

HOUSE BILL NO. 1331

Introduced by

Representatives Keiser, Berg, Wald

1 A BILL for an Act to create and enact a new section to chapter 65-01 of the North Dakota
2 Century Code, relating to civil liability for intentional work-related injuries; to amend and reenact
3 sections 65-01-05, 65-02-23, 65-04-14, 65-09-01, and 65-09-02 of the North Dakota Century
4 Code, relating to employer and provider fraud and to the liability of a noncomplying employer for
5 work-related injuries; to provide a penalty; and to provide a continuing appropriation.

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

7 **SECTION 1.** A new section to chapter 65-01 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Civil liability for intentional injuries.** The sole exception to an employer's immunity
10 from civil liability under this title, except as provided in chapter 65-09, is an action for an injury
11 to an employee caused by an employer's intentional act done with the conscious purpose of
12 inflicting the injury.

13 **SECTION 2. AMENDMENT.** Section 65-01-05 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **65-01-05. Employment of those unprotected by insurance unlawful - Effect of**
16 **failure to secure compensation - Penalty - Injunction.** It is unlawful for any employer to
17 employ anyone, or to receive the fruits of the labor of any person, in a hazardous employment
18 as defined in this title, without first making application for workers' compensation insurance
19 coverage for the protection of such employees by notice to the bureau of the intended
20 employment, the nature thereof, and the estimated payroll expenditure for the coming
21 twelve-month period. Failure to secure workers' compensation coverage for employees by
22 application for workers' compensation insurance constitutes a class A misdemeanor. If the
23 premium due exceeds five hundred dollars, the penalty for willful failure to secure coverage is a
24 class C felony. Where the employer is a corporation or a limited liability company, the

1 president, secretary, treasurer, or person with primary responsibility is liable for the failure to
2 secure workers' compensation coverage under this section. In addition to the penalties
3 prescribed by this section the bureau may, by injunction proceedings as provided for in this title,
4 enjoin any employer from unlawfully employing uninsured workers.

5 **SECTION 3. AMENDMENT.** Section 65-02-23 of the 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **65-02-23. Workers' compensation fraud unit - Continuing appropriation.** The
8 bureau shall establish a workers' compensation fraud unit. The bureau may employ
9 investigators and licensed attorneys, or contract with a private investigator whenever feasible or
10 cost effective, to investigate and review any alleged case of fraud against the fund by
11 employers, injured workers, or providers of medical or other services, including activities
12 described under section 65-04-14 or 65-05-33. The unit shall refer cases of fraud to the bureau
13 for the imposition of administrative penalties and may refer them to the appropriate authorities
14 for prosecution. Money in the workers' compensation fund is appropriated on a continuing
15 basis for payment of costs associated with identifying, preventing, and investigating employer or
16 provider fraud. The biennial independent performance audit of the bureau must evaluate and
17 report on the effectiveness of these expenditures. The bureau may establish a process to
18 charge investigative costs against the rate class of an employer being investigated and to credit
19 any recoveries to that rate class.

20 **SECTION 4. AMENDMENT.** Section 65-04-14 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **65-04-14. False payroll report - Liability of employer - Collection and disposition**
23 **of penalty.** An employer who willfully misrepresents to the bureau or its representative the
24 amount of payroll upon which a premium under this title is based, or willfully fails to secure
25 coverage for employees, is liable to the state in the amount of two thousand dollars plus ten
26 times the amount of the difference between the premium paid and the amount of premium the
27 employer should have paid. The bureau shall collect a penalty imposed under this section in a
28 civil action in the name of the state, and the bureau shall deposit a penalty collected under this
29 section to the credit of the fund. An employer who willfully misrepresents to the bureau or its
30 representative the amount of payroll upon which a premium under this title is based, or willfully
31 fails to secure coverage for employees, is guilty of a class A misdemeanor, but if the difference

1 between the premium paid and the amount the employer should have paid is more than five
2 hundred dollars, the offense is a class C felony.

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

5 **65-09-01. Liability of uninsured employer for injury to employees.**

6 1. Any employer subject to this title who ~~fails to comply with chapter 65-04~~ is liable ~~is~~
7 in violation of section 65-04-14 is not protected by the immunity from civil liability
8 granted to employers under this title for injuries to that employer's employees for
9 damages suffered by reason of injuries sustained in the course of employment and
10 ~~is liable~~ to the dependents and legal representatives of an employee whose death
11 results from injuries sustained in the course of employment. The employer is liable
12 ~~also~~ for the premiums, reimbursements, penalties, and interest provided for in this
13 title.

14 2. The bureau shall establish a procedure by which a person may apply to the bureau
15 for a determination of whether that person is an employer required to obtain
16 workers' compensation coverage under this title. A determination under this
17 section that a person is not required to be insured is effective for no more than one
18 year from the date the person is notified of the determination. The bureau retains
19 continuing jurisdiction over determinations made under this section and may
20 reconsider or revoke its decision at any time.

21 **SECTION 6. AMENDMENT.** Section 65-09-02 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **65-09-02. Application for compensation - Common-law defenses not available -**
24 **Fund subrogated to recovery - Hearing - Time for filing.** An employee whose employer ~~has~~
25 ~~failed to comply with chapter 65-04~~ is in violation of section 65-04-14, who has been injured in
26 the course of employment, or the employee's dependents or legal representatives in case death
27 has ensued, may file an application with the bureau for an award of compensation under this
28 title and in addition may maintain a civil action against the employer for damages resulting from
29 the injury or death. In the action, the employer may not assert the common-law defenses of:

- 30 1. The fellow servant rule.
31 2. Assumption of risk.

1 3. Contributory negligence.
2 The bureau is subrogated to the recovery made in the action against the uninsured employer.
3 The subrogation interest is determined according to section 65-01-09, with the uninsured
4 employer being the person other than the fund with a legal liability to pay damages with respect
5 to the employee's injury or death. An injured employee, or the dependents of an employee who
6 died as a result of a work-related accident, shall file the original claim for compensation within
7 one year after the injury or within two years after the death. The bureau shall notify the
8 claimant and the employer that the matter is being processed under this chapter, and
9 subsequently shall hear and determine the application for compensation as it would for other
10 claims before the bureau. A determination by the bureau that a person is not an employer
11 required to obtain workers' compensation coverage under this title is a defense to any claim
12 that the person failed to obtain coverage for the time period during which the determination is
13 effective.