

HOUSE BILL NO. 1149

Introduced by

Representative Froseth

Senator Mutch

(At the request of the Workers Compensation Bureau)

1 A BILL for an Act to amend and reenact sections 65-01-09, 65-04-03.1, 65-04-04, 65-04-15,
2 subsection 1 of section 65-04-26.1, subsections 1 and 2 of section 65-04-32, subsection 3 of
3 section 65-04-33, sections 65-05-07.2, 65-05-28.1, 65-06-01, 65-06-02, 65-06-03, and 65-06-04
4 of the North Dakota Century Code, relating to the workers compensation bureau's subrogation
5 interests and participation in third-party actions, elimination of the expiration date for the state
6 entities account, employer certificates of coverage, release of information from employer files,
7 personal liability for failure to pay premiums or file premium reports, notice of decisions issued
8 by the workers compensation bureau affecting employer accounts, the penalty structure for
9 failure to secure workers' compensation coverage, employer medical assessments, eligibility of
10 an employer to select preferred providers to render medical treatment, and volunteer disaster
11 emergency trainees and volunteer firefighters; to repeal section 65-04-19.2 and chapter 65-14
12 of the North Dakota Century Code, relating to state agency participation in the workers'
13 compensation risk management program and the employee information program on hazardous
14 substances; to provide an effective date; and to declare an emergency.

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

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

18 **65-01-09. Injury through negligence of third person - Option of employee - Fund**
19 **subrogated when claim filed.** When an injury or death for which compensation is payable
20 under provisions of this title shall have been sustained under circumstances creating in some
21 person other than the fund a legal liability to pay damages in respect thereto, the injured
22 employee, or the employee's dependents may claim compensation under this title and proceed
23 at law to recover damages against such other person. The fund is subrogated to the rights of
24 the injured employee or the employee's dependents to the extent of fifty percent of the

1 damages recovered up to a maximum of the total amount it has paid or would otherwise pay in
2 the future in compensation and benefits for the injured employee. The bureau's subrogation
3 interest may not be reduced by settlement, compromise, or judgment. The action against such
4 other person may be brought by the injured employee, or the employee's dependents in the
5 event of the employee's death. Such action shall be brought in the injured employee's or in the
6 employee's dependents' own right and name and as trustee for the bureau for the subrogation
7 interest of the bureau. However, if the director chooses not to participate in ~~a health care~~
8 ~~malpractice~~ an action, the fund has no subrogation interest and no obligation to pay fees or
9 costs under this section. If the injured employee or the employee's dependents do not institute
10 suit within sixty days after date of injury, the bureau may bring the action in its own name and
11 as trustee for the injured employee or the employee's dependents and retain as its subrogation
12 interest the full amount it has paid or would otherwise pay in the future in compensation and
13 benefits to the injured employee or the employee's dependents. Within sixty days after both the
14 injured employee and the bureau have declined to commence an action against a third person
15 as provided above, the employer may bring the action in the employer's own name or in the
16 name of the employee, or both, and in trust for the bureau and for the employee. The party
17 bringing the action may determine if the trial jury should be informed of the trust relationship. If
18 the action is brought by the injured employee or the employee's dependents, or the employer
19 as provided above, the bureau shall pay fifty percent of the costs of the action, exclusive of
20 attorney fee, when such costs are incurred. If there is no recovery of damages in the action,
21 this shall be a cost of the bureau to be paid from the bureau general fund. When there is
22 recovery of damages in the action, the costs of the action, exclusive of attorney's fees, must be
23 prorated and adjusted on the percentage of the total subrogation interest of the bureau
24 recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured
25 employee's attorney from the bureau general fund as follows:

- 26 1. Twenty percent of the subrogation interest recovered for the bureau when legal
27 action is not commenced.
- 28 2. Twenty-five percent of the subrogation interest recovered for the bureau when
29 action is commenced and settled before judgment.
- 30 3. Thirty-three and one-third percent of the subrogation interest recovered for the
31 bureau when recovered through judgment.

1 The above provisions as to costs of the action and attorney fees is effective only when the
2 injured employee advises the bureau in writing the name and address of the employee's
3 attorney, and that the employee has employed such attorney for the purpose of collecting
4 damages or of bringing legal action for recovery of damages. If a claimant fails to pay the
5 bureau's subrogation interest within thirty days of receipt of a recovery in a third party action,
6 the bureau's subrogation interest is the full amount of the damages recovered, up to a
7 maximum of the total amount it has paid or would otherwise pay in the future in compensation
8 and benefits to the injured employee or the employee's dependents, and no costs or attorney
9 fees will be paid from the bureau's subrogation interest.

