

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1072
(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact a new subsection to section 65-04-27.2 of the North Dakota Century Code, relating to cease and desist orders; to amend and reenact section 65-01-02, subsection 4 of section 65-01-08, sections 65-01-10, 65-04-04, 65-04-06, 65-04-19, 65-04-22, 65-04-24, and 65-04-26.2, subsection 3 of section 65-04-32, section 65-04-33, and subsection 1 of section 65-09-01 of the North Dakota Century Code, relating to definitions, the removal of the word "annual", off-setting premiums, the organizational seal, payroll reports, payment of premiums, premiums in default, notice of premium owing, liability of a general contractor, notices of decision, noncompliance of employers, and liability of uninsured employers; to repeal section 65-06.2-09 of the North Dakota Century Code, relating to safety and performance reviews; to provide a penalty; and to provide for an application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions.

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the injured employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the injured employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
 - a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the

three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.

- c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimantinjured employee during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
 7. "Board" means the workforce safety and insurance board of directors.
 8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
 9. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the injured employee; or is under eighteen years of age and does not reside with the injured employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the injured employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the injured employee for support. A child does not include a married child unless actually dependent on the injured employee as shown on the preceding year's income tax returns.
 10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.
 - a. The term includes:
 - (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
 - (2) An injury to artificial members.
 - (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
 - (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.

- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
 - (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury.
- b. The term does not include:
- (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 ~~whethat~~ is exposed 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.
 - (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
 - (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
 - (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
 - (7) Injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.
 - (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
 - (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
 - (10) A mental injury arising from mental stimulus.
11. "Date of first disability" means the first date the injured employee was unable to work because of a compensable injury.

12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
13. "Director" means the director of the organization.
14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.
16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.
 - a. The term includes:
 - (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.
 - (2) Aliens.
 - (3) County general assistance workers, except those who are engaged in repaying to counties moneys the counties have been compelled by statute to expend for county general assistance.
 - (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.
 - b. The term does not include:
 - (1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.
 - (2) An individual who is engaged in an illegal enterprise or occupation.
 - (3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
 - (4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:
 - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must

provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.

- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
 - (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.
 - (7) An employer.
17. "Employer" means a person ~~wh~~that engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
- a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
 - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
 - j. A multidistrict special education unit.
 - k. An area career and technology center.
 - l. A regional education association.
18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
- a. Agricultural or domestic service.

- b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. "Health care provider" includes a doctor, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
23. "Noncompliance" means failure to follow the requirements of chapter 65-04. An employer may be in noncompliance regardless of the employer's insured or uninsured status with the organization.
- ~~23-24.~~ "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
- ~~24-25.~~ "Parent" includes a stepparent and a parent by adoption.
26. "Payroll report" means the mechanism created by the organization and used by employers to report all employee payroll required by the organization.
- ~~25-27.~~ "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
- ~~26-28.~~ "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an injured employee from performing any work and results from any one of the following conditions:
- a. Total and permanent loss of sight of both eyes;
 - b. Loss of both legs or loss of both feet at or above the ankle;
 - c. Loss of both arms or loss of both hands at or above the wrist;
 - d. Loss of any two of the members or faculties in subdivision a, b, or c;
 - e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
 - f. Third-degree burns that cover at least forty percent of the body and require grafting;
 - g. A medically documented brain injury affecting cognitive and mental functioning which renders an injured employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or

- h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the injured employee has not reached maximum medical improvement within one hundred four weeks, the injured employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the injured employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

- ~~27-29.~~ "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
- ~~28-30.~~ "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
- ~~29-31.~~ "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
- ~~32.~~ "Subcontractor" means a person that agrees to perform all or part of the work for a contractor or another subcontractor.
- ~~30-33.~~ "Temporary total disability" means disability that results in the inability of an injured employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the injured employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
- ~~34.~~ "Uninsured" means failure of an employer to secure mandatory coverage with the organization or failure to pay premium, assessment, penalty, or interest, as calculated by the organization, which is more than forty-five days past due. An uninsured employer is subject to chapter 65-09.
- ~~31-35.~~ "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
- ~~32-36.~~ a. "Wages" means:
- (1) An injured employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.
 - (2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.
 - (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.

