

Fifty-seventh  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2157**

Introduced by

Industry, Business and Labor Committee

(At the request of the Workers Compensation Bureau)

1 A BILL for an Act to create and enact two new sections to chapter 65-04, relating to workers'  
2 compensation dispute resolution and penalties for employer's failure to secure coverage,  
3 submit payroll, or otherwise comply with chapter 65-04; to amend and reenact sections  
4 65-02-23, 65-02-24, 65-04-04, 65-04-19, 65-04-20, 65-04-22, 65-04-24, 65-04-25, 65-04-26.1,  
5 65-04-27.1, 65-08-01, 65-09-01, 65-09-02, and 65-10-01, relating to workers' compensation  
6 premium billing statements, determining date of default for premium, service of process on  
7 directors of nonresident corporations, procedure for notifying corporate officers of their liability  
8 for unpaid premium, reporting wages for extraterritorial coverage, appeals, and internal  
9 cross-references; to repeal sections 65-01-05, 65-04-05, 65-04-12, 65-04-14, 65-04-23,  
10 65-09-03, and 65-09-04, relating to penalties for an employer's failure to secure workers'  
11 compensation coverage, submit payroll, or otherwise comply with chapter 65-04; and to provide  
12 a penalty.

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

14 **SECTION 1. AMENDMENT.** Section 65-02-23 of the 1999 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16 **65-02-23. Workers' compensation fraud unit - Continuing appropriation.** The  
17 bureau shall establish a workers' compensation fraud unit. The bureau may employ  
18 investigators and licensed attorneys, or contract with a private investigator whenever feasible or  
19 cost effective, to investigate and review any alleged case of fraud against the fund by  
20 employers, injured workers, or providers of medical or other services, including activities  
21 described under section ~~65-04-14~~ 12 of this Act or 65-05-33. The unit shall refer cases of fraud  
22 to the bureau for the imposition of administrative penalties and may refer them to the  
23 appropriate authorities for prosecution. Money in the workers' compensation fund is  
24 appropriated on a continuing basis for payment of costs associated with identifying, preventing,

1 and investigating employer or provider fraud. The biennial independent performance evaluation  
2 of the bureau must evaluate and report on the effectiveness of these expenditures. The bureau  
3 may establish a process to charge investigative costs against the rate class of an employer  
4 being investigated and to credit any recoveries to that rate class.

5 **SECTION 2. AMENDMENT.** Section 65-02-24 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **65-02-24. Immunity from civil liability.** A person who notifies the bureau or who  
8 assists the bureau on any matter pertaining to the administration of this title of an alleged  
9 violation of section ~~65-04-14~~ 12 of this Act or 65-05-33, or who provides information in the  
10 course of an investigation of an alleged violation of section ~~65-04-14~~ 12 of this Act or 65-05-33,  
11 is not subject to civil liability for that action if the action was in good faith and without malice. At  
12 the request of the person who notifies or assists the bureau or who provides information to the  
13 bureau, the bureau may not reveal the identity of that person or disclose any information that  
14 may reveal the identity of that person to any person other than a representative of or a person  
15 rendering assistance to the bureau.

16 **SECTION 3. AMENDMENT.** Section 65-04-04 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **65-04-04. Employers obligated to pay premiums - Premium receipts and**  
19 **certificates to be mailed.** Each employer subject to this title shall pay into the fund annually  
20 the amount of premiums determined and fixed by the bureau for the employment or occupation  
21 of the employer. The amount must be determined by the classifications, rules, and rates made  
22 and published by the bureau and must be based on a proportion of the annual expenditure of  
23 money by the employer for the service of persons subject to the provisions of this title.  
24 ~~Immediately after payment is made, the~~ The bureau shall mail to the employer a ~~receipt or~~  
25 certificate specifying that the payment has been made. The ~~receipt or~~ certificate, attested by  
26 the seal of the bureau, is prima facie evidence of the payment of the premium. If an employer  
27 defaults on premium payments after a certificate has been issued, the bureau may revoke that  
28 employer's certificate. The bureau shall provide that premiums to be paid by school districts,  
29 townships, and all public corporations or agencies, except municipal corporations, fall due at  
30 the end of the fiscal year of that entity, and that premiums to be paid by all municipal  
31 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 bureau may carry new or current risks for a period of less than one year and not to exceed ~~fifteen~~ eighteen months, either by request of the employer or action of the bureau. 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 workers' compensation 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.

