

**WORKFORCE SAFETY & INSURANCE
2023 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION**

BILL NO: SB 2116

BILL DESCRIPTION: WSI Red Tape Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its consulting actuaries, The Burkhalter Group, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation:

- Repeals the WSI Information Fund;
- Removes requirement for WSI to produce a biennial report;
- Repeals claim file retention statute requiring file retention until 10 years post death;
- Cleans up the safety regulation and enforcement statutes to conform to current practice;
- Eliminates an unnecessary financial report to OMB;
- Eliminates the educational revolving loan fund; and
- Repeals the retrospective rating program statute.

FISCAL IMPACT: No significant fiscal impact is anticipated.

DATE: December 30, 2022

work accidents, or an employer or a health care provider who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol, recreational marijuana use, or illegal use of a controlled substance may request the employee undergo testing to determine if the employee had alcohol, marijuana, or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated by company policy, the employee forfeits all entitlement to workforce safety and insurance benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to benefits. If a claim for death benefits is filed, the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

65-01-12. Attorney general to represent organization.

Upon the request of the organization, the attorney general shall institute and prosecute the necessary actions or proceedings for the enforcement of this title or for the recovery of any money due the fund or of any penalty provided for in this title, and shall defend all suits, actions, or proceedings brought against the organization or any of its employees in the attorney general's official capacity.

65-01-13. Information fund - Continuing appropriation.

There is created a fund to be known as the information fund within the workforce safety and insurance fund, to which the organization shall deposit all moneys received from private citizens, businesses, associations, corporations, and limited liability companies for providing these entities with publications and statistical information concerning workforce safety and insurance matters. The information must be provided at cost. The moneys in the fund are appropriated, as a standing and continuing appropriation, to workforce safety and insurance to pay publication and statistical processing expenses incurred by the organization.

65-01-14. Informal decision by organization.

Repealed by S.L. 1997, ch. 532, § 6.

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 65-01-15.1, 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.

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.
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

- f. This subsection does not prevent an injured employee or an employer from hiring or paying an attorney.
- g. All disputes relating to payment or denial of an attorney's fees or costs must be submitted to the court, hearing officer, or arbitrator for decision, but a court, hearing officer, or arbitrator may not order the maximum fees be exceeded.
- h. The organization shall pay an injured employee's attorney's fees and costs from the organization's general fund. The organization is liable for its costs on appeal if the decision of the organization is affirmed.

65-02-08.1. State advisory council - Composition - Compensation - Duties.

Repealed by S.L. 1997, ch. 528, § 7.

65-02-09. General information to public - Biennial report.

The organization, from time to time, may publish and distribute among employers and employees general information as to the business transacted by the organization as in its judgment may be useful. The director shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must include:

1. A statement of the number of awards made by it.
2. A general statement of the causes of accidents leading to the injuries for which the awards were made.
3. A detailed statement of the disbursements from the fund.
4. A statement of the conditions of the various funds carried by the organization.
5. A breakdown of those allocated loss adjustment expenses that reflect the attorney's fees and costs paid to attorneys who represent injured workers, the attorney's fees and costs paid to attorneys with whom the organization contracts to represent the organization, the amount paid for administrative law judges for hearings, and the amount paid for the court reporter and any other legal expenses.
6. Any other matters which the organization wishes to call to the attention of the governor, including any recommendation for legislation or otherwise which it may have to make.

65-02-10. Organization to submit budget.

Repealed by S.L. 1959, ch. 372, § 117.

65-02-11. Process and procedure - Investigations - Examination of witnesses - Costs.

Except as otherwise provided by this title, process and procedure under this title is governed by chapter 28-32. The organization may make investigation as in its judgment is best calculated to ascertain the substantial rights of all the parties. Any member of the organization and any person specifically designated by the organization may examine witnesses and records, with or without subpoena, examine, investigate, copy, photograph, and take samples at any pertinent location or facility, administer oaths to witnesses, require the attendance of witnesses without fee whenever the testimony is taken at the home, office, or place of work of those witnesses, and generally to do anything necessary to facilitate or promote the efficient administration of this title. The organization may issue a subpoena to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and any other records deemed necessary by the organization. Subpoenas may be enforced by applying to a judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure to comply with the order of the district court is contempt as provided in chapter 27-10. The organization shall pay the costs of any medical examination, scientific investigation, medical or expert witness appearance or report, requested or approved by the organization, relating to a claim for benefits, from the organization's general fund.

65-02-24. Immunity from civil liability.

