

WORKFORCE SAFETY AND INSURANCE

CHAPTER 580

SENATE BILL NO. 2214

(Senators Magrum, Boehm)
(Representatives Christensen, S. Olson)

AN ACT to create and enact a new paragraph to subdivision b of subsection 16 of section 65-01-02 of the North Dakota Century Code, relating to the exclusions from the term employee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²² **SECTION 1.** A new paragraph to subdivision b of subsection 16 of section 65-01-02 of the North Dakota Century Code is created and enacted as follows:

An athlete participating in a contact sport. As used in this paragraph, "contact sport" means a team or individual competitive athletic activity that includes significant physical contact between the athletes involved. The term includes football and hockey.

SECTION 2. EFFECTIVE DATE. This Act is effective through August 31, 2028, and after that date is ineffective.

Approved March 22, 2023

Filed March 23, 2023

³²² Section 65-01-02 was also amended by section 1 of House Bill No. 1052, chapter 581.

CHAPTER 581

HOUSE BILL NO. 1052

(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact paragraph 1 of subdivision b of subsection 11 of section 65-01-02, subsection 4 of section 65-01-16, section 65-04-15, subsection 3 of section 65-04-19, subsections 1 and 3 of section 65-04-27.2, subsection 2 of section 65-04-32, and subsection 10 of section 65-05-32 of the North Dakota Century Code, relating to preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, an employer conducting business with a known uninsured employer, requests for reconsideration of employer decisions issued by the organization, and privacy of records; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²³ **SECTION 1. AMENDMENT.** Paragraph 1 of subdivision b of subsection 11 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

³²³ Section 65-01-02 was also amended by section 1 of Senate Bill No. 2214, chapter 580.

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

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

1. The information contained in an employer's file is confidential and not subject to disclosure under chapter 44-04 and section 6 of article XI of the Constitution of North Dakota, is for the exclusive use and information of the organization or its agents in the discharge of the organization's official duties, and is not open to the public nor usable in any court in any court action or proceeding unless the organization is a party to that court action or proceeding. The information contained in the file, however, may be tabulated and published by the organization in statistical form for the use and information of the state departments and of the public.
2. An employer file includes all documents and data pertaining to a person that pays premium to the organization, except for information relating to a grant award under section 65-03-04 which the organization is specifically authorized to disclose or under section 65-03-04 which does not disclose payroll or premium information as provided in subsection 3.
3. Upon request, the organization shall disclose the rate classification of an employer to the requester; however, the organization may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. The organization may disclose whether an employer's file is active, canceled, closed, pending, delinquent, or uninsured. The information in the employer's file may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title, except upon written authorization by the employer for a specified purpose, or at the discretion of the organization with regard to delinquent and uninsured employers. Disclosure by a public servant of information contained in an employer's report, except as otherwise allowed by law, is a violation of section 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the organization.
4. The organization may provide employer file information to another employer, or the authorized representative of another employer, in instances of employer account transfers, in instances of consolidations, and for application of section 65-04-26.2.
5. The organization may, upon request of the state tax commissioner or the secretary of state, furnish to them a list of employers showing only the names, addresses, and organization file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties.
6. The organization may provide any state or federal agency, or any law enforcement agency, information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of that state or federal agency or law enforcement agency.

- 5-7. Whenever the organization obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the organization ~~shall~~may provide any relevant information to those officials for the purpose of administering their duties.
- 6-8. The organization may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

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

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

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 or 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 hearing is not requested, the order is final and may not be appealed. If a hearing is requested, the hearing must be conducted in accordance with chapter 28-32 to the extent that chapter does not conflict with this section and the order remains in effect until the hearing officer renders a decision. If an employer fails to appear at a hearing requested under this section, that employer defaults and the allegations contained in the cease and desist order are deemed true.
3. A general contractor or a subcontractor that ~~willfully~~knowingly uses the services of a subcontractor precluded from operating under a cease and desist order, ~~or an employer conducting business with an uninsured employer precluded from operating under a cease and desist order,~~ is subject to a penalty of five thousand dollars and one hundred dollars per day for each day the violation occurs. The organization shall provide notice to the general contractor or subcontractor by regular mail before assessing penalties under this section. The organization may reduce the penalties under this section.

