

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1539

Introduced by

Representatives Weisz, Lefor, M. Ruby, Vigesaa

(Approved by the Delayed Bills Committee)

A BILL for an Act to amend and reenact subsection 5 of section 15-39.1-05.2, sections 15-39.1-10.11 and 15-39.1-35, subsection 5 of section 18-11-15, and sections 39-03.1-29, 54-52-23, 54-52.1-04.16, and 54-52.1-08.2 of the North Dakota Century Code, relating to duties of the employee benefits programs committee; ~~and to repeal sections 54-35-02.3 and 54-35-02.4 of the North Dakota Century Code, relating to the employee benefits programs committee;~~ to provide for a prescription drug coverage performance audit; and to provide for a legislative management report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 15-39.1-05.2 of the North Dakota Century Code is amended and reenacted as follows:

5. Shall submit to the legislative ~~management's employee benefits programs committee~~ management any necessary or desirable changes in statutes relating to the administration of the fund.

SECTION 2. AMENDMENT. Section 15-39.1-10.11 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-10.11. Postretirement adjustments.

An individual who on June 30, 2001, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a monthly increase equal to an amount determined by taking two dollars per month multiplied by the member's number of years of service credit plus one dollar per month multiplied by the number of years since the member's retirement. In addition, an individual who is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a seventy-five hundredths of one percent increase of the individual's current monthly benefit with the increased benefit payable each month thereafter beginning on July 1,

2001. An individual who on June 30, 2002, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a seventy-five hundredths of one percent increase of the individual's current monthly benefit with the increased benefit payable each month thereafter beginning on July 1, 2002. This annual benefit adjustment is conditioned on an actuarial test performed annually by the board's actuarial consultant to determine the actuarial adequacy of the statutory contribution rate. The board shall report the results of the actuarial test annually to the ~~employee benefits programs committee~~legislative management. If the actuarial valuation indicates a shortfall between the actuarially determined benchmark contribution rate and the statutory rate, the board may reduce or suspend the conditional annual benefit adjustment. The actuarial adequacy test fails if one or more of the following are true:

1. The shortfall is greater than six-tenths of one percent in any year; or
2. The shortfall is greater than three-tenths of one percent in any two consecutive years.

SECTION 3. AMENDMENT. Section 15-39.1-35 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-35. Savings clause - Plan modifications.

If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the ~~employee benefits programs committee~~legislative management. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 4. AMENDMENT. Subsection 5 of section 18-11-15 of the North Dakota Century Code is amended and reenacted as follows:

5. With the consent of the governing body of the city involved, upon the advice of its actuary that the pension schedule can be implemented on an actuarially sound basis and notification to the ~~legislative management's employee benefits programs committee~~management, and in substitution for the pension payment schedule provided in subsection 1, 3, or 4, a firefighters relief association shall pay a monthly

service pension to members of the association with the following qualifications, the following amount:

			Percent of first-class firefighter's monthly salary on January first during year the pension is paid
Years of service	Years of age		
10	50		20%
11	50		22%
12	50		24%
13	50		26%
14	50		28%
15	50		30%
16	50		32%
17	50		34%
18	50		36%
19	50		38%
20	50		40%
21	51		43%
22	52		46%
23	53		49%
24	54		52%
25	55		55%
26	56		58%
27	57		61%
28	58		64%
29	59		67%
30	60		70%

SECTION 5. AMENDMENT. Section 39-03.1-29 of the North Dakota Century Code is amended and reenacted as follows:

1 **39-03.1-29. Savings clause - Plan modifications.**

2 If the board determines that any section of this chapter does not comply with applicable
3 federal statutes or rules, the board shall adopt appropriate terminology with respect to that
4 section as will comply with those federal statutes or rules, subject to the approval of the
5 ~~employee benefits programs committee~~legislative management. Any plan modifications made
6 by the board pursuant to this section are effective until the effective date of any measure
7 enacted by the legislative assembly providing the necessary amendments to this chapter to
8 ensure compliance with the federal statutes or rules.

9 **SECTION 6. AMENDMENT.** Section 54-52-23 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **54-52-23. Savings clause - Plan modifications.**

12 If the board determines that any section of this chapter does not comply with applicable
13 federal statutes or rules, the board shall adopt appropriate terminology with respect to that
14 section as will comply with those federal statutes or rules, subject to the approval of the
15 ~~employee benefits programs committee~~legislative management. Any plan modifications made
16 by the board pursuant to this section are effective until the effective date of any measure
17 enacted by the legislative assembly providing the necessary amendments to this chapter to
18 ensure compliance with the federal statutes or rules.

19 **SECTION 7. AMENDMENT.** Section 54-52.1-04.16 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **54-52.1-04.16. Prescription drug coverage - Performance audits.**

- 22 1. Except for Medicare part D, prescription drug coverage, the board may not enter or
23 renew a contract for prescription drug coverage, whether contracting directly with a
24 pharmacy benefits manager, providing prescription drug coverage through a
25 self-insurance plan, or contracting with a carrier, unless the contract authorizes the
26 board ~~during~~for the term of the contract to conduct a performance audit of the
27 prescription drug coverage and any related pharmacy benefits management services.
28 For each contract for prescription drug coverage, the board shall conduct a
29 performance audit under this section. The contract must provide:
30 a. The board must have full access to data regarding:

- 1 (1) The total dollars paid to the pharmacy benefits manager by the carrier and
2 from all other sources under the contract with the carrier and the board;
3 (2) The total amount of dollars paid to the pharmacy benefits manager by the
4 carrier which were not subsequently paid to a licensed pharmacy in the
5 state; and
6 (3) Payments made to all pharmacy providers.

