

Introduced by

Industry, Business and Labor Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to create and enact two new sections to chapter 65-02 and a new section to
2 chapter 65-04, of the North Dakota Century Code, relating to attorney's fees and reimbursement
3 to employers, payment of fees associated with credit or debit card payments, and settlements
4 regarding amounts owed by employers; to amend and reenact sections 65-04-19, 65-04-24,
5 and 65-04-25 and subsection 1 of section 65-04-26.1 of the North Dakota Century Code,
6 relating to audit of employers, workforce safety and insurance retaining counsel on employer
7 files, and filing payroll reports; to provide a continuing appropriation; and to provide for
8 application.

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

10 **SECTION 1.** A new section to chapter 65-02 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Attorney's fees reimbursement.**

13 An employer that is insured and in good standing with the organization is eligible for
14 reimbursement of reasonable legal costs and reasonable attorney's fees if the employer is
15 found to be uninsured or noncompliant by the workers compensation authorities of another
16 state and hires an attorney to defend against the determination. A reimbursement may be made
17 only if the organization determines the employer's employees did not regularly work in the other
18 state.

19 **SECTION 2.** A new section to chapter 65-02 of the North Dakota Century Code is created
20 and enacted as follows:

21 **Electronic transaction payment fees - Continuing appropriation.**

22 Money in the workforce safety and insurance fund is appropriated on a continuing basis for
23 payment of fees associated with credit or debit card payments made to the organization.

1 **SECTION 3. AMENDMENT.** Section 65-04-19 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **65-04-19. Organization to assign rate classifications, calculate premium, and**
4 **determine premium due from employer - Audit - Notification of billing statement as notice**
5 **of amount due.**

6 1. The organization shall assign rate classifications based on information provided to the
7 organization by the employer or information gathered through the organization's
8 investigative process.

9 2. The organization shall determine the amount of premium due from every employer
10 subject to this title for the twelve months next succeeding the date of expiration of a
11 previous period of insurance or next succeeding the date at which the organization
12 received information an employer is subject to the title.

13 3. If the organization does not receive the payroll report or, in the case of a noncompliant
14 employer, the organization does not receive reliable and accurate payroll information,
15 the organization may calculate premium using the wage cap in effect per employee
16 reported in the previous payroll report, using information obtained through the
17 organization's investigative process, or using data obtained from job service North
18 Dakota.

19 4. The organization may audit an employer conducting business in this state. Audit
20 findings are applicable to the audited period and the subsequent payroll period only.
21 unless the audit referral is made for a potential violation of section 65-04-33.

22 5. The organization shall send a copy of the billing statement to the employer. Sending
23 the billing statement, by mail or electronically, constitutes notice to the employer of the
24 amount due.

25 **SECTION 4. AMENDMENT.** Section 65-04-24 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **65-04-24. Notice of premium or assessment owing - Organization to bring suit for**
28 **premiums in default.**

29 The organization shall notify an employer of the amount of premium, assessment, penalty,
30 and interest due the organization from the employer. If the employer fails to pay that amount
31 within thirty days, the organization may collect the premium, assessment, penalties, and interest

1 due by civil action. In any action for the collection of amounts due the organization under this
2 title, the court may not review or consider the action of the organization regarding the
3 acceptance or payment of any claim. The organization may adjust or compromise the account.
4 The organization may retain counsel on a contingent or hourly fee basis to represent the
5 organization in any proceeding relating to the collection of amounts due under this title. The
6 organization shall charge attorney's fees and costs to the organization's general fund.

7 **SECTION 5. AMENDMENT.** Section 65-04-25 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **65-04-25. Service of nonresident employer in suit for premium or in suit against an**
10 **uninsured employer.**

11 If the employer in an action to collect delinquent premiums or for injuries sustained in the
12 employer's employment for which the employer did not carry the required insurance is a
13 nonresident of this state, or a foreign corporation or limited liability company doing business in
14 this state, service of the summons may be made upon any agent, representative, or foreman of
15 ~~said~~the employer in this state, or in the case of a foreign corporation, its director, and if there is
16 no agent, representative, or foreman, or in the case of a foreign corporation, director, upon
17 whom service can be made in this state, service upon the secretary of state constitutes
18 personal service upon that nonresident employer or corporation's director who has either failed
19 to secure the necessary coverage or who is delinquent in the employer's premiums, or service
20 may be made in any other manner designated by law. The organization may retain counsel who
21 is licensed in another state to represent the organization on a contingent or hourly fee basis in
22 any proceeding relating to the collection of amounts due the organization under this title. All
23 attorney's fees and costs incurred under this section are a charge to the general fund.

24 **SECTION 6. AMENDMENT.** Subsection 1 of section 65-04-26.1 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 1. An officer or director of a corporation, or manager or governor of a limited liability
27 company, or partner of a limited liability partnership, or employee of a corporation or
28 limited liability company having twenty percent stock ownership who has control of or
29 supervision over the filing of and responsibility for filing ~~premium~~payroll reports or
30 making payment of premiums or reimbursements under this title and who fails to file
31 the reports or to make payments as required, is personally liable for premiums under

1 this chapter and reimbursement under section 65-04-04.4, including interest,
2 penalties, and costs if the corporation or limited liability company does not pay to the
3 organization those amounts for which the corporation or limited liability company is
4 liable.

5 **SECTION 7.** A new section to chapter 65-04 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Settlement in discretion of organization.**

8 Notwithstanding the other provisions of this chapter, the organization may settle an amount
9 owed by an employer to resolve a disputed issue at any time and on its own motion or by
10 application of an employer.

11 **SECTION 8. APPLICATION.** Section 1 of this Act applies to attorney fees incurred after
12 July 31, 2021.