

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

HOUSE BILL NO. 1325
(Representatives Poolman, Berg, Martinson, Porter)
(Senators Klein, Krebsbach)

AN ACT to create and enact a new subsection to section 65-01-16 of the North Dakota Century Code, relating to disputed decisions of the workers compensation bureau; to amend and reenact subsections 6 and 7 of section 65-01-16, sections 65-02-06.1, 65-02-27, and 65-02-30 of the North Dakota Century Code, relating to the workers' assistance program and to the independent audit of the workers compensation bureau; to amend and reenact section 65-02-23 of the North Dakota Century Code as amended by section 3 of House Bill No. 1331 and the new section to chapter 65-03 of the North Dakota Century Code as created by section 2 of House Bill No. 1296, as approved by the fifty-sixth legislative assembly; to repeal section 65-02-29 of the North Dakota Century Code, section 3 of chapter 612 of the 1995 Session Laws, section 7 of chapter 532 of the 1997 Session Laws, and section 8 of chapter 542 of the 1997 Session Laws, relating to the independent audit of the workers compensation bureau, disputed decisions of the workers compensation bureau, the expiration date of the workers' adviser program, and the expiration date of the preacceptance disability benefits provisions; to provide an appropriation; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6 and 7 of section 65-01-16 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the ~~workers' adviser program~~ office of independent review 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 ~~workers' adviser program~~ office of independent review mails its notice that the ~~program's 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.

SECTION 2. A new subsection to section 65-01-16 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

This section is effective for all orders and decisions on all claims regardless of the date of injury or the date the claim was filed.

SECTION 3. AMENDMENT. Section 65-02-06.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-06.1. Allocated loss adjustment expenses - Continuing appropriation - Annual review. Money in the workers' compensation fund is appropriated on a continuing basis for the payment of all allocated loss adjustment expenses experienced by the bureau in its administration of this title. In its annual audit and its biennial report, the bureau shall include a breakdown of those allocated loss adjustment expenses that reflect the attorney fees and costs paid to attorneys who represent injured workers, the attorney fees and costs paid to attorneys with whom it contracts to represent the bureau, the amount paid for administrative law judges for hearings, and the court reporter and other legal expenses paid. ~~The performance audit required under section 65-02-29 must include a review of the bureau's legal costs to determine whether the system is operating efficiently.~~

SECTION 4. AMENDMENT. If House Bill No. 1331 becomes effective, section 65-02-23 of the North Dakota Century Code, as amended by section 3 of House Bill No. 1331, is amended and reenacted as follows:

65-02-23. Workers' compensation fraud unit - Continuing appropriation. The bureau shall establish a workers' compensation fraud unit. The bureau 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 65-04-14 or 65-05-33. The unit shall refer cases of fraud to the bureau for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workers' compensation fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. The biennial independent performance ~~audit~~ evaluation of the bureau must evaluate and report on the effectiveness of these expenditures. The bureau 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.

SECTION 5. AMENDMENT. Section 65-02-27 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-27. ~~(Effective until July 31, 1999) Workers' adviser program~~ Office of independent review. ~~A workers' adviser program~~ The bureau's office of independent review is established. The ~~program office of independent review~~ is independent of the claims department of the workers compensation bureau and activities administered through the ~~program office~~ must be administered in accordance with this title. The ~~program office of independent review~~ must provide assistance to ~~an injured employee~~ a worker who has filed a claim, ~~including which may include acting on behalf of an injured employee~~ a worker who is aggrieved by a decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and ~~advising an injured employee~~ informing a worker of the effect of decisions made by the bureau, the ~~employee worker~~, or an employer under this title. ~~The office of independent review shall provide assistance to workers, upon request, in cases of constructive denial or after a vocational consultant's report has been issued.~~ The bureau shall employ a director of the ~~program, support staff for the program, office of independent review~~ and other personnel determined to be necessary for the administration of the ~~program office~~. ~~Personnel~~ A person employed to administer the ~~program office of independent review~~ may not act as an attorney for ~~an injured employee a worker~~. The bureau may not pay attorney fees to an attorney who represents ~~an injured employee a worker~~ in a disputed claim before the bureau unless the ~~injured employee worker~~ has first attempted to resolve the dispute through the ~~workers' adviser program office of independent review~~. A ~~written~~ request for assistance by ~~an injured employee a worker~~ who contacts the ~~program office of independent review~~ 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 worker~~, sent by regular mail, that the ~~program's office of independent review's~~ assistance to the ~~employee worker~~ is completed. The information contained in a file established by the ~~workers' adviser program office of independent review~~ on ~~an injured employee's a worker's~~ disputed claim, including communications from a worker, is ~~not subject to discovery and may not be used as evidence in subsequent proceedings relative to that dispute~~ privileged and may not be released without the worker's permission. Information in the file containing the notes or mental impressions of office of independent review staff is confidential and may not be released by the office of independent review.

SECTION 6. AMENDMENT. Section 65-02-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-30. Independent ~~audit~~ performance evaluation - Bureau development of performance measurements - Continuing appropriation. Biennially, the director shall request the state auditor to select ~~an audit a~~ firm with extensive expertise in workers' compensation practices and standards to complete a performance ~~audit~~ evaluation of the functions and operations of the bureau during that biennium. ~~This may not be construed to require the firm to be a certified public accounting firm.~~ The ~~audit~~ evaluation must evaluate the departments of the bureau to determine whether the bureau is providing quality service in an efficient and cost-effective manner. The firm also shall conduct a performance ~~audit~~ evaluation of the board to determine whether the board is operating within section

65-02-03.3 and within the board's bylaws. The ~~audit~~ firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director, the chairman of the board, and ~~the auditor~~ a representative of the firm shall present the ~~audit~~ evaluation report and any action taken to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative session following the ~~audit~~ performance evaluation. The director shall provide a copy of the ~~audit~~ performance evaluation report to the state auditor. The bureau shall develop and maintain comprehensive, objective performance measurements. These measurements must be evaluated as part of the independent ~~audit~~ performance evaluation performed under this section. Money in the workers' compensation fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation.

SECTION 7. AMENDMENT. If House Bill No. 1296 becomes effective, the new section to chapter 65-03 of the North Dakota Century Code, as created by section 2 of House Bill No. 1296, is amended and reenacted as follows:

Safety programs. The bureau 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. The biennial independent performance ~~audit~~ evaluation of the bureau must evaluate and report on the effectiveness of these programs.

SECTION 8. REPEAL. Section 65-02-29 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 9. REPEAL. Section 3 of chapter 612 of the 1995 Session Laws is repealed.

SECTION 10. REPEAL. Section 7 of chapter 532 of the 1997 Session Laws of North Dakota is repealed.

SECTION 11. REPEAL. Section 8 of chapter 542 of the 1997 Session Laws is repealed.

SECTION 12. APPROPRIATION. There is hereby appropriated out of the workers compensation fund the sum of \$440,000, or so much thereof as may be necessary, to the workers compensation bureau for the purpose of defraying the costs of the office of independent review established under section 65-02-27, for the biennium beginning July 1, 1999, and ending June 30, 2001.

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 Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1325.

House Vote: Yeas 98 Nays 0 Absent 0

Senate Vote: Yeas 47 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State