- b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

SECTION 2. AMENDMENT. Subsection 4 of section 65-01-08 of the North Dakota Century Code is amended and reenacted as follows:

4. A staffing service that provides only temporary staffing services is the employee's employer. The temporary staffing service shall maintain a workforce safety and insurance account in the temporary staffing service's name and report the wages for those workers annually to the organization. All other staffing services shall:
 - a. Report ~~annually~~ the payroll detail as directed by the organization for each North Dakota client company.
 - b. Maintain complete and separate records of the payroll of the staffing service's client companies. Claims must be separately identified by the staffing service for each client company.
 - c. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between a staffing service and a client company is terminated, the employees become the sole employees of the client company.
 - d. Notify the organization of the client company's name, workforce safety and insurance account number, and the date the staffing service began providing services to the client company. The staffing service shall provide this information upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.
 - e. Supply the organization with a copy of the agreement between the staffing service and client company.
 - f. Notify the organization upon termination of any agreement with a client company, but no later than fifteen days from the effective date of termination.
 - g. Notify the staffing service's client companies of an uninsured status for failure to pay workforce safety and insurance premiums within fifteen days of notice by the organization.

SECTION 3. AMENDMENT. Section 65-01-10 of the North Dakota Century Code is amended and reenacted as follows:

65-01-10. Waiver of rights to compensation void - Deduction of premium from employee prohibited - Penalty.

No agreement by an employee to waive rights to compensation under this title is valid except as provided in section 65-05-25. No agreement by any employee to pay any portion of the premium paid or payable by the employer into the fund is valid, and any employer who deducts any portion of ~~such~~the premium from the wages or salary of any employee entitled to the eligible for benefits of under this title is guilty of a class A misdemeanor and is subject to a penalty of up to five thousand dollars. The organization may reduce the penalties provided under this section. An employer may not appeal an organization decision not to reduce a penalty under this section.

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

65-04-04. Employers obligated to pay premiums and assessments - ~~Premium and certificates to be mailed~~Certificate provided.

1. Each employer subject to this title shall pay into the fund ~~annually~~ the amount of ~~premiums~~premium and assessment determined ~~and fixed~~ by the organization ~~for the employment or occupation of the employer~~. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title.
2. The organization shall ~~mail~~provide to the employer a certificate specifying that the payment has been made. The certificate, ~~attested by the seal of the organization~~, is prima facie evidence of the payment of the premium.
3. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum ~~premium~~due and has no employees for the period indicated on the certificate. If an employer defaults on ~~premium or assessment~~ payments after a certificate has been issued, the organization may revoke that employer's certificate.
4. The organization shall provide that premiums ~~to be paid or assessments payable~~ by school districts, multidistrict special education units, area career and technology centers, and regional education associations, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that ~~premiums to be paid or assessments payable~~ by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums or assessments of other employers fall due on different or specified dates.
5. For the purpose of effectuating different or specified due dates, the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization.
6. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of ~~premium payment~~ showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud.
7. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

SECTION 5. AMENDMENT. Section 65-04-06 of the North Dakota Century Code is amended and reenacted as follows:

65-04-06. Employer obligated to file payroll reports - Organization to specify method of providing information - Verification may be required.

~~Information required by the organization shall be furnished by employers on preprinted forms provided free of charge, or in another manner specified by the organization. Each employer subject to this title shall provide at least annually a payroll report to the organization. The organization may require an employer to file a payroll report with the organization more frequently during the premium year.~~

Each employer required to file a payroll report must file the report by an electronic method approved by the organization. An employer that does not comply with the requirements to file the payroll report electronically is deemed to have failed to submit the payroll report. If an employer is unable to provide the information required, the employer shall submit to the organization in writing ~~good and sufficient~~ the reason therefor. The organization and its representatives may require any employer to submit information verified under oath within the time period fixed by it or by law.

SECTION 6. AMENDMENT. Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19. Organization to assign rate classifications, calculate premium, and determine premium due from employer - ~~Mailing~~Notification of premium billing statement as notice of amount due.

1. The organization shall assign rate classifications based on information provided to the organization by the employer or information gathered through the organization's investigative process.
2. The organization shall determine the amount of premium due from every employer subject to this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the organization received information an employer is subject to the title.
3. If the organization does not receive the ~~annual~~ payroll report or, in the case of a noncompliant employer, the organization does not receive reliable and accurate payroll information, the organization may calculate premium 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.
4. The organization shall ~~mail~~send a copy of the premium billing statement to the employer. ~~Mailing of~~Sending the premium billing statement, by mail or electronically, constitutes notice to the employer of the amount due.

SECTION 7. AMENDMENT. Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

65-04-22. Organization may make premium due immediately - When premium is in default - Penalty.

The organization may require ~~payment of a premium, including an advance premium, a security deposit, or any other instrument that is acceptable to the organization, within any time which, in the judgment of the organization, is reasonable and necessary to secure the payment of the premium by any employer.~~ The organization may require advance payment of the premium, whether paid either in full or in installments. Any payment shall be in default one month from the payment due date specified in the premium billing statement.

