

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 paragraph 1 of subdivision b of subsection 11 of section
 2 65-01-02, subsection 4 of section 65-01-16, section 65-04-15, subsection 3 of section 65-04-19,
 3 ~~section 65-04-26.2~~, subsections 1 and 3 of section 65-04-27.2, subsection 2 of section
 4 65-04-32, and subsection 10 of section 65-05-32 of the North Dakota Century Code, relating to
 5 preventive treatment, requests for reconsideration of claim decisions issued by the organization,
 6 providing employer account information, calculation of an employer's premium and creating a
 7 presumption of accuracy, an employer conducting business with a known uninsured employer,
 8 ~~general contractor liability for subcontractors and independent contractors~~, requests for
 9 reconsideration of employer decisions issued by the organization, and privacy of records; ~~and to~~
 10 provide for a legislative management report; and to provide for application.

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

12 **SECTION 1. AMENDMENT.** Paragraph 1 of subdivision b of subsection 11 of section
 13 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

- 14 (1) Ordinary diseases of life to which the general public outside of employment
 15 is exposed or preventive treatment for communicable diseases, except that
 16 the organization may pay for preventive treatment for a health care provider
 17 as defined in section 23-07.5-01, firefighter, peace officer, correctional
 18 officer, court officer, law enforcement officer, emergency medical technician,
 19 or an individual trained and authorized by law or rule to render emergency
 20 medical assistance or treatment that is exposed an exposure to a
 21 bloodborne pathogen as defined in section 23-07.5-01 occurring in the
 22 course of employment and for exposure to rabies occurring in the course of
 23 employment.

1 **SECTION 2. AMENDMENT.** Subsection 4 of section 65-01-16 of the North Dakota Century
2 Code is amended and reenacted as follows:

3 4. A party has forty-five days from the day the notice of decision was mailed by the
4 organization ~~in which~~ to file a written request for reconsideration. The request for
5 reconsideration is considered filed only upon receipt by the organization. The
6 employer is not required to file the request through an attorney. The request must
7 state the reason for disagreement with the organization's decision and the desired
8 outcome. The request may be accompanied by additional evidence not previously
9 submitted to the organization. The organization shall reconsider the matter by informal
10 internal review of the information of record. Absent a timely and sufficient request for
11 reconsideration, the notice of decision is final and may not be reheard or appealed.

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

14 **65-04-15. Information in employer's files confidential - Exceptions - Penalty if**
15 **employee of organization divulges information.**

16 1. The information contained in an employer's file is confidential and not subject to
17 disclosure under chapter 44-04 and section 6 of article XI of the Constitution of North
18 Dakota, is for the exclusive use and information of the organization or its agents in the
19 discharge of the organization's official duties, and is not open to the public nor usable
20 in any court in any court action or proceeding unless the organization is a party to that
21 court action or proceeding. The information contained in the file, however, may be
22 tabulated and published by the organization in statistical form for the use and
23 information of the state departments and of the public.

24 2. An employer file includes all documents and data pertaining to a person that pays
25 premium to the organization, except for information relating to a grant award under
26 section 65-03-04 which the organization is specifically authorized to disclose or under
27 section 65-03-04 which does not disclose payroll or premium information as provided
28 in subsection 3.

29 3. Upon request, the organization shall disclose the rate classification of an employer to
30 the requester; however, the organization may not disclose any information that would
31 reveal the amount of payroll upon which that employer's premium is being paid or the

1 amount of premium the employer is paying. The organization may disclose whether an
2 employer's file is active, canceled, closed, pending, delinquent, or uninsured. The
3 information in the employer's file may not be released in aggregate form, except to
4 those persons contracting with the organization for exchange of information pertaining
5 to the administration of this title, except upon written authorization by the employer for
6 a specified purpose, or at the discretion of the organization with regard to delinquent
7 and uninsured employers. Disclosure by a public servant of information contained in
8 an employer's report, except as otherwise allowed by law, is a violation of section
9 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is disqualified from
10 holding any office or employment with the organization.

11 4. The organization may provide employer file information to another employer, or the
12 authorized representative of another employer, in instances of employer account
13 transfers, in instances of consolidations, and for application of section 65-04-26.2.

