

SENATE BILL NO. 2123

Introduced by

Industry, Business and Labor Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to amend and reenact subdivision b of subsection 16 of section 65-01-02 and
2 sections 65-04-04, 65-04-15, 65-04-17, 65-04-19.1, 65-05-28.1, and 65-06.2-04 of the North
3 Dakota Century Code, relating to the definition of employment, an employer's certificate of
4 premium payment, release of confidential information, the maximum experience rating of
5 employers, premium discounts in risk management programs, preferred providers, and
6 roughrider industries; and to provide for application.

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

8 **SECTION 1. AMENDMENT.** Subdivision b of subsection 16 of section 65-01-02 of the
9 North Dakota Century Code is amended and reenacted as follows:

- 10 b. The term does not include:
- 11 (1) Any person whose employment is both casual and not in the course of
12 the trade, business, profession, or occupation of that person's
13 employer.
- 14 (2) Any person who is engaged in an illegal enterprise or occupation.
- 15 (3) The spouse of an employer or a child under the age of twenty-two of an
16 employer. For purposes of this paragraph and section 65-07-01, "child"
17 means any legitimate child, stepchild, adopted child, foster child, or
18 acknowledged illegitimate child.
- 19 (4) Any real estate broker or real estate salesperson, provided the person
20 meets the following three requirements:
- 21 (a) The salesperson or broker must be a licensed real estate agent
22 under section 43-23-05.
- 23 (b) Substantially all of the salesperson's or broker's remuneration for
24 the services performed as a real estate agent must be directly

1 related to sales or other efforts rather than to the number of hours
2 worked.

3 (c) A written agreement must exist between the salesperson or
4 broker and the person or firm for whom the salesperson or broker
5 works, which agreement must provide that the salesperson or
6 broker will not be treated as an employee but rather as an
7 independent contractor.

8 (5) The members of the board of directors of a business corporation who
9 are not employed in any capacity by the corporation other than as
10 members of the board of directors.

11 (6) ~~Any individual delivering newspapers or shopping news, if substantially~~
12 ~~all of the individual's remuneration is directly related to sales or other~~
13 ~~efforts rather than to the number of hours worked and a written~~
14 ~~agreement exists between the individual and the publisher of the~~
15 ~~newspaper or shopping news which states that the individual is an~~
16 ~~independent contractor.~~

17 (7) An employer.

18 **SECTION 2. AMENDMENT.** Section 65-04-04 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **65-04-04. Employers obligated to pay premiums - Premium and certificates to be**
21 **mailed.** Each employer subject to this title shall pay into the fund annually the amount of
22 premiums determined and fixed by the organization for the employment or occupation of the
23 employer. The amount must be determined by the classifications, rules, and rates made and
24 published by the organization and must be based on a proportion of the annual expenditure of
25 money by the employer for the service of persons subject to the provisions of this title. The
26 organization shall mail to the employer a certificate specifying that the payment has been made.
27 The certificate, attested by the seal of the organization, is prima facie evidence of the payment
28 of the premium. Notwithstanding the provisions of section 65-04-15, the certificate may reflect
29 the employer has paid the minimum premium and has ~~estimated~~ no wages employees for the
30 period indicated on the certificate. If an employer defaults on premium payments after a
31 certificate has been issued, the organization may revoke that employer's certificate. The

1 organization shall provide that premiums to be paid by school districts, townships, and all public
2 corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of
3 that entity, and that premiums to be paid by all municipal corporations fall due at the end of the
4 calendar year, and may make provisions so that premiums of other employers fall due on
5 different or specified dates. For the purpose of effectuating different or specified due dates the
6 organization may carry new or current risks for a period of less than one year and not to exceed
7 eighteen months, either by request of the employer or action of the organization. An employer
8 subject to this chapter shall display in a conspicuous manner at the workplace and in a
9 sufficient number of places to reasonably inform employees of the fact, a certificate of premium
10 payment showing compliance with this chapter and the toll-free telephone number used to
11 report unsafe working conditions and actual or suspected workforce safety and insurance fraud.
12 Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars
13 for failure to display the notice of compliance and the toll-free telephone number as required by
14 this section.

