

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1149
(Representative Froseth)
(Senator Mutch)
(At the request of the Workers Compensation Bureau)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

65-01-09. Injury through negligence of third person - Option of employee - Fund subrogated when claim filed. When an injury or death for which compensation is payable under provisions of this title shall have been sustained under circumstances creating in some person other than the fund a legal liability to pay damages in respect thereto, the injured employee, or the employee's dependents may claim compensation under this title and proceed at law to recover damages against such other person. The fund is subrogated to the rights of the injured employee or the employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The bureau's subrogation interest may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or the employee's dependents in the event of the employee's death. Such action shall be brought in the injured employee's or in the employee's dependents' own right and name and as trustee for the bureau for the subrogation interest of the bureau. However, if the director chooses not to participate in ~~a health care malpractice an~~ action, the fund has no subrogation interest and no obligation to pay fees or costs under this section. If the injured employee or the employee's dependents do not institute suit within sixty days after date of injury, the bureau may bring the action in its own name and as trustee for the injured employee or the employee's dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents. Within sixty days after both the injured employee and the bureau have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the employee, or both, and in trust for the bureau and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or the employee's dependents, or the employer as provided above, the bureau shall pay fifty percent of the costs of the action, exclusive of attorney fee, when such costs are incurred. If there is no recovery of damages in the action, this shall be a cost of the bureau to be paid from the bureau general fund. When there is recovery of damages in the action, the costs of the action, exclusive of attorney's fees, must be

prorated and adjusted on the percentage of the total subrogation interest of the bureau recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured employee's attorney from the bureau general fund as follows:

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

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

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

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

1. The bureau shall establish a single workers' compensation account for state entities covered by chapter 32-12.2. The bureau shall use the combined payroll, premium, and loss history of selected agencies to determine future experience rates, dividends, assessments, and premiums. Classifications and premium rates must be based on the hazards and risks of the different occupations covered by this account. The payroll reporting period for this account is for a fiscal year of July first through June thirtieth. The office of management and budget shall furnish combined payroll information to the bureau in a format prescribed by the bureau.
2. Workers' compensation premiums from state entities covered by chapter 32-12.2 must be deposited in the risk management workers' compensation fund. The state investment board shall invest this fund in accordance with chapter 21-10. Funds received as contributions from state entities, all other payments deposited in this fund, and interest and income received on investments are appropriated on a continuing basis for the purposes of this fund. The purposes of this fund are to pay workers' compensation premiums for state agencies and to pay workers' 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 premiums to be paid by all municipal 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 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 65-04-15 of the North Dakota Century Code is amended and reenacted as follows:

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

The bureau may, upon request of the state tax commissioner or the secretary of state, furnish to them a list or lists of employers showing only the names, addresses, and bureau file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of

administering their duties. The bureau may provide ~~the commissioner of labor or job service North Dakota with any state or federal agency~~ information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of ~~the commissioner of labor or job service North Dakota~~ that state or federal agency. Whenever the bureau obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties. The bureau may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

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

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

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

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

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

3. An employer who is uninsured is liable for any premiums plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of noncompliance. An additional five percent penalty is due for each year of noncompliance before the most recent year, ~~not to exceed six years or fifty percent,~~ beginning on the date the bureau became aware of the employer's uninsured status, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent. The bureau may not assess a penalty for more than six years of past noncompliance. The bureau may assess additional penalties, from the date the bureau became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. The penalties for employers are in addition to any other penalties provided by law. The bureau

may reduce these penalties. However, the amount due from an employer may not be less than the actual cost and reserves of any claim attributable to the employer during the time the employer was uninsured. An employer may not appeal a bureau decision not to reduce a penalty under this subsection.

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

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

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

65-05-28.1. Employer to select preferred provider. Notwithstanding section 65-05-28, an employer subject to this title who maintains ~~an approved~~ a risk management program pursuant to section 65-04-19.1 approved by the bureau may select a preferred 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~~ such that municipality or of any other officer of ~~such that~~ such that municipality having authority to demand ~~such~~ such service ~~as a firefighter~~ as a firefighter. ~~Firemen Firefighters~~ who are paid a regular wage or stipend by the municipality ~~as such for serving as a firefighter~~ 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~~ shall be deemed volunteer ~~firemen~~ firefighters.

The term "~~emergency or disaster~~ volunteer disaster ~~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~~ 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 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.

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

The term "municipality" when used in reference to emergency or disaster 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 and firefighter, emergency or disaster volunteer disaster emergency trainees, and community emergency response team member declared employees - Covered by workers' compensation - Termination. ~~Volunteer firemen firefighters, emergency or disaster volunteers, and volunteer disaster emergency trainees community emergency response team members are employees of the municipalities which they serve and are entitled to the same protection and rights under the provisions of this title as are full-time paid employees of such those municipalities; except, however, that the protection and rights granted to volunteer disaster emergency trainees by this section shall terminate and cease in the event of an enemy attack on this country, except as to rights to benefits that shall have vested prior to the time of such attack.~~

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

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

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

65-06-04. Assessment of premiums. For the purpose of making assessments of premiums to be charged against municipalities for protection of volunteer ~~firemen and volunteer firefighters, emergency or disaster emergency trainees~~ volunteers, community emergency response team members, the bureau shall make such survey as may seem advisable to ascertain the probable annual expenditures necessary to be paid out of the fund to carry out the provisions of this chapter, and shall fix the annual charges and assessments which shall be made against municipalities employing volunteer ~~firemen and volunteer disaster emergency trainees~~ firefighters, emergency or disaster volunteers, and community emergency response team members. Such charge shall be a fixed sum for each one hundred of the population of the municipality involved, the same to be uniform as to all such municipalities but in proportion to the population thereof. In determining the amount of premium

charge, the bureau may apply the system of experience rating provided in this title, as applied to other risks. The bureau may also establish a minimum charge or assessment to be applicable to municipalities where the fixed rate or charge multiplied by the number of hundreds of the population thereof would amount to less than the amount of such minimum charge or assessment. The population of a municipality shall be that shown by the latest official North Dakota state or United States government census, whichever may be the later.

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

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

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-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1149 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 90 Nays 0 Absent 4

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State