14 5. The organization may, upon request of the state tax commissioner or the secretary of
15 state, furnish to them a list of employers showing only the names, addresses, and
16 organization file identification numbers of such employers as those files relate to this
17 chapter; provided, that any such list so furnished must be used by the tax
18 commissioner or the secretary of state only for the purpose of administering their
19 duties.

20 6. The organization may provide any state or federal agency, or any law enforcement
21 agency, information obtained pursuant to the administration of this title. Any
22 information so provided must be used only for the purpose of administering the duties
23 of that state or federal agency or law enforcement agency.

24 5-7. Whenever the organization obtains information on activities of a contractor doing
25 business in this state of which officials of the secretary of state, job service North
26 Dakota, or tax commissioner may be unaware and that may be relevant to the duties
27 of those officials, the organization ~~shall~~may provide any relevant information to those
28 officials for the purpose of administering their duties.

29 6-8. The organization may provide any state agency or a private entity with a list of names
30 and addresses of employers for the purpose of jointly publishing or distributing
31 publications or other information pursuant to section 54-06-04.3. Any information so

1 provided may only be used for the purpose of jointly publishing or distributing
2 publications or other information as provided in section 54-06-04.3.

3 **SECTION 4. AMENDMENT.** Subsection 3 of section 65-04-19 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 3. ~~If~~ The organization may calculate an employer's premium without employer-supplied
6 wages if the organization does not receive the employer's payroll report or, in the case
7 of a noncompliant employer, the organization does not receive reliable and accurate
8 payroll information, the organization may calculate from the employer. The
9 organization's premium calculation using the wage cap in effect per employee
10 reported in the previous payroll report, using information obtained through the
11 organization's investigative process, or using data obtained from job service North
12 Dakota is presumed accurate.

13 ~~SECTION 5. AMENDMENT. Section 65-04-26.2 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~65-04-26.2. General contractor liability for subcontractors and independent~~
16 ~~contractors.~~

17 ~~1. An individual employed by a subcontractor or by an independent contractor operating~~
18 ~~under an agreement with a general contractor is deemed to be an employee of the~~
19 ~~general contractor and any subcontractor that supplied work to the subcontractor or~~
20 ~~independent contractor. A general contractor and a subcontractor are liable for~~
21 ~~payment of premium and any applicable penalty for an employee of a subcontractor or~~
22 ~~independent contractor that does not secure required coverage or pay the premium~~
23 ~~owing. The general contractor and a subcontractor are liable for payment of this~~
24 ~~premium and penalty until the subcontractor or independent contractor pays this~~
25 ~~premium and penalty. The liability imposed on a general contractor and a~~
26 ~~subcontractor under this section for the payment of premium and penalties under this~~
27 ~~title which are not paid by a subcontractor or independent contractor is limited to work~~
28 ~~performed under that general contractor.~~

29 ~~2. Notwithstanding subsection 1, a general contractor is not liable for payment of any~~
30 ~~subcontractor or independent contractor owed premium and penalty if the general~~
31 ~~contractor collects a certificate specifying the payment has been made by the~~

~~subcontractor or independent contractor, or the general contractor collects a signed form stating the subcontractor or independent contractor is exempt from payment of the premium. A signed form collected under this subsection waives the general contractor's liability for the remainder of the calendar year.~~

~~3. Upon request of the organization, a person the organization determines may have information that may assist the organization in determining the amount of wages expended by the subcontractor or independent contractor shall provide this information to the organization.~~

~~3.4. If the organization is unable to obtain complete and reliable payroll information for a subcontractor or independent contractor, the organization may calculate premium using the available payroll information of the subcontractor or independent contractor for work performed under the liable general contractor or a subcontractor as permitted in section 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure coverage or pay the premium owing arises from a single project with a general contractor, the liability of the general contractor and subcontractor is one hundred percent of the amount of premium and penalty owed by the subcontractor or independent contractor. If there is evidence showing the subcontractor or independent contractor was working on multiple projects during the period the subcontractor or independent contractor failed to secure coverage, the organization shall set the amount of the general contractor and subcontractor's liability which may not exceed seventy percent of the total premium and penalty owed by the subcontractor or independent contractor.~~

