

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1227

Introduced by

Representative Kilzer

1 A BILL for an Act to amend and reenact section 65-01-09 of the North Dakota Century Code,
2 relating to subrogation interests of the workers compensation bureau.

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

4 **SECTION 1. AMENDMENT.** Section 65-01-09 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **65-01-09. Injury through negligence of third person - Option of employee - Fund**
7 **subrogated when claim filed.** When an injury or death for which compensation is payable
8 under provisions of this title shall have been sustained under circumstances creating in some
9 person other than the fund a legal liability to pay damages in respect thereto, the injured
10 employee, or the employee's dependents may claim compensation under this title and proceed
11 at law to recover damages against such other person. The fund is subrogated to the rights of
12 the injured employee or the employee's dependents to the extent of fifty percent of the
13 damages recovered up to a maximum of the total amount it has paid or would otherwise pay in
14 the future in compensation and benefits for the injured employee. The bureau's subrogation
15 interest may not be reduced by settlement, compromise, or judgment. The action against such
16 other person may be brought by the injured employee, or the employee's dependents in the
17 event of the employee's death. Such action shall be brought in the injured employee's or in the
18 employee's dependents' own right and name and as trustee for the bureau for the subrogation
19 interest of the bureau. However, if the director chooses not to participate in a health care
20 malpractice action, the fund has no subrogation interest and no obligation to pay fees or costs
21 under this section. If the injured employee or the employee's dependents do not institute suit
22 within sixty days after date of injury, the bureau may bring the action in its own name and as
23 trustee for the injured employee or the employee's dependents and retain as its subrogation
24 interest the full amount it has paid or would otherwise pay in the future in compensation and

1 benefits to the injured employee or the employee's dependents. Within sixty days after both the
2 injured employee and the bureau have declined to commence an action against a third person
3 as provided above, the employer may bring the action in the employer's own name or in the
4 name of the employee, or both, and in trust for the bureau and for the employee. The party
5 bringing the action may determine if the trial jury should be informed of the trust relationship. If
6 the action is brought by the injured employee or the employee's dependents, or the employer
7 as provided above, the bureau shall pay fifty percent of the costs of the action, exclusive of
8 attorney fee, when such costs are incurred. If there is no recovery of damages in the action,
9 this shall be a cost of the bureau to be paid from the bureau general fund. When there is
10 recovery of damages in the action, the costs of the action, exclusive of attorneys fees, must be
11 prorated and adjusted on the percentage of the total subrogation interest of the bureau
12 recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured
13 employee's attorney from the bureau general fund as follows:

- 14 1. Twenty percent of the subrogation interest recovered for the bureau when legal
15 action is not commenced.
- 16 2. Twenty-five percent of the subrogation interest recovered for the bureau when
17 action is commenced and settled before judgment.
- 18 3. Thirty-three and one-third percent of the subrogation interest recovered for the
19 bureau when recovered through judgment.

20 The above provisions as to costs of the action and attorney fees is effective only when the
21 injured employee advises the bureau in writing the name and address of the employee's
22 attorney, and that the employee has employed such attorney for the purpose of collecting
23 damages or of bringing legal action for recovery of damages. If a claimant fails to pay the
24 bureau's subrogation interest within thirty days of receipt of a recovery in a third party action,
25 the bureau's subrogation interest is the full amount of the damages recovered, up to a
26 maximum of the total amount it has paid or would otherwise pay in the future in compensation
27 and benefits to the injured employee or the employee's dependents, and no costs or attorney
28 fees will be paid from the bureau's subrogation interest.