Default of any installment payment will, at the option of the organization, make the entire remaining balance of the premium due and payable. The organization may declare an employer uninsured at any time after forty-five days have passed from the due date specified in the premium billing statement and the employer has failed to make a payment to the organization. The organization may decline coverage to any employer that has been determined to be uninsured under this section or where a premium delinquency remains unresolved.

When an employer defaults in the payment of a premium, an installment of the premium, penalty or interest, or in the filing of any bond required under this chapter, the employer at the time of default is subject to a penalty not to exceed two hundred fifty dollars plus two percent of the amount of premiums, penalties, and interest in default, and beginning one month after default, a penalty of two percent of the amount of premiums, penalties, and interest in default for each month or fraction of a month the premium, penalty, or interest remains unpaid.

SECTION 8. AMENDMENT. Section 65-04-24 of the North Dakota Century Code is amended and reenacted as follows:

65-04-24. Notice of premium or assessment owing - Organization to bring suit for premiums in default.

~~When an employer defaults on payment of premium, penalties, or interest, the organization may bring suit for the collection of premium, accrued penalties and interest, and any additional penalties and interest that may accrue. The organization shall notify an employer of the amount of premium, assessment, penalty, and interest due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, assessment, penalties, and interest due by civil action. In any action for the collection of amounts due the organization under this title, the court may not review or consider the action of the organization regarding the acceptance or payment of any claim. The organization may adjust or compromise the account. The organization may retain counsel on a contingent fee basis to represent the organization in any proceeding relating to the collection of amounts due under this title. The organization shall charge attorney's fees and costs to the organization's general fund. In any action for the collection of amounts due the organization under this title, the court may not review or consider the action of the organization regarding the acceptance or payment of any claim.~~

SECTION 9. AMENDMENT. Section 65-04-26.2 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26.2. General contractor liability for subcontractors and independent contractors.

1. An individual employed by a subcontractor or by an independent contractor operating under an agreement with a general contractor is deemed to be an employee of the general contractor ~~if and any subcontractor that supplied work to the subcontractor or independent contractor does not secure coverage as required under this title. A general contractor is and a subcontractor are~~ liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage ~~or pay the premium owing. The general contractor is and a subcontractor are~~ liable for payment of this premium and penalty until the subcontractor or independent contractor pays this premium and penalty. The liability imposed on a general contractor ~~and a subcontractor~~ under this section for the payment of premium and penalties under this title which are not paid by a subcontractor or independent contractor is limited to work performed under that general contractor.
2. Upon request of the organization, a person the organization determines may have information that may assist the organization in determining the amount of wages expended by the subcontractor or independent contractor shall provide this information to the organization.
3. If the organization is unable to obtain complete and reliable payroll information for a subcontractor or independent contractor, the organization may calculate premium using the available payroll information of the subcontractor or independent contractor for work performed under the liable general contractor ~~or a subcontractor~~ as permitted in section 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure coverage ~~or pay the premium owing~~ arises from a single project with a general contractor, the liability of the general contractor ~~and subcontractor~~ is one hundred percent of the amount of premium and penalty owed by the subcontractor or independent contractor. If there is evidence showing the subcontractor or independent contractor was working on multiple projects during the period the subcontractor or independent contractor failed to secure coverage, the organization shall set the amount of ~~the the general contractor's subcontractor and subcontractor's~~ liability which may not exceed seventy percent of the total premium and penalty owed by the subcontractor or independent contractor.
4. The definition of the term "contractor" under section 43-07-01 applies to this section.

SECTION 10. A new subsection to section 65-04-27.2 of the North Dakota Century Code is created and enacted as follows:

A general contractor or a subcontractor that willfully uses the services of a subcontractor 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 11. AMENDMENT. Subsection 3 of section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Within sixty days after~~After receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by ~~certified~~regular mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration. 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. If the organization does not issue an order within sixty days of receiving a request for reconsideration, a party may request, and the organization shall promptly issue, an appealable determination.

SECTION 12. AMENDMENT. Section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

65-04-33. Intentional acts - Failure to secure coverage - Uninsured - Noncompliance - Failure to submit necessary reports - Penalty.