~~4.5. The definition of the term "contractor" under section 43-07-01 applies to this section.~~

SECTION 5. AMENDMENT. Subsections 1 and 3 of section 65-04-27.2 of the North Dakota Century Code are amended and reenacted as follows:

1. If it appears to the organization an employer is without workers compensation coverage or is in an uninsured status in violation of this title, ~~by registered mail~~ knowingly conducts business with an uninsured employer, the director by registered mail may issue to the employer an order to cease and desist and a notice of opportunity for hearing. Within ~~thirty~~forty-five days ~~of receipt of the~~from the date of service of the order, a party to the order may make a written request for a hearing. If a

1 hearing is not requested, the order is final and may not be appealed. If a hearing is
2 requested, the hearing must be conducted in accordance with chapter 28-32 to the
3 extent that chapter does not conflict with this section and the order remains in effect
4 until the hearing officer renders a decision. If an employer fails to appear at a hearing
5 requested under this section, that employer defaults and the allegations contained in
6 the cease and desist order are deemed true.

- 7 3. A general contractor or a subcontractor that ~~willfully~~knowingly uses the services of a
8 subcontractor precluded from operating under a cease and desist order, or an
9 employer conducting business with an uninsured employer precluded from operating
10 under a cease and desist order, is subject to a penalty of five thousand dollars and
11 one hundred dollars per day for each day the violation occurs. The organization shall
12 provide notice to the general contractor or subcontractor by regular mail before
13 assessing penalties under this section. The organization may reduce the penalties
14 under this section.

15 **SECTION 6. AMENDMENT.** Subsection 2 of section 65-04-32 of the North Dakota Century
16 Code is amended and reenacted as follows:

- 17 2. An employer has forty-five days from the day the notice of decision was mailed by the
18 organization to file a written ~~petition~~request for reconsideration. The request for
19 reconsideration is considered filed only upon receipt by the organization. The
20 employer is not required to file the request through an attorney. The request must
21 state the reason for disagreement with the organization's decision and the desired
22 outcome. The request may be accompanied by additional evidence not previously
23 submitted to the organization. The organization shall reconsider the matter by informal
24 internal review of the information of record. Absent a timely and sufficient request for
25 reconsideration, the notice of decision is final and may not be reheard or appealed.

26 **SECTION 7. AMENDMENT.** Subsection 10 of section 65-05-32 of the North Dakota
27 Century Code is amended and reenacted as follows:

- 28 10. The organization may provide any state or federal agency, or any law enforcement
29 agency, any information obtained pursuant to the administration of this title. Any
30 information so provided must be used for the purpose of administering the duties of
31 that state or federal agency or law enforcement agency.

1 **SECTION 8. APPLICATION.** Section 1 of this Act applies to all claims filed on or after
2 August 1, 2023. Sections 2 and ~~7~~6 of the Act apply to all requests for reconsideration regardless
3 of the date of decision issued by the organization.

4 **SECTION 9. WORKFORCE SAFETY AND INSURANCE - STUDY GENERAL**
5 **CONTRACTOR LIABILITY FOR SUBCONTRACTORS AND INDEPENDENT CONTRACTS -**
6 **REPORT TO LEGISLATIVE MANAGEMENT.** During the 2023-24 interim, workforce safety and
7 insurance shall study section 65-04-26.2 regarding the liability of a general contractor or the
8 payment of premium for subcontractors and independent contractors who do not secure
9 required coverage or pay premiums owed. The study must address whether changes can be
10 made to gain efficiencies for those subject to 65-04-26.2 and determine whether changes can
11 be made to increase the effective application of the statute. The study must include research of
12 comparable laws in other jurisdictions and a review of workforce safety and insurance policies
13 and procedures in applying 65-04-26.2. Workforce safety and insurance shall seek input from
14 relevant stakeholders including business personnel and industry groups. Before July 1, 2024,
15 workforce safety and insurance shall report the findings of the study and recommend any
16 statutory changes to the legislative management.