

FIRES

CHAPTER 207

SENATE BILL NO. 2211

(Senators Weber, Bekkedahl, Klein)
(Representatives Kempenich, Pyle, Warrey)

AN ACT to create and enact a new subsection to section 18-03-01.1, a new subsection to section 26.1-01-03, and a new subdivision to subsection 1 of section 26.1-01-07 of the North Dakota Century Code, relating to the operations of the state fire marshal; to amend and reenact section 18-01-01, subsection 1 of section 18-01-03.1, sections 18-01-04, 18-01-09, 18-01-20, 18-01-35, 18-01-36, 18-03-04, 18-03-05, 18-03-07, 18-04-04, 18-04-04.1, and 18-04-05, subsection 1 of section 18-13-01, subsection 4 of section 18-13-02, subsection 3 of section 18-13-03, subsection 6 of section 18-13-04, subsections 6 and 7 of section 18-13-05, section 18-13-07, and subsection 1 of section 26.1-03-17, relating to the operations of the state fire marshal; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-01-01 of the North Dakota Century Code is amended and reenacted as follows:

18-01-01. Appointment of state fire marshal - Appointment and salaries of deputies and assistants - Budget.

The ~~attorney general~~insurance commissioner shall appoint the state fire marshal and supervise the operation of the state fire marshal department. The state fire marshal shall manage the state fire marshal department and shall perform the duties imposed on the state fire marshal by this chapter.

The state fire marshal shall appoint such deputies and other employees as the state fire marshal deems necessary to carry out this chapter within the limits of legislative appropriations.

Before entering upon their duties, the state fire marshal and each deputy appointed under this section shall take and subscribe the constitutional oath of office and file the oath in the office of the secretary of state.

The state fire marshal department ~~must be operated in conjunction~~shall collaborate with the bureau of criminal investigation, ~~and the state fire marshal shall report all suspected cases of arson to the bureau of criminal investigation.~~ The budget for the state fire marshal department must be submitted as part of the ~~attorney general's~~insurance commissioner's budget.

SECTION 2. AMENDMENT. Subsection 1 of section 18-01-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The state fire marshal and the state fire marshal's deputies may perform fire safety inspections of those facilities required to be inspected under administrative rules of the department of health and human services. The state fire marshal shall charge a fee not to exceed fifty dollars for conducting these fire safety inspections in an amount determined by administrative rules adopted by the state fire marshal. Inspection fees received by the state fire marshal must be deposited into the attorney general's insurance regulatory trust fund operating fund.

SECTION 3. AMENDMENT. Section 18-01-04 of the North Dakota Century Code is amended and reenacted as follows:

18-01-04. Rules for prevention of fires to be issued.

The state fire marshal, under the supervision of the attorney general insurance commissioner, shall make rules not inconsistent with the provisions of this code for the prevention of fires and shall explain such rules fully to all state, county, and municipal boards and officers. All such rules must be posted in such conspicuous places as will tend to be of the greatest benefit to the residents of the state, and when called upon, the state fire marshal or one of the state fire marshal's assistants shall appear before any public board and explain the benefits derived from compliance with such rules and regulations in the reduction of hazardous conditions and loss by fire.

SECTION 4. AMENDMENT. Section 18-01-09 of the North Dakota Century Code is amended and reenacted as follows:

18-01-09. Investigation by state fire marshal - Complaint to state's attorney bureau of criminal investigation - Records of arson prosecutions.

If any investigation made pursuant to the provisions of section 18-01-07 is insufficient in the opinion of the state fire marshal, the state fire marshal shall take or cause to be taken the sworn testimony of all persons having any means of knowledge in relation to the matter under investigation and shall cause the same to be reduced to writing. If the state fire marshal is of the opinion that there is evidence sufficient to charge any person with the crime of arson, the state fire marshal shall ~~cause said person to be arrested and charged with such an offense.~~ The state fire marshal shall furnish to the state's attorney of the county in which the crime is alleged to have been committed the ~~names of all witnesses obtained by the state fire marshal~~ furnish to the bureau of criminal investigation and the state's attorney the written report created pursuant to section 18-01-07 and a copy of all the pertinent and material testimony taken in the case. The state fire marshal shall keep a record of the proceedings in all prosecutions for arson and of the results in all cases in which a final disposition is made.

SECTION 5. AMENDMENT. Section 18-01-20 of the North Dakota Century Code is amended and reenacted as follows:

18-01-20. Service of order and notice - Contents of notice - Additional parties - Duty of attorney general insurance commissioner.

1. There must be served upon the owner, mortgagee, lessee, tenant, occupant, and other persons known to have or claim any interest in the premises described in the order of abatement a copy of the abatement order and a written notice stating:

4-a. The title of the proceeding.

