHAPTER 65-08

EXTRATERRITORIAL APPLICATION

65-08-01. Extraterritorial coverage - When and how furnished.

1. An employee who suffers an injury while working outside this state, on account of which the employee or the employee's dependents would have been entitled to workforce safety and insurance benefits provided by this title had such injury occurred within this state, is entitled to benefits, or that employee's dependents in the event of the employee's death are entitled to benefits if at the time of injury:

a. The employment is principally localized in this state, as determined by the following:

(1) The employer has a place of business in this state;
(2) The employee regularly works at or from that place of business;
(3) The employment contract is entered in this state; and
(4) In the case of an employee leasing company, the company retains control over the employee and does not lease the employee to an out-of-state employer;
b. The employee is working under a contract of hire, made in this state in employment not principally localized in any state, if:
(1) The employer has a place of business in this state;
(2) The employment contract is entered in this state; and
(3) In the case of over-the-road trucking, the employer retains control over the driver, dispatches employees from this state, and does not lease the driver to out-of-state employers; but trip leasing does not end coverage;
c. The employee is working under a contract of hire made in this state in employment principally localized in another state and that state's workforce safety and insurance law is not applicable to the employer, as provided by a reciprocal agreement;
d. The employee is working under a contract of hire made in this state for employment outside the United States and the workforce safety and insurance law of that other jurisdiction is not applicable to the employer; or
e. The employee is a resident of another state, and is hired by a North Dakota employer or that employer's authorized agent for temporary employment, the situs of which is located in another state, and the temporary employment is necessary to the principal employment of the North Dakota employer, provided that the other state recognizes the coverage under this title as the sole remedy of the employee against the employer for the injury or death.
2. The payment or award of benefits under the workforce safety and insurance law of another state, territory, province, or foreign nation to an employee or the employee's dependents otherwise entitled on account of the injury or death to workforce safety and insurance benefits of this state bars a claim for benefits under this title.
3. An employment relationship that is principally localized outside of this state is exempt from this title while the employee is temporarily within this state unless the workforce safety and insurance law of the state in which the employment is principally localized provides that the workforce safety and insurance remedy in this state is the exclusive remedy for the employee or the dependents of an employee who died as the result of an injury in this state.
4. An employer whose employment results in significant contacts with this state shall acquire workforce safety and insurance coverage in this state unless a reciprocal agreement between the states is entered which provides that the other state will likewise recognize that an employment relationship entered into in this state is exempted from the application of the workers' compensation insurance law of the other state. An employment has significant contacts with this state when:
a. Any employee earns or would have been expected to earn twenty-five percent or more of the employee's gross annual wage or income from that employer from

services rendered in this state; or
b. Twenty-five percent of the employer's gross annual payroll is payable to employees for services rendered in this state.
c. An employer hires an employee in this state for work in this state.
Under this subsection, an employee injured in this state may elect to file a claim in this state notwithstanding that the employee had another remedy in the state in which the employment was principally localized. A claim filed under this subsection is subject to section 65-05-05. The time limits within which the organization shall issue a decision on a claim, as specified in sections 65-01-16 and 65-02-08, do not begin to run for claims filed under this section until the first date the organization may begin to process the claim as set forth in section 65-05-05.
5. An employer who opens an employer account with the organization under this section is obligated to report all wages earned in this state, regardless of whether the significant contacts factors set forth in subsection 4 have been met.

65-08-02. Reciprocity in extraterritorial application of compensation acts of various states provided.

Repealed by S.L. 1991, ch. 718, § 2.

65-08-03. Evidence that nonresident employer carries extraterritorial workforce safety and insurance coverage.

A certificate from the executive secretary or other duly authorized officer of workforce safety and insurance or similar organization of another state certifying that an employer of such other state is insured under the Workforce Safety and Insurance Act or similar act thereof, and has provided extraterritorial coverage insuring that employer's employees while working within this state, is prima facie evidence that such employer carries such workforce safety and insurance.

65-08-04. Agreements between states relating to conflicts of jurisdiction.