10 **SECTION 2. AMENDMENT.** Section 65-04-03.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **65-04-03.1. (~~Effective through June 30, 2003~~) State entities account - Continuing**
13 **appropriation - Report to budget section.**

- 14 1. The bureau shall establish a single workers' compensation account for state
15 entities covered by chapter 32-12.2. The bureau shall use the combined payroll,
16 premium, and loss history of selected agencies to determine future experience
17 rates, dividends, assessments, and premiums. Classifications and premium rates
18 must be based on the hazards and risks of the different occupations covered by
19 this account. The payroll reporting period for this account is for a fiscal year of July
20 first through June thirtieth. The office of management and budget shall furnish
21 combined payroll information to the bureau in a format prescribed by the bureau.
- 22 2. Workers' compensation premiums from state entities covered by chapter 32-12.2
23 must be deposited in the risk management workers' compensation fund. The state
24 investment board shall invest this fund in accordance with chapter 21-10. Funds
25 received as contributions from state entities, all other payments deposited in this
26 fund, and interest and income received on investments are appropriated on a
27 continuing basis for the purposes of this fund. The purposes of this fund are to pay
28 workers' compensation premiums for state agencies and to pay workers'
29 compensation claims costs not covered by the deductible contract. The risk
30 management division of the office of management and budget shall administer this
31 fund. Section 54-44.1-11 does not apply to this fund.

1 3. A state entity covered by chapter 32-12.2 shall participate in the risk management
2 workers' compensation program unless exempted by the director of the office of
3 management and budget.

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

9 5. The office of management and budget may adopt rules to administer the risk
10 management workers' compensation program. The workers compensation bureau
11 and the risk management division of the office of management and budget
12 periodically shall report to the budget section of the legislative council on the
13 success of this program.

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

16 **65-04-04. Employers obligated to pay premiums - Premium and certificates to be**
17 **mailed.** Each employer subject to this title shall pay into the fund annually the amount of
18 premiums determined and fixed by the bureau for the employment or occupation of the
19 employer. The amount must be determined by the classifications, rules, and rates made and
20 published by the bureau and must be based on a proportion of the annual expenditure of
21 money by the employer for the service of persons subject to the provisions of this title. The
22 bureau shall mail to the employer a certificate specifying that the payment has been made. The
23 certificate, attested by the seal of the bureau, is prima facie evidence of the payment of the
24 premium. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the
25 employer has paid the minimum premium and has estimated no wages for the period indicated
26 on the certificate. If an employer defaults on premium payments after a certificate has been
27 issued, the bureau may revoke that employer's certificate. The bureau shall provide that
28 premiums to be paid by school districts, townships, and all public corporations or agencies,
29 except municipal corporations, fall due at the end of the fiscal year of that entity, and that
30 premiums to be paid by all municipal corporations fall due at the end of the calendar year, and
31 may make provisions so that premiums of other employers fall due on different or specified

1 dates. For the purpose of effectuating different or specified due dates the bureau may carry
2 new or current risks for a period of less than one year and not to exceed eighteen months,
3 either by request of the employer or action of the bureau. An employer subject to this chapter
4 shall display in a conspicuous manner at the workplace and in a sufficient number of places to
5 reasonably inform employees of the fact, a certificate of premium payment showing compliance
6 with this chapter and the toll-free telephone number used to report unsafe working conditions
7 and actual or suspected workers' compensation fraud. Any employer subject to this chapter is
8 liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of
9 compliance and the toll-free telephone number as required by this section.

10 **SECTION 4. AMENDMENT.** Section 65-04-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **65-04-15. Information in employer's ~~reports~~ files confidential - Penalty if**
13 **employee of bureau divulges information.** The information contained in an employer's
14 ~~report file~~ is for the exclusive use and information of the bureau or its agents in the discharge of
15 ~~its~~ their official duties and is not open to the public nor usable in any court in any action or
16 proceeding ~~pending therein~~ unless the bureau is a party ~~thereto~~. ~~The information contained in~~
17 ~~an employer's report may be provided to a federal or state law enforcement agency pursuant to~~
18 ~~a lawful order of a court upon a showing of necessity and prior notice to the bureau of an~~
19 ~~application for the order~~. The information contained in the ~~report file~~, however, may be
20 tabulated and published by the bureau in statistical form for the use and information of the state
21 departments and of the public. Upon request, the bureau shall disclose the rate classification of
22 an employer to the requester; however, the bureau may not disclose any information that would
23 reveal the amount of payroll upon which that employer's premium is being paid or the amount of
24 premium the employer is paying. The bureau may disclose whether an employer's file is active,
25 cancelled, closed, pending, or delinquent. The information in the employer's file may not be
26 released in aggregate form, except to those persons contracting with the bureau for exchange
27 of information pertaining to the administration of this title or except upon written authorization by
28 the employer for a specified purpose. Anyone who is convicted under section 12.1-13-01 is
29 disqualified from holding any office or employment with the bureau.