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

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

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

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

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

Approved April 26, 2023

Filed April 26, 2023

CHAPTER 582

HOUSE BILL NO. 1279

(Representatives Roers Jones, Heinert, Jonas, Louser, Schauer, Thomas)
(Senators Barta, Larson, Lee)

AN ACT to create and enact section 65-01-15.2 of the North Dakota Century Code, relating to compensability for cardiac events for firefighters and law enforcement officers; to amend and reenact sections 65-01-15 and 65-01-15.1 of the North Dakota Century Code, relating to documentation required for firefighters and law enforcement officers and the presumption of compensability for firefighters and law enforcement officers; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15. Yearly documentation required for firefighter and law enforcement officer.

Except for benefits for an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under ~~section~~sections 65-01-15.1 and 65-01-15.2, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a health care provider which indicates the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years.

³²⁴ **SECTION 2. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.

1. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, is presumed to have been suffered in the line of duty. The presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related.
2. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter.

³²⁴ Section 65-01-15.1 was also amended by section 2 of Senate Bill No. 2116, chapter 465.

3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. The five years of continuous service requirement may include full-time paid service outside the state. An employer shall require provide at no expense a medical examination upon employment, for any employee subject to this section.
 - a. After the initial medical examination, an employer shall require provide at no expense at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test indicating cardiovascular health to a reasonable degree of medical certainty.
 - b. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination.
 - c. If a medical examination produces a false positive result for a condition covered under this section, the organization shall consider the condition to be a compensable injury. In the case of a false positive result, neither the coverage of the condition nor the period of disability may exceed fifty-six days. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section.
4. For purposes of this section, "law enforcement officer" means a person an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.
5. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

³²⁵ **SECTION 3.** Section 65-01-15.2 of the North Dakota Century Code is created and enacted as follows:

65-01-15.2. Presumption of compensability for cardiac events of full-time paid firefighters and law enforcement officers.

1. A heart attack, stroke, vascular rupture, or other similar cardiac event, is presumed to be a compensable injury when a full-time paid firefighter or law enforcement officer:
 - a. Engages in a situation involving strenuous physical law enforcement activity, fire suppression activity, or emergency response activity, or participates in a training exercise involving strenuous physical activity; and
 - b. The heart attack, stroke, vascular rupture, or other similar cardiac event occurs no later than forty-eight hours after the full-time paid firefighter or law enforcement officer engaged or participated in the activity listed under subdivision a.
2. The presumption under subsection 1 may be rebutted by clear and convincing evidence the condition or impairment was not work related.
3. This section applies to any full-time paid firefighter or law enforcement officer who has less than five years of continuous service.
4. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless the full-time paid firefighter or law enforcement officer has successfully passed a medical examination that failed to reveal any evidence of a cardiovascular condition.
5. For purposes of this section, "law enforcement officer" means an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full-time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.

SECTION 4. RETROACTIVE APPLICATION. This Act applies retroactively to a claim for workers' compensation benefits filed after October 1, 2021, regardless of date of injury. A full-time paid firefighter or law enforcement officer who submitted a claim for benefits between October 1, 2021, and the effective date of this Act may resubmit the claim if the initial claim was denied by the organization for not being a compensable injury.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 6, 2023

Filed February 6, 2023

³²⁵ Section 65-01-15.2 was amended by section 3 of Senate Bill No. 2116, chapter 465.

CHAPTER 583

SENATE BILL NO. 2038

(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to repeal section 65-02-30 of the North Dakota Century Code, relating to the quadrennial performance evaluation of workforce safety and insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²⁶ **SECTION 1. REPEAL.** Section 65-02-30 of the North Dakota Century Code is repealed.

Approved March 14, 2023

Filed March 15, 2023

³²⁶ Section 65-02-30 was amended by section 1 of Senate Bill No. 2040, chapter 584.

