

**FIRST ENGROSSMENT  
with Conference Committee Amendments**

Fifty-sixth  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1325**

Introduced by

Representatives Poolman, Berg, Martinson, Porter

Senators Klein, Krebsbach

1 A BILL for an Act to create and enact a new subsection to section 65-01-16 of the North Dakota  
2 Century Code, relating to disputed decisions of the workers compensation bureau; to amend  
3 and reenact subsections 6 and 7 of section 65-01-16, sections 65-02-06.1, 65-02-27, and  
4 65-02-30 of the North Dakota Century Code, relating to the workers' assistance program and to  
5 the independent audit of the workers compensation bureau; to amend and reenact section  
6 65-02-23 of the North Dakota Century Code as amended by section 3 of House Bill No. 1331  
7 and the new section to chapter 65-03 of the North Dakota Century Code as created by  
8 section 2 of House Bill No. 1296, as approved by the fifty-sixth legislative assembly; to repeal  
9 section 65-02-29 of the North Dakota Century Code, section 3 of chapter 612 of the 1995  
10 Session Laws, section 7 of chapter 532 of the 1997 Session Laws, and section 8 of  
11 chapter 542 of the 1997 Session Laws, relating to the independent audit of the workers  
12 compensation bureau, disputed decisions of the workers compensation bureau, the expiration  
13 date of the workers' adviser program, and the expiration date of the preacceptance disability  
14 benefits provisions; to provide an appropriation; and to provide a continuing appropriation.

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

16 **SECTION 1. AMENDMENT.** Subsections 6 and 7 of section 65-01-16 of the 1997  
17 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 18 6. A party has thirty days from the date of service of an administrative order in which  
19 to file a request for assistance from the ~~workers' adviser program~~ office of  
20 independent review under section 65-02-27.
- 21 7. A party has thirty days, from the date of service of an administrative order or from  
22 the day the ~~workers' adviser program~~ office of independent review mails its notice  
23 that the ~~program's~~ office's assistance is complete, in which to file a written request  
24 for rehearing. The request must specifically state each alleged error of fact and

1 law to be reheard and the relief sought. Absent a timely and sufficient request for  
2 rehearing, the administrative order is final and may not be reheard or appealed.

3 **SECTION 2.** A new subsection to section 65-01-16 of the 1997 Supplement to the North  
4 Dakota Century Code is created and enacted as follows:

5 This section is effective for all orders and decisions on all claims regardless of the  
6 date of injury or the date the claim was filed.

7 **SECTION 3. AMENDMENT.** Section 65-02-06.1 of the 1997 Supplement to the North  
8 Dakota Century Code is amended and reenacted as follows:

9 **65-02-06.1. Allocated loss adjustment expenses - Continuing appropriation -**  
10 **Annual review.** Money in the workers' compensation fund is appropriated on a continuing  
11 basis for the payment of all allocated loss adjustment expenses experienced by the bureau in  
12 its administration of this title. In its annual audit and its biennial report, the bureau shall include  
13 a breakdown of those allocated loss adjustment expenses that reflect the attorney fees and  
14 costs paid to attorneys who represent injured workers, the attorney fees and costs paid to  
15 attorneys with whom it contracts to represent the bureau, the amount paid for administrative  
16 law judges for hearings, and the court reporter and other legal expenses paid. ~~The~~  
17 ~~performance audit required under section 65-02-29 must include a review of the bureau's legal~~  
18 ~~costs to determine whether the system is operating efficiently.~~

19 **SECTION 4. AMENDMENT.** If House Bill No. 1331 becomes effective, section  
20 65-02-23 of the North Dakota Century Code, as amended by section 3 of House Bill No. 1331,  
21 is amended and reenacted as follows:

22 **65-02-23. Workers' compensation fraud unit - Continuing appropriation.** The  
23 bureau shall establish a workers' compensation fraud unit. The bureau may employ  
24 investigators and licensed attorneys, or contract with a private investigator whenever feasible or  
25 cost effective, to investigate and review any alleged case of fraud against the fund by  
26 employers, injured workers, or providers of medical or other services, including activities  
27 described under section 65-04-14 or 65-05-33. The unit shall refer cases of fraud to the bureau  
28 for the imposition of administrative penalties and may refer them to the appropriate authorities  
29 for prosecution. Money in the workers' compensation fund is appropriated on a continuing  
30 basis for payment of costs associated with identifying, preventing, and investigating employer  
31 or provider fraud. The biennial independent performance ~~audit~~ evaluation of the bureau must

1 evaluate and report on the effectiveness of these expenditures. The bureau may establish a  
2 process to charge investigative costs against the rate class of an employer being investigated  
3 and to credit any recoveries to that rate class.

