

February 11, 1997

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

Page 1, line 3, remove the first "and" and after the second comma insert "65-01-11,"

Page 1, line 4, replace the second "and" with a comma

Page 1, line 5, after "compensation" insert ", and the burden of proof in workers' compensation matters; and to provide for a study of wage-loss benefits structure"

Page 6, line 8, after the period insert "This paragraph does not apply to public safety employees, including law enforcement officers, or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties."

Page 14, after line 26, insert:

**"SECTION 3. AMENDMENT.** Section 65-01-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**65-01-11. Burden of proof in compensation matters - Death certificate.** If the bureau or an employer claims that an employee is not entitled to the benefits of the North Dakota Workers' Compensation Law ~~by reason of the fact that~~ because the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving ~~such the~~ exemption or forfeiture is upon the bureau or upon the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in 49 CFR 383.51 or a level of an illegally used controlled substance sufficient to cause impairment found by a test required by a physician, qualified technician, chemist, or registered nurse and performed as required by the United States secretary of transportation under 49 CFR part 40, at or above the cutoff level in part 40, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or an employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired; or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated by company policy, the employee forfeits all entitlement to workers' compensation benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to participate in the same benefits. In the event of If a claim for death benefits is filed, the official death certificate must be considered as evidence of death and may not be used to establish the cause of death."

Page 15, line 4, replace "other cause" with "disease existing before that total or partial disability or death"

Page 16, line 2, replace "3" with "4"

Page 16, after line 17, insert:

**"SECTION 7. BUREAU TO STUDY WAGE-LOSS BENEFITS STRUCTURE.**

During the 1997-1998 interim, the bureau shall conduct a study of its wage-loss benefits structure to determine if the current structure provides for equitable compensation for wage-loss resulting from a work-related injury. The results of the study must identify the advantages and disadvantages of the current system and of any proposed system. The results must include recommendations on how the bureau's benefits structure could be refined to provide an appropriate balance between adequate benefits and return-to-work incentives. The bureau shall report on the progress of the study to an interim committee designated by the legislative council to receive the report. If any legislation is expected to be proposed as a result of the study, the interim committee designated by the legislative council may review the proposed legislation before it is introduced."

Renumber accordingly