

Fifty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1269

Introduced by

Representative Berg

Senator Mutch

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 of paid firefighters and law  
3 enforcement officers are work-related; to amend and reenact sections 65-01-02, 65-01-03,  
4 65-01-11, 65-01-15, and 65-07-03 of the North Dakota Century Code, relating to definitions, the  
5 presumption of being an employee for purposes of workers' compensation, and the burden of  
6 proof in workers' compensation matters; and to provide for a study of wage-loss benefits  
7 structure.

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

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

11 **65-01-02. Definitions.** In this title:

12 1. "Acute care" means a short course of intensive diagnostic and therapeutic services  
13 provided immediately following a work injury with a rapid onset of pronounced  
14 symptoms.

15 2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of  
16 the injury.

17 ~~2.~~ 3. "Artificial members" includes only such devices as are substitutes for, and not  
18 mere aids to, a natural part, organ, limb, or other part of the body. The term does  
19 not include eyeglasses or contact lenses unless the eye is, or eyes are, injured as  
20 a result of a compensable injury, and such injury causes a change in sight which  
21 requires fitting of eyeglasses or contact lenses not previously worn by the injured  
22 worker, or requires a change in existing prescription.

1       ~~3.~~ 4. "Artificial replacements" means mechanical aids including braces, belts, casts, or  
2 crutches as may be reasonable and necessary due to compensable injury. The  
3 ~~term does not include:~~

- 4       a. ~~Personal items that are for the injured employee's personal use or hygiene,~~  
5       ~~including hand massages, toothbrushes, slippers, shampoo, and soap;~~
- 6       b. ~~Any product or item such as clothing or footwear unless the items are~~  
7       ~~considered orthopedic devices and are prescribed by the treating doctor or~~  
8       ~~health care provider;~~
- 9       c. ~~All items of furniture except hospital beds, shower stools, wheelchairs, or~~  
10       ~~whirlpools if prescribed by the treating doctor or health care provider;~~
- 11       d. ~~Vitamins and food supplements except in those cases where the injury~~  
12       ~~causes severe dietary problems, where the injury results in the employee's~~  
13       ~~paraplegia or quadriplegia, or where the employee becomes~~  
14       ~~wheelchair bound due to the injury;~~
- 15       e. ~~Eye exams unless there is a reasonable potential for injury to the employee's~~  
16       ~~eyes as a result of the injury;~~
- 17       f. ~~Home gym or exercise equipment unless the bureau otherwise orders;~~
- 18       g. ~~Memberships or monthly dues to health clubs, unless the bureau orders~~  
19       ~~otherwise;~~
- 20       h. ~~Private hospital or nursing home rooms except in cases of extreme medical~~  
21       ~~necessity and only when directed by the attending doctor. If the employee~~  
22       ~~desires better accommodations than those ordered by the attending doctor,~~  
23       ~~the difference in cost will be paid by the employee;~~
- 24       i. ~~Serological tests (VDRL and RPR) for syphilis or any other venereal disease~~  
25       ~~tests, pregnancy tests, or any other routine tests unless clearly necessitated~~  
26       ~~by the injury; and~~
- 27       j. ~~Aids or programs primarily intended to help the employee lose weight or stop~~  
28       ~~smoking.~~

29       4. 5. "Average weekly wage" means the weekly wages the employee was receiving  
30       from all employments at the ~~time of injury~~ date of first disability. The average  
31       weekly wage as determined under this section must be rounded to the nearest

dollar. In cases where the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

a. For seasonal employment, one-fiftieth of the total wages from all occupations during the twelve months preceding the injury or during the tax year preceding the injury, or during the three tax years preceding the injury, whichever is highest and for which accurate, reliable, and complete records are readily available.

b. The "average weekly wage" of a self-employed employee is determined by the following formula: net profits based on preceding tax year or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.

~~b.~~ c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.

~~c.~~ d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.

~~d.~~ e. Biweekly rate divided by two.

~~e.~~ ~~In seasonal employment, the average weekly wage is one-fiftieth of the total wages the employee has earned from all occupations during the twelve calendar months immediately preceding the injury or one-fiftieth of the average annual income for the three-year period immediately preceding the injury, whichever is greater.~~

~~f.~~ ~~If the average weekly wage of an employee cannot be ascertained, the wage for the purposes of calculating compensation is the~~ The usual wage paid other employees engaged in similar occupations ~~where the wages are fixed.~~

~~g.~~ ~~If there are special circumstances under which the average weekly~~ A wage cannot be reasonably and fairly determined by applying subdivisions a through f, an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty two weeks, or the number of weeks actually worked if that number is less than

~~fifty-two~~ approximating the weekly wage lost by the claimant during the period of disability.

~~5-~~ 6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.

~~6-~~ 7. "Brother" and "sister" ~~includes~~ include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless he or she actually is dependent.

~~7-~~ 8. "Bureau" means the North Dakota workers compensation bureau, or the director, or any department heads, assistants, or employees of the bureau designated by the director, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.

~~8-~~ 9. "Child" means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but shall not include a married child unless actually dependent.

~~9-~~ 10. "Compensable injury" means an injury by accident arising out of and in the course of employment which must be established by medical evidence supported by objective medical findings.

a. The term "~~compensable injury~~", ~~in addition to an injury by accident~~, includes:

- (1) ~~Any disease that can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed are not compensable except where the disease follows as an incident to, and in its inception is~~ Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not

1 independent of the relation of employer and employee. ~~The disease~~  
2 Disease includes ~~impairment and~~ effects from radiation ~~fairly traceable~~  
3 ~~to the employment. It does not have to be foreseen or expected, but~~  
4 ~~after it is contracted, it must have had its origin in a risk connected with~~  
5 ~~the employment and have flowed from that source as a rational~~  
6 ~~consequence. Preventive treatment for communicable diseases is not~~  
7 ~~compensable under this title.~~

8 (2) An injury to artificial members.