The organization, through the action of the director, may enter into agreements with the workforce safety and insurance agencies of other states relating to conflicts of jurisdiction where
the contract of employment is in one state and the injuries are received in the other state, or where there is a dispute as to the boundaries or jurisdiction of the states and when such agreements have been executed and made public by the respective state agencies, the rights of the employee hired in such other state and injured while temporarily employed in this state, or hired in this state and injured while temporarily employed in another state, or where the jurisdiction is otherwise uncertain, must be determined pursuant to such agreements and confined to the jurisdiction provided in such agreements. Where such an agreement exists, any provisions of this chapter which conflict with the provisions of that agreement are superseded by
the provisions of that agreement.

CHAPTER 65-08.1
WORKFORCE SAFETY AND INSURANCE COMPANY

65-08.1-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Company" means the workforce safety and insurance company or other organization established by the organization to provide additional workforce safety and insurance coverage.
2. "Employers' liability coverage" means an insurance product that provides coverage for injury-related claims suffered by an employee that are not covered by title 65.
3. "Extraterritorial workforce safety and insurance coverage" means coverage provided under section 65-08-01.
4. "Incidental operations" means operations of an employer for fewer than thirty days in a state with which the employer has no other significant contacts.
5. "Other states insurance" means an insurance product that provides workforce safety and insurance coverage to an employer for that employer's employee while the employee is working at an incidental operation in a state in which the employee is eligible to file for workforce safety and insurance benefits if the employee suffers a work-related illness or injury or dies as a result of work activities in that state.
6. "Principally localized" means the employer has a place of business in this state, the employee regularly works at or from that place of business, the employment contract is entered in that state, and in case of an employee leasing company, the company retains control over the employee and does not lease the employee to an out-of-state employer.

65-08.1-02. Workforce safety and insurance additional coverages.

The organization may establish a casualty insurance organization, organized as a stock or mutual company, a risk pool, a reciprocal exchange, a risk retention or purchasing group, or a reinsurer with the limited purpose of offering extraterritorial workforce safety and insurance coverage or other states insurance. The casualty insurance organization may be established only upon the director's determination that the organization is needed to provide sufficient workforce safety and insurance coverage for the employees and employers of this state and upon the approval of the budget section of the legislative management. If a stock insurance company is established, the company shall meet the stock requirements of section 65-08.1-03.

65-08.1-03. Workforce safety and insurance company created - Stock requirements.

The North Dakota workforce safety and insurance may establish a stock insurance company to provide extraterritorial workforce safety and insurance, other states insurance, and employer's liability insurance to North Dakota employers insured by the organization. The capital stock and surplus for the company must be paid out of the workforce safety and insurance fund. The company shall have capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. The company may not issue an insurance policy until fifty percent of the required capital stock and all of the required surplus have been paid in, and the residue of capital stock must be paid in within twelve months from the time of filing the articles of incorporation. The organization is the sole stockholder of the company. The company must be incorporated pursuant to the laws of this state and is subject to
title 26.1 unless otherwise provided.

65-08.1-04. Board of directors - Members.

The board of directors of the company consists of the director of workforce safety and

insurance and four persons appointed by the director. The director is the chairman of the board.
The chairman shall appoint a secretary-treasurer for the board. Any member of the board may be removed at any time by the director.

65-08.1-05. Workforce safety and insurance to be provided.

The company shall provide extraterritorial workforce safety and insurance or other states insurance to an employer who is insured by North Dakota workforce safety and insurance. The company may exclude coverage for a state with which workforce safety and insurance has a reciprocal agreement that recognizes an employer's workforce safety and insurance coverage in the state in which the employer's business is principally localized as being sufficient or for a state whose workforce safety and insurance coverage is provided through an exclusive state fund.

65-08.1-06. Rates - Billing.

The board shall set the rates to be charged by the company for additional workforce safety and insurance coverage. The board may consult with workforce safety and insurance and its actuary in determining the appropriate rates. The company shall incorporate its billings with the
billings of the organization to ensure that an employer receives one billing that itemizes the charges for mandatory workforce safety and insurance coverage and for the optional additional workforce safety and insurance.

CHAPTER 65-09

PROCEEDINGS BY INJURED EMPLOYEE AGAINST UNINSURED EMPLOYER

65-09-01. Liability of uninsured employer for injury to employees.