**SECTION 4. AMENDMENT.** Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-19. Bureau to determine premium due from employer - Mailing of ~~pay-in-order premium billing statement~~ as notice of amount due.** The bureau 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 bureau received information that an employer is subject to the title. The bureau shall order the premium to be paid into the fund and shall mail a copy of the ~~pay-in-order premium billing statement~~ to the employer. Mailing of the ~~pay-in-order premium billing statement~~ constitutes notice to the employer of the amount due.

**SECTION 5. AMENDMENT.** Section 65-04-20 of the North Dakota Century Code is amended and reenacted as follows:

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

4. If the amount of premium billed to an employer on a ~~pay-in-order premium billing statement~~ is greater than ~~one hundred dollars~~ the minimum premium, the employer may pay the excess of the minimum premium in installments as follows:

a. ~~If the employer is the state of North Dakota, or any department, industrial association, or political subdivision of the state, the employer may pay the premium in two equal semiannual installments at the option of the employer and no bond or undertaking is required to secure the payment of deferred premiums.~~

b. ~~If the employer is other than one mentioned in subdivision a, the employer may pay the premium either in two equal semiannual installments or in four equal quarterly installments.~~

2. 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 provided in this chapter apply.

**SECTION 6. AMENDMENT.** Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-22. Bureau may make premium due immediately - When premium ~~not covered by special order~~ is in default.** The bureau, by its proper order, and by an endorsement and notification to that effect upon the ~~pay in order~~ premium billing statement sent to an employer, may require payment of a premium within any time less than one month which, in the judgment of the bureau, is reasonable and necessary to secure the payment of the premium by any employer whose employment within this state is likely to continue for less than one month, and in such case, default shall begin at the end of the time allowed by the bureau for the payment of the premium. In the absence of such order, endorsement, and notification, the premium, whether the same is to be paid in full or in installments, shall be in default ~~as follows:~~

1. ~~The entire premium, or if the employer exercises the employer's option to pay the premium in installments, the first installment, shall be in default one month from the payment due date of specified in the pay in order premium billing statement.~~
2. ~~If the employer has elected to pay the employer's premium in semiannual installments, the final payment shall be in default six months from the date of the pay in order.~~
3. ~~If the employer has elected to pay the employer's premium in quarterly installments, the second installment shall be in default three months from the date of the pay in order, and the third and fourth installments shall be in default six months and nine months respectively from the date of the pay in order.~~

1 ~~If the employer has elected to pay the employer's premium in installments, default~~ Default of  
2 any installment payment will, at the option of the bureau, make the entire remaining balance of  
3 the premium due and payable. The bureau may declare an employer to be uninsured at any  
4 time after forty-five days has passed from the due date specified in the premium billing  
5 statement and the employer has failed to make a payment to the bureau.

6 **SECTION 7. AMENDMENT.** Section 65-04-24 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **65-04-24. Bureau to bring suit for premiums in default.** ~~Within twenty days after~~  
9 When an employer defaults on payment of premium, penalties, or interest, the bureau ~~shall~~  
10 ~~certify the account in default to the attorney general~~ may bring suit for the collection of the  
11 premium, accrued penalties and interest, and any additional penalties and interest that may  
12 accrue. ~~After an account has been certified to the attorney general the~~ The bureau may adjust  
13 or compromise the account ~~upon recommendation of the attorney general.~~ The bureau, ~~upon~~  
14 ~~the recommendation and approval of the attorney general,~~ may retain counsel on a contingent  
15 fee basis to represent the bureau in any proceeding relating to the collection of amounts due  
16 under this title. The bureau shall charge attorney fees and costs to the workers' compensation  
17 ~~general fund of the workers compensation bureau.~~ In any action for the collection of amounts  
18 due the bureau under this title, the court may not review or consider the action of the bureau  
19 regarding the acceptance or payment of any claim.

