

Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1137

Introduced by

Representative Keiser

1 A BILL for an Act to create and enact sections 65-04-26.2 and 65-04-27.2 of the North Dakota  
2 Century Code, relating to workers' compensation requirements for general contractors and  
3 cease and desist orders; ~~and~~ to amend and reenact subsection 16 of section 65-01-02 and  
4 section 65-04-19 of the North Dakota Century Code, relating to the workers' compensation  
5 definition of employee, assignment of rate classification, and calculation of premium; and to  
6 provide a penalty.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Subsection 16 of section 65-01-02 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10 16. "Employee" means ~~a person~~ an individual who performs hazardous employment for  
11 another for remuneration unless the ~~person~~ individual is an independent contractor  
12 under the common-law test.

13 a. The term includes:

14 (1) All elective and appointed officials of this state and its political subdivisions,  
15 including municipal corporations and including the members of the  
16 legislative assembly, all elective officials of ~~the several counties of this~~  
17 ~~state~~ any county, and all elective peace officers of any city.

18 (2) Aliens.

19 (3) County general assistance workers, except those who are engaged in  
20 repaying to counties moneys ~~that~~ the counties have been compelled by  
21 statute to expend for county general assistance.

22 (4) Minors, whether lawfully or unlawfully employed; ~~a.~~ A minor is deemed  
23 sui juris for the purposes of this title, and no other person has any claim for  
24 relief or right to claim workforce safety and insurance benefits for any injury

1 to a minor worker, but in the event of the award of a lump sum of benefits to  
2 a minor employee, the lump sum may be paid only to the legally appointed  
3 guardian of the minor.

4 b. The term does not include:

5 (1) ~~Any person~~An individual whose employment is both casual and not in the  
6 course of the trade, business, profession, or occupation of that  
7 ~~person's~~individual's employer.

8 (2) ~~Any person~~An individual who is engaged in an illegal enterprise or  
9 occupation.

10 (3) The spouse of an employer or ~~a~~the child under the age of twenty-two of an  
11 employer. For purposes of this paragraph and section 65-07-01, "child"  
12 means any legitimate child, stepchild, adopted child, foster child, or  
13 acknowledged illegitimate child.

14 (4) ~~Any~~A real estate broker or real estate salesperson, provided the  
15 ~~person~~individual meets the following three requirements:

16 (a) The salesperson or broker must be a licensed real estate agent under  
17 section 43-23-05.

18 (b) Substantially all of the salesperson's or broker's remuneration for the  
19 services performed as a real estate agent must be directly related to  
20 sales or other efforts rather than to the number of hours worked.

21 (c) A written agreement must exist between the salesperson or broker  
22 and the person ~~or firm~~ for ~~whom~~which the salesperson or broker  
23 works, which agreement must provide ~~that~~ the salesperson or broker  
24 will not be treated as an employee but rather as an independent  
25 contractor.

26 (5) The members of the board of directors of a business corporation who are  
27 not employed in any capacity by the corporation other than as members of  
28 the board of directors.

29 (6) ~~Any~~An individual delivering newspapers or shopping news, if substantially  
30 all of the individual's remuneration is directly related to sales or other efforts  
31 rather than to the number of hours worked and a written agreement exists

1                   between the individual and the publisher of the newspaper or shopping  
2                   news which states that the individual is an independent contractor.

3                   (7) An employer.

4                   e. ~~Persons employed by a subcontractor, or by an independent contractor operating~~  
5                   ~~under an agreement with the general contractor, for the purpose of this chapter~~  
6                   ~~are deemed to be employees of the general contractor who is liable and~~  
7                   ~~responsible for the payments of premium for the coverage of these employees~~  
8                   ~~until the subcontractor or independent contractor has secured the necessary~~  
9                   ~~coverage and paid the premium for the coverage. This subdivision does not~~  
10                  ~~impose any liability upon a general contractor other than liability to the~~  
11                  ~~organization for the payment of premiums which are not paid by a subcontractor~~  
12                  ~~or independent contractor.~~

13                  **SECTION 2. AMENDMENT.** Section 65-04-19 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15                  **65-04-19. Organization to assign rate classifications, calculate premium, and**  
16 **determine premium due from employer - Mailing of premium billing statement as notice**  
17 **of amount due.**