CHAPTER 584

SENATE BILL NO. 2040

(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-02-30 of the North Dakota Century Code, relating to quadrennial performance evaluation of workforce safety and insurance; and to repeal section 54-35-22 of the North Dakota Century Code, relating to the workers' compensation review committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²⁷ **SECTION 1. AMENDMENT.** Section 65-02-30 of the North Dakota Century Code is amended and reenacted as follows:

65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation.

Once every four years, the director shall request the state auditor to select a firm with extensive expertise in workers' compensation practices and standards to complete a performance evaluation of the functions and operations of the organization during that evaluation period. This may not be construed to require the firm to be a certified public accounting firm. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director or the director's designee, the chairman of the board or the chairman's designee, and a representative of the firm shall present the evaluation report and any action taken to the legislative management's ~~workers' compensation review committee~~ management and to the governor. The director shall provide a copy of the performance evaluation report to the state auditor. Except as otherwise provided in this section, the ~~workers' compensation review committee~~ legislative management may not select ~~no~~ more than four elements to be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor shall include the elements selected by the ~~committee~~ legislative management in the performance evaluation, but the state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the ~~workers' compensation review committee~~ legislative management, may not exceed eight. In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the ~~workers' compensation review committee~~ legislative management the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements. Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation. The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section.

SECTION 2. REPEAL. Section 54-35-22 of the North Dakota Century Code is repealed.

³²⁷ Section 65-02-30 was repealed by section 1 of Senate Bill No. 2038, chapter 583.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 585

SENATE BILL NO. 2039

(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact sections 54-57-09 and 65-05.1-06.3 of the North Dakota Century Code, relating to the office of administrative hearings case tracking report to the legislative management and workforce safety and insurance pilot programs status report to the legislative management; and to repeal sections 65-01-19 and 65-03-05 of the North Dakota Century Code, relating to workforce safety and insurance pilot programs and safety grant programs reports to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-57-09 of the North Dakota Century Code is amended and reenacted as follows:

54-57-09. Case processing tracking and reporting.

1. The office of administrative hearings shall track the time elapsed between the date the office receives a file from workforce safety and insurance and the date of the administrative law judge's decision, and monthly calculate a rolling six-month average of time elapsed.
2. The office of administrative hearings shall adopt case processing standards and policies, including provisions intended to meet a goal of an average of two hundred fifteen days or less per case. Administrative law judges have an average of two hundred fifteen days to issue a decision for any injured worker case from the date the office of administrative hearings receives a file from workforce safety and insurance. The date of the last assigned file is the date of assignment for all consolidated files.
3. The office of administrative hearings ~~and workforce safety and insurance~~ shall report statistical information regarding results under the case processing standards and policies to the ~~legislative management and the state advisory council~~ each quarter. The reports must include the information required under subsection 1.

SECTION 2. AMENDMENT. Section 65-05.1-06.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.3. Rehabilitation services pilot programs --Reports. (Effective after August 31, 2022)

The organization may implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services. A pilot program may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the outcome of the rehabilitation services offered by the organization to assist the injured employee in

making adjustments necessitated from the employee's injury and to improve the effectiveness of vocational rehabilitation services in returning an employee to substantial gainful employment. Notwithstanding laws to the contrary, a pilot program may address a broad range of approaches, including collaborative efforts between the organization and the injured employee through which there are variances from the rehabilitation services hierarchy; return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of public and private entities. If a pilot program utilizes coordination of services of other state agencies, such as job service North Dakota, department of health and human services, North Dakota university system, or department of public instruction, the organization shall consult with the state agency in establishing the relevant portions of the pilot program, and the state agency shall cooperate with the organization in implementing the pilot program. ~~The organization shall provide status reports on current pilot programs in accordance with section 65-01-19.~~

SECTION 3. REPEAL. Sections 65-01-19 and 65-03-05 of the North Dakota Century Code are repealed.

Approved March 14, 2023

Filed March 15, 2023