

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1464
(Representatives N. Johnson, Berg, Boe)
(Senators Klein, Wanzek)

AN ACT to amend and reenact subsection 14 of section 54-44.3-20, section 54-57-01, subsection 1 of section 54-57-03, sections 65-01-16, 65-02-01, 65-02-03.3, 65-02-22, 65-02-33, 65-04-19.3, and 65-04-32, subdivision b of subsection 3 of section 65-05-29, and subsection 2 of section 65-05.1-08 of the North Dakota Century Code, relating to the workforce safety and insurance board, workforce safety and insurance administrative hearings, and workforce safety and insurance personnel; to repeal sections 65-02-01.2 and 65-02-34 of the North Dakota Century Code, relating to the workforce safety and insurance personnel system and spending authority; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 54-44.3-20 of the North Dakota Century Code is amended and reenacted as follows:

14. Officers ~~and employees~~ of workforce safety and insurance.

SECTION 2. AMENDMENT. Section 54-57-01 of the North Dakota Century Code is amended and reenacted as follows:

54-57-01. Office of administrative hearings - Agency defined - Administrative agency defined.

1. A state office of administrative hearings is created.
2. The office is under the direction of a director of administrative hearings who must be free of any association that would impair the director's ability to function officially in a fair and objective manner. The director must be an attorney at law in good standing, admitted to the bar in this state, and currently licensed by the state board of law examiners. The director of administrative hearings must be appointed by the governor and confirmed by the senate and shall hold office for a term of six years, the term beginning July first of the year of appointment and ending June thirtieth of the sixth calendar year after appointment.
3. The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section 28-32-31 and to provide administrative law judges to preside at administrative hearings as requested by agencies. The director of administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state board of law examiners. Administrative law judges employed by the director before August 1, 1995, need not be attorneys at law and may be designated by the director to preside at any administrative proceedings or adjudicative proceedings under section 54-57-03. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative law judges must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative law judge must have a demonstrated knowledge of administrative practices

and procedures and must be free of any association that would impair the person's ability to function officially in a fair and objective manner.

4. The director of administrative hearings may employ the necessary support staff required by the office. Support staff must be classified employees.
5. The director of administrative hearings shall develop categories of positions in the classified service under class titles for the appointment or employment of administrative law judges and support staff in consultation with and approved by the director of North Dakota human resource management services, including the salary to be paid for each position or category of position.
6. The director shall file a report with the governor and the state advisory council for administrative hearings not later than the first day of December of each odd-numbered year. The report must provide information regarding all administrative hearings conducted by the office of administrative hearings during the previous biennium. The report must provide information regarding meeting case processing guidelines for each agency, the cost of hearings for each agency, the decisions issued for each agency, and the results of the office of administrative hearings' service survey.
7. In this chapter, unless the context or subject matter otherwise requires, "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government whether headed by an appointed or elected official.
7. 8. In this chapter, unless the context or subject matter otherwise requires, "administrative agency" means that term as defined in section 28-32-01.

SECTION 3. AMENDMENT. Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, ~~workforce safety and insurance~~, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

SECTION 4. AMENDMENT. Section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

65-01-16. Decisions by organization - Disputed decisions. The following procedures must be followed in claims for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

1. The organization shall send a copy of each initial claim form filed with the organization to the claimant's employer, by regular mail, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed. Failure of the employer to file a response within fourteen days from the day the response form was

mailed to the employer constitutes the employer's admission that the information in the claim form is correct.

2. The organization may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of record.
3. The organization may issue a notice of decision for any decision made by informal internal review and shall serve the notice of decision on the parties by regular mail. A notice of decision must include a statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.
4. A party has thirty days from the day the notice of decision was mailed by the organization in which to file a written request for reconsideration. The request must state the alleged errors in the decision and the relief sought. 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.
5. Within sixty days after receiving a request for reconsideration, the organization shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. 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.
6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the office of independent review under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the office of independent review mails its notice that the office's assistance is complete, in which to file a written request for rehearing. The request must specifically state 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.
8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section. ~~The organization may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings, conclusions, and orders. In reviewing recommended findings, conclusions, and orders, the organization may consult with its legal counsel representing it in the proceeding.~~
9. ~~Within sixty days after receiving the recommended findings, conclusions, and order, the organization shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.~~
- ~~40.~~ 10. A party 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.
- ~~41.~~ 10. Any notice of decision, administrative order, or posthearing administrative order is subject to review and reopening under section 65-05-04.
- ~~42.~~ ~~This section is effective for all orders and decisions on all claims regardless of the date of injury or the date the claim was filed.~~

SECTION 5. AMENDMENT. Section 65-02-01 of the North Dakota Century Code is amended and reenacted as follows:

65-02-01. Workforce safety and insurance - Director - Division directors. The organization must be maintained for the administration of this title. ~~The board shall appoint the director of the organization. The director is subject to the supervision and direction of the board and serves at the pleasure of the board.~~ The director may appoint the director of any division established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

SECTION 6. AMENDMENT. Section 65-02-03.3 of the North Dakota Century Code is amended and reenacted as follows:

65-02-03.3. Board - Powers and duties. ~~The board may authorize the organization to transfer moneys between line items within the organization's budget.~~ The board shall:

- ~~1. Appoint a director on a nonpartisan, merit basis.~~
- ~~2. Set the compensation of the director.~~
- ~~3. Ensure a proper response to any audit recommendations.~~
- ~~4. Present an annual report to the legislative audit and fiscal review committee. The report must be presented by the chairman of the board and the director.~~
- ~~5. Prepare, with the assistance of the organization, an organization budget, beginning with the July 1, 1999, through June 30, 2001, biennium. The organization shall present the budget to the governor for inclusion in the governor's budget. If the governor makes adjustments to the budget, the board may concur in the adjustments or may present testimony to the appropriations committees of the legislative assembly, requesting amendments to the budget to remove adjustments made by the governor. The deadline for submission of the budget is the same as the deadline for all executive agencies.~~
- ~~6. Assist the organization in developing and submitting a budget, responding to any audit recommendations, formulating policies, and discussing problems issues related to the administration of the organization, including the determination of employer premium rates, maintenance of the solvency of the workforce safety and insurance fund, and provision of rehabilitation services, while ensuring impartiality and freedom from political influence.~~
- ~~7. 2. Incorporate Recommend principles of continuous improvement goalsetting, a procedure for implementing a team-oriented continuous improvement program throughout all operations of the organization. The program must include a number of challenging, measurable goals to ensure the organization maintains focus on improving those areas most important to its primary mission.~~
- ~~8. 3. Adopt internal management rules creating bylaws for the board and relating to the election of a board chairman, formation of committees, replacement of departing members, voting procedures, and other procedural matters.~~
4. Provide annual, formal recommendations to the governor regarding setting premium levels and providing premium dividend distributions.
5. Provide formal recommendations to the governor regarding legislation that affect the organization.
6. Provide formal recommendations to the governor regarding the fund's investment allocation.

SECTION 7. AMENDMENT. Section 65-02-22 of the North Dakota Century Code is amended and reenacted as follows:

65-02-22. Hearing officer - Qualifications - Location. A hearing officer designated by the ~~organization~~ office of administrative hearings under chapter 28-32 must be ~~a person~~ an individual licensed to practice law in this state. A hearing officer ~~designated by the organization~~ may not maintain an office within the organization ~~from which the hearing officer conducts daily business. This section does not preclude a hearing held pursuant to chapter 28-32 from being held within the organization.~~

SECTION 8. AMENDMENT. Section 65-02-33 of the North Dakota Century Code is amended and reenacted as follows:

65-02-33. Occupational health and preventive medicine programs - Continuing appropriation. ~~Upon approval of the board, the~~ The organization may establish and implement programs to advance occupational health and preventive medicine in this state and to protect the integrity of the fund. These programs may include the provision of education or training, consultation, grants, scholarships, or other incentives that promote superior care and treatment of the workforce in this state. Funds in the workforce and insurance fund are appropriated to the organization on a continuing basis for the purpose of funding the programs implemented under this section.

SECTION 9. AMENDMENT. Section 65-04-19.3 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19.3. Premium calculation programs - Authority. ~~Upon approval of its board of directors, the~~ 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.

SECTION 10. AMENDMENT. Section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

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 65-05-07.2:

1. The organization may issue a notice of decision based on an informal internal review of the record and shall serve notice of the decision on the parties by regular mail. The organization shall include with the decision a notice of the employer's right to reconsideration.
2. An employer has thirty days from the date of service to file a written petition for reconsideration. The request must state specifically the alleged errors in the decision and the relief sought. 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. Within sixty days after receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by certified mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration.
4. A party has thirty days from the date of service 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. ~~The organization may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings of fact, conclusions of law, and orders. In reviewing recommended findings, conclusions, and orders, the organization may consult with its legal counsel representing it in the proceeding.~~
6. ~~Within sixty days after receiving the administrative law judge's recommended findings of fact, conclusions of law, and order, the organization shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.~~
7. 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.

SECTION 11. AMENDMENT. Subdivision b of subsection 3 of section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

- b. An adjudication by the organization or by order of ~~the board or~~ any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the organization;

SECTION 12. AMENDMENT. Subsection 2 of section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

2. The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount payable on behalf of an applicant may not exceed fifty thousand dollars and must be payable within five years. A loan must be repaid within a period not to exceed twenty years. A loan must be repaid at an interest rate established by the organization which may not exceed the rate of one percent below the Bank of North Dakota's prime interest rate. The organization shall pay the Bank of North Dakota a negotiated fee for administering and servicing loans under this section. At the ~~board's~~ organization's discretion, moneys to establish and maintain the revolving loan fund must be appropriated from the organization's workforce safety and insurance fund. The revolving loan fund is a special fund and must be invested pursuant to section 21-10-06. Investment income and collections of interest and principal on loans made from the revolving loan fund are appropriated on a continuing basis to maintain the fund and provide loans in accordance with this section. The ~~board~~ organization, as determined necessary, may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.

SECTION 13. REPEAL. Sections 65-02-01.2 and 65-02-34 of the North Dakota Century Code are repealed.

SECTION 14. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1464 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 92 Nays 2 Absent 0

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State