

HOUSE BILL NO. 1325

Introduced by

Representatives Poolman, Berg, Martinson, Porter

Senators Klein, Krebsbach

1 A BILL for an Act to amend and reenact subsections 6 and 7 of section 65-01-16, sections
2 65-02-06.1, 65-02-27, and 65-02-30 of the North Dakota Century Code, relating to the workers'
3 assistance program and to the independent audit of the workers compensation bureau; to
4 repeal section 65-02-29 of the North Dakota Century Code, section 3 of chapter 612 of the
5 1995 Session Laws of North Dakota, and section 8 of chapter 542 of the 1997 Session Laws of
6 North Dakota, relating to the independent audit of the workers compensation bureau, the
7 expiration date of the workers' adviser program, and the expiration date of the preacceptance
8 disability benefits provisions; to provide an appropriation; and to provide a continuing
9 appropriation.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 **SECTION 1. AMENDMENT.** Subsections 6 and 7 of section 65-01-16 of the 1997
12 Supplement to the North Dakota Century Code are amended and reenacted as follows:

13 6. A party has thirty days from the date of service of an administrative order in which
14 to file a request for assistance from the ~~workers' adviser program~~ office of
15 independent review under section 65-02-27.

16 7. A party has thirty days, from the date of service of an administrative order or from
17 the day the ~~workers' adviser program~~ office of independent review mails its notice
18 that the ~~program's office's~~ assistance is complete, in which to file a written request
19 for rehearing. The request must specifically state each alleged error of fact and
20 law to be reheard and the relief sought. Absent a timely and sufficient request for
21 rehearing, the administrative order is final and may not be reheard or appealed.

22 **SECTION 2. AMENDMENT.** Section 65-02-06.1 of the 1997 Supplement to the North
23 Dakota Century Code is amended and reenacted as follows:

1 **65-02-06.1. Allocated loss adjustment expenses - Continuing appropriation -**
2 **Annual review.** Money in the workers' compensation fund is appropriated on a continuing
3 basis for the payment of all allocated loss adjustment expenses experienced by the bureau in
4 its administration of this title. In its annual audit and its biennial report, the bureau shall include
5 a breakdown of those allocated loss adjustment expenses that reflect the attorney fees and
6 costs paid to attorneys who represent injured workers, the attorney fees and costs paid to
7 attorneys with whom it contracts to represent the bureau, the amount paid for administrative law
8 judges for hearings, and the court reporter and other legal expenses paid. ~~The performance~~
9 ~~audit required under section 65-02-29 must include a review of the bureau's legal costs to~~
10 ~~determine whether the system is operating efficiently.~~

11 **SECTION 3. AMENDMENT.** Section 65-02-27 of the 1997 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **65-02-27. ~~(Effective until July 31, 1999) Workers' adviser program~~ Office of**
14 **independent review.** ~~A workers' adviser program~~ The bureau's office of independent review is
15 established. The ~~program~~ office of independent review is independent of the claims department
16 of the workers compensation bureau and activities administered through the ~~program~~ office
17 must be administered in accordance with this title. The ~~program~~ office of independent review
18 must provide assistance to ~~an injured employee~~ a worker who has filed a claim, including which
19 ~~may include~~ acting on behalf of ~~an injured employee~~ a worker who is aggrieved by a decision of
20 the bureau, communicating with bureau staff regarding claim dispute resolution, and ~~advising~~
21 ~~an injured employee~~ informing a worker of the effect of decisions made by the bureau, the
22 ~~employee~~ worker, or an employer under this title. The bureau shall employ a director of the
23 ~~program, support staff for the program,~~ office of independent review and other personnel
24 determined to be necessary for the administration of the ~~program~~ office. ~~Personnel~~ A person
25 employed to administer the ~~program~~ office of independent review may not act as an attorney for
26 ~~an injured employee~~ a worker. The bureau may not pay attorney fees to an attorney who
27 represents ~~an injured employee~~ a worker in a disputed claim before the bureau unless the
28 ~~injured employee~~ worker has first attempted to resolve the dispute through the ~~workers' adviser~~
29 ~~program~~ office of independent review. A written request for assistance by ~~an injured employee~~
30 a worker who contacts the ~~program~~ office of independent review within the period for
31 requesting a hearing on an administrative order tolls the time period for requesting a hearing on

1 that order. The period begins upon notice to the ~~employee worker~~, sent by regular mail, that
2 the ~~program's office of independent review's~~ assistance to the ~~employee worker~~ is completed.
3 The information contained in a file established by the ~~workers' adviser program office of~~
4 ~~independent review on an injured employee's~~ a worker's disputed claim, including
5 ~~communications from a worker, is not subject to discovery and may not be used as evidence in~~
6 ~~subsequent proceedings relative to that dispute~~ privileged and may not be released without the
7 worker's permission. Information in the file containing the notes or mental impressions of office
8 of independent review staff is confidential and may not be released by the office of independent
9 review.

10 **SECTION 4. AMENDMENT.** Section 65-02-30 of the 1997 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **65-02-30. Independent performance audit - Bureau development of performance**
13 **measurements - Continuing appropriation.** Biennially, the director shall request the state
14 auditor to select ~~an audit~~ a firm with extensive expertise in workers' compensation practices
15 and standards to complete a performance audit of the functions and operations of the bureau
16 during that biennium. This may not be construed to require the firm to be a certified public
17 accounting firm. The audit must evaluate the departments of the bureau to determine whether
18 the bureau is providing quality service in an efficient and cost-effective manner. The firm also
19 shall conduct a performance audit of the board to determine whether the board is operating
20 within section 65-02-03.3 and within the board's bylaws. The ~~audit~~ firm's report must contain
21 recommendations for departmental improvement or an explanation of why no recommendations
22 are being made. The director, the chairman of the board, and the auditor shall present the audit
23 report and any action taken to the legislative council's legislative audit and fiscal review
24 committee and to the house and senate industry, business and labor standing committees
25 during the next regular session of the legislative session following the performance audit. The
26 director shall provide a copy of the performance audit report to the state auditor. The bureau
27 shall develop and maintain comprehensive, objective performance measurements. These
28 measurements must be evaluated as part of the independent performance audit performed
29 under this section. Money in the workers' compensation fund is appropriated on a continuing
30 basis for the payment of the expense of conducting the performance audit.

1 **SECTION 5. REPEAL.** Section 65-02-29 of the 1997 Supplement to the North Dakota
2 Century Code is repealed.

3 **SECTION 6. REPEAL.** Section 3 of chapter 612 of the 1995 Session Laws of North
4 Dakota is repealed.

5 **SECTION 7. REPEAL.** Section 8 of chapter 542 of the 1997 Session Laws of North
6 Dakota is repealed.

7 **SECTION 8. APPROPRIATION.** There is hereby appropriated out of the workers
8 compensation fund the sum of \$440,000, or so much thereof as may be necessary, to the
9 Workers Compensation Bureau for the purpose of defraying the costs of the office of
10 independent review established under section 65-02-27, for the biennium beginning July 1,
11 1999, and ending June 30, 2001.