- 2-b. The name of the court in which the proceeding is instituted.
 - 3-c. That the abatement order has been filed in the district court.
 - 4-d. That the state fire marshal will apply to the court for a judgment enforcing the terms of the abatement order.
 - 5-e. That all persons interested in the premises described in the abatement order or in the proceeding in the district court will be required to appear therein and state any objections to the order, within twenty days after the date of service of the notice upon them.
2. The notice must be subscribed by the ~~attorney general~~insurance commissioner who shall appear for the state fire marshal in each such proceeding. Service must be made in the same manner as a summons is required to be served in a civil action. Whenever it appears that persons in addition to those served are necessary or proper parties to the proceeding, the court may order such persons to be brought in by proper service of the order and notice upon them.

SECTION 6. AMENDMENT. Section 18-01-35 of the North Dakota Century Code is amended and reenacted as follows:

18-01-35. Fire and tornado fund fees.

The ~~attorney general~~insurance commissioner shall charge and collect fees for services provided by the state fire marshal program to entities covered by the fire and tornado fund under chapter 26.1-22. All fees collected under this section must be deposited in the ~~attorney general's operating~~insurance regulatory trust fund.

SECTION 7. AMENDMENT. Section 18-01-36 of the North Dakota Century Code is amended and reenacted as follows:

18-01-36. Petroleum release compensation fund fees.

The ~~attorney general~~insurance commissioner shall charge and collect fees for services provided by the state fire marshal program to entities covered by the petroleum release compensation fund under chapter 23-37. All fees collected under this section must be deposited in the ~~attorney general's operating~~insurance regulatory trust fund.

SECTION 8. A new subsection to section 18-03-01.1 of the North Dakota Century Code is created and enacted as follows:

Report quarterly to the state fire marshal.

SECTION 9. AMENDMENT. Section 18-03-04 of the North Dakota Century Code is amended and reenacted as follows:

18-03-04. Association to furnish bond.

The North Dakota firefighter's association shall file with the ~~director of the office of management and budget~~the state fire marshal a bond in the penal sum of two thousand dollars conditioned for the faithful disposition of the funds ~~appropriated by the legislative assembly~~distributed from the insurance regulatory trust fund for the use of the association in ~~conducting fire schools~~to carry out this chapter.

SECTION 10. AMENDMENT. Section 18-03-05 of the North Dakota Century Code is amended and reenacted as follows:

18-03-05. Statement of desired appropriation submitted to office of the ~~budget~~ state fire marshal.

Not later than July first of each year next preceding a regular session of the legislative assembly, the ~~director of the budget~~ North Dakota firefighter's association shall send to the ~~North Dakota firefighter's association~~ a suitable blank form to be filled out with state fire marshal an itemized statement of the amount of money necessary to promote the efficiency and growth of the different fire departments and fire protection districts of the association and to ~~conduct the fire schools to be held~~ carry out this chapter during the succeeding biennium under the direction of the association. ~~The association shall return the blanks properly filled out as provided in section 54-44.1-04.~~

SECTION 11. AMENDMENT. Section 18-03-07 of the North Dakota Century Code is amended and reenacted as follows:

18-03-07. Office of management and budget ~~insurance commissioner to pay sum appropriated to association treasurer.~~

Not later than the first day of August of each year, the ~~office of management and budget, by warrants prepared and issued by the office and signed by the state auditor,~~ insurance commissioner shall pay to the ~~treasurer of the North Dakota firefighter's association~~ the sum appropriated by the legislative assembly for that year one million two hundred thousand dollars from the insurance regulatory trust fund. The sum, however, may not be paid until the treasurer of the association has filed the bond required in section 18-03-04.

SECTION 12. AMENDMENT. Section 18-04-04 of the North Dakota Century Code is amended and reenacted as follows:

18-04-04. Insurance companies to report fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril, and crop hail insurance premium collections - Form furnished by insurance commissioner.

1. The insurance commissioner, when the commissioner forwards to an insurance company which is issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril, and crop hail insurance in this state the form to be used in submitting its annual statement, shall forward a form containing the names of all cities and all rural fire protection districts or rural fire departments entitled to benefits under the provisions of this chapter. Every insurance company issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril, and crop hail insurance within this state shall complete such form by showing on the form the amount of all premiums received by the insurance company upon such policies issued on property within the corporate limits of each city shown on the form and on property within the boundaries of each rural fire protection district shown on the form or property within the boundaries of each rural fire department as certified by the state fire marshal during the year ending on the preceding thirty-first day of December and shall file the form as a part of the insurance company's annual statement.

2. An insurance company failing to report fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril, and crop hail insurance premium collections on or before March first, on forms prescribed by the insurance commissioner, is subject to the monetary penalties prescribed in section 26.1-03-11.

SECTION 13. AMENDMENT. Section 18-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

18-04-04.1. Insurance tax distribution fund.

The insurance tax distribution fund is a special fund in the state treasury. The portion of revenue provided in section 26.1-03-17 must be deposited in the fund for disbursement as provided in this chapter and chapter 23-46, ~~subject to legislative appropriation.~~

SECTION 14. AMENDMENT. Section 18-04-05 of the North Dakota Century Code is amended and reenacted as follows:

18-04-05. Amount due cities, rural fire protection districts, or rural fire departments - Transfer to firefighters death benefit fund - Disbursement to North Dakota firefighter's association - Payments by insurance commissioner - Continuing appropriation.

