

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

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

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

15 6. A party has thirty days from the date of service of an administrative order in which
16 to file a request for assistance from the ~~workers' adviser program~~ office of
17 independent review under section 65-02-27.

18 7. A party has thirty days, from the date of service of an administrative order or from
19 the day the ~~workers' adviser program~~ office of independent review mails its notice
20 that the ~~program's office's~~ office's assistance is complete, in which to file a written request
21 for rehearing. The request must specifically state each alleged error of fact and
22 law to be reheard and the relief sought. Absent a timely and sufficient request for
23 rehearing, the administrative order is final and may not be reheard or appealed.

1 **SECTION 2. AMENDMENT.** Section 65-02-06.1 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **65-02-06.1. Allocated loss adjustment expenses - Continuing appropriation -**
4 **Annual review.** Money in the workers' compensation fund is appropriated on a continuing
5 basis for the payment of all allocated loss adjustment expenses experienced by the bureau in
6 its administration of this title. In its annual audit and its biennial report, the bureau shall include
7 a breakdown of those allocated loss adjustment expenses that reflect the attorney fees and
8 costs paid to attorneys who represent injured workers, the attorney fees and costs paid to
9 attorneys with whom it contracts to represent the bureau, the amount paid for administrative
10 law judges for hearings, and the court reporter and other legal expenses paid. ~~The~~
11 ~~performance audit required under section 65-02-29 must include a review of the bureau's legal~~
12 ~~costs to determine whether the system is operating efficiently.~~

13 **SECTION 3. AMENDMENT.** If House Bill No. 1331 becomes effective, section
14 65-02-23 of the North Dakota Century Code, as amended by section 3 of House Bill No. 1331,
15 is amended and reenacted as follows:

16 **65-02-23. Workers' compensation fraud unit - Continuing appropriation.** The
17 bureau shall establish a workers' compensation fraud unit. The bureau may employ
18 investigators and licensed attorneys, or contract with a private investigator whenever feasible or
19 cost effective, to investigate and review any alleged case of fraud against the fund by
20 employers, injured workers, or providers of medical or other services, including activities
21 described under section 65-04-14 or 65-05-33. The unit shall refer cases of fraud to the bureau
22 for the imposition of administrative penalties and may refer them to the appropriate authorities
23 for prosecution. Money in the workers' compensation fund is appropriated on a continuing
24 basis for payment of costs associated with identifying, preventing, and investigating employer
25 or provider fraud. The biennial independent performance ~~audit~~ evaluation of the bureau must
26 evaluate and report on the effectiveness of these expenditures. The bureau may establish a
27 process to charge investigative costs against the rate class of an employer being investigated
28 and to credit any recoveries to that rate class.

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

1 **65-02-27. (~~Effective until July 31, 1999~~) Workers' adviser program Office of**

2 **independent review.** ~~A workers' adviser program~~ The bureau's office of independent review is
3 established. The ~~program~~ office of independent review is independent of the claims department
4 of the workers compensation bureau and activities administered through the ~~program~~ office
5 must be administered in accordance with this title. The ~~program~~ office of independent review
6 must provide assistance to ~~an injured employee~~ a worker who has filed a claim, including
7 which may include acting on behalf of ~~an injured employee~~ a worker who is aggrieved by a
8 decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and
9 ~~advising an injured employee~~ informing a worker of the effect of decisions made by the bureau,
10 the ~~employee~~ worker, or an employer under this title. The office of independent review also
11 shall provide assistance of workers, upon request, in cases of constructive denial or after a
12 vocational consultant's report has been issued. The bureau shall employ a director of the
13 ~~program~~, support staff for the ~~program~~, office of independent review and other personnel
14 determined to be necessary for the administration of the ~~program~~ office. Personnel A person
15 employed to administer the ~~program~~ office of independent review may not act as an attorney
16 for ~~an injured employee~~ a worker. The bureau may not pay attorney fees to an attorney who
17 represents ~~an injured employee~~ a worker in a disputed claim before the bureau unless the
18 ~~injured employee~~ worker has first attempted to resolve the dispute through the ~~workers' adviser~~
19 ~~program~~ office of independent review. A written request for assistance by ~~an injured employee~~
20 a worker who contacts the ~~program~~ office of independent review within the period for
21 requesting a hearing on an administrative order tolls the time period for requesting a hearing on
22 that order. The period begins upon notice to the ~~employee~~ worker, sent by regular mail, that
23 the ~~program's~~ office of independent review's assistance to the ~~employee~~ worker is completed.
24 The information contained in a file established by the ~~workers' adviser program~~ office of
25 independent review on ~~an injured employee's~~ a worker's disputed claim, including
26 communications from a worker, is ~~not subject to discovery and may not be used as evidence in~~
27 ~~subsequent proceedings relative to that dispute~~ privileged and may not be released without the
28 worker's permission. Information in the file containing the notes or mental impressions of office
29 of independent review staff is confidential and may not be released by the office of independent
30 review.

