CHAPTER 65-04
THE FUND AND PREMIUM PAYMENTS THERETO

65-04-01. Classification of employments - Premium rates - Requirements.

1. The organization shall classify employments with respect to their degrees of hazard, determine the risks of different classifications, and fix the rate of premium for each of the classifications sufficiently high to provide for:
   a. The payment of the expenses of administration of the organization;
   b. The payment of compensation according to the provisions and schedules contained in this title; and
   c. The maintenance by the fund of adequate reserves and surplus to the end that it may be kept at all times in an entirely solvent condition.
2. In the exercise of the powers and discretion conferred upon it, the organization shall fix and maintain for each class of occupation, the lowest rate which still will enable it to comply with the other provisions of this section.
3. The organization shall establish premium rates annually on an actuarial basis. The statewide average premium rate level may not deviate by more than five percentage points from the recommended actuarial indicated premium level for that year.
4. Before the effective date of any premium rate change, including a change in the minimum premium, the organization shall hold a public hearing on the rate change. Chapter 28-32 does not apply to a hearing held by the organization under this subsection.

65-04-02. Reserves - Surplus.

1. The organization shall maintain adequate financial reserves to ensure the solvency of the fund and the payment of future benefit obligations, based upon actuarially sound principles. The discount rate used in evaluating the financial reserves may not exceed six percent. The level of financial reserves plus available surplus determined as of June thirtieth of each year must be at least one hundred twenty percent but may not exceed one hundred forty percent of the actuarially established discounted reserve.
2. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is below one hundred twenty percent of the actuarially established discounted reserve, the organization may not issue premium dividends and, notwithstanding section 65-04-01, the organization shall modify recommended premium rate levels so that the organization is estimated to come into compliance within the following two years.
3. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years. However, premium dividends issued may not exceed fifty percent of the preceding year's premium in any given year.
4. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is between one hundred twenty percent and one hundred thirty percent of the actuarially established discounted reserve, the organization may not issue premium dividends.
5. If the level of financial reserves plus available surplus determined as of June thirtieth of any year is one hundred thirty percent to one hundred forty percent of the actuarially established discounted reserve, the organization may issue premium dividends. However, premium dividends issued may not exceed forty percent of the preceding year's premium in any given year, and the level of financial reserves plus available surplus may not be reduced below one hundred thirty percent.
6. For the purposes of this section, "available surplus" means net assets as stated on the statement of net assets of the organization, but does not include funds designated or

obligated to specific programs or projects pursuant to a directive or specific approval by the legislative assembly.

7. The independent annual financial audit of the organization must report the organization's financial reserves.

65-04-03. Accounts to be kept for classifications and employers.

The organization shall keep an accurate account of the moneys paid in premiums by each of the several classes of occupations or industries and of the disbursements on account of injuries to and deaths of employees thereof, and it also shall keep an account of the moneys received from each individual employer and of the amount disbursed from the fund on account of injuries to and deaths of employees of each employer.

65-04-03.1. State entities account - Continuing appropriation.

1. The organization shall establish a single workforce safety and insurance account for state entities covered by chapter 32-12.2. The organization shall use the combined payroll, premium, and loss history of selected agencies to determine future experience rates, dividends, assessments, and premiums. Classifications and premium rates must be based on the hazards and risks of the different occupations covered by this account. The payroll reporting period for this account is for a fiscal year of July first through June thirtieth. The office of management and budget shall furnish combined payroll information to the organization in a format prescribed by the organization.
2. Workforce safety and insurance premiums from state entities covered by chapter 32-12.2 must be deposited in the risk management workers' compensation fund. The state investment board shall invest this fund in accordance with chapter 21-10. Funds received as contributions from state entities, all other payments deposited in this fund, and interest and income received on investments are appropriated on a continuing basis for the purposes of this fund. The purposes of this fund are to pay workforce safety and insurance premiums for state agencies, workforce safety and insurance claims costs not covered by the deductible contract, and costs associated with workers' compensation loss control programs. The risk management division of the office of management and budget shall administer this fund. Section 54-44.1-11 does not apply to this fund.
3. A state entity covered by chapter 32-12.2 shall participate in the risk management workforce safety and insurance program unless exempted by the director of the office of management and budget.
4. The risk management division of the office of management and budget shall administer the account's internal workforce safety and insurance return-to-work program. Every state entity is required to participate in the return-to-work program. The program may include assigning employees to agencies other than the agency for which the employee worked on the date of the injury.
5. The office of management and budget may adopt rules to administer the risk management workforce safety and insurance program.