4 **SECTION 5. AMENDMENT.** Section 65-02-27 of the 1997 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6 **65-02-27. (~~Effective until July 31, 1999~~) Workers' adviser program Office of**  
7 **independent review.** ~~A workers' adviser program~~ The bureau's office of independent review is  
8 established. The ~~program~~ office of independent review is independent of the claims department  
9 of the workers compensation bureau and activities administered through the ~~program~~ office  
10 must be administered in accordance with this title. The ~~program~~ office of independent review  
11 must provide assistance to ~~an injured employee~~ a worker who has filed a claim, including  
12 which may include acting on behalf of ~~an injured employee~~ a worker who is aggrieved by a  
13 decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and  
14 ~~advising an injured employee~~ informing a worker of the effect of decisions made by the bureau,  
15 the ~~employee~~ worker, or an employer under this title. The office of independent review shall  
16 provide assistance to workers, upon request, in cases of constructive denial or after a  
17 vocational consultant's report has been issued. The bureau shall employ a director of the  
18 ~~program, support staff for the program,~~ office of independent review and other personnel  
19 determined to be necessary for the administration of the ~~program~~ office. ~~Personnel~~ A person  
20 employed to administer the ~~program~~ office of independent review may not act as an attorney  
21 for ~~an injured employee~~ a worker. The bureau may not pay attorney fees to an attorney who  
22 represents ~~an injured employee~~ a worker in a disputed claim before the bureau unless the  
23 ~~injured employee~~ worker has first attempted to resolve the dispute through the ~~workers' adviser~~  
24 ~~program~~ office of independent review. A written request for assistance by ~~an injured employee~~  
25 a worker who contacts the ~~program~~ office of independent review within the period for  
26 requesting a hearing on an administrative order tolls the time period for requesting a hearing on  
27 that order. The period begins upon notice to the ~~employee~~ worker, sent by regular mail, that  
28 the ~~program's~~ office of independent review's assistance to the ~~employee~~ worker is completed.  
29 The information contained in a file established by the ~~workers' adviser program~~ office of  
30 independent review on ~~an injured employee's~~ a worker's disputed claim, including  
31 communications from a worker, is ~~not subject to discovery and may not be used as evidence in~~

1 ~~subsequent proceedings relative to that dispute~~ privileged and may not be released without the  
2 worker's permission. Information in the file containing the notes or mental impressions of office  
3 of independent review staff is confidential and may not be released by the office of independent  
4 review.

5 **SECTION 6. AMENDMENT.** Section 65-02-30 of the 1997 Supplement to the North  
6 Dakota Century Code is amended and reenacted as follows:

7 **65-02-30. Independent ~~audit~~ performance evaluation - Bureau development of**  
8 **performance measurements - Continuing appropriation.** Biennially, the director shall  
9 request the state auditor to select ~~an audit~~ a firm with extensive expertise in workers'  
10 compensation practices and standards to complete a performance ~~audit~~ evaluation of the  
11 functions and operations of the bureau during that biennium. This may not be construed to  
12 require the firm to be a certified public accounting firm. The ~~audit~~ evaluation must evaluate the  
13 departments of the bureau to determine whether the bureau is providing quality service in an  
14 efficient and cost-effective manner. The firm also shall conduct a performance ~~audit~~ evaluation  
15 of the board to determine whether the board is operating within section 65-02-03.3 and within  
16 the board's bylaws. The ~~audit~~ firm's report must contain recommendations for departmental  
17 improvement or an explanation of why no recommendations are being made. The director, the  
18 chairman of the board, and ~~the auditor~~ a representative of the firm shall present the ~~audit~~  
19 evaluation report and any action taken to the legislative council's legislative audit and fiscal  
20 review committee and to the house and senate industry, business and labor standing  
21 committees during the next regular session of the legislative session following the ~~audit~~  
22 performance evaluation. The director shall provide a copy of the ~~audit~~ performance evaluation  
23 report to the state auditor. The bureau shall develop and maintain comprehensive, objective  
24 performance measurements. These measurements must be evaluated as part of the  
25 independent ~~audit~~ performance evaluation performed under this section. Money in the workers'  
26 compensation fund is appropriated on a continuing basis for the payment of the expense of  
27 conducting the performance evaluation.

28 **SECTION 7. AMENDMENT.** If House Bill No. 1296 becomes effective, the new  
29 section to chapter 65-03 of the North Dakota Century Code, as created by section 2 of House  
30 Bill No. 1296, is amended and reenacted as follows:

1           **Safety programs.** The bureau shall create and operate work safety and loss  
2 prevention programs to protect the health of covered employees and the financial integrity of  
3 the fund, including programs promoting safety practices by employers and employees through  
4 education, training, consultation, grants, or incentives. The biennial independent performance  
5 ~~audit~~ evaluation of the bureau must evaluate and report on the effectiveness of these  
6 programs.

7           **SECTION 8. REPEAL.** Section 65-02-29 of the 1997 Supplement to the North Dakota  
8 Century Code is repealed.

9           **SECTION 9. REPEAL.** Section 3 of chapter 612 of the 1995 Session Laws is  
10 repealed.

11           **SECTION 10. REPEAL.** Section 7 of chapter 532 of the 1997 Session Laws of North  
12 Dakota is repealed.

13           **SECTION 11. REPEAL.** Section 8 of chapter 542 of the 1997 Session Laws is  
14 repealed.

15           **SECTION 12. APPROPRIATION.** There is hereby appropriated out of the workers  
16 compensation fund the sum of \$440,000, or so much thereof as may be necessary, to the  
17 workers compensation bureau for the purpose of defraying the costs of the office of  
18 independent review established under section 65-02-27, for the biennium beginning July 1,  
19 1999, and ending June 30, 2001.