90718.0200

FIRST ENGROSSMENT

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1408

Introduced by

Representatives Ruby, Clark, Kasper

Senator Wanzek

A BILL for an Act to create and enact a new chapter to title 65 of the North Dakota Century Code, relating to allowing employers to purchase private insurance or self-insure for workers' compensation coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 65 of the North Dakota Century Code is created and enacted as follows:

Duty to secure payment of compensation - Options - Definition.

1. Notwithstanding contrary provisions of law, every employer required to provide workers' compensation coverage under this title shall secure the coverage under this title by:
   a. Paying premiums and providing coverage through the state fund;
   b. Providing coverage and qualifying as a self-insured employer under this title; or
   c. Providing coverage and qualifying as a carrier-insured employer under this title.
2. As used in this chapter:
   a. "Carrier-insured employer" means an employer that provides workers' compensation coverage through a guaranty contract insurer.
   b. "Guaranty contract insurer" means an insurer that is authorized under titles 26.1 and 65 to transact workers' compensation insurance in this state. An insurer may not be authorized to transact workers' compensation insurance in this state unless the insurer's policy provides workers' compensation coverage that meets or exceeds the coverage required under title 65.

c. "Self-insurer" means an employer or group of employers that has been authorized under this chapter to carry its own liability to its employees covered by this title.

Carrier-insured employers.

1. An employer may qualify as a carrier-insured employer by establishing to the insurance commissioner's satisfaction that the employer is insured by a guaranty contract insurer. A carrier-insured employer must have proof of insurance filed with the insurance department.

2. The insurance department may suspend or revoke the authorization of an insurer to issue workers' compensation insurance policies in this state if the insurance department finds the company failed to comply with the insurer's obligations under this title or failed to comply with the orders of the insurance department.

3. The insurance department shall adopt rules addressing:

   a. Proof of insurance requirements;

   b. Guaranty contract expiration, cancellation, and termination requirements for carrier-insured employers; and

   c. Insurance department revocation of authorization to be a carrier-insured employer.

Qualification - Self-insurers.

1. An employer may qualify as a self-insurer by establishing to the insurance commissioner's satisfaction that the employer has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments that may become due from such employer. Each application for certification as a self-insurer submitted by an employer must be accompanied by payment of a fee of one hundred fifty dollars or such larger sum as the insurance commissioner finds necessary for the administrative costs of evaluation of the applicant's qualifications. Any employer that has formerly been certified as a self-insurer and thereafter ceases to be so certified may not apply for certification within three years of ceasing to have been so certified.

2. A self-insurer may be required by the insurance commissioner to supplement existing financial ability by depositing in an escrow account in a depository

designated by the insurance commissioner, money or corporate or governmental securities approved by the insurance commissioner or a surety bond written by any company admitted to transact surety business in this state, or provide an irrevocable letter of credit issued by a federally or state-chartered commercial banking institution authorized to conduct business in this state filed with the insurance department. The money, securities, bond, or letter of credit must be in an amount reasonably sufficient in the insurance commissioner's discretion to ensure payment of reasonably foreseeable compensation and assessments, but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, bond, or letter of credit required under this subsection, the insurance commissioner shall take into consideration the financial ability of the employer to pay compensation and assessments and probable continuity of operation of the self-insurer. However, a letter of credit is acceptable only if the self-insurer has a net worth of not less than five hundred million dollars as evidenced in an annual financial statement prepared by a qualified, independent auditor using generally accepted accounting principles. The money, securities, bond, or letter of credit so deposited must be held by the insurance commissioner solely for the payment of compensation by the self-insurer and the self-insurer's assessments. In the event of default, the self-insurer loses all right and title to, any interest in, and any right to control the surety. The amount of surety may be increased or decreased from time to time by the insurance commissioner. The income from any securities deposited may be distributed currently to the self-insurer. The letter of credit option authorized in this subsection does not apply to a self-insurer that is a hospital or a political subdivision.

3. Securities or money deposited by an employer pursuant to subsection 2 must be returned to the self-insurer upon the self-insurer's written request if the employer files the bond required by subsection 2.

4. If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the insurance commissioner shall require the employer to make up the

employer's proper share of any deficit or insufficiency in the state fund as a condition to certification as a self-insurer.

5. A self-insurer may insure a portion of the self-insurer's liability under this title with any insurer authorized to transact insurance in this state; however, the insurer may not participate in the administration of the responsibilities of the self-insurer under this title. The insurance may not exceed eighty percent of the liabilities under this title.

6. For purposes of the application of this section, the insurance department may adopt separate rules establishing the security requirements applicable to political subdivisions. In setting the requirements, the insurance department shall take into consideration the ability of the political subdivision to meet its self-insured obligations, such as source of funds, permanency, and right of default.

7. The insurance commissioner shall adopt rules to carry out the purposes of this section, including rules relating to the terms and conditions of letters of credit and the establishment of the appropriate level of net worth of the self-insurer to qualify for use of the letter of credit. Only letters of credit issued in strict compliance with the rules may be deemed acceptable.

Surety liability - Termination.

1. The surety on a bond filed by a self-insurer under this chapter may terminate the self-insurer's liability thereon by giving the insurance commissioner written notice stating when, not less than thirty days thereafter, the termination will be effective.

2. In case of a termination, the surety shall remain liable, in accordance with the terms of the bond, with respect to future compensation for injuries to employees of the self-insurer occurring before the termination of the surety's liability.

3. If the bond is terminated for any reason other than the employer terminating the employer's status as a self-insurer, the employer shall, before the date of termination of the surety's liability, otherwise comply with the requirements of this title.