65-04-04. Employers obligated to pay premiums and assessments - Certificate provided.

1. Each employer subject to this title shall pay into the fund the amount of premium and assessment determined by the organization. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title.
2. The organization shall provide to the employer a certificate specifying that the payment has been made. The certificate, is prima facie evidence of the payment of the premium.
3. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum due and has no employees for the period indicated on

the certificate. If an employer defaults on premium or assessment payments after a certificate has been issued, the organization may revoke that employer's certificate.

4. The organization shall provide that premiums or assessments payable by school districts, multidistrict special education units, area career and technology centers, and regional education associations, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums or assessments payable by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums or assessments of other employers fall due on different or specified dates.
5. For the purpose of effectuating different or specified due dates, the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization.
6. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud.
7. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

65-04-04.1. Determination of weekly wage for premium purposes to veteran-on-the-job trainee.

Repealed by S.L. 1997, ch. 538, § 1.

65-04-04.2. Basis of calculating premiums.

1. For each year, the amount of an employee's wages subject to premium calculations must be determined as an amount equal to seventy percent of the statewide average annual wage, hereafter referred to as limited payroll, rounded to the nearest one hundred dollars, determined by the organization on or before July first as calculated by job service North Dakota under subsection 3 of section 52-04-03.
2. The rates for each classification must be determined by:
   a. Estimating the revenue needed by each employment classification;
   b. Estimating the total limited payroll to be reported by all employers in each employment classification for the year; and
   c. Dividing the estimated revenue needed by an employment classification by the estimated total limited payroll in that classification to determine the required average premium for that classification rate.

65-04-04.3. Employer relief for third-party recovery.

The organization, upon recovery of its subrogation interest after a third-party lawsuit under section 65-01-09, shall give relief to the employer from the date of injury for the amount of the recovery up to the actual amount expended on a claim charged against the employer's account. For purposes of this section, "relief" means the amount of money recovered by the organization in a third-party action will be deducted from the amount charged against the employer's experience rating.

65-04-04.4. Medical expense assessments.

The employer shall reimburse the organization for all medical expenses related to a compensable injury to an employee if the expenses do not exceed two hundred fifty dollars and shall reimburse the organization for the first two hundred fifty dollars of medical expenses when the expenses exceed two hundred fifty dollars. If a claim for benefits is filed with the organization by midnight central time on the first business day following the workplace injury, the organization shall pay the first two hundred fifty dollars of medical expenses. A claim is filed by submitting a form furnished by the organization or by another method designated by the

organization. If a claim for benefits is filed with the organization more than fourteen days from the date the employer received notice of the workplace injury from the employee, the employer shall reimburse the organization for the first three hundred fifty dollars of medical expenses if the expenses exceed three hundred fifty dollars. If the organization determines the claim is compensable, the organization shall pay the medical expenses associated with the claim and notify the employer of payments to be made by the employer under this section. If the employer does not pay the organization within thirty days of notice by the organization, the organization may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five percent of the payment owed by the employer. The organization shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for any payment the employer makes on a claim. Except as otherwise provided, if the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the organization shall pay all further medical expenses. This section is effective for all compensable injuries that occur after July 31, 1995. This section does not apply to compensable injuries paid under sections 65-06.2-04 and 65-06.2-08.

65-04-04.5. Settlement in discretion of organization.

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

65-04-05. Employer to furnish payroll information to organization - Determination of status - Report of actual and estimated payrolls.

Repealed by S.L. 2001, ch. 578, § 17.

65-04-05.1. Sections 65-04-04 and 65-04-05 retroactive.

Repealed by S.L. 1951, ch. 344, § 11.

65-04-06. Employer obligated to file payroll reports - Organization to specify method of providing information - Verification may be required.

Each employer subject to this title shall provide at least annually a payroll report to the organization. The organization may require an employer to file a payroll report with the organization more frequently during the premium year.

Each employer required to file a payroll report must file the report by an electronic method approved by the organization. An employer that does not comply with the requirements to file the payroll report electronically is deemed to have failed to submit the payroll report. If an employer is unable to provide the information required, the employer shall submit to the organization in writing the reason. The organization and its representatives may require any employer to submit information under oath.

65-04-07. County superintendents of schools to report school district clerks to organization.

Repealed by S.L. 1995, ch. 176, § 2.

65-04-08. County auditors to report auditors and clerks to organization.