A person who notifies the organization or who assists the organization on any matter pertaining to the administration of this title of an alleged violation of section 65-04-33 or 65-05-33, or who provides information in the course of an investigation of an alleged violation of section 65-04-33 or 65-05-33, is not subject to civil liability for that action if the action was in good faith and without malice. At the request of the person who notifies or assists the organization or who provides information to the organization, the organization may not reveal the identity of that person or disclose any information that may reveal the identity of that person to any person other than a representative of or a person rendering assistance to the organization.

65-02-25. Amnesty for certain claims and accounts.

After the workforce safety and insurance fraud unit is established, the organization may offer, not more than once every twelve months, a period of amnesty to any person who has willfully made a false claim or false statement or who has willfully misrepresented payroll, to allow that person the opportunity to close and repay the false claim, to close and repay the claim for which a false statement has been made, or to pay the appropriate premium and penalty on an account for which payroll was misrepresented. The amnesty period may not exceed sixty days. A person who receives amnesty under this section is immune from criminal prosecution relating to those acts for which amnesty is received.

65-02-26. Nondisclosure of investigative information.

Any investigative information gathered pursuant to section 65-02-23 is criminal investigative information and may not be disclosed except as provided in section 44-04-18.7. Notwithstanding sections 65-04-15 and 65-05-32, the fraud unit may provide investigative and claim file information to other fraud investigative and law enforcement entities, and gather investigative and claim file information from them.

65-02-27. Decision review office.

The organization's decision review office is established. The decision review office is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title. The decision review office shall provide assistance to an injured employee who has filed a claim, which may include acting on behalf of an injured employee who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing an injured employee of the effect of decisions made by the organization, an injured employee, or an employer under this title. The organization shall employ a director of the decision review office and other personnel determined to be necessary for the administration of the office. An individual employed to administer the decision review office may not act as an attorney for an injured employee. The organization may not pay attorney's fees to an attorney who represents an injured employee in a disputed claim before the organization unless the injured employee has first attempted to resolve the dispute through the decision review office. A written request for assistance by an injured employee who contacts the decision review office within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order. The period begins upon notice to the injured employee, sent by regular mail, that the decision review office's assistance to the injured employee is completed. The information contained in a file established by the decision review office on an injured employee's disputed claim, including communications from an injured employee, is privileged and may not be released without the injured employee's permission. Information in the file containing the notes or mental impressions of decision review office staff is confidential and may not be released by the decision review office.

65-02-28. Organization claim files - Destruction.

If the organization determines that a person who has a claim for injury on file has been deceased for at least ten years, the organization may destroy any claim files for that person.

The organization may not destroy any claim file it specifically has been requested not to destroy. The organization shall establish a means for maintaining statistical and identifying information for any claim files destroyed under this section.

65-02-29. Independent audit.

Repealed by S.L. 1999, ch. 553, § 8.

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 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 may 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 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, 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 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.

65-02-31. Payments in lieu of taxes by organization.

If a building and associated real property is purchased by the organization pursuant to a legislative grant of authority, the organization shall make payments in lieu of property taxes in the manner and according to the conditions and procedures that would apply if the building and property were privately owned.

65-02-32. Assessment of property - Notice to organization.

All property subject to valuation must be assessed for the purpose of making the payments under section 65-02-31 in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year, the county auditor of any county in which property subject to valuation is located shall give written notice to workforce safety and insurance and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in that county.

65-02-33. Occupational health and preventive medicine programs - Continuing appropriation.

The organization may establish and implement programs to advance occupational health and preventive medicine in this state and to protect the integrity of the fund. These programs may include the provision of education or training, consultation, grants, scholarships, or other incentives that promote superior care and treatment of the workforce in this state. Funds in the

CHAPTER 65-03 PREVENTION OF INJURIES

65-03-01. Jurisdiction of organization - Safety regulations - Enforcement.

The organization shall have full power and jurisdiction over, and the supervision of, every employment and place of employment subject to the provisions of this title, and whenever necessary adequately to enforce and administer this title, shall issue and enforce all necessary and proper rules and safety regulations. The organization may designate some suitable person to make inspections to determine if safety rules and regulations are being followed or complied with.

65-03-02. Penalty for violation of safety rule or regulation - Fine - Penalty premium rating - Extension of time to comply.

Any employer who shall fail to comply with any reasonable safety rule or regulation made in accordance with the provisions of this chapter, within twenty days after notice from the organization or its authorized agent, shall be guilty of an infraction, and the organization may penalize the premium rating of the employer guilty of such violation in an amount not exceeding ten percent during the year or years in which such violation continues. Upon application and a proper and sufficient showing that the rule or regulation cannot be complied with within the twenty days herein specified, the organization may extend such time for such period as the facts in each case warrant, but not to exceed three months.

65-03-03. Mine foremen - Rules regarding.

Repealed by S.L. 2009, ch. 608, § 6.

65-03-04. Safety programs - Continuing appropriation.