1. Any employer subject to this title who is in violation of subsection 1 or 2 of section 65-04-33 or declared uninsured pursuant to section 65-04-22 is not protected by the immunity from civil liability granted to employers under this title for injuries to that employer's employees for damages suffered by reason of injuries sustained in the course of employment and to the dependents and legal representatives of an employee whose death results from injuries sustained in the course of employment. The employer is liable for the premiums, reimbursements, penalties, and interest provided for in this title.
2. The organization may establish a procedure to determine whether a person is an employer required to obtain workers' compensation coverage under this title and to require a person asserting independent contractor status to file a statement annually with the organization certifying that status. A determination under this section that a person is not required to be insured is effective for no more than one year from the date the person is notified of the determination. The organization retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

65-09-02. Application for compensation - Common-law defenses not available - Fund subrogated to recovery - Hearing - Time for filing.

An employee whose employer is in violation of section 65-04-33, who has been injured in

the course of employment, or the employee's dependents or legal representatives in case death
has ensued, may file an application with the organization for an award of compensation under this title and in addition may maintain a civil action against the employer for damages resulting from the injury or death. In the action, the employer may not assert the common-law defenses of:
1. The fellow servant rule.
2. Assumption of risk.
3. Contributory negligence.
The organization is subrogated to the recovery made in the action against the uninsured employer. The subrogation interest is determined according to section 65-01-09, with the uninsured employer being the person other than the fund with a legal liability to pay damages with respect to the employee's injury or death. An injured employee, or the dependents of an employee who died as a result of a work-related accident, shall file the original claim for compensation within one year after the injury or within two years after the death. The organization shall notify the claimant and the employer that the matter is being processed under
this chapter, and subsequently shall hear and determine the application for compensation as it would for other claims before the organization. A determination by the organization that a person
is not an employer required to obtain workforce safety and insurance coverage under this title is
a defense to any claim that the person failed to obtain coverage for the time period during which
the determination is effective.

65-09-03. Award - Payroll reports - Notice - Premium - Judgment.

Repealed by S.L. 2001, ch. 578, § 17.

65-09-04. Premiums and penalties to be paid by employer.

Repealed by S.L. 2001, ch. 578, § 17.

CHAPTER 65-10
APPEALS

65-10-01. Appeal from decision of organization.

If the final action of the organization denies the right of the claimant to participate at all in the fund on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claim,
or if the organization allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted or
of the county in which the claimant resides. An employer may also appeal a decision of the organization in any injury case or an organization decision issued under chapter 65-04, in the

manner prescribed in this section. An appeal involving injuries allegedly covered by insurance provided under contracts with extraterritorial coverage shall be triable in the district court of Burleigh County. Any appeal under this section shall be taken in the manner provided in chapter
28-32. Any appeal to the district court shall be heard on the record, transmitted from the organization, and, in the discretion of the court, additional evidence may be presented pertaining to the questions of law involved in the appeal.

65-10-02. Determination by court - Judgment paid by organization.

On appeal, the court shall determine the right of the claimant. If it determines the right in the claimant's favor, it shall fix the claimant's compensation within the limits prescribed in this title, and any final judgment so obtained shall be paid by the organization out of the fund in the same
manner as awards are paid.

65-10-03. Cost of appeal and attorney's fees fixed by the organization.

The organization shall pay the cost of the judicial appeal and the attorney's fees for an injured employee's attorney when the employee prevails. The employee has prevailed when any
part of the decision of the organization is reversed and the employee receives an additional benefit as a result. An injured employee does not prevail on a remand for further action or proceedings unless the injured employee ultimately receives an additional benefit. The organization shall pay the attorney's fees from the organization's general fund. The amount of the attorney's fees must be determined in the same manner as prescribed by the organization for attorney's fees, and the amount of attorney's fees already allowed in administrative proceedings before the organization must be taken into consideration. The organization shall establish, pursuant to section 65-02-08, a maximum fee to be paid in an appeal. The maximum fee may be exceeded upon application of the injured employee to the organization, upon a finding that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex, but a court may not order that the maximum fee
be exceeded. Notwithstanding the foregoing, the organization is liable for its costs on appeal if the decision of the organization is affirmed.