Repealed by S.L. 1997, ch. 538, § 1.

65-04-09. All public contracts involving labor to be reported to organization.

Repealed by S.L. 1997, ch. 538, § 1.

65-04-10. Provision relating to workforce safety and insurance required in contractor's bonds.

There must be inserted in every bond given by a contractor doing work for the state of North Dakota or for any political subdivision thereof, in addition to the general provisions for the faithful and complete performance of all work required under the contract, this further provision: That

the contractor has made, or will make, prior to the commencement of any work by the contractor or any subcontractor under the contract, full and true report to the organization of the payroll expenditures for the employees to be engaged in the work, and that the contractor has paid, or will pay, the premium thereon prior to the commencement of the work.

65-04-11. Organization may make examinations under oath to secure payroll information.

The director, the organization, or any person employed by the organization for that purpose may examine under oath any employer, or any officer, agent, or employee of any employer, for the purpose of ascertaining any information which the employer is required under this title to furnish to the organization.

65-04-12. Penalties for failure to obtain coverage or to make payroll reports - How collected - Disposition.

Repealed by S.L. 2001, ch. 578, § 17.

65-04-13. Books, records, and payrolls of employers subject to audit and inspection - Penalty for refusal to permit inspection.

All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of the employers, are open always for inspection by the organization or any of its traveling auditors, inspectors, or assistants for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of employees, and any other information necessary for the organization to administer this title. An employer who refuses to submit the employer's books, records, and payrolls for inspection by the organization, or its auditor, inspector, or assistant presenting written authority from the organization, is subject to a penalty of five hundred dollars for each offense. The organization shall collect the penalty by civil action in the name of the state and shall deposit a penalty collected under this section to the credit of the fund.

65-04-14. False payroll report - Liability of employer - Collection and disposition of penalty.

Repealed by S.L. 2001, ch. 578, § 17.

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 employers as those files relate to this chapter; provided, that any list 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.
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 may provide any relevant information to those officials for the purpose of administering their duties.
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.

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.

Repealed by S.L. 2023, ch. 465, § 8.

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. The organization may calculate an employer's premium without employer-supplied wages if the organization does not receive the employer's payroll report or does not receive reliable and accurate payroll information 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.
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.

65-04-19.2. State agency participation in risk management program.

Repealed by S.L. 2003, ch. 564, § 14.

65-04-19.3. Premium calculation programs - Authority.

The organization may create and implement actuarially sound employer premium calculation programs, including dividends, group insurance, premium deductibles, and reimbursement for medical expense assessments. Programs created or modified under this section are not subject to title 28-32 and may include requirements or incentives for the early reporting of injuries. An employer with a deductible policy under this section, who chooses to pursue a third-party action under section 65-01-09 after an injured worker and the organization have chosen not to pursue the third-party action, may keep one hundred percent of the recovery obtained, regardless of the expense incurred in covering the injury and regardless of any contrary provision in section 65-01-09. If the employer pursues the third-party action pursuant to this section, neither the organization nor the injured worker has any liability for sharing in the expense of bringing that action.

65-04-19.4. Premium credit - National guard - Armed forces - Veterans - Surviving spouse.

1. An active member of the North Dakota national guard or the armed forces as defined under section 37-01-01, a veteran as defined under section 37-01-40, or a surviving spouse of a veteran, is eligible for a one-time premium credit of up to two hundred fifty dollars. The premium credit is available to a new account with the organization having active member, veteran, or surviving spouse ownership of fifty percent or more.
2. The organization may implement rules for the administration of this section.

65-04-20. Installment payment of premiums - Interest required.

An employer, subject to section 65-04-22, may pay the annual premium in installments.

Interest must be charged at the prevailing base rate posted by the Bank of North Dakota plus two and one-half percent. The interest charged must be at least six percent per annum. Interest must be charged on all premiums deferred under this section. Upon default in payment of any installment, the penalties apply which are provided in sections 65-04-22 and 65-04-33.

65-04-21. Utilization of public funds for payment of premiums due the fund.

The state of North Dakota or any municipality thereof, whenever necessary, may use any funds of the state or municipality, as the case may be, except such funds as are raised by special levies, for the payment of premiums due the fund for insurance upon employees of such state or municipality. If there are no funds on hand with which the premium payments may be made, the state or a municipality thereof may issue special warrants against its general fund for the payment of such premiums, and such warrants shall be paid in their order the same as any other warrants of the state or municipality.