20 **SECTION 8. AMENDMENT.** Section 65-04-25 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **65-04-25. Service of nonresident employer in suit for premium or in suit against**  
23 **an uninsured employer.** If the employer in an action to collect delinquent premiums or for  
24 injuries sustained in the employer's employment for which the employer did not carry the  
25 required insurance is a nonresident of this state, or a foreign corporation or limited liability  
26 company doing business in this state, service of the summons may be made upon any agent,  
27 representative, or foreman of said employer in this state, or in the case of a foreign corporation,  
28 its director, and where there is no agent, representative, or foreman, or in the case of a foreign  
29 corporation, director, upon whom service can be made in this state, service upon the secretary  
30 of state ~~shall constitute~~ constitutes personal service upon ~~such that~~ nonresident employer or  
31 corporation's director who has either failed to secure the necessary coverage or who is

1 delinquent in the employer's premiums, or service may be made in any other manner  
2 designated by law. ~~In the event it is not possible or practical to proceed in this state, the~~ The  
3 bureau may, ~~upon the recommendation and approval of the attorney general,~~ retain counsel  
4 who is licensed in another state to represent the bureau on a contingent fee basis in any  
5 proceeding relating to the collection of amounts due the bureau under this title. All attorney  
6 fees and costs ~~shall be~~ incurred under this section are a charge to the general fund.

7 **SECTION 9. AMENDMENT.** Section 65-04-26.1 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **65-04-26.1. Corporate officer personal liability.**

- 10 1. An officer or director of a corporation, or manager or governor of a limited liability  
11 company, or employee of a corporation or limited liability company having twenty  
12 percent stock ownership who has control of or supervision over the filing of and  
13 responsibility for filing premium reports or making payment of premiums or  
14 reimbursements under this title and who fails to file the reports or to make  
15 payments as required, is personally liable for premiums under this chapter and  
16 reimbursement under section 65-05-07.2, including interest, penalties, and costs if  
17 the corporation or limited liability company does not pay to the bureau those  
18 amounts for which the corporation or limited liability company is liable.
- 19 2. The personal liability of any person as provided in this section survives dissolution,  
20 reorganization, bankruptcy, receivership, or assignment for the benefit of creditors.  
21 For the purposes of this section, all wages paid by the corporation or limited liability  
22 company must be considered earned from any person determined to be personally  
23 liable.
- 24 3. After review of the evidence in the employer's file, the bureau shall determine  
25 personal liability under this section. The bureau shall ~~provide, by registered mail,~~  
26 ~~notice of liability to a person determined to be personally liable under this section.~~  
27 ~~A person determined to be liable may request reconsideration or rehearing by the~~  
28 ~~bureau of that determination. The bureau's determination of personal liability is~~  
29 ~~final and is not reviewable in any court unless the person requests reconsideration~~  
30 ~~or rehearing of the determination. The request must be in writing and must be~~  
31 ~~served on the bureau within thirty days from the date of mailing of the notice.~~

1 ~~Thereafter, a hearing must be held pursuant to chapter 28-32~~ issue a decision  
2 under this section pursuant to section 10 of this Act.

3 **SECTION 10.** A new section to chapter 65-04 of the North Dakota Century Code is  
4 created and enacted as follows:

5 **Decisions by bureau - Disputed decisions.** Notwithstanding any provisions to the  
6 contrary in chapter 28-32, the following procedures apply when the bureau issues a decision  
7 under chapter 65-04 or section 65-05-07.2:

- 8 1. The bureau may issue a decision based on an informal internal review of the  
9 record and shall serve notice of the decision on the parties by regular mail. The  
10 bureau shall include with the decision a notice of the employer's right to  
11 reconsideration.
- 12 2. An employer has thirty days from the date of service to file a written petition for  
13 reconsideration. The request must state specifically the alleged errors in the  
14 decision and the relief sought. The request may be accompanied by additional  
15 evidence not previously submitted to the bureau. The bureau shall reconsider the  
16 matter by informal internal review of the information of record. Absent a timely and  
17 sufficient request for reconsideration, the administrative order is final and may not  
18 be reheard or appealed.
- 19 3. Within sixty days after receiving a petition for reconsideration, unless settlement  
20 negotiations are ongoing, the bureau shall serve on the parties by certified mail an  
21 administrative order including its findings of fact, conclusions of law, and order, in  
22 response to the petition for reconsideration.
- 23 4. A party has thirty days from the date of service of an administrative order to file a  
24 written request for rehearsing. The request must state specifically each alleged  
25 error of fact and law to be reheard and the relief sought. Absent a timely and  
26 sufficient request for rehearing, the administrative order is final and may not be  
27 reheard or appealed.
- 28 5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that  
29 chapter does not conflict with this section. The bureau may arrange for the  
30 designation of hearing officers to conduct rehearings and issue recommended  
31 findings of fact, conclusions of law, and orders. In reviewing recommended

findings, conclusions, and orders, the bureau may consult with its legal counsel representing it in the proceeding.