4. The liability of a surety on any bond filed under this section must be released and extinguished and the bond returned to the employer or surety if either the liability is

secured by another bond filed or money or securities deposited as required by this chapter.

Termination of status - Notice - Financial requirements.

1. Any employer may at any time terminate the employer's status as a self-insurer by giving the insurance commissioner written notice stating when, not less than thirty days thereafter, the termination will be effective. The termination may not be effective until the employer either has ceased to be an employer or has filed with the insurance commissioner for state fund coverage under this title.
2. An employer that ceases to be a self-insurer, and which so files with the insurance commissioner, shall maintain money, securities, or surety bonds deemed sufficient in the insurance commissioner's discretion to cover the entire liability of the employer for injuries or occupational diseases to the employer's employees which occurred during the period of self-insurance; however, the insurance commissioner may agree for the medical aid and accident funds to assume the obligation of the claims, in whole or in part, and shall adjust the employer's premium rate to provide for the payment of the obligations on behalf of the employer.

Default by self-insurer - Authority of insurance commissioner - Liability for reimbursement.

1. The insurance commissioner, in cases of default upon any obligation under this title by the self-insurer, after ten days' notice by certified mail to the defaulting self-insurer of the intention to do so, may bring suit upon the bond or collect the interest and principal of any of the securities as the securities become due, sell the securities as may be required, or apply the money deposited to pay compensation and discharge the obligations of the defaulting self-insurer under this title.
2. The insurance commissioner may fulfill the defaulting self-insured employer's obligations under this title from the defaulting self-insured employer's deposit or from other funds provided under this title for the satisfaction of claims against the defaulting self-insured employer. The defaulting self-insured employer is liable to and shall reimburse the insurance commissioner for the amounts necessary to fulfill the obligations of the defaulting self-insured employer which are in excess of the amounts received by the insurance commissioner from any bond filed or

securities or money deposited by the defaulting self-insured employer. The amounts to be reimbursed must include all amounts paid or payable as compensation under this title together with administrative costs, including attorney's fees, and must be considered taxes due the insurance department.

Self-insurers' insolvency trust - Assessments - Rules.

1. A self-insurers' insolvency trust is established to provide for the unsecured benefits paid to the injured employees of self-insured employers under this title for insolvent or defaulting self-insured employers and for the associated administrative costs of the insurance department, including attorney's fees. The self-insurers' insolvency trust must be funded by an insolvency assessment that must be levied on a postinsolvency basis and after the defaulting self-insured employer's security deposit, assets, and reinsurance, if any, have been exhausted. Insolvency assessments must be imposed on all self-insured employers, except political subdivisions. The manner of imposing and collecting assessments to the insolvency fund must be set forth in rules adopted by the insurance department to ensure that a self-insured employer pays into the fund in proportion to the employer's claim costs. The rules must provide that a self-insured employer that has surrendered the employer's certification must be assessed for a period of not more than three calendar years following the termination date of the certification.
2. The insurance commissioner shall adopt rules to carry out the purposes of this section, including:
    a. Governing the formation of the self-insurers' insolvency trust for the purpose of this chapter;
    b. Governing the insurance department and operation of the self-insurers' insolvency trust to assure compliance with the requirements of this chapter;
    c. Requiring adequate accountability of the collection and disbursement of funds in the self-insurers' insolvency trust; and
    d. Any other provisions necessary to carry out the requirements of this chapter.

Payments upon default. If compensation due under this title is not paid because of an uncorrected default of a self-insurer, compensation must be paid from the workforce safety and insurance fund, and any moneys obtained by the insurance commissioner from the bonds or other security provided under this chapter must be deposited in the fund for the payment of compensation and administrative costs, including attorney's fees.

Default lien.

1. In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the amounts necessary to fulfill the obligations of a defaulting self-insured employer together with administrative costs and attorney's fees is a lien prior to all other liens or claims and on a parity with prior tax liens. The existence of a default by a self-insured employer is sufficient to create the lien without any prior or subsequent action by the insurance department. All administrators, receivers, and assignees for the benefit of creditors shall notify the insurance commissioner of the administration, receivership, or assignment within thirty days of appointment or qualification.
2. Separate and apart and in addition to the lien established by this section, the insurance commissioner may issue an assessment, for the amount necessary to fulfill the defaulting self-insured employer's obligations, including all amounts paid and payable as compensation under this title and administrative costs, including attorney's fees.

Corrective action against employer authorized - Appeal.

1. The insurance commissioner shall take corrective action against a self-insured employer if the insurance commissioner determines:
   a. The employer is not following proper workers' compensation insurance claims procedures;
   b. The employer's accident prevention program is inadequate; or
   c. Any condition as established by rule exists.
2. Corrective actions may be taken upon the insurance commissioner's initiative or in response to a petition filed. Corrective actions that may be taken by the insurance commissioner include:
   a. Probationary certification for a period of time determined by the insurance commissioner;
   b. Mandatory training for employers in areas including claims management, safety procedures, and administrative reporting requirements; and

c. Monitoring of the activities of the employer to determine progress toward compliance.

3. Upon the termination of the corrective action, the insurance commissioner shall review the employer's program for compliance with state laws and rules. A written report regarding the employer's compliance must be provided to the employer and to any party to a petition filed. If the insurance commissioner determines that compliance has been attained, no further action may be taken. If compliance has not been attained, the insurance commissioner may take additional corrective action or proceed toward decertification.

Request for claim resolution - Time. The self-insurer shall request allowance or denial of a claim within sixty days from the date the claim is filed. If the self-insurer fails to act within sixty days, the insurance department shall intervene and adjudicate the claim.