65-04-22. Organization may make premium due immediately - When premium is in default - Penalty.

The organization may require a security deposit, or other instrument that is acceptable to the organization, within any time which, in the judgment of the organization, is reasonable and necessary. The organization may require advance payment of the premium, either in full or in installments. Any payment shall be in default one month from the payment due date specified in the billing statement.

Default of any installment payment will, at the option of the organization, make the entire remaining balance of the premium due and payable. The organization may declare an employer uninsured at any time after forty-five days have passed from the due date specified in the billing statement and the employer has failed to make a payment to the organization. The organization may decline coverage to any employer that has been determined to be uninsured under this section or where a premium delinquency remains unresolved.

When an employer defaults in the payment of a premium, an installment of the premium, penalty or interest, or in the filing of any bond required under this chapter, the employer at the time of default is subject to a penalty not to exceed two hundred fifty dollars plus two percent of the amount of premiums, penalties, and interest in default, and beginning one month after default, a penalty of two percent of the amount of premiums, penalties, and interest in default for each month or fraction of a month the premium, penalty, or interest remains unpaid.

65-04-22.1. Retroactive payment not required.

When the organization reviews a potential employment relationship involving an independent contractor who has a valid identification number issued under section 34-05-01.4 and determines that the party described as an independent contractor is an employee for purposes of workforce safety and insurance premiums, rather than an independent contractor, the organization may not require the party determined to be the employer to pay premiums for that employee, or any interest, penalty, or delinquency fee with respect to those premiums, retroactive to the date the relationship with the employee began, unless, however, the organization determines that the employer willfully and intentionally entered the relationship with the purpose of avoiding workforce safety and insurance premium payments. The organization

may require the payment of premiums for that employee as of the date the order declaring an employment relationship becomes final.

65-04-23. Penalties for default in payment of premiums, penalties, and interest.

Repealed by S.L. 2001, ch. 578, § 17.

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

The organization shall notify an employer of the amount of premium, assessment, penalty, and interest due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, assessment, penalties, and interest due by civil action. In any action for the collection of amounts due the organization under this title, the court may not review or consider the action of the organization regarding the acceptance or payment of any claim. The organization may adjust or compromise the account. The organization may retain counsel on a contingent or hourly fee basis to represent the organization in any proceeding relating to the collection of amounts due under this title. The organization shall charge attorney's fees and costs to the organization's general fund.

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

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

65-04-26. Lien priority and filing - Remedies available in action for delinquent premiums - Exemptions restricted.

The claim of the organization in bankruptcy, probate, insolvency, and receivership proceedings for premiums in default and penalties is a lien with the same priority as prior income tax liens, except that this lien is not enforceable against a purchaser, including a lien creditor, of real estate or personal property for valuable consideration without notice. Notice of this lien must be filed in the place and manner provided for in section 57-38-49. A certificate of the organization that premiums and penalties are due for the period stated in the certificate is prima facie evidence of this fact. In any action brought for the recovery of premiums in default and penalties, the remedies of garnishment or attachment, or both, are available. No exemptions except absolute exemptions under section 28-22-02 may be allowed against any levy under execution pursuant to judgment recovered in the action.

65-04-26.1. Corporate officer personal liability.

1. An officer or director of a corporation, or manager or governor of a limited liability company, or partner of a limited liability partnership, or employee of a corporation or limited liability company having twenty percent stock ownership who has control of or supervision over the filing of and responsibility for filing payroll reports or making payment of premiums or reimbursements under this title and who fails to file the reports or to make payments as required, is personally liable for premiums under this chapter and reimbursement under section 65-04-04.4, including interest, penalties,

and costs if the corporation or limited liability company does not pay to the organization those amounts for which the corporation or limited liability company is liable.

2. The personal liability of any person as provided in this section survives dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation or limited liability company must be considered earned from any person determined to be personally liable.
3. After review of the evidence in the employer's file, the organization shall determine personal liability under this section. The organization shall issue a decision under this section pursuant to section 65-04-32.

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

1. An individual employed by a subcontractor or by an independent contractor operating under an agreement with a general contractor is deemed to be an employee of the general contractor and any subcontractor that supplied work to the subcontractor or independent contractor. A general contractor and a subcontractor are liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage or pay the premium owing. The general contractor and a subcontractor are liable for payment of this premium and penalty until the subcontractor or independent contractor pays this premium and penalty. The liability imposed on a general contractor and a subcontractor under this section for the payment of premium and penalties under this title which are not paid by a subcontractor or independent contractor is limited to work performed under that general contractor.
2. 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. 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. The definition of the term "contractor" under section 43-07-01 applies to this section.