1. The insurance commissioner shall disburse funds in the insurance tax distribution fund as provided under this section.
2. The insurance commissioner shall transfer an amount of up to fifty thousand dollars per biennium, as may be necessary, to the firefighters death benefit fund for distribution under chapter 18-05.1.
3. The insurance commissioner shall disburse funds to the North Dakota firefighter's association for uses authorized under chapter 18-03, ~~subject to legislative appropriations.~~
4. The insurance commissioner shall compute the amounts due to the certified city fire departments, certified rural fire departments, or certified fire protection districts entitled to benefits under this chapter on or before December first of each year. ~~The insurance commissioner shall allocate one-half of the biennial legislative appropriation for distribution under this subsection, to each eligible city not within a certified fire protection district, each certified rural fire protection district organized under this title, and each rural fire department certified by the state fire marshal, and pay the amount allocated in December of each year. The allocation must be made in proportion to the amount of insurance company premiums received by insurance companies pursuant to section 26.1-03-17 for policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, commercial multiple peril, and crop hail insurance~~ the lines of insurance identified under section 18-04-04 on property within the city, certified rural fire protection district, or area served by the certified rural fire department to the total of those premiums for those policies in the state.
5. Annually, the insurance commissioner shall determine the amount of insurance premium taxes collected from the insurance lines identified in section 18-04-04 to the certified city fire departments, certified rural fire departments, and certified fire protection districts. Moneys authorized for

disbursement under this section are appropriated from the insurance tax distribution fund to the insurance commissioner on a continuing basis for the purpose of this section.

SECTION 15. AMENDMENT. Subsection 1 of section 18-13-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agent" means any person authorized by the ~~attorney general~~insurance commissioner to purchase or sell packages of cigarettes.

SECTION 16. AMENDMENT. Subsection 4 of section 18-13-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the state fire marshal and the ~~attorney general~~insurance commissioner upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request is subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make those copies available.

SECTION 17. AMENDMENT. Subsection 3 of section 18-13-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The certifications must be made available to the ~~attorney general~~insurance commissioner for purposes consistent with this chapter and the state tax commissioner for the purposes of ensuring compliance with this section.

SECTION 18. AMENDMENT. Subsection 6 of section 18-13-04 of the North Dakota Century Code is amended and reenacted as follows:

6. A manufacturer certifying cigarettes in accordance with section 18-13-03 shall provide a copy of the certifications to every wholesale dealer and agent to which the manufacturer sells cigarettes, and shall provide sufficient copies of an illustration of the package marking utilized by the manufacturer under this section for each retail dealer to which the wholesale dealer or agent sells cigarettes. A wholesale dealer and agent shall provide a copy of these package markings received from the manufacturer to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the state fire marshal, the tax commissioner, the ~~attorney general~~insurance commissioner, and their employees to inspect markings of cigarette packaging marked under this section.

SECTION 19. AMENDMENT. Subsection 6 of section 18-13-05 of the North Dakota Century Code is amended and reenacted as follows:

6. In addition to any other remedy provided by law, the state fire marshal or ~~attorney general~~insurance commissioner may file an action in district court for a violation of this chapter, including petitioning for:
 - a. Preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or any other person to enjoin the person from selling or offering to sell any cigarette that does not comply with the requirements of this chapter; or

- b. To recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney's fees.

SECTION 20. AMENDMENT. Subsection 7 of section 18-13-05 of the North Dakota Century Code is amended and reenacted as follows:

7. Each violation of this chapter or of rules adopted to implement this chapter constitutes a separate civil violation for which the state fire marshal or attorney general/insurance commissioner may obtain relief.

SECTION 21. AMENDMENT. Section 18-13-07 of the North Dakota Century Code is amended and reenacted as follows:

18-13-07. Inspection. (Contingent expiration date - [See note](#))

The attorney general/insurance commissioner and the state fire marshal may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale shall give the attorney general/insurance commissioner and the state fire marshal the means, facilities, and opportunity for the examinations authorized by this section.

SECTION 22. A new subsection to section 26.1-01-03 of the North Dakota Century Code is created and enacted as follows:

Manage, control, and supervise the state fire marshal.

SECTION 23. A new subdivision to subsection 1 of section 26.1-01-07 of the North Dakota Century Code is created and enacted as follows:

For services provided by the state fire marshal.

SECTION 24. AMENDMENT. Subsection 1 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except fraternal benefit and benevolent societies, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day. Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under section 18-04-05 and chapter 23-46 in any fiscal year. Collections from this tax exceeding the sum

of the amount deposited in the insurance tax distribution fund must be deposited in the general fund in the state treasury.

Approved April 13, 2023

Filed April 14, 2023