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

3 **65-02-30. Independent ~~audit~~ performance evaluation - Bureau development of**
4 **performance measurements - Continuing appropriation.** Biennially, the director shall
5 request the state auditor to select ~~an audit~~ a firm with extensive expertise in workers'
6 compensation practices and standards to complete a performance ~~audit~~ evaluation of the
7 functions and operations of the bureau during that biennium. This may not be construed to
8 require the firm to be a certified public accounting firm. The ~~audit~~ evaluation must evaluate the
9 departments of the bureau to determine whether the bureau is providing quality service in an
10 efficient and cost-effective manner. The firm also shall conduct a performance ~~audit~~ evaluation
11 of the board to determine whether the board is operating within section 65-02-03.3 and within
12 the board's bylaws. The ~~audit~~ firm's report must contain recommendations for departmental
13 improvement or an explanation of why no recommendations are being made. The director, the
14 chairman of the board, and ~~the auditor~~ a representative of the firm shall present the ~~audit~~
15 evaluation report and any action taken to the legislative council's legislative audit and fiscal
16 review committee and to the house and senate industry, business and labor standing
17 committees during the next regular session of the legislative session following the ~~audit~~
18 performance evaluation. The director shall provide a copy of the ~~audit~~ performance evaluation
19 report to the state auditor. The bureau shall develop and maintain comprehensive, objective
20 performance measurements. These measurements must be evaluated as part of the
21 independent ~~audit~~ performance evaluation performed under this section. Money in the workers'
22 compensation fund is appropriated on a continuing basis for the payment of the expense of
23 conducting the performance evaluation.

24 **SECTION 6. AMENDMENT.** If House Bill No. 1296 becomes effective, the new
25 section to chapter 65-03 of the North Dakota Century Code, as created by section 2 of House
26 Bill No. 1296, is amended and reenacted as follows:

27 **Safety programs.** The bureau shall create and operate work safety and loss
28 prevention programs to protect the health of covered employees and the financial integrity of
29 the fund, including programs promoting safety practices by employers and employees through
30 education, training, consultation, grants, or incentives. The biennial independent performance

1 ~~audit~~ evaluation of the bureau must evaluate and report on the effectiveness of these
2 programs.

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

5 **SECTION 8. REPEAL.** Section 3 of chapter 612 of the 1995 Session Laws is
6 repealed.

7 **SECTION 9. REPEAL.** Section 8 of chapter 542 of the 1997 Session Laws is
8 repealed.

9 **SECTION 10. APPROPRIATION.** There is hereby appropriated out of the workers
10 compensation fund the sum of \$440,000, or so much thereof as may be necessary, to the
11 workers compensation bureau for the purpose of defraying the costs of the office of
12 independent review established under section 65-02-27, for the biennium beginning July 1,
13 1999, and ending June 30, 2001.