- 18                  1. The organization shall assign rate classifications based on information provided to the  
19 organization by the employer or information gathered through the organization's  
20 investigative process.
- 21                  2. The organization shall determine the amount of premium due from every employer  
22 subject to this title for the twelve months next succeeding the date of expiration of a  
23 previous period of insurance or next succeeding the date at which the organization  
24 received information that an employer is subject to the title.
- 25                  3. If the organization does not receive the annual payroll report or, in the case of a  
26 noncompliant employer, the organization does not receive reliable and accurate  
27 payroll information, the organization may calculate premium using the wage cap in  
28 effect per employee reported in the previous payroll report, using information obtained  
29 through the organization's investigative process, or using data obtained from job  
30 service North Dakota.

1       4.    The organization shall order the premium to be paid into the fund and shall mail a copy  
2           of the premium billing statement to the employer. Mailing of the premium billing  
3           statement constitutes notice to the employer of the amount due.

4       **SECTION 3.** Section 65-04-26.2 of the North Dakota Century Code is created and enacted  
5 as follows:

6       **65-04-26.2. General contractor liability for subcontractors and independent**  
7 **contractors.**

- 8       1.    An individual employed by a subcontractor or by an independent contractor operating  
9           under an agreement with a general contractor is deemed to be an employee of the  
10          general contractor if the subcontractor or independent contractor does not secure  
11          coverage as required under this title. A general contractor is liable for payment of  
12          premium and any applicable penalty for an employee of a subcontractor or  
13          independent contractor that does not secure required coverage. The general  
14          contractor is liable for payment of this premium and penalty until the subcontractor or  
15          independent contractor pays this premium and penalty. The liability imposed on a  
16          general contractor under this section for the payment of premium and penalties under  
17          this title which are not paid by a subcontractor or independent contractor is limited to  
18          work performed under that general contractor.
- 19       2.    Upon request of the organization, a person the organization determines may have  
20          information that may assist the organization in determining the amount of wages  
21          expended by the subcontractor or independent contractor shall provide this  
22          information to the organization.
- 23       3.    ~~Absent~~ if the organization is unable to obtain complete and reliable payroll information  
24          for a subcontractor or independent contractor, the organization may calculate premium  
25          using all the available payroll information of the subcontractor or independent  
26          contractor for work performed under the liable general contractor as permitted in  
27          section 65-04-19. ~~The organization may reduce the liability of an employer under this~~  
28          ~~section~~ if a subcontractor's or independent contractor's liability for failure to secure  
29          coverage arises from a single project with a general contractor, the liability of the  
30          general contractor is one hundred percent of the amount of premium and penalty  
31          owed by the subcontractor or independent contractor. If there is evidence showing the

1 subcontractor or independent contractor was working on multiple projects during the  
2 period the subcontractor or independent contractor failed to secure coverage, the  
3 organization shall set the amount of the general contractor's liability which may not  
4 exceed seventy percent of the total premium and penalty owed by the subcontractor  
5 or independent contractor.

6 4. The definition of the term "contractor" under section 43-07-01 applies to this section.

7 **SECTION 4.** Section 65-04-27.2 of the North Dakota Century Code is created and enacted  
8 as follows:

9 **65-04-27.2. Cease and desist order - Civil penalty.**

- 10 1. If it appears to the organization an employer is without workers compensation  
11 coverage or is in an uninsured status in violation of this title, by registered mail the  
12 director may issue to the employer an order to cease and desist and a notice of  
13 opportunity for hearing. Within thirty days of receipt of the order, a party to the order  
14 may make a written request for a hearing. If a hearing is not requested, the order is  
15 final and may not be appealed. If a hearing is requested, the hearing must be  
16 conducted in accordance with chapter 28-32 to the extent that chapter does not  
17 conflict with this section and the order remains in effect until the hearing officer  
18 renders a decision. If an employer fails to appear at a hearing requested under this  
19 section, that employer defaults and the allegations contained in the cease and desist  
20 order are deemed true.
- 21 2. In addition to the penalties in section 65-04-33, a person that employs an individual in  
22 violation of a cease and desist order issued under this section is subject to a penalty of  
23 ten thousand dollars and to a penalty of one hundred dollars per day for each day the  
24 violation continues. The organization may reduce the penalties under this section.