

**SENATE BILL NO. 2094
with House Amendments
SENATE BILL NO. 2094**

Sixty-fifth
Legislative Assembly
of North Dakota

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~~one
31 thousand dollars, the penalty for willful failure to secure coverage or willful

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

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

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

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

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

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