

Introduced by

Senators Sand, Thompson

Representatives Carlson, Jacobs

1 A BILL for an Act to create and enact a new section to chapter 65-01 of the North Dakota  
2 Century Code, relating to the presumption that certain conditions are related to a firefighter's or  
3 a law enforcement officer's work for purposes of workers' compensation coverage; to amend  
4 and reenact subsection 18 of section 65-01-02 of the North Dakota Century Code, relating to  
5 the presumption that certain conditions are related to a firefighter's or a law enforcement  
6 officer's work for purposes of workers' compensation coverage; and to provide an effective  
7 date.

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

9 **SECTION 1. AMENDMENT.** Subsection 18 of section 65-01-02 of the North Dakota  
10 Century Code is amended and reenacted as follows:

- 11 18. "Fairly traceable to the employment" when used to modify the term "disease"  
12 means only a disease that:
- 13 a. Arises under conditions wherein it is apparent to the rational mind upon  
14 consideration of all the circumstances that there is a direct causal connection  
15 between the conditions under which the work is performed and the disease;
  - 16 b. Can be seen to have followed as a natural incident of the work as a result of  
17 the exposure occasioned by the nature of the employment;
  - 18 c. Can be fairly traced to the employment; or
  - 19 d. However, any condition or impairment of health of a full-time paid firefighter or  
20 law enforcement officer caused by lung or respiratory disease, hypertension,  
21 heart disease, or exposure to infectious disease as defined by sections  
22 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid  
23 firefighter, resulting in total or partial disability or death is presumed to have  
24 been suffered in the line of duty. The condition or impairment of health may

not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a ~~physical~~ medical examination which fails to reveal any evidence of such a condition. An employer shall require a ~~physical~~ medical examination upon employment, ~~and annually thereafter~~, for any employee subject to this subdivision. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical exam including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. This subdivision does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this subdivision. For purposes of this subdivision, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal

1 investigation, the game and fish department, the state highway patrol, the  
2 parole and probation division, the North Dakota state university police  
3 department, the North Dakota state college of science police department, the  
4 university of North Dakota police department, a county sheriff's department,  
5 or a city police department. The presumption does not include a condition or  
6 impairment of health of a full-time paid firefighter or law enforcement officer,  
7 who has been employed for ten years or less, if the condition or impairment is  
8 diagnosed more than two years after the employment as a full-time paid  
9 firefighter or law enforcement officer ends. The presumption also does not  
10 include a condition or impairment of health of a full-time paid firefighter or law  
11 enforcement officer, who has been employed more than ten years, if the  
12 condition or impairment is diagnosed more than five years after the  
13 employment as a full-time paid firefighter or law enforcement officer ends.

14 **SECTION 2.** A new section to chapter 65-01 of the North Dakota Century Code is  
15 created and enacted as follows:

16 **Presumption of compensability for certain conditions of full-time paid firefighters**  
17 **and law enforcement officers.** Any condition or impairment of health of a full-time paid  
18 firefighter or law enforcement officer caused by lung or respiratory disease as defined by  
19 sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid firefighter,  
20 resulting in total or partial disability or death is presumed to have been suffered in the line of  
21 duty. The condition or impairment of health may not be attributed to any disease existing  
22 before that total or partial disability or death unless the contrary is shown by competent  
23 evidence. As used in this section, an occupational cancer is one which arises out of  
24 employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes,  
25 or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active  
26 duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not  
27 eligible for the benefit provided under this section unless that full-time paid firefighter or law  
28 enforcement officer has completed five years of continuous service and has successfully  
29 passed a medical examination which fails to reveal any evidence of such a condition. An  
30 employer shall require a medical examination upon employment, for any employee subject to  
31 this section. After the initial medical examination, an employer shall require at least a periodic

1 medical examination as follows: for one to ten years of service, every five years; for eleven to  
2 twenty years of service, every three years; and for twenty-one or more years of service, every  
3 year. The periodic medical examination, at a minimum, must consist of a general medical  
4 history of the individual and the individual's family; an occupational history including contact  
5 with and an exposure to hazardous materials, toxic products, contagious and infectious  
6 diseases, and to physical hazards; a physical examination including measurement of height,  
7 weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting  
8 total blood cholesterol test and papanicolaou smear for women. If the medical examination  
9 reveals that an employee falls into a recognized risk group, the employee must be referred to a  
10 qualified health professional for future medical examination. This section does not affect an  
11 employee's responsibility to document that the employee has not used tobacco as required  
12 under section 65-01-15. Results of the examination must be used in rebuttal to a presumption  
13 afforded under this section. For purposes of this section, "law enforcement officer" means a  
14 person who is licensed to perform peace officer law enforcement duties under chapter 12-63  
15 and is employed full time by the bureau of criminal investigation, the game and fish department,  
16 the state highway patrol, the parole and probation division, the North Dakota state university  
17 police department, the North Dakota state college of science police department, the university  
18 of North Dakota police department, a county sheriff's department, or a city police department.  
19 The presumption does not include a condition or impairment of health of a full-time paid  
20 firefighter or law enforcement officer, who has been employed for ten years or less, if the  
21 condition or impairment is diagnosed more than two years after the employment as a full-time  
22 paid firefighter or law enforcement officer ends. The presumption also does not include a  
23 condition or impairment of health of a full-time paid firefighter or law enforcement officer, who  
24 has been employed more than ten years, if the condition or impairment is diagnosed more than  
25 five years after the employment as a full-time paid firefighter or law enforcement officer ends.

26 **SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective if House Bill  
27 No. 1269 is not approved by the fifty-fifth legislative assembly. Section 2 of this Act becomes  
28 effective if House Bill No. 1269 is approved by the fifty-fifth legislative assembly.