Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1102
(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

21. "Health care provider" ~~means~~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~~, a doctor~~ any of these individuals.

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

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, ~~resulting in total or partial disability or death~~ 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.

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

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.

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

65-05-20.1. Scholarship fund - Rules.

1. The organization may establish a scholarship fund ~~to provide scholarships for the~~. 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~~. The organization may also grant scholarships for the spouse and child of an injured worker~~;

   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 the child meets the definition of child at the time of the initial scholarship application. The organization may also grant scholarships to injured~~; 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.

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

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.

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

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

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

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

~~1.~~ The organization ~~shall~~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.

~~2.~~ ~~Each pilot program must include a cost-benefit analysis; a strengths, weaknesses, opportunities, and threats analysis; and employer and employee satisfaction information.~~ The organization shall include in its annual report to the workers' compensation review committee under section 54-35-22~~:~~

~~a.~~ ~~Preliminary reports on future pilot programs;~~

~~b.~~ ~~Status~~status reports on current pilot programs~~; and~~

~~c.~~ ~~Final reports on completed pilot programs, including recommendations and proposed legislative changes necessary to implement recommendations.~~

~~3.~~ ~~The organization shall collect data regarding the status of claims that receive rehabilitation services. The data must include:~~

~~a.~~ ~~The stage of rehabilitation services at which closure occurs;~~

~~b.~~ ~~The reason for the closure; and~~

~~c.~~ ~~Followup data to determine the effectiveness of job searches and returns to work, including postinjury earnings~~.

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

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 ~~and the child meets the definition of child at the time of the initial loan application~~; 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 ~~and the child meets the definition of child at the time of the initial loan application~~.

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.

~~2.~~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.

~~3.~~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.

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

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.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1102.

House Vote:	Yeas 78	Nays 14	Absent 2
Senate Vote:	Yeas 41	Nays 5	Absent 1

Chief Clerk of the House

Received by the Governor at 11:56 A.M. on April 16, 2015.

Approved at 10:02 A.M. on April 20, 2015.

Governor

Filed in this office this 20th day of April, 2015,

at 2:33 o'clock P. M.

Secretary of State