30 The bureau may, upon request of the state tax commissioner or the secretary of state,
31 furnish to them a list or lists of employers showing only the names, addresses, and bureau file

1 identification numbers of such employers as those files relate to this chapter; provided, that any
2 such list so furnished must be used by the tax commissioner or the secretary of state only for
3 the purpose of administering their duties. The bureau may provide ~~the commissioner of labor~~
4 ~~or job service North Dakota~~ with any state or federal agency information obtained pursuant to
5 the administration of this title. Any information so provided must be used only for the purpose
6 of administering the duties of ~~the commissioner of labor or job service North Dakota~~ that state
7 or federal agency. Whenever the bureau obtains information on activities of a contractor doing
8 business in this state of which officials of the secretary of state, job service North Dakota, or tax
9 commissioner may be unaware and that may be relevant to the duties of those officials, the
10 bureau shall provide any relevant information to those officials for the purpose of administering
11 their duties. The bureau may provide any state agency or a private entity with a list of names
12 and addresses of employers for the purpose of jointly publishing or distributing publications or
13 other information pursuant to section 54-06-04.3. Any information so provided may only be
14 used for the purpose of jointly publishing or distributing publications or other information as
15 provided in section 54-06-04.3.

16 **SECTION 5. AMENDMENT.** Subsection 1 of section 65-04-26.1 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 1. An officer or director of a corporation, or manager or governor of a limited liability
19 company, or partner of a limited liability partnership, or employee of a corporation
20 or limited liability company having twenty percent stock ownership who has control
21 of or supervision over the filing of and responsibility for filing premium reports or
22 making payment of premiums or reimbursements under this title and who fails to
23 file the reports or to make payments as required, is personally liable for premiums
24 under this chapter and reimbursement under section 65-05-07.2, including interest,
25 penalties, and costs if the corporation or limited liability company does not pay to
26 the bureau those amounts for which the corporation or limited liability company is
27 liable.

28 **SECTION 6. AMENDMENT.** Subsections 1 and 2 of section 65-04-32 of the North
29 Dakota Century Code are amended and reenacted as follows:

- 30 1. The bureau may issue a notice of decision based on an informal internal review of
31 the record and shall serve notice of the decision on the parties by regular mail.

1 The bureau shall include with the decision a notice of the employer's right to
2 reconsideration.

3 2. An employer has thirty days from the date of service to file a written petition for
4 reconsideration. The request must state specifically the alleged errors in the
5 decision and the relief sought. The request may be accompanied by additional
6 evidence not previously submitted to the bureau. The bureau shall reconsider the
7 matter by informal internal review of the information of record. Absent a timely and
8 sufficient request for reconsideration, the ~~administrative order~~ notice of decision is
9 final and may not be reheard or appealed.

10 **SECTION 7. AMENDMENT.** Subsection 3 of section 65-04-33 of the North Dakota
11 Century Code is amended and reenacted as follows:

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

1 **SECTION 8. AMENDMENT.** Section 65-05-07.2 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **65-05-07.2. Payment to bureau for certain claims.** The employer shall reimburse the
4 bureau for all medical expenses related to a compensable injury to an employee if the
5 expenses are not more than two hundred fifty dollars and shall reimburse the bureau for the first
6 two hundred fifty dollars of medical expenses when the expenses are more than two hundred
7 fifty dollars. If an employee's compensable injury is determined through a civil action to have
8 been sustained through the fault or negligence of a third person, or if a settlement has been
9 entered between the employee and a third person through which the third person agrees to
10 compensate the employee for the injury, the bureau, upon receipt of its subrogation interest,
11 shall credit the account of the employer to the extent of the payment made by the employer to
12 the bureau under this section. Upon the bureau's determination that the claim is compensable,
13 the bureau shall pay the medical expenses associated with the claim and notify the employer of
14 payments to be made by the employer under this section. If the employer does not pay the
15 bureau within ~~ninety~~ thirty days of notice by the bureau, the bureau may impose a penalty on
16 that employer. The penalty may not exceed one hundred twenty-five percent of the payment
17 owed by the employer. The bureau shall collect the penalty in a civil action against the
18 employer and deposit the money in the fund. An employer may not directly or indirectly charge
19 an injured employee for any payment the employer makes on a claim. When the cost of an
20 injured employee's medical treatment exceeds two hundred fifty dollars, the bureau shall pay all
21 further medical expenses pursuant to this title. This section is effective for all compensable
22 injuries that occur after July 31, 1995. Compensable injuries paid under sections 65-06.2-04
23 through 65-06.2-08 are not subject to this section.

