

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1052
(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact paragraph 1 of subdivision b of subsection 11 of section 65-01-02, subsection 4 of section 65-01-16, section 65-04-15, subsection 3 of section 65-04-19, subsections 1 and 3 of section 65-04-27.2, subsection 2 of section 65-04-32, and subsection 10 of section 65-05-32 of the North Dakota Century Code, relating to preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, an employer conducting business with a known uninsured employer, requests for reconsideration of employer decisions issued by the organization, and privacy of records; to provide for a legislative management report; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Paragraph 1 of subdivision b of subsection 11 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment that is exposed an exposure to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.

SECTION 2. AMENDMENT. Subsection 4 of section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

4. A party has forty-five days from the day the notice of decision was mailed by the organization ~~in which~~ 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.

SECTION 3. AMENDMENT. Section 65-04-15 of the North Dakota Century Code is amended and reenacted as follows:

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 such employers as those files relate to this chapter; provided, that any such list so 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.
- ~~5-7.~~ 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 ~~shall~~ may provide any relevant information to those officials for the purpose of administering their duties.
- ~~6-8.~~ 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.

SECTION 4. AMENDMENT. Subsection 3 of section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~If~~ The organization may calculate an employer's premium without employer-supplied wages if the organization does not receive the employer's payroll report or, in the case of a noncompliant employer, the organization does not receive reliable and accurate payroll information, the organization may calculate 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.

SECTION 5. AMENDMENT. Subsections 1 and 3 of section 65-04-27.2 of the North Dakota Century Code are amended and reenacted as follows:

1. If it appears to the organization an employer is without workers compensation coverage or is in an uninsured status in violation of this title, by registered mail 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 ~~thirty~~forty-five days ~~of receipt of the~~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.
3. A general contractor or a subcontractor that ~~willfully~~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.

SECTION 6. AMENDMENT. Subsection 2 of section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

2. An employer has forty-five days from the day the notice of decision was mailed by the organization to file a written ~~petition~~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.

SECTION 7. AMENDMENT. Subsection 10 of section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

10. The organization may provide any state or federal agency, or any law enforcement agency, any information obtained pursuant to the administration of this title. Any information so provided must be used for the purpose of administering the duties of that state or federal agency or law enforcement agency.

SECTION 8. APPLICATION. Section 1 of this Act applies to all claims filed on or after August 1, 2023. Sections 2 and 6 of the Act apply to all requests for reconsideration regardless of the date of decision issued by the organization.

SECTION 9. WORKFORCE SAFETY AND INSURANCE - STUDY GENERAL CONTRACTOR LIABILITY FOR SUBCONTRACTORS AND INDEPENDENT CONTRACTS - REPORT TO LEGISLATIVE MANAGEMENT. During the 2023-24 interim, workforce safety and insurance shall study section 65-04-26.2 regarding the liability of a general contractor or the payment of premium for subcontractors and independent contractors who do not secure required coverage or pay premiums owed. The study must address whether changes can be made to gain efficiencies for those subject to section 65-04-26.2 and determine whether changes can be made to increase the effective application of the statute. The study must include research of comparable laws in other jurisdictions and a review of workforce safety and insurance policies and procedures in applying section 65-04-26.2. Workforce

safety and insurance shall seek input from relevant stakeholders including business personnel and industry groups. Before July 1, 2024, workforce safety and insurance shall report the findings of the study and recommend any statutory changes to the legislative management.

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-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1052.

House Vote: Yeas 88 Nays 2 Absent 4

Senate Vote: Yeas 45 Nays 2 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State