The organization shall create and operate work safety and loss prevention programs to protect the health of covered employees and the financial integrity of the fund, including programs promoting safety practices by employers and employees through education, training, consultation, grants, or incentives. As a term of award of a grant under this section, a recipient authorizes the organization to disclose the name of the award recipient and the amount of the award received. Any funds deposited in the workforce safety insurance fund are appropriated to the organization on a continuing basis for the purpose of funding the programs implemented under this section.

65-03-05. Safety grant programs - Reporting requirements.

The organization shall compile data relating to grants issued under this chapter. The organization shall report biennially to the legislative council.

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, 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. The organization may provide any state or federal 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.
5. 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 provide any relevant information to those officials for the purpose of administering their duties.
6. 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.

65-04-16. Adjustment of premium paid on estimated payroll.

In the event that the amount of premium collected from any employer at the beginning of any premium period is ascertained and calculated by using as a basis the estimated expenditures for wages for the period of time covered by such premium payments, an adjustment of the amount of such premiums shall be made at the end of said period, and the actual amount of such premium shall be determined from the actual expenditure of wages for said period.

65-04-17. Experience rating of employers.

The organization may establish a system for the experience rating of risks of employers contributing to the fund, and such system shall provide for the credit rating and the penalty rating of individual risks within such limitations as the organization may establish from time to time.

In calculating the experience rating, the organization shall determine the minimum rate for each employment classification by multiplying the required average premium rate by twenty-five hundredths to get the minimum rate assigned to an employer with a positive experience rating.

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

65-04-17.1. Retrospective rating program.

The organization may establish a program to provide retrospective rating. The organization may not require an employer to participate in the program, but it may refuse to allow an employer to participate when it determines that refusal is appropriate. The organization shall establish formulas, based on sound actuarial principles, for premium calculation under the program. Sections 65-04-01, 65-04-04, and 65-04-04.2 do not apply to retrospective premiums allowed under this section. Any moneys held by the organization for future claim payments must accrue interest at a reasonable rate as determined by the organization. The organization may execute a contract with an employer to establish a retrospective rating plan for that employer. The contract is binding on the employer and the organization for the term identified in the contract. The term identified in the contract may extend past the end of the biennium in which the contract is executed but the term may not exceed ten years. The organization shall

determine the amount of the deposit premium to be paid by an employer participating in the program. The amount of the deposit premium must be based on current rates, payroll, and experience rate factors. The organization shall establish the maximum premium liability of a participating employer. The maximum premium is not subject to the limitations of section 65-04-17. The organization may provide refunds from the workforce safety and insurance fund when it is determined appropriate under the retrospective rating formula established. The organization shall provide any refund due within thirty days after the date of the retrospective premium valuation. The organization may impose a penalty if an employer fails to pay additional premium due within thirty days after the retrospective premium valuation. The organization may require an employer to provide a bond, letter of credit, or other security approved by the organization to guarantee payment of future employer obligations incurred by a retrospective rating plan. The organization may charge an employer participating in the program a nonrefundable surcharge for the purpose of assisting retirement of any unfunded liability of the fund.

65-04-18. Subsequent injury or aggravation of previous injury or condition of employee - Charge to employer's risk - Charge of part of claim to subsequent injury fund.

Whenever a subsequent injury or aggravation of a previous injury or pre-existing condition occurs to an employee, the risk of the employer for whom such person was working at the time of such subsequent injury or aggravation shall be charged only with the amount of the awards resulting from such subsequent injury or aggravation. Whenever such subsequent injury or aggravation results in further disability or an aggravation of a pre-existing injury or condition, the compensation which is in excess of the amount to which the injured employee would have been entitled solely by reason of the subsequent injury or aggravation shall be charged to the subsequent injury fund and not to the classification or the risk to which the subsequent injury or aggravation is charged.

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

1. The organization shall assign rate classifications based on information provided to the organization by the employer or information gathered through the organization's investigative process.
2. The organization shall determine the amount of premium due from every employer subject to this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the organization received information an employer is subject to the title.
3. If the organization does not receive the payroll report or, in the case of a noncompliant employer, the organization does not receive reliable and accurate payroll information, the organization may calculate premium 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.
4. The organization may audit an employer conducting business in this state. Audit findings are applicable to the audited period and the subsequent payroll period only, unless the audit referral is made for a potential violation of section 65-04-33.
5. The organization shall send a copy of the billing statement to the employer. Sending the billing statement, by mail or electronically, constitutes notice to the employer of the amount due.

65-04-19.1. Premium discount for implementation of risk management programs.

Any employer who achieves the benchmarks outlined by the organization's risk management programs is eligible for a discount in the annual premium for the year following the year in which the risk management program's benchmarks are achieved.