24 **SECTION 9. AMENDMENT.** Section 65-05-28.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **65-05-28.1. Employer to select preferred provider.** Notwithstanding section
27 65-05-28, an employer subject to this title who maintains ~~an approved~~ a risk management
28 program ~~pursuant to section 65-04-19.1 approved by the bureau~~ may select a preferred
29 provider to render medical treatment to employees who sustain compensable injuries.
30 "Preferred provider" means a designated provider or group of providers of medical services,
31 including consultations or referral by the provider or providers.

SECTION 10. AMENDMENT. Section 65-06-01 of the North Dakota Century Code is amended and reenacted as follows:

65-06-01. Volunteer fireman firefighter, volunteer disaster emergency trainees trainee, in training defined. The term "volunteer ~~fireman~~ firefighter" means any active member of an organized volunteer fire department of this state and any other person performing services as a volunteer ~~fireman~~ firefighter for a municipality at the request of the chief or other person in command of the fire department of ~~such that~~ that municipality or of any other officer of ~~such that~~ that municipality having authority to demand ~~such~~ service as a firefighter. ~~Firemen~~ Firefighters who are paid a regular wage or stipend by the municipality ~~as such for serving as a firefighter~~, or whose entire time is devoted to ~~such services~~ service as a firefighter for the municipality, for the purpose of this chapter, ~~shall are not be deemed~~ are not volunteer ~~firemen~~ firefighters.

The term "volunteer disaster emergency trainee" means any person serving without remuneration who is actively engaged in training to qualify as a disaster emergency worker in the event of an 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 emergency management.

The term "in training" ~~shall be limited to and~~ means only those periods of time, ~~prior to an enemy attack on this country~~, during which ~~such a~~ a volunteer disaster emergency trainee is receiving instruction, or is engaged in exercises or operations, in preparation for qualification as a disaster emergency worker in the event of an enemy attack on this country.

The term "municipality" when used in reference to volunteer disaster emergency trainees means ~~the state or district thereof~~, 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 ~~firemen~~ firefighters.

SECTION 11. AMENDMENT. Section 65-06-02 of the North Dakota Century Code is amended and reenacted as follows:

65-06-02. Volunteer firemen firefighters and volunteer disaster emergency trainees declared employees - Covered by workers' compensation - Termination. Volunteer ~~firemen~~ firefighters and volunteer disaster emergency trainees are employees of the

1 municipalities which they serve and are entitled to the same protection and rights under the
2 provisions of this title as are full-time paid employees of ~~such~~ those municipalities, ~~except,~~
3 ~~however, that the protection and rights granted to volunteer disaster emergency trainees by this~~
4 ~~section shall terminate and cease in the event of an enemy attack on this country, except as to~~
5 ~~rights to benefits that shall have vested prior to the time of such attack.~~

6 **SECTION 12. AMENDMENT.** Section 65-06-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **65-06-03. Compensation benefits - How determined.** The basis of compensation
9 and benefits to be paid to volunteer ~~firemen~~ firefighters and volunteer disaster emergency
10 trainees under the terms of this chapter shall be determined in accordance with the provisions
11 of section 65-05-09; provided, however, that the weekly wage of the claimant shall be
12 determined from a computation of income derived from the claimant's business or employment.

13 **SECTION 13. AMENDMENT.** Section 65-06-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **65-06-04. Assessment of premiums.** For the purpose of making assessments of
16 premiums to be charged against municipalities for protection of volunteer ~~firemen~~ firefighters
17 and volunteer disaster emergency trainees, the bureau shall make such survey as may seem
18 advisable to ascertain the probable annual expenditures necessary to be paid out of the fund to
19 carry out the provisions of this chapter, and shall fix the annual charges and assessments
20 which shall be made against municipalities employing volunteer ~~firemen~~ firefighters and
21 volunteer disaster emergency trainees. Such charge shall be a fixed sum for each one hundred
22 of the population of the municipality involved, the same to be uniform as to all such
23 municipalities but in proportion to the population thereof. In determining the amount of premium
24 charge, the bureau may apply the system of experience rating provided in this title, as applied
25 to other risks. The bureau may also establish a minimum charge or assessment to be
26 applicable to municipalities where the fixed rate or charge multiplied by the number of hundreds
27 of the population thereof would amount to less than the amount of such minimum charge or
28 assessment. The population of a municipality shall be that shown by the latest official North
29 Dakota state or United States government census, whichever may be the later.

30 **SECTION 14. REPEAL.** Section 65-04-19.2 and chapter 65-14 of the North Dakota
31 Century Code are repealed.

1 **SECTION 15. EMERGENCY.** Section 2 of this Act is declared to be an emergency
2 measure.