6. Within sixty days after receiving the administrative law judge's recommended findings of fact, conclusions of law, and order, the bureau shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.

7. An employer may appeal a posthearing administrative order to district court in accordance with chapter 65-10.

**SECTION 11. AMENDMENT.** Section 65-04-27.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-27.1. Injunctive relief - Procedure.**

1. a. To protect the lives, safety, and well-being of wage workers, to ensure fair and equitable contributions to the workers' compensation fund among all employers, and to protect the workers' compensation fund, the bureau 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 bureau that the employer has unlawfully employed uninsured workers in violation of section ~~65-01-05~~ 12 of this Act;

(2) When the employer defaults in the payment of insurance premiums, reimbursements, penalties, or interest into the fund; or

(3) When the bureau, 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 bureau 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.

**SECTION 12.** A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

**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 workers' compensation insurance coverage for the protection of employees by notifying the bureau 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 bureau 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 bureau shall collect a penalty imposed under this subsection in a civil action in the name of the state, and the bureau shall deposit a penalty collected under this subsection to the credit of

1           the workers' compensation fund. An employer who willfully misrepresents to the  
2           bureau or its representative the amount of payroll upon which a premium under this  
3           title is based, or who willfully fails to secure coverage for employees, is guilty of a  
4           class A misdemeanor. If the premium due exceeds five hundred dollars, the  
5           penalty for willful failure to secure coverage or willful misrepresentation to the  
6           bureau or its representative is a class C felony. If the employer is a corporation or  
7           a limited liability company, the president, secretary, treasurer, or person with  
8           primary responsibility is liable for the failure to secure workers' compensation  
9           coverage under this subsection. In addition to the penalties prescribed by this  
10           subsection, the bureau may initiate injunction proceedings as provided for in this  
11           title to enjoin an employer from unlawfully employing uninsured workers. The cost  
12           of an investigation under this subsection which results in a criminal conviction may  
13           be charged to the employer's account and collected by civil action.

14        3. An employer who is uninsured is liable for any premiums plus penalties and  
15           interest due on those premiums, plus a penalty of twenty-five percent of all  
16           premiums due during the most recent year of noncompliance. An additional five  
17           percent penalty is due for each year of noncompliance before the most recent year,  
18           not to exceed six years or fifty percent, beginning on the date the bureau became  
19           aware of the employer's uninsured status. The bureau may assess additional  
20           penalties, from the date the bureau became aware of the employer's uninsured  
21           status continuing until the effective date of coverage, equal to twenty-five percent  
22           of the premium due for that period. The penalties for employers are in addition to  
23           any other penalties provided by law. The bureau may reduce these penalties.  
24           However, the amount due from an employer may not be less than the actual cost  
25           and reserves of any claim attributable to the employer during the time the employer  
26           was uninsured. An employer may not appeal a bureau decision not to reduce a  
27           penalty under this subsection.

28        4. An employer who fails or refuses to furnish to the bureau the annual payroll report  
29           and estimate or who fails or refuses to furnish other information required by the  
30           bureau under this chapter is subject to a penalty established by the bureau of two  
31           thousand dollars. Upon the request of the bureau, the employer shall furnish the

bureau any of that employer's payroll records, annual payroll reports, and other information required by the bureau 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 bureau, the employer is subject to a penalty not to exceed one hundred dollars for each day until the bureau receives the records, in addition to the two thousand dollar penalty set forth above. The bureau may reduce penalties for employers under this subsection. However, an employer may not appeal a bureau decision not to reduce a penalty. The bureau shall notify an employer by regular mail of the amount of premium and penalty due the bureau from the employer. If the employer fails to pay that amount within thirty days, the bureau 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 bureau 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.

**SECTION 13. AMENDMENT.** Section 65-08-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**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 workers' compensation 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:

