

**FIRST ENGROSSMENT  
with Conference Committee Amendments  
ENGROSSED HOUSE BILL NO. 1052**

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 subsections 1 and 3 of section 65-04-27.2, subsection 2 of section 65-04-32, and subsection 10  
4 of section 65-05-32 of the North Dakota Century Code, relating to preventive treatment,  
5 requests for reconsideration of claim decisions issued by the organization, providing employer  
6 account information, calculation of an employer's premium and creating a presumption of  
7 accuracy, an employer conducting business with a known uninsured employer, requests for  
8 reconsideration of employer decisions issued by the organization, and privacy of records; to  
9 provide for a legislative management report; and to provide for application.

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

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

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

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

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

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

12           **65-04-15. Information in employer's files confidential - Exceptions - Penalty if**  
13 **employee of organization divulges information.**

- 14           1. The information contained in an employer's file is confidential and not subject to  
15 disclosure under chapter 44-04 and section 6 of article XI of the Constitution of North  
16 Dakota, is for the exclusive use and information of the organization or its agents in the  
17 discharge of the organization's official duties, and is not open to the public nor usable  
18 in any court in any court action or proceeding unless the organization is a party to that  
19 court action or proceeding. The information contained in the file, however, may be  
20 tabulated and published by the organization in statistical form for the use and  
21 information of the state departments and of the public.
- 22           2. An employer file includes all documents and data pertaining to a person that pays  
23 premium to the organization, except for information relating to a grant award under  
24 section 65-03-04 which the organization is specifically authorized to disclose or under  
25 section 65-03-04 which does not disclose payroll or premium information as provided  
26 in subsection 3.
- 27           3. Upon request, the organization shall disclose the rate classification of an employer to  
28 the requester; however, the organization may not disclose any information that would  
29 reveal the amount of payroll upon which that employer's premium is being paid or the  
30 amount of premium the employer is paying. The organization may disclose whether an  
31 employer's file is active, canceled, closed, pending, delinquent, or uninsured. The

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

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

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

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

22 ~~5-7.~~ Whenever the organization obtains information on activities of a contractor doing  
23 business in this state of which officials of the secretary of state, job service North  
24 Dakota, or tax commissioner may be unaware and that may be relevant to the duties  
25 of those officials, the organization ~~shall~~may provide any relevant information to those  
26 officials for the purpose of administering their duties.

27 ~~6-8.~~ The organization may provide any state agency or a private entity with a list of names  
28 and addresses of employers for the purpose of jointly publishing or distributing  
29 publications or other information pursuant to section 54-06-04.3. Any information so  
30 provided may only be used for the purpose of jointly publishing or distributing  
31 publications or other information as provided in section 54-06-04.3.

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

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

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

13       1.    If it appears to the organization an employer is without workers compensation  
14            coverage ~~or~~ is in an uninsured status in violation of this title, ~~by registered mail or~~  
15            knowingly conducts business with an uninsured employer, the director by registered  
16            mail may issue to the employer an order to cease and desist and a notice of  
17            opportunity for hearing. ~~Within thirty-five days of receipt of the~~from the date of  
18            service of the order, a party to the order may make a written request for a hearing. If a  
19            hearing is not requested, the order is final and may not be appealed. If a hearing is  
20            requested, the hearing must be conducted in accordance with chapter 28-32 to the  
21            extent that chapter does not conflict with this section and the order remains in effect  
22            until the hearing officer renders a decision. If an employer fails to appear at a hearing  
23            requested under this section, that employer defaults and the allegations contained in  
24            the cease and desist order are deemed true.

25       3.    A general contractor or a subcontractor that ~~willfully~~knowingly uses the services of a  
26            subcontractor precluded from operating under a cease and desist order, ~~or an~~  
27            employer conducting business with an uninsured employer precluded from operating  
28            under a cease and desist order, is subject to a penalty of five thousand dollars and  
29            one hundred dollars per day for each day the violation occurs. The organization shall  
30            provide notice to the general contractor or subcontractor by regular mail before

1 assessing penalties under this section. The organization may reduce the penalties  
2 under this section.

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

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

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

16 10. The organization may provide any state or federal agency, or any law enforcement  
17 agency, any information obtained pursuant to the administration of this title. Any  
18 information so provided must be used for the purpose of administering the duties of  
19 that state or federal agency or law enforcement agency.

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

23 **SECTION 9. WORKFORCE SAFETY AND INSURANCE - STUDY GENERAL**  
24 **CONTRACTOR LIABILITY FOR SUBCONTRACTORS AND INDEPENDENT CONTRACTS -**  
25 **REPORT TO LEGISLATIVE MANAGEMENT.** During the 2023-24 interim, workforce safety and  
26 insurance shall study section 65-04-26.2 regarding the liability of a general contractor or the  
27 payment of premium for subcontractors and independent contractors who do not secure  
28 required coverage or pay premiums owed. The study must address whether changes can be  
29 made to gain efficiencies for those subject to section 65-04-26.2 and determine whether  
30 changes can be made to increase the effective application of the statute. The study must  
31 include research of comparable laws in other jurisdictions and a review of workforce safety and

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- 1 insurance policies and procedures in applying section 65-04-26.2. Workforce safety and
- 2 insurance shall seek input from relevant stakeholders including business personnel and industry
- 3 groups. Before July 1, 2024, workforce safety and insurance shall report the findings of the
- 4 study and recommend any statutory changes to the legislative management.