

**FIRST ENGROSSMENT
with Senate Amendments
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; to amend and reenact subsection 16 of section 65-01-02 and section
4 65-04-19 of the North Dakota Century Code, relating to the workers' compensation definition of
5 employee, assignment of rate classification, and calculation of premium; and to provide a
6 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. If the organization is unable to obtain complete and reliable payroll information for a
24 subcontractor or independent contractor, the organization may calculate premium
25 using the available payroll information of the subcontractor or independent contractor
26 for work performed under the liable general contractor as permitted in section
27 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure
28 coverage arises from a single project with a general contractor, the liability of the
29 general contractor is one hundred percent of the amount of premium and penalty
30 owed by the subcontractor or independent contractor. If there is evidence showing the
31 subcontractor or independent contractor was working on multiple projects during the

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

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

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

8 **65-04-27.2. Cease and desist order - Civil penalty.**

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