

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1116

(Representative Keiser)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to create and enact six new sections to chapter 65-06.2 of the North Dakota Century Code, relating to workers' compensation coverage for inmates engaged in work programs through roughrider industries; to amend and reenact sections 65-05-07.2 and 65-06.2-01 of the North Dakota Century Code, relating to the requirement that employers pay a portion of the medical benefits of workers' compensation claims and to the definition of an inmate; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 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 3, 4, 5, 6, and 7 of this Act are not subject to this section.

SECTION 2. AMENDMENT. Section 65-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

65-06.2-01. Inmate defined. For the purposes of ~~this chapter~~ sections 65-06.2-02 and 65-06.2-03, an inmate is a person who is confined against the inmate's will in a city or county penal institution or is a person who, as a criminal defendant before a court, is ordered or elects to perform public service for a city or county in conjunction with or in lieu of a jail sentence. The term inmate does not include an individual injured while incarcerated in the North Dakota state penitentiary or any of its affiliated facilities or an individual injured in a fight, riot, recreational activity, or other incident not directly related to the inmate's work assignment.

SECTION 3. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

Workers' compensation coverage for inmates engaged in work programs through roughrider industries. The director of the department of corrections and rehabilitation may elect to provide and request from the bureau a program of modified workers' compensation coverage

established under this chapter and according to administrative rules and fee schedules of this chapter. Roughrider industries shall qualify for the bureau's risk management program before the bureau may provide the modified workers' compensation coverage. The modified workers' compensation coverage would be for inmates incarcerated at the penitentiary and engaged in work in a prison industries work program through roughrider industries, whether the program is operated by roughrider industries or by contract with another entity or private employer. An inmate who sustains a compensable injury arising out of and in the course of work in a prison industries work program through roughrider industries may only receive workers' compensation benefits under the modified workers' compensation coverage established for that purpose.

SECTION 4. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

Modified coverage of inmates engaged in work programs through roughrider industries - Conditions. Except as otherwise provided in this chapter, all claims for workers' compensation benefits under this section and sections 3, 5, and 7 of this Act are subject to title 65. A claim under this section and sections 3, 5, and 7 of this Act must be filed according to section 65-05-01. While an inmate is incarcerated at the penitentiary, the penitentiary shall pay the reasonable medical expenses of that inmate at penitentiary medical payment levels, if that inmate incurs a compensable injury while working in a prison industries work program through roughrider industries. If an inmate sustains a compensable injury while working in a prison industries work program through roughrider industries, disability, vocational rehabilitation allowance, and permanent partial impairment benefits may not accrue or be paid while the inmate is incarcerated and may only be paid after the inmate is discharged from the penitentiary. If the director of the department of corrections and rehabilitation and the bureau determine that an inmate who suffers a compensable injury under this chapter is in need of vocational rehabilitation services while the inmate is incarcerated, the penitentiary and the bureau may provide vocational rehabilitation services to the inmate. An injury resulting from a fight, riot, recreational activity, or other activity or incident other than the inmate's actual performance of work duties in a prison industries work program through roughrider industries is not compensable under this title.

SECTION 5. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

Rulemaking - Excess or reinsurance coverage. The bureau, in cooperation with the department of corrections and rehabilitation and the risk management division of the office of management and budget, shall adopt administrative rules and fee schedules for a program of modified workers' compensation coverage established and provided under this section and sections 3, 4, and 7 of this Act. The administrative rules and fee schedules must provide for the classification of inmates engaged in work in a prison industries work program through roughrider industries, the computation of premium, the payment of claims charges against the classification, the payment of medical bills, excess coverage or reinsurance, and the reimbursement by roughrider industries to the bureau for all claim benefit costs charged against that classification, as well as any allocated loss adjustment expense and all administrative expenses, including the expense of issuing the coverage, for the life of the claim in excess of premiums and medical expenses paid by roughrider industries. Roughrider industries shall secure excess coverage or shall reinsure all excess risks through the risk management division to cover the costs in excess of premiums and medical expenses paid. The risk management division shall assess a premium against roughrider industries for the cost of excess or reinsurance coverage and roughrider industries shall pay that premium.

SECTION 6. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

State reimbursement for liability in excess of collected premiums. Whenever total costs and expenses charged to the classification of the modified workers' compensation program established under this chapter exceeds the amount of premiums paid into the fund and any policy limits of the reinsurance or excess coverage purchased under section 5 of this Act, those excess costs and expenses are a general obligation of the state and the state shall reimburse the bureau for credit to the workers' compensation fund through legislative appropriation. Roughrider industries shall secure a means of reinsuring excess costs and expenses to minimize exposure of loss to the state general fund.

The bureau may not provide the additional excess coverage or reinsurance required under this section. This modified workers' compensation coverage may not be effective unless the excess coverage or reinsurance required under this section is in place.

SECTION 7. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

No liability for damages - Inmates are not employees. The state and its employees, and the department of corrections and rehabilitation and its divisions, departments, and employees may not be held liable for damages at common law or by statute if an inmate covered under a program of modified workers' compensation coverage under this chapter sustains a compensable injury while working in a prison industries work program through roughrider industries. An inmate covered under a program of modified workers' compensation coverage under this chapter is not an employee of the state or the department of corrections and rehabilitation and its divisions and departments except for the purpose of modified workers' compensation coverage under this chapter.

SECTION 8. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

Safety and performance audit. The bureau shall perform a safety audit of the roughrider industries work programs covered under this chapter and a performance audit of the program of modified workers' compensation coverage. The bureau shall submit a report with recommendations based on the safety and performance audit to an interim committee designated by the legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.

SECTION 9. EXPIRATION DATE. This Act is effective through June 30, 2003, and after that date is ineffective.

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-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1116.

House Vote: Yeas 86 Nays 5 Absent 6

Senate Vote: Yeas 46 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State