15 **SECTION 3. AMENDMENT.** Section 65-04-15 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **65-04-15. Information in employer's files confidential - Exceptions - Penalty if**
18 **employee of organization divulges information.** The information contained in an employer's
19 file is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North
20 Dakota; is for the exclusive use and information of the organization or its agents in the
21 discharge of the organization's official duties; and is not open to the public nor usable in any
22 court in any court action or proceeding unless the organization is a party to that court action or
23 proceeding. The information contained in the file, however, may be tabulated and published by
24 the organization in statistical form for the use and information of the state departments and of
25 the public. Upon request, the organization shall disclose the rate classification of an employer
26 to the requester; however, the organization may not disclose any information that would reveal
27 the amount of payroll upon which that employer's premium is being paid or the amount of
28 premium the employer is paying. The organization may disclose whether an employer's file is
29 active, canceled, closed, pending, ~~or delinquent,~~ or uninsured. The information in the
30 employer's file may not be released in aggregate form, except to those persons contracting with
31 the organization for exchange of information pertaining to the administration of this title ~~or,~~

1 except upon written authorization by the employer for a specified purpose, or at the discretion
2 of the organization with regard to delinquent and uninsured employers. Disclosure by a public
3 servant of information contained in an employer's report, except as otherwise allowed by law, is
4 a violation of section 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is
5 disqualified from holding any office or employment with the organization.

6 The organization may, upon request of the state tax commissioner or the secretary of
7 state, furnish to them a list of employers showing only the names, addresses, and organization
8 file identification numbers of such employers as those files relate to this chapter; provided, that
9 any such list so furnished must be used by the tax commissioner or the secretary of state only
10 for the purpose of administering their duties. The organization may provide any state or federal
11 agency information obtained pursuant to the administration of this title. Any information so
12 provided must be used only for the purpose of administering the duties of that state or federal
13 agency. Whenever the organization obtains information on activities of a contractor doing
14 business in this state of which officials of the secretary of state, job service North Dakota, or tax
15 commissioner may be unaware and that may be relevant to the duties of those officials, the
16 organization shall provide any relevant information to those officials for the purpose of
17 administering their duties. The organization may provide any state agency or a private entity
18 with a list of names and addresses of employers for the purpose of jointly publishing or
19 distributing publications or other information pursuant to section 54-06-04.3. Any information so
20 provided may only be used for the purpose of jointly publishing or distributing publications or
21 other information as provided in section 54-06-04.3.

22 **SECTION 4. AMENDMENT.** Section 65-04-17 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **65-04-17. Experience rating of employers.** The organization may establish a system
25 for the experience rating of risks of employers contributing to the fund, and such system shall
26 provide for the credit rating and the penalty rating of individual risks within such limitations as
27 the organization may establish from time to time.

28 In calculating the experience rating, the organization shall determine the ~~maximum and~~
29 minimum ~~rates~~ rate for each employment classification by:

- 1 4. ~~Multiplying the required average premium rate by one and seventy five hundredths~~
2 ~~to get the maximum rate assigned to an employer with a negative experience~~
3 ~~rating; and~~
4 2. ~~Multiplying~~ multiplying the required average premium rate by twenty-five
5 hundredths to get the minimum rate assigned to an employer with a positive
6 experience rating.

7 The organization may not amend its experience rating system by emergency
8 rulemaking.

9 **SECTION 5. AMENDMENT.** Section 65-04-19.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **65-04-19.1. Premium discount for implementation of ~~preapproved risk~~**
12 **~~management program programs.~~** Any employer who ~~implements or maintains~~ achieves the
13 benchmarks outlined by the organization's risk management programs approved by the
14 ~~organization~~ is ~~entitled to~~ eligible for a discount in the annual premium ~~the employer must pay~~
15 ~~to the organization~~ for the year following the year in which the risk management ~~programs~~
16 program's benchmarks are implemented or maintained. ~~The organization may not apply the~~
17 ~~discount to an employer's premium unless the organization has approved the programs~~
18 ~~implemented by the employer~~ achieved.

19 **SECTION 6. AMENDMENT.** Section 65-05-28.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **65-05-28.1. Employer to select preferred provider.** Notwithstanding section
22 65-05-28, ~~an~~ any employer subject to this title ~~who maintains a risk management program~~
23 ~~approved by the organization~~ may select a preferred provider to render medical treatment to
24 employees who sustain compensable injuries. "Preferred provider" means a designated
25 provider or group of providers of medical services, including consultations or referral by the
26 provider or providers.

27 **SECTION 7. AMENDMENT.** Section 65-06.2-04 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **65-06.2-04. Workers' compensation coverage for inmates engaged in work**
30 **~~programs through roughrider industries.~~** The director of the department of corrections and
31 rehabilitation may elect to provide and request from the organization a program of modified

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

11 **SECTION 8. APPLICATION.** Section 4 of this Act applies to all employer accounts
12 incepting or renewing after July 1, 2008.