

Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1122

Introduced by

Representative Ruby

Senator Klein

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to amend and reenact sections 65-01-09 and 65-05-05 of the North Dakota
2 Century Code, relating to subrogation and lien rights of the organization and reimbursement of
3 benefits paid by the organization; and to provide for application.

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

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

7 **65-01-09. Injury through negligence of third person - Option of employee - ~~Fund~~**
8 **Organization subrogated when claim filed - Lien created.**

9 When an injury or death for which compensation is payable under provisions of this title shall
10 have been sustained under circumstances creating in some person other than the ~~fund~~
11 organization a legal liability to pay damages in respect thereto, the injured employee, or the
12 employee's dependents may claim compensation under this title and proceed at law to recover
13 damages against such other person. The ~~fund~~ organization is subrogated to the rights of the
14 injured employee or the employee's dependents to the extent of fifty percent of the damages
15 recovered up to a maximum of the total amount it has paid or would otherwise pay in the future
16 in compensation and benefits for the injured employee. The organization also has a lien to the
17 extent of fifty percent of the damages recovered up to a maximum of the total amount it has
18 paid in compensation and benefits. The organization's subrogation interest or lien may not be
19 reduced by settlement, compromise, or judgment. The action against such other person may
20 be brought by the injured employee, or the employee's dependents in the event of the
21 employee's death. Such action shall be brought in the injured employee's or in the employee's
22 dependents' own right and name and as trustee for the organization for the subrogation interest
23 of the organization. However, if the director chooses not to participate in an action, the ~~fund~~
24 organization has no subrogation interest and no obligation to pay fees or costs under this

section and no lien. If the injured employee or the employee's dependents do not institute suit within sixty days after date of injury, the organization 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 and retain as its lien the full amount it has paid in compensation and benefits. Within sixty days after both the injured employee and the organization 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 organization 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 organization shall pay fifty percent of the costs of the action, exclusive of attorney's fees, when such costs are incurred as the action progresses before recovery of damages. If there is no recovery of damages in the action, this shall be a cost of the organization to be paid from the organization's general fund. ~~When there is~~ After 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 organization recovered to the total recovery in the action. The organization shall pay attorney's fees to the injured employee's attorney from the organization's general fund as follows:

- ~~1. Twenty percent of the subrogation interest recovered for the organization when legal action is not commenced.~~
- ~~2. Twenty-five percent of the subrogation interest recovered for the organization when action is commenced and settled before judgment.~~
- ~~3.~~ 2. Thirty-three and one-third percent of the subrogation interest recovered for the organization when recovered through judgment entered as a result of a trial on the merits or recovered through binding alternative dispute resolution.

The above provisions as to costs of the action and attorney's fees ~~is~~ are effective only when the injured employee advises the organization 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 organization's subrogation interest and lien within thirty days of receipt of a recovery in a

1 third-party action, the organization's subrogation interest is the full amount of the damages
2 recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future
3 in compensation and benefits to the injured employee or the employee's dependents, ~~and~~ no
4 costs or attorney's fees will be paid from the organization's subrogation interest and the
5 organization's lien is the full amount of the damages recovered up to a maximum of the total
6 amount it has paid. The organization's lien is created upon first payment of benefits. The lien
7 attaches to all claims, demands, settlement proceeds, judgment awards, or insurance payable
8 by reason of a legal liability of a third person. If the organization does not receive payment of
9 its lien amount within thirty days of the payment of any recovery and if the organization has
10 served, by regular mail, written notice of its lien upon the employee or the employee's
11 dependents and upon the third person, the third person, the insurer of the third person, the
12 employee or employee's dependents, and the attorney of the employee or employee's
13 dependents are liable to the organization for the lien amount. A release or satisfaction of any
14 judgment, claim, or demand given by the employee or the employee's dependent's is not valid
15 or effective against the lien. An action to collect the organization's lien amount must be
16 commenced within one year of the organization first possessing actual knowledge of a
17 recovery.

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

20 **65-05-05. Payments made to insured employees injured in course of employment**
21 **and to their dependents.** The organization shall disburse the fund for the payment of
22 compensation and other benefits as provided in this chapter to employees, or to their
23 dependents in case death has ensued, who:

- 24 1. Are subject to the provisions of this title;
- 25 2. Are employed by employers who are subject to this title; and
- 26 3. Have been injured in the course of their employment.

27 If an employee applies for benefits from another state for the same injury, the organization will
28 suspend all future benefits pending resolution of the application. If an employee is determined
29 to be eligible for benefits through some other state act, no further compensation shall be
30 allowed under this title and the employee must reimburse the organization for the entire amount

1 of benefits paid if the award covers the same time period already reimbursed by the
2 organization.

3 **SECTION 3. APPLICATION.** This Act applies to all claims regardless of the date of
4 injury.