

Introduced by

Industry, Business and Labor Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to create and enact section 65-04-04.4 of the North Dakota Century Code,  
2 relating to medical expense assessments; to amend and reenact sections 65-04-22,  
3 65-04-26.1, 65-04-32, and subsections 2, 3, and 4 of section 65-04-33 of the North Dakota  
4 Century Code, relating to securing premium payments, correct cross references, employer  
5 noncompliance, and employer false statements; to repeal section 65-05-07.2 of the North  
6 Dakota Century Code, relating to medical expense assessments; and to provide a penalty.

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

8 **SECTION 1.** Section 65-04-04.4 of the North Dakota Century Code is created and enacted  
9 as follows:

10 **65-04-04.4. Medical expense assessments.**

11 The employer shall reimburse the organization for all medical expenses related to a  
12 compensable injury to an employee if the expenses do not exceed two hundred fifty dollars and  
13 shall reimburse the organization for the first two hundred fifty dollars of medical expenses when  
14 the expenses exceed two hundred fifty dollars. If a claim for benefits is filed with the  
15 organization by midnight central time on the first business day following the workplace injury,  
16 the organization shall pay the first two hundred fifty dollars of medical expenses. A claim is filed  
17 by submitting a form furnished by the organization or by another method designated by the  
18 organization. If a claim for benefits is filed with the organization more than fourteen days from  
19 the date the employer received notice of the workplace injury from the employee, the employer  
20 shall reimburse the organization for the first three hundred fifty dollars of medical expenses if  
21 the expenses exceed three hundred fifty dollars. If the organization determines the claim is  
22 compensable, the organization shall pay the medical expenses associated with the claim and  
23 notify the employer of payments to be made by the employer under this section. If the employer  
24 does not pay the organization within thirty days of notice by the organization, the organization

1 may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five  
2 percent of the payment owed by the employer. The organization shall collect the penalty in a  
3 civil action against the employer and deposit the money in the fund. An employer may not  
4 directly or indirectly charge an injured employee for any payment the employer makes on a  
5 claim. Except as otherwise provided, if the cost of an injured employee's medical treatment  
6 exceeds two hundred fifty dollars, the organization shall pay all further medical expenses. This  
7 section is effective for all compensable injuries that occur after July 31, 1995. This section does  
8 not apply to compensable injuries paid under sections 65-06.2-04 and 65-06.2-08.

9       **SECTION 2. AMENDMENT.** Section 65-04-22 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11       **65-04-22. Organization may make premium due immediately - When premium is in**  
12 **default.**

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

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

25       **SECTION 3. AMENDMENT.** Section 65-04-26.1 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27       **65-04-26.1. Corporate officer personal liability.**

28       1. An officer or director of a corporation, or manager or governor of a limited liability  
29 company, or partner of a limited liability partnership, or employee of a corporation or  
30 limited liability company having twenty percent stock ownership who has control of or  
31 supervision over the filing of and responsibility for filing premium reports or making

1 payment of premiums or reimbursements under this title and who fails to file the  
2 reports or to make payments as required, is personally liable for premiums under this  
3 chapter and reimbursement under section ~~65-05-07.2~~65-04-04.4, including interest,  
4 penalties, and costs if the corporation or limited liability company does not pay to the  
5 organization those amounts for which the corporation or limited liability company is  
6 liable.

7 2. The personal liability of any person as provided in this section survives dissolution,  
8 reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For  
9 the purposes of this section, all wages paid by the corporation or limited liability  
10 company must be considered earned from any person determined to be personally  
11 liable.

12 3. After review of the evidence in the employer's file, the organization shall determine  
13 personal liability under this section. The organization shall issue a decision under this  
14 section pursuant to section 65-04-32.

15 **SECTION 4. AMENDMENT.** Section 65-04-32 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **65-04-32. Decisions by organization - Disputed decisions.**

18 Notwithstanding any provisions to the contrary in chapter 28-32, the following procedures  
19 apply when the organization issues a decision under this chapter or section  
20 ~~65-05-07.2~~65-04-04.4:

21 1. The organization may issue a notice of decision based on an informal internal review  
22 of the record and shall serve notice of the decision on the parties by regular mail. The  
23 organization shall include with the decision a notice of the employer's right to  
24 reconsideration.

25 2. An employer has thirty days from the day the notice of decision was mailed to file a  
26 written petition for reconsideration. The employer is not required to file the request  
27 through an attorney. The request must state the reason for disagreement with the  
28 organization's decision and the desired outcome. The request may be accompanied  
29 by additional evidence not previously submitted to the organization. The organization  
30 shall reconsider the matter by informal internal review of the information of record.

1 Absent a timely and sufficient request for reconsideration, the notice of decision is final  
2 and may not be reheard or appealed.

3 3. Within sixty days after receiving a petition for reconsideration, unless settlement  
4 negotiations are ongoing, the organization shall serve on the parties by certified mail  
5 an administrative order including its findings of fact, conclusions of law, and order, in  
6 response to the petition for reconsideration. The organization may serve an  
7 administrative order on any decision made by informal internal review without first  
8 issuing a notice of decision and receiving a request for reconsideration.

9 4. A party has thirty days from the date of service of an administrative order to file a  
10 written request for rehearing. The request must state specifically each alleged error of  
11 fact and law to be reheard and the relief sought. Absent a timely and sufficient request  
12 for rehearing, the administrative order is final and may not be reheard or appealed.

