

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2093
(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact section 65-01-09, subsection 5 of section 65-01-16, and section 65-02-27 of the North Dakota Century Code, relating to subrogation liens, administrative orders, and the decision review office; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

65-01-09. Injury through negligence of third person - Option of employee - Organization subrogated when claim filed - Lien created.

When an injury or death for which compensation is payable under provisions of this title ~~shall~~ have been sustained under circumstances creating in some person other than the organization a legal liability to pay damages in respect thereto, the injured employee, or the injured employee's dependents may claim compensation under this title and proceed at law to recover damages against such other person.

1. The organization is subrogated to the rights of the injured employee or the injured employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount ~~the organization~~ the organization has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The organization also has a lien to the extent of fifty percent of the damages recovered up to a maximum of the total amount ~~the organization~~ the organization has paid in compensation and benefits. The organization's subrogation interest or lien may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or the injured employee's dependents in the event of the injured employee's death. Such action shall be brought in the injured employee's or in the injured employee's dependents' own right and name and as trustee for the organization for the subrogation interest of the organization. However, if the director chooses not to participate in an action, and the decision is in writing, the organization has no subrogation interest and no obligation to pay fees or costs under this section and no lien.
2. If the injured employee or the injured employee's dependents do not institute suit within sixty days after date of injury, the organization may bring the action in its own name and as trustee for the injured employee or the injured employee's dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the injured employee's dependents and retain as its lien the full amount ~~the organization~~ the organization has paid in compensation and benefits. In the alternative, the organization may bring an action against a third party to recover its lien for benefits paid to the injured employee. Within sixty days after both the injured employee and the organization have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the injured employee, or both, and in trust for the organization and for the injured employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship.
3. If the action is brought by the injured employee or the injured employee's dependents, or the employer as provided ~~above~~ in subsection 2, the organization shall pay fifty percent of the costs of the action, exclusive of attorney's fees, when such costs are incurred as the action progresses before recovery of damages. If there is no recovery of damages in the action, this

shall be a cost of the organization to be paid from the organization's general fund. After recovery of damages in the action, the costs of the action, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the organization recovered to the total recovery in the action. The organization shall pay attorney's fees to the injured employee's attorney from the organization's general fund as follows:

4. a. Twenty-five percent of the subrogation interest recovered for the organization before judgment; and
2. b. Thirty-three and one-third percent of the subrogation interest recovered for the organization when recovered through judgment entered as a result of a trial on the merits or recovered through binding alternative dispute resolution.
4. The above provisions as to costs of the action and attorney's fees are effective only when the injured employee advises the organization in writing the name and address of the injured employee's attorney, and that the injured employee has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If a ~~claimant~~ injured employee fails to pay the organization's subrogation interest and lien within thirty days of receipt of a recovery in a third-party action, the organization's subrogation interest is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the injured employee's dependents, no costs or attorney's fees will be paid from the organization's subrogation interest and the organization's lien is the full amount of the damages recovered up to a maximum of the total amount it has paid.
5. The organization's lien is created upon first payment of benefits. The lien attaches to all claims, demands, settlement proceeds, judgment awards, or insurance payable by reason of a legal liability of a third person. If the organization does not receive payment of its lien amount within thirty days of the payment of any recovery and if the organization has served, by regular mail, written notice of its lien upon the injured employee or the injured employee's dependents and upon the third person, ~~the third person~~, the insurer of the third person, the injured employee or injured employee's dependents, and the attorney of the injured employee or injured employee's dependents are liable to the organization for the lien amount. A release or satisfaction of any judgment, claim, or demand given by the injured employee or the injured employee's dependents is not valid or effective against the lien. An action to collect the organization's lien amount must be commenced within one year of the organization first possessing actual knowledge of a recovery.
6. Upon receipt of its subrogation interest, the organization shall credit the medical expense assessment paid by the employer under section 65-04-04.4 to the employer's account.
7. If the organization's lien is not recognized by another jurisdiction, the organization may issue a decision, including a decision demanding repayment from the injured employee, of all benefits and compensation the organization has made on behalf of the injured employee, including costs and administrative fees.

SECTION 2. AMENDMENT. Subsection 5 of section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~Within sixty days after~~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. If the organization does not issue an order within sixty days of receiving a request for reconsideration, any interested party may request, and the organization shall promptly issue, an appealable determination.

SECTION 3. AMENDMENT. Section 65-02-27 of the North Dakota Century Code is amended and reenacted as follows:

65-02-27. Decision review office.

The organization's decision review office is established. The decision review office is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title. The decision review office shall provide assistance to an injured employee who has filed a claim, which may include acting on behalf of an injured employee who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing an injured employee of the effect of decisions made by the organization, an injured employee, or an employer under this title. ~~The decision review office shall provide assistance to employees, upon request, in cases of constructive denial or after a vocational consultant's report has been issued.~~ The organization shall employ a director of the decision review office and other personnel determined to be necessary for the administration of the office. ~~A person~~An individual employed to administer the decision review office may not act as an attorney for an injured employee. The organization may not pay attorney's fees to an attorney who represents an injured employee in a disputed claim before the organization unless the injured employee has first attempted to resolve the dispute through the decision review office. A written request for assistance by an injured employee who contacts the decision review office within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order. The period begins upon notice to the injured employee, sent by regular mail, that the decision review office's assistance to the injured employee is completed. The information contained in a file established by the decision review office on an injured employee's disputed claim, including communications from an injured employee, is privileged and may not be released without the injured employee's permission. Information in the file containing the notes or mental impressions of decision review office staff is confidential and may not be released by the decision review office.

SECTION 4. APPLICATION. Section 1 of this Act applies to all claims regardless of date of injury.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2093.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 94 Nays 0 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State