

Introduced by

Industry, Business and Labor Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to amend and reenact section 65-01-09, subsection 5 of section 65-01-16, and  
2 section 65-02-27 of the North Dakota Century Code, relating to subrogation liens, administrative  
3 orders, and the decision review office; and to provide for application.

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

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

7 **65-01-09. Injury through negligence of third person - Option of employee -**  
8 **Organization subrogated when claim filed - Lien created.**

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

14 1. The organization is subrogated to the rights of the injured employee or the injured  
15 employee's dependents to the extent of fifty percent of the damages recovered up to a  
16 maximum of the total amount ~~the organization~~ the organization has paid or would otherwise pay in the  
17 future in compensation and benefits for the injured employee. The organization also  
18 has a lien to the extent of fifty percent of the damages recovered up to a maximum of  
19 the total amount ~~the organization~~ the organization has paid in compensation and benefits. The  
20 organization's subrogation interest or lien may not be reduced by settlement,  
21 compromise, or judgment. The action against such other person may be brought by  
22 the injured employee, or the injured employee's dependents in the event of the injured  
23 employee's death. Such action shall be brought in the injured employee's or in the  
24 injured employee's dependents' own right and name and as trustee for the

1 organization for the subrogation interest of the organization. However, if the director  
2 chooses not to participate in an action, and the decision is in writing, the organization  
3 has no subrogation interest and no obligation to pay fees or costs under this section  
4 and no lien.

5 2. If the injured employee or the injured employee's dependents do not institute suit  
6 within sixty days after date of injury, the organization may bring the action in its own  
7 name and as trustee for the injured employee or the injured employee's dependents  
8 and retain as its subrogation interest the full amount it has paid or would otherwise pay  
9 in the future in compensation and benefits to the injured employee or the injured  
10 employee's dependents and retain as its lien the full amount ~~it~~the organization has  
11 paid in compensation and benefits. In the alternative, the organization may bring an  
12 action against a third party to recover its lien for benefits paid to the injured employee.

13 Within sixty days after both the injured employee and the organization have declined  
14 to commence an action against a third person as provided above, the employer may  
15 bring the action in the employer's own name or in the name of the injured employee,  
16 or both, and in trust for the organization and for the injured employee. The party  
17 bringing the action may determine if the trial jury should be informed of the trust  
18 relationship.

19 3. If the action is brought by the injured employee or the injured employee's dependents,  
20 or the employer as provided ~~above~~in subsection 2, the organization shall pay fifty  
21 percent of the costs of the action, exclusive of attorney's fees, when such costs are  
22 incurred as the action progresses before recovery of damages. If there is no recovery  
23 of damages in the action, this shall be a cost of the organization to be paid from the  
24 organization's general fund. After recovery of damages in the action, the costs of the  
25 action, exclusive of attorney's fees, must be prorated and adjusted on the percentage  
26 of the total subrogation interest of the organization recovered to the total recovery in  
27 the action. The organization shall pay attorney's fees to the injured employee's  
28 attorney from the organization's general fund as follows:

29 4. a. Twenty-five percent of the subrogation interest recovered for the organization  
30 before judgment;and