65-04-27. Payment of claims - Employers in default.

The payment of a judgment rendered in an action brought against an employer for the collection of defaulted premiums or the voluntary payment of the amount of premium, penalties, and costs prior to judgment entitles the employer and that employer's employees to the benefits provided in this title from the date of the payment. The organization shall pay an employee who sustains an injury while working for an employer whose premium is in default the same as the employee would receive if the employee were working for an employer whose premium is not in default.

65-04-27.1. Injunctive relief - Procedure.

1. a. To protect the lives, safety, and well-being of wageworkers, to ensure fair and equitable contributions to the workforce safety and insurance fund among all employers, and to protect the workforce safety and insurance fund, the organization may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title:
   (1) When it has been brought to the attention of the organization that the employer has unlawfully employed uninsured workers in violation of section 65-04-33;
   (2) When the employer defaults in the payment of insurance premiums, reimbursements, penalties, or interest into the fund; or
   (3) When the organization, in exercise of the authority granted it by section 65-03-01, finds that it is necessary to enjoin and restrain certain employers and employments to protect the lives and safety of the employees because of the employer's failure or refusal to comply with necessary and proper safety rules.

   b. The courts of this state have jurisdiction to grant preventive relief under the circumstances described in subdivision a.
2. Chapter 32-06 as it relates to injunction applies to proceedings instituted under this section to the extent that chapter is applicable.
3. In addition to chapter 32-06, when the court has granted an immediate temporary injunction at the time of the commencement of the action, the defendant employer may have a hearing by the court on the merits of the case without delay. Upon three days' written notice to the organization, the court shall proceed to hearing on the merits and render its decision.
4. In addition to chapter 32-06, when the court has not granted an immediate temporary injunction at the time of the commencement of the action and the time for answer has expired, either party may have a hearing by the court on the merits of the case. Upon ten days' notice by either party to the other, the court shall proceed to hearing on the merits and render its decision.
5. Any court of competent jurisdiction in this state shall impose a fine of at least one thousand dollars against an employer who has violated an injunction granted under this section. The court shall impose a fine for each violation, in addition to any other penalty provided by law.

65-04-27.2. Cease and desist order - Civil penalty.

1. If it appears to the organization an employer is without workers compensation coverage, is in an uninsured status in violation of this title, 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 forty-five days 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.
2. In addition to the penalties in section 65-04-33, a person that employs an individual in violation of a cease and desist order issued under this section is subject to a penalty of ten thousand dollars and to a penalty of one hundred dollars per day for each day the violation continues. The organization may reduce the penalties under this section.
3. A general contractor or a subcontractor that 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.

65-04-28. Complying employers not liable for injuries to or deaths of employees - Common-law actions barred.

Employers who comply with the provisions of this chapter shall not be liable to respond in damages at common law or by statute for injury to or death of any employee, wherever occurring, during the period covered by the premiums paid into the fund.

65-04-29. Employers carrying on nonhazardous employment may come under law - Employee's option.

Any employer carrying on any employment not defined as hazardous under section 65-01-02 who complies with this title and who pays into the fund the premiums provided for under this chapter is covered under the fund and is not liable to respond in damages at common law or by statute for injuries to or the death of any employee, wherever occurring, during the period covered by such premiums. Any employee who elects before injury not to come under workforce safety and insurance may do so by notifying the organization and the employer of such election in writing.

65-04-30. State treasurer is custodian of fund - Deposit - Disbursement on vouchers.

The state treasurer is the custodian of the fund and all payments of awards of the organization for disbursements other than travel and administrative expenses must be paid by the state treasurer upon warrant-checks authorized and prepared by the organization. Warrants drawn upon the fund and paid by the state treasurer must be returned to the organization and must be kept in the files of the organization. The treasurer may deposit any portion of the fund not needed for immediate use in the manner and subject to the requirements prescribed by law for the deposit by the treasurer of state funds. Any interest earned by any portion of the fund which is deposited by the state treasurer under this section must be collected by the state treasurer and placed to the credit of the fund.

65-04-31. Investment of fund.

Investment of the fund must be under the supervision of the state investment board in accordance with chapter 21-10. For purposes of this section, the director is the official signatory for the organization on any check, document, or other legal instrument relating to or resulting from the investment of organization funds.

65-04-32. Decisions by organization - Disputed decisions.