- 7 b. The board must have full access to data regarding the average reimbursement,
8 by drug ingredient cost, dispensing fee, administration fee, and any other fee
9 paid by a pharmacy benefits manager to licensed pharmacies with which the
10 pharmacy benefits manager shares common ownership or control or is affiliated.
11 c. The board must have full access to data regarding the average reimbursement,
12 by drug ingredient cost, dispensing fee, administration fee, and any other fee
13 paid by a pharmacy benefits manager to pharmacies licensed in the state.
14 d. The board must have full access to data regarding any direct and indirect fees,
15 charges, or recoupment, or any kind of assessments, effective rates, or other
16 price concessions imposed by the pharmacy benefits manager on pharmacies
17 licensed with which the pharmacy benefits manager shares common ownership
18 or control or is affiliated.
19 e. The board must have full access to data regarding any direct and indirect fees,
20 charges, or recoupment, or any kind of assessments, effective rates, or other
21 price concessions imposed by the pharmacy benefits manager, on pharmacies
22 licensed in the state.
23 f. ~~The contract must provide that~~ That all drug rebates, financial incentives, fees,
24 and discounts, from all sources, must be disclosed to the board.
25 g. The board must have full access to data to determine whether spread pricing
26 occurs, and if spread pricing occurs, full access to data regarding the spread
27 pricing.
28 h. The board must have full access to the contract and any subcontract by the
29 carrier and the pharmacy benefits manager or other entity regarding the plan
30 members.

- 1 i. The board must have access to all documents necessary for the board to
2 conduct the performance audit under this section.
- 3 j. That failure to comply with the terms of the contract relating to access to data is a
4 breach of the contract with the board. Upon a finding of breach of contract under
5 this subdivision, the board is entitled to liquidated damages in the amount of
6 twenty thousand dollars per violation.
- 7 2. The board shall use an independent auditor who has no conflict of interest with the
8 carrier, pharmacy benefits manager, or board. Data and documents provided by the
9 pharmacy benefits manager to the board may not be redacted or altered by the
10 pharmacy benefits manager. The board's auditor, the insurance department, and the
11 ~~employee benefits programs committee~~legislative management may access any
12 information the board may access under this section. All information accessed by the
13 board, board's auditor, insurance department, or ~~employee benefits programs~~
14 ~~committee~~legislative management which is a trade secret is a confidential record. The
15 pharmacy benefits manager shall provide all data and documents necessary to enable
16 the board to calculate any compensation the pharmacy benefits manager pays to the
17 public employees retirement system if a program or contract guarantee was not
18 properly implemented. The pharmacy benefits manager shall disclose to the board all
19 retained manufacturer administrative fees. This subsection does not limit the
20 information required to be disclosed to the board under subsection 1.
- 21 3. Except for Medicare part D, if the board contracts directly with a pharmacy benefits
22 manager or provides prescription drug coverage through a self-insurance plan, the
23 contract must provide the pharmacy benefits manager shall disclose to the board and
24 the board's auditor all rebates and any other fees that provide the pharmacy benefits
25 manager with sources of income under the contract, including under related contracts
26 the pharmacy benefits manager has with third parties, such as drug manufacturers.
- 27 4. Anything the board has access to under this section, the insurance department and
28 ~~employee benefits programs committee~~has legislative management have access to.

29 **SECTION 8. AMENDMENT.** Section 54-52.1-08.2 of the North Dakota Century Code is
30 amended and reenacted as follows:

54-52.1-08.2. Uniform group insurance program - Compliance with federal requirements - Group purchasing arrangements.

If the board determines that any section or the phraseology of any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section to comply with the federal statutes or rules, subject to the approval of the legislative ~~management's employee benefits programs-~~
~~committeemanagement.~~ The board may assume responsibility for group purchasing arrangements as provided by federal law. Any plan modifications made by the board under this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 9. REPEAL. Sections 54-35-02.3 and 54-35-02.4 of the North Dakota Century Code are repealed.

SECTION 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM - STATE AUDITOR - PRESCRIPTION DRUG COVERAGE PERFORMANCE AUDIT - REPORT TO LEGISLATIVE MANAGEMENT. In lieu of the requirement under section 54-52.1-04.16 that the public employees retirement system contract to conduct a prescription drug coverage performance audit of the main public employees retirement system health benefit plan for the 2021-23 contract, the state auditor shall contract in accordance with chapter 54-10 to conduct a prescription drug coverage performance audit of the main public employees retirement system health benefit plan during the 2023-24 interim, in the same manner as provided for under section 54-52.1-04.16, for contract years 2021-23. The retirement board, carrier, and pharmacy benefits manager shall provide the state auditor with access to information in the same manner as provided for a performance audit under section 54-52.1-06. The state auditor may pursue the liquidated damages for failure to provide the auditor access to data for the performance audit conducted under this section. Performance audit fees, not to exceed \$375,000, for performance audits performed under this section must be on a flat fee or hourly basis and be paid by the public employees retirement system board. The state auditor shall provide reports to the legislative management regarding contracts to conduct the prescription drug coverage performance audits, performance audit results, and audit reports issued.