

Fifty-eighth
Legislative Assembly
of North Dakota

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

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

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

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

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

- 27 1. Twenty percent of the subrogation interest recovered for the bureau when legal
28 action is not commenced.
- 29 2. Twenty-five percent of the subrogation interest recovered for the bureau when
30 action is commenced and settled before judgment.

- 1 3. Thirty-three and one-third percent of the subrogation interest recovered for the
2 bureau when recovered through judgment.

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

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

14 **65-04-03.1. (~~Effective through June 30, 2003~~) State entities account - Continuing**
15 **appropriation - Report to budget section.**

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

management division of the office of management and budget shall administer this fund. Section 54-44.1-11 does not apply to this fund.

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

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

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

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

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

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

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

14 **65-04-15. Information in employer's ~~reports~~ files confidential - Penalty if**
15 **employee of bureau divulges information.** The information contained in an employer's
16 ~~report file~~ is for the exclusive use and information of the bureau or its agents in the discharge of
17 ~~its their~~ official duties and is not open to the public nor usable in any court in any action or
18 ~~proceeding pending therein unless the bureau is a party thereto. The information contained in~~
19 ~~an employer's report may be provided to a federal or state law enforcement agency pursuant to~~
20 ~~a lawful order of a court upon a showing of necessity and prior notice to the bureau of an~~
21 ~~application for the order.~~ The information contained in the ~~report file~~, however, may be
22 tabulated and published by the bureau in statistical form for the use and information of the state
23 departments and of the public. Upon request, the bureau shall disclose the rate classification
24 of an employer to the requester; however, the bureau may not disclose any information that
25 would reveal the amount of payroll upon which that employer's premium is being paid or the
26 amount of premium the employer is paying. The bureau may disclose whether an employer's
27 file is active, cancelled, closed, pending, or delinquent. The information in the employer's file
28 may not be released in aggregate form, except to those persons contracting with the bureau for
29 exchange of information pertaining to the administration of this title or except upon written
30 authorization by the employer for a specified purpose. Anyone who is convicted under section
31 12.1-13-01 is disqualified from holding any office or employment with the bureau.

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

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

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

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

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

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

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

1 employer may not appeal a bureau decision not to reduce a penalty under this
2 subsection.

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

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

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

28 **65-05-28.1. Employer to select preferred provider.** Notwithstanding section
29 65-05-28, an employer subject to this title who maintains ~~an approved~~ a risk management
30 program ~~pursuant to section 65-04-19.1~~ approved by the bureau may select a preferred
31 provider to render medical treatment to employees who sustain compensable injuries.

"Preferred provider" means a designated provider or group of providers of medical services, 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, emergency or disaster volunteer disaster emergency trainees, community emergency response team member, 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~~ individual performing services as a volunteer ~~fireman~~ firefighter for a municipality at the request of the chief or other ~~person~~ individual in command of the fire department of ~~such that~~ municipality or of any other officer of ~~such 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 volunteer ~~firemen~~ firefighters.

The term "~~emergency or disaster~~ volunteer ~~disaster~~ emergency trainee" means any ~~person~~ individual serving without remuneration who is actively engaged in training to qualify as a disaster emergency worker ~~in the event of an~~ or is responding to a hazard, emergency disaster, or 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 an~~ an emergency or disaster 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~~ a hazard, emergency, disaster, or enemy attack on this country.

The term "community emergency response team member" means an individual registered as a community emergency response team member with the appropriate authority. For purposes of this chapter, a community emergency response team member is acting as a community emergency response team member only when the individual is receiving approved community emergency response team training or is acting as a member of a community emergency response team in an emergency or disaster.

1 Upon request of the bureau, the disaster emergency organization of a municipality shall
2 provide the bureau with its roster of registered community emergency response team
3 members.

4 The term "municipality" when used in reference to emergency or disaster volunteer
5 ~~disaster emergency trainees~~ means the state or district thereof, cities, counties, municipalities,
6 districts, or any other geographical entity of this state. This definition is not in any way intended
7 to alter any interpretation or ruling in regard to the use of the term "municipality" when used in
8 reference to volunteer ~~firemen~~ firefighters.

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

11 **65-06-02. Volunteer ~~firemen and firefighter~~, emergency or disaster volunteer**
12 **~~disaster emergency trainees~~, and community emergency response team member**
13 **declared employees - Covered by workers' compensation - Termination.** Volunteer
14 ~~firemen~~ firefighters, emergency or disaster volunteers, and ~~volunteer disaster emergency~~
15 ~~trainees~~ community emergency response team members are employees of the municipalities
16 which they serve and are entitled to the same protection and rights under the provisions of this
17 title as are full-time paid employees of ~~such those~~ municipalities, ~~except, however, that the~~
18 ~~protection and rights granted to volunteer disaster emergency trainees by this section shall~~
19 ~~terminate and cease in the event of an enemy attack on this country, except as to rights to~~
20 ~~benefits that shall have vested prior to the time of such attack.~~

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

23 **65-06-03. Compensation benefits - How determined.** The basis of compensation
24 and benefits to be paid to a volunteer ~~firemen~~ firefighter, an emergency or disaster volunteer
25 ~~and disaster emergency trainees~~, or a community emergency response team member under
26 the terms of this chapter shall be determined in accordance with the provisions of section
27 65-05-09; provided, however, that the weekly wage of the claimant shall be determined from a
28 computation of income derived from the claimant's business or employment.

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

1 **65-06-04. Assessment of premiums.** For the purpose of making assessments of
2 premiums to be charged against municipalities for protection of volunteer ~~firemen and volunteer~~
3 firefighters, emergency or disaster ~~emergency trainees~~ volunteers, community emergency
4 response team members, the bureau shall make such survey as may seem advisable to
5 ascertain the probable annual expenditures necessary to be paid out of the fund to carry out
6 the provisions of this chapter, and shall fix the annual charges and assessments which shall be
7 made against municipalities employing volunteer ~~firemen and volunteer disaster emergency~~
8 ~~trainees~~ firefighters, emergency or disaster volunteers, and community emergency response
9 team members. Such charge shall be a fixed sum for each one hundred of the population of
10 the municipality involved, the same to be uniform as to all such municipalities but in proportion
11 to the population thereof. In determining the amount of premium charge, the bureau may apply
12 the system of experience rating provided in this title, as applied to other risks. The bureau may
13 also establish a minimum charge or assessment to be applicable to municipalities where the
14 fixed rate or charge multiplied by the number of hundreds of the population thereof would
15 amount to less than the amount of such minimum charge or assessment. The population of a
16 municipality shall be that shown by the latest official North Dakota state or United States
17 government census, whichever may be the later.

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

20 **SECTION 15. EMERGENCY.** This Act is declared to be an emergency measure.