- 1        2. b. Thirty-three and one-third percent of the subrogation interest recovered for the  
2                    organization when recovered through judgment entered as a result of a trial on  
3                    the merits or recovered through binding alternative dispute resolution.
- 4        4. The above provisions as to costs of the action and attorney's fees are effective only  
5                    when the injured employee advises the organization in writing the name and address  
6                    of the injured employee's attorney, and ~~that~~ the injured employee has employed such  
7                    attorney for the purpose of collecting damages or of bringing legal action for recovery  
8                    of damages. ~~If a claimant~~ an injured employee fails to pay the organization's  
9                    subrogation interest and lien within thirty days of receipt of a recovery in a third-party  
10                    action, the organization's subrogation interest is the full amount of the damages  
11                    recovered, up to a maximum of the total amount it has paid or would otherwise pay in  
12                    the future in compensation and benefits to the injured employee or the injured  
13                    employee's dependents, no costs or attorney's fees will be paid from the  
14                    organization's subrogation interest and the organization's lien is the full amount of the  
15                    damages recovered up to a maximum of the total amount it has paid.
- 16        5. The organization's lien is created upon first payment of benefits. The lien attaches to  
17                    all claims, demands, settlement proceeds, judgment awards, or insurance payable by  
18                    reason of a legal liability of a third person. If the organization does not receive  
19                    payment of its lien amount within thirty days of the payment of any recovery and if the  
20                    organization has served, by regular mail, written notice of its lien upon the injured  
21                    employee or the injured employee's dependents and upon the third person, ~~the third-~~  
22                    ~~person,~~ the insurer of the third person, the injured employee or injured employee's  
23                    dependents, and the attorney of the injured employee or injured employee's  
24                    dependents are liable to the organization for the lien amount. A release or satisfaction  
25                    of any judgment, claim, or demand given by the injured employee or the injured  
26                    employee's dependents is not valid or effective against the lien. An action to collect the  
27                    organization's lien amount must be commenced within one year of the organization  
28                    first possessing actual knowledge of a recovery.
- 29        6. Upon receipt of its subrogation interest, the organization shall credit the medical  
30                    expense assessment paid by the employer under section 65-04-04.4 to the employer's  
31                    account.

1        7. If the organization's lien is not recognized by another jurisdiction, the organization may  
2        issue a decision, including a decision demanding repayment from the injured  
3        employee, of all benefits and compensation the organization has made on behalf of  
4        the injured employee, including costs and administrative fees.

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

7        5. ~~Within sixty days after~~After receiving a request for reconsideration, the organization  
8 shall serve on the parties by regular mail a notice of decision reversing the previous  
9 decision or, in accordance with the North Dakota Rules of Civil Procedure, an  
10 administrative order that includes its findings, conclusions, and order. The organization  
11 may serve an administrative order on any decision made by informal internal review  
12 without first issuing a notice of decision and receiving a request for reconsideration. If  
13 the organization does not issue an order within sixty days of receiving a request for  
14 reconsideration, any interested party may request, and the organization shall promptly  
15 issue, an appealable determination.

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

18        **65-02-27. Decision review office.**

19        The organization's decision review office is established. The decision review office is  
20 independent of the claims department of the organization and activities administered through  
21 the office must be administered in accordance with this title. The decision review office shall  
22 provide assistance to an injured employee who has filed a claim, which may include acting on  
23 behalf of an injured employee who is aggrieved by a decision of the organization,  
24 communicating with organization staff regarding claim dispute resolution, and informing an  
25 injured employee of the effect of decisions made by the organization, an injured employee, or  
26 an employer under this title. ~~The decision review office shall provide assistance to employees,~~  
27 ~~upon request, in cases of constructive denial or after a vocational consultant's report has been~~  
28 ~~issued.~~ The organization shall employ a director of the decision review office and other  
29 personnel determined to be necessary for the administration of the office. ~~A person~~An individual  
30 employed to administer the decision review office may not act as an attorney for an injured  
31 employee. The organization may not pay attorney's fees to an attorney who represents an

1 injured employee in a disputed claim before the organization unless the injured employee has  
2 first attempted to resolve the dispute through the decision review office. A written request for  
3 assistance by an injured employee who contacts the decision review office within the period for  
4 requesting a hearing on an administrative order tolls the time period for requesting a hearing on  
5 that order. The period begins upon notice to the injured employee, sent by regular mail, that the  
6 decision review office's assistance to the injured employee is completed. The information  
7 contained in a file established by the decision review office on an injured employee's disputed  
8 claim, including communications from an injured employee, is privileged and may not be  
9 released without the injured employee's permission. Information in the file containing the notes  
10 or mental impressions of decision review office staff is confidential and may not be released by  
11 the decision review office.

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