- 1           a.    The employment is principally localized in this state, as determined by the  
2                following:
  - 3                (1)   The employer has a place of business in this state;
  - 4                (2)   The employee regularly works at or from that place of business;
  - 5                (3)   The employment contract is entered in this state; and
  - 6                (4)   In the case of an employee leasing company, the company retains  
7                      control over the employee and does not lease the employee to an  
8                      out-of-state employer;
- 9           b.    The employee is working under a contract of hire, made in this state in  
10               employment not principally localized in any state, if:
  - 11               (1)   The employer has a place of business in this state;
  - 12               (2)   The employment contract is entered in this state; and
  - 13               (3)   In the case of over-the-road trucking, the employer retains control over  
14                      the driver, dispatches employees from this state, and does not lease  
15                      the driver to out-of-state employers; but trip leasing does not end  
16                      coverage;
- 17           c.    The employee is working under a contract of hire made in this state in  
18               employment principally localized in another state and that state's workers'  
19               compensation law is not applicable to the employer, as provided by a  
20               reciprocal agreement;
- 21           d.    The employee is working under a contract of hire made in this state for  
22               employment outside the United States and the workers' compensation law of  
23               that other jurisdiction is not applicable to the employer; or
- 24           e.    The employee is a resident of another state, and is hired by a North Dakota  
25               employer or that employer's authorized agent for temporary employment, the  
26               situs of which is located in another state, and the temporary employment is  
27               necessary to the principal employment of the North Dakota employer,  
28               provided that the other state recognizes the coverage under this title as the  
29               sole remedy of the employee against the employer for the injury or death.
- 30           2.    The payment or award of benefits under the workers' compensation law of another  
31               state, territory, province, or foreign nation to an employee or the employee's

dependents otherwise entitled on account of the injury or death to workers' compensation 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 workers' compensation law of the state in which the employment is principally localized provides that the workers' compensation 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 workers' compensation 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 law of the other state. An employment has significant contacts with this state when (a) the 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) if no employee earns twenty-five percent of the employee's gross annual income from that employment within this state, the employer's gross annual payroll in a calendar year in this state is at least one hundred thousand dollars. 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 bureau 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 bureau may begin to process the claim as set forth in section 65-05-05.

5. An employer who opens an employer account with the bureau under this section is obligated to report all wages paid in this state, regardless of whether the significant contacts factors set forth in subsection 4 have been met.

**SECTION 14. AMENDMENT.** Section 65-09-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**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 ~~65-04-14~~ 12 of this Act 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 bureau shall establish a procedure by which a person may apply to the bureau for a determination of whether that person is an employer required to obtain workers' compensation coverage under this title. 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 bureau retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

**SECTION 15. AMENDMENT.** Section 65-09-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**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 ~~65-04-14~~ 12 of this Act, 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 bureau 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.

1 The bureau is subrogated to the recovery made in the action against the uninsured employer.  
2 The subrogation interest is determined according to section 65-01-09, with the uninsured  
3 employer being the person other than the fund with a legal liability to pay damages with respect  
4 to the employee's injury or death. An injured employee, or the dependents of an employee who  
5 died as a result of a work-related accident, shall file the original claim for compensation within  
6 one year after the injury or within two years after the death. The bureau shall notify the  
7 claimant and the employer that the matter is being processed under this chapter, and  
8 subsequently shall hear and determine the application for compensation as it would for other  
9 claims before the bureau. A determination by the bureau that a person is not an employer  
10 required to obtain workers' compensation coverage under this title is a defense to any claim  
11 that the person failed to obtain coverage for the time period during which the determination is  
12 effective.

13 **SECTION 16. AMENDMENT.** Section 65-10-01 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **65-10-01. Appeal from decision of bureau.** If the final action of the bureau denies the  
16 right of the claimant to participate at all in the fund on the ground that the injury was  
17 self-inflicted, or on the ground that the accident did not arise in the course of employment, or  
18 upon any other ground going to the basis of the claim, or if the bureau allows the claimant to  
19 participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is  
20 less than the maximum allowance provided by this title, the claimant may appeal to the district  
21 court of the county wherein the injury was inflicted or of the county in which the claimant  
22 resides. An employer may also appeal a decision of the bureau in any injury case or a bureau  
23 decision issued under chapter 65-04, in the manner prescribed in this section. An appeal  
24 involving injuries allegedly covered by insurance provided under contracts with extraterritorial  
25 coverage shall be triable in the district court of Burleigh County. Any appeal under this section  
26 shall be taken in the manner provided in chapter 28-32. Any appeal to the district court shall be  
27 heard on the record, transmitted from the bureau, and, in the discretion of the court, additional  
28 evidence may be presented pertaining to the questions of law involved in the appeal.

29 **SECTION 17. REPEAL.** Sections 65-01-05, 65-04-05, 65-04-12, 65-04-14, 65-04-23,  
30 65-09-03, and 65-09-04 of the North Dakota Century Code are repealed.