13 5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that  
14 chapter does not conflict with this section.

15 6. An employer may appeal a posthearing administrative order to district court in  
16 accordance with chapter 65-10. Chapter 65-10 does not preclude the organization  
17 from appealing to district court a final order issued by a hearing officer under this title.

18 **SECTION 5. AMENDMENT.** Subsections 2, 3, and 4 of section 65-04-33 of the North  
19 Dakota Century Code are amended and reenacted as follows:

20 2. An employer who willfully misrepresents to the organization or its representative the  
21 amount of payroll upon which a premium under this title is based, or who willfully fails  
22 to secure coverage for employees, is liable to the state in the amount of ~~two~~five  
23 thousand dollars plus three times the difference between the premium paid and the  
24 amount of premium the employer should have paid. The organization shall collect a  
25 penalty imposed under this subsection in a civil action in the name of the state, and  
26 the organization shall deposit a penalty collected under this subsection to the credit of  
27 the workforce safety and insurance fund. An employer who willfully misrepresents to  
28 the organization or its representative the amount of payroll upon which a premium  
29 under this title is based, or who willfully fails to secure coverage for employees, is  
30 guilty of a class A misdemeanor. If the premium due exceeds five hundred dollars, the  
31 penalty for willful failure to secure coverage or willful misrepresentation to the

1 organization or its representative is a class C felony. If the employer is a corporation or  
2 a limited liability company, the president, secretary, treasurer, or person with primary  
3 responsibility is liable for the failure to secure workforce safety and insurance  
4 coverage under this subsection. In addition to the penalties prescribed by this  
5 subsection, the organization may initiate injunction proceedings as provided for in this  
6 title to enjoin an employer from unlawfully employing uninsured workers. The cost of  
7 an investigation under this subsection which results in a criminal conviction may be  
8 charged to the employer's account and collected by civil action.

9 3. An employer who willfully makes a false statement in an attempt to preclude an injured  
10 worker from securing benefits or payment for services is liable to the state in the  
11 amount of five thousand dollars. The organization shall collect a civil penalty imposed  
12 under this section in a civil action in the name of the state, and the organization shall  
13 deposit a penalty collected under this section to the credit of the workforce safety and  
14 insurance fund. A willful violation of this section is a class A misdemeanor. The cost of  
15 an investigation under this subsection which results in a criminal conviction may be  
16 charged to the employer's account and collected by civil action.

17 ~~3.4.~~ An employer who is uninsured is liable for any premiums plus penalties and interest  
18 due on those premiums, plus a penalty of twenty-five percent of all premiums due  
19 during the most recent year of noncompliance. An additional five percent penalty is  
20 due for each year of noncompliance before the most recent year beginning on the  
21 date the organization became aware of the employer's uninsured status, resulting in  
22 the penalty for the second most recent year being thirty percent, for the third most  
23 recent year being thirty-five percent, for the fourth most recent year being forty  
24 percent, for the fifth most recent year being forty-five percent, and for the sixth most  
25 recent year being fifty percent. In addition, the organization may assess a penalty of  
26 five thousand dollars for each premium period the employer was uninsured. The  
27 organization may not assess a penalty for more than six years of past noncompliance.  
28 The organization may assess additional penalties, from the date the organization  
29 became aware of the employer's uninsured status continuing until the effective date of  
30 coverage, equal to twenty-five percent of the premium due for that period. In addition,  
31 the organization may assess an employer the actual cost and reserves of any claim

1           attributable to the employer during the time the employer was uninsured. The  
2           penalties for employers are in addition to any other penalties by law. The organization  
3           may reduce the penalties provided for under this section. An employer may not appeal  
4           an organization decision not to reduce a penalty under this subsection.

5     4.5. An employer who fails or refuses to furnish to the organization the annual payroll  
6           report and estimate or who fails or refuses to furnish other information required by the  
7           organization under this chapter is subject to a penalty established by the organization  
8           of two thousand dollars. Upon the request of the organization, the employer shall  
9           furnish the organization any of that employer's payroll records, annual payroll reports,  
10          and other information required by the organization under this chapter and an estimate  
11          of payroll for the advance premium year. If the employer fails or refuses to provide the  
12          records within thirty days of a written request from the organization, the employer is  
13          subject to a penalty not to exceed one hundred dollars for each day until the  
14          organization receives the records, in addition to the five thousand dollar penalty set  
15          forth ~~above~~ in subsection 4. The organization may not assess a penalty that exceeds  
16          one hundred fifty dollars under this subsection against an organized township. The  
17          organization may reduce penalties for employers under this subsection. However, an  
18          employer may not appeal an organization decision not to reduce a penalty. The  
19          organization shall notify an employer by regular mail of the amount of premium and  
20          penalty due the organization from the employer. If the employer fails to pay that  
21          amount within thirty days, the organization may collect the premium, penalties, and  
22          interest due by civil action. In that action, the court may not review or consider the  
23          action of the organization regarding the acceptance or payment of a claim filed when  
24          the employer was uninsured. No exemptions except absolute exemptions under  
25          section 28-22-02 are allowed against any levy under executions pursuant to a  
26          judgment recovered in the action.

27     **SECTION 6. REPEAL.** Section 65-05-07.2 of the North Dakota Century Code is repealed.