Notwithstanding any provisions to the contrary in chapter 28-32, the following procedures apply when the organization issues a decision under this chapter or section 65-04-04.4:

1. The organization may issue a notice of decision based on an informal internal review of the record and shall issue the notice of the decision on the parties by regular mail or electronic means. The organization shall include with the decision a notice of the employer's right to reconsideration.
2. An employer has forty-five days from the day the notice of decision was issued by the organization by regular mail or electronic means 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.

3. After receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall issue to the parties by regular mail or electronic means, an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration. The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration. If the organization does not issue an order within sixty days of receiving a request for reconsideration, a party may request, and the organization shall promptly issue, an appealable determination.
4. A party has forty-five days from the date of issuance of an administrative order to file a written request for rehearing. The request must state specifically each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that chapter does not conflict with this section.
6. An employer may appeal a posthearing administrative order to district court in accordance with chapter 65-10. Chapter 65-10 does not preclude the organization from appealing to district court a final order issued by a hearing officer under this title.

65-04-33. Intentional acts - Failure to secure coverage - Uninsured - Noncompliance - Failure to submit necessary reports - Penalty.

1. An employer may not employ any person, or receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first applying for workforce safety and insurance coverage for the protection of employees by notifying the organization of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming twelve-month period.
2. a. An employer that willfully misrepresents to the organization or its representative, by statement or omission, the amount of payroll upon which a premium under this title is based, or that willfully fails to secure coverage for employees, is liable to the state in the amount of five thousand dollars plus three times the difference between the premium paid and the amount of premium the employer should have paid.
   b. The organization shall collect a penalty imposed under this subsection in a civil action in the name of the state, and the organization shall deposit a penalty collected under this subsection to the credit of the workforce safety and insurance fund.
   c. An employer that willfully misrepresents to the organization or its representative, by statement or omission, the amount of payroll upon which a premium under this title is based, or that willfully fails to secure coverage for employees, is guilty of a class A misdemeanor. If the premium due exceeds one thousand dollars, the penalty for willful failure to secure coverage or willful misrepresentation to the organization or its representative is a class C felony. If the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workforce safety and insurance coverage under this subsection.
   d. In addition to the penalties prescribed by this subsection, the organization may initiate injunction proceedings as provided for in this title to enjoin an employer from unlawfully employing uninsured workers.
   e. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.
3. An employer that willfully makes a false statement or fails to make a statement in an attempt to preclude an injured worker from securing benefits or payment for services, or that willfully discharges or threatens to discharge an employee for seeking or making known the intention to seek workforce safety and insurance benefits is liable to the state in the amount of five thousand dollars. The organization shall collect a civil

penalty imposed under this section in a civil action in the name of the state, and the organization shall deposit a penalty collected under this section to the credit of the workforce safety and insurance fund. A willful violation of this section is a class A misdemeanor. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.

4. a. An employer that is uninsured for failure to secure coverage is liable for any premiums, assessments plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of failure to secure coverage.
   b. An additional five percent penalty is due for each year of failure to secure coverage before the most recent year beginning on the date the organization became aware of the employer's failure to secure coverage, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent.
   c. In addition, the organization may assess a penalty of up to five thousand dollars for each premium period the employer failed to secure coverage. The organization may not assess a penalty for more than six years of failure to secure coverage.
   d. The organization may assess an employer the actual cost and reserves of any claim attributable to the employer during the time the employer failed to secure coverage.
   e. The penalties for employers are in addition to any other penalties by law. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.
5. a. An employer in noncompliance is subject to a penalty of up to five thousand dollars for each premium period the employer was in noncompliance.
   b. The organization may not assess a penalty for more than six years of past noncompliance.
   c. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.
6. a. An employer that fails or refuses to furnish to the organization the payroll report or estimate, or that fails or refuses to furnish other information required by the organization under this chapter is subject to a penalty established by the organization of up to five thousand dollars.
   b. Upon the request of the organization, the employer shall furnish the organization any of that employer's payroll records, payroll reports, and other information required by the organization under this chapter and an estimate of payroll for the advance premium year.
   c. If the employer fails or refuses to provide the records within thirty days of a written request from the organization, the employer is subject to a penalty of five thousand dollars and a penalty not to exceed one hundred dollars for each day until the organization receives the records.
   d. The organization may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township.
   e. The organization may reduce penalties for employers under this subsection. However, an employer may not appeal an organization decision not to reduce a penalty.