1. An employer may not employ any person, or receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first applying for workforce safety and insurance coverage for the protection of employees by notifying the organization of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming twelve-month period.
2.
 - a. An employer ~~who~~that willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or ~~who~~that willfully fails to secure coverage for employees, is liable to the state in the amount of five thousand dollars plus three times the difference between the premium paid and the amount of premium the employer should have paid.
 - b. The organization shall collect a penalty imposed under this subsection in a civil action in the name of the state, and the organization shall deposit a penalty collected under this subsection to the credit of the workforce safety and insurance fund.
 - c. An employer ~~who~~that willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or ~~who~~that willfully fails to secure coverage for employees, is guilty of a class A misdemeanor. If the premium due exceeds one thousand dollars, the penalty for willful failure to secure coverage or willful misrepresentation to the organization or its representative is a class C felony. If the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workforce safety and insurance coverage under this subsection.
 - d. In addition to the penalties prescribed by this subsection, the organization may initiate injunction proceedings as provided for in this title to enjoin an employer from unlawfully employing uninsured workers.
 - e. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.

3. An employer ~~who~~that willfully makes a false statement in an attempt to preclude an injured worker from securing benefits or payment for services, or that willfully discharges or threatens to discharge an employee for seeking or making known the intention to seek workforce safety and insurance benefits is liable to the state in the amount of five thousand dollars. The organization shall collect a civil penalty imposed under this section in a civil action in the name of the state, and the organization shall deposit a penalty collected under this section to the credit of the workforce safety and insurance fund. A willful violation of this section is a class A misdemeanor. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.

4.
 - a. An employer ~~who~~that is uninsured for failure to secure coverage is liable for any premiums, assessments plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of ~~noncompliance~~failure to secure coverage.
 - b. An additional five percent penalty is due for each year of ~~noncompliance~~failure to secure coverage before the most recent year beginning on the date the organization became aware of the employer's ~~uninsured status~~failure to secure coverage, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent.
 - c. In addition, the organization may assess a penalty of up to five thousand dollars for each premium period the employer ~~was uninsured~~failed to secure coverage. The organization may not assess a penalty for more than six years of ~~past noncompliance~~failure to secure coverage.
 - d. ~~The organization may assess additional penalties, from the date the organization became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. In addition, the~~The organization may assess an employer the actual cost and reserves of any claim attributable to the employer during the time the employer ~~was uninsured~~failed to secure coverage.
 - e. The penalties for employers are in addition to any other penalties by law. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.

5.
 - a. An employer in noncompliance is subject to a penalty of up to five thousand dollars for each premium period the employer was in noncompliance.
 - b. The organization may not assess a penalty for more than six years of past noncompliance.
 - c. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.

- 5-6.
 - a. An employer ~~who~~that fails or refuses to furnish to the organization the ~~annual~~ payroll report ~~and~~or estimate, or whothat fails or refuses to furnish other information required by the organization under this chapter is subject to a penalty established by the organization of ~~two~~up to five thousand dollars.
 - b. Upon the request of the organization, the employer shall furnish the organization any of that employer's payroll records, ~~annual~~ payroll reports, and other information required by the organization under this chapter and an estimate of payroll for the advance premium year.

- c. If the employer fails or refuses to provide the records within thirty days of a written request from the organization, the employer is subject to a penalty of five thousand dollars and a penalty not to exceed one hundred dollars for each day until the organization receives the records, in addition to the five thousand dollar penalty set forth in subsection 4.
 - d. The organization may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township.
 - e. The organization may reduce penalties for employers under this subsection. However, an employer may not appeal an organization decision not to reduce a penalty. ~~The organization shall notify an employer by regular mail of the amount of premium and penalty due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the organization regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.~~
6. ~~When an employer defaults in the payment of any premium, any installment of the premium, any penalty or interest, or in the filing of any bond required under this chapter, the employer at the time of default is subject to a penalty not to exceed two hundred fifty dollars plus two percent of the amount of premiums, penalties, and interest in default, and beginning one month after default, a penalty of two percent of the amount of premiums, penalties, and interest in default for each month or fraction of a month the premium, penalty, or interest remains unpaid.~~

SECTION 13. AMENDMENT. Subsection 1 of section 65-09-01 of the North Dakota Century Code is amended and reenacted as follows:

- 1. Any employer subject to this title ~~who~~that is in violation of ~~subsection 1 or 2 of section 65-04-33 or declared uninsured pursuant to section 65-04-22~~ is not protected by the immunity from civil liability granted to employers under this title for injuries to that employer's employees for damages suffered by reason of injuries sustained in the course of employment and to the dependents and legal representatives of an employee whose death results from injuries sustained in the course of employment. The employer is liable for the premiums, reimbursements, penalties, and interest provided for in this title.

SECTION 14. REPEAL. Section 65-06.2-09 of the North Dakota Century Code is repealed.

SECTION 15. APPLICATION. Section 5 of this Act applies to employer payroll periods ending on or after August 31, 2019.

SECTION 16. APPLICATION. Section 9 of this Act applies to all employer accounts regardless of the date the employer did not secure coverage or did not pay the premium owing.

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-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1072.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State