9 (3) Injuries due to heart attack or other heart-related disease, stroke, and  
10 physical injury ~~precipitated~~ caused by mental stimulus, ~~which must be~~  
11 ~~causally related to~~ but only when caused by the employee's  
12 employment; with reasonable medical certainty, and ~~which must have~~  
13 ~~been precipitated by~~ only when it is determined with reasonable  
14 medical certainty that unusual stress is at least fifty percent of the  
15 cause of the injury or disease as compared with all other contributing  
16 causes combined. Unusual stress means stress greater than the  
17 highest level of stress normally experienced or anticipated in that  
18 position or line of work.

19 (4) Injuries arising out of employer-required or supplied travel to and from a  
20 remote jobsite or activities performed at the direction or under the  
21 control of the employer.

22 (5) An injury caused by the willful act of a third person directed against an  
23 employee because of the employee's employment.

24 (6) A mental or psychological condition caused by a physical injury, but  
25 only when the physical injury is determined with reasonable medical  
26 certainty to be at least fifty percent of the cause of the condition as  
27 compared with all other contributing causes combined, and only when  
28 the condition did not preexist the work injury.

29 b. The term does not include:

(1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases.

(2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to commit suicide or to injure or kill another, including injury or aggravation of an injury, which results from the employee's suicide or attempted suicide.

~~(2)~~ (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.

~~(3)~~ (4) An injury that arises out of an altercation in which the injured employee is ~~the initial physical~~ an aggressor. 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.

~~(4)~~ (5) An injury that arises out of an illegal act committed by the injured employee.

~~(5)~~ (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.

~~(6)~~ (7) Injuries attributable to a preexisting injury, disease, or other condition ~~which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. It is insufficient, however, to afford compensation under this title solely because, including when the employment acted~~ acts as a trigger to produce symptoms in a ~~latent and underlying the preexisting injury, disease, or other~~ condition ~~if the underlying condition would likely have progressed similarly in the~~

~~absence of the employment trigger, unless the employment trigger is determined to be a substantial aggravating or accelerating factor. An underlying condition is a preexisting injury, disease, or infirmity substantially accelerates its progression or substantially worsens its severity.~~

~~(7)~~ (8) A nonemployment injury that, although acting upon a prior compensable injury, is ~~established as~~ an independent intervening cause of injury.

~~(8)~~ (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a ~~nonemployment~~ subsequent injury.

~~(9)~~ (10) A mental injury arising from mental stimulus or a mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except an action that is the intentional infliction of emotional harm.

~~40.~~ 11. "Date of first disability" ~~and "loss of earnings date" mean~~ means the first full date the employee was unable to work in relation to a compensable injury. ~~These terms do not apply to recurrent disabilities.~~

~~41.~~ 12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.

~~42.~~ 13. "Director" means the director of the bureau.

~~43.~~ 14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.

a. ~~Permanent total disability is permanent in nature and total in character, and is paid to an employee who is not capable of rehabilitation of earnings capacity, which depend upon the following factors:~~

~~(1)~~ (1) Nature of injury;

~~(2)~~ (2) Degree of physical impairment;

~~(3)~~ (3) Age;

- 1                   (4)   ~~Education;~~
- 2                   (5)   ~~Work history; and~~
- 3                   (6)   ~~Vocational rehabilitation potential.~~
- 4           b.   ~~Temporary total disability is total in character but temporary in nature and is~~
- 5               ~~paid to the employee until maximum medical recovery with work release to~~
- 6               ~~any occupation for which the employee is reasonably suited by aptitude;~~
- 7               ~~education, experience, or training.~~
- 8           e.   ~~Partial disability exists when the following are present and must be paid~~
- 9               ~~pursuant to section 65-05-10:~~
- 10           (1)   ~~The employee has a permanent physical inability to perform certain~~
- 11               ~~work;~~
- 12           (2)   ~~The employee is able to do some work subject to the disability;~~
- 13           (3)   ~~The employee has an actual loss of earning capacity that is causally~~
- 14               ~~related to the disability; and~~
- 15           (4)   ~~The employee has not undergone training under chapter 65-05.1.~~
- 16   44.   15.   "Doctor" means doctor of medicine, chiropractor, osteopathy, dentist, optometrist,
- 17           podiatrist, or psychologist acting within the scope of the doctor's license.
- 18   45.   16.   "Employee" means every a person engaged in a hazardous employment under
- 19           ~~any appointment, contract of hire, or apprenticeship, express or implied, oral or~~
- 20           ~~written, who performs services for another for remuneration unless the person is~~
- 21           ~~an independent contractor under the "common law" test, and:~~
- 22           a.   The term includes:
- 23               (1)   All elective and appointed officials of this state and its political
- 24                   subdivisions, including municipal corporations and including the
- 25                   members of the legislative assembly, all elective officials of the several
- 26                   counties of this state, and all elective peace officers of any city.
- 27               (2)   Aliens.
- 28               (3)   County general assistance workers except those who are engaged in
- 29                   repaying to counties moneys that the counties have been compelled by
- 30                   statute to expend for county general assistance.



(4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workers' compensation benefits for any injury to a minor worker, but in the event of the award of a lump sum of ~~compensation~~ benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

(1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.

(2) Any person who is engaged in an illegal enterprise or occupation.

(3) The spouse or child of the employer dwelling in the household of the employer.

(4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:

(a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.

(b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.

(c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.

(5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.

(6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other

1 efforts rather than to the number of hours worked and a written  
2 agreement exists between the individual and the publisher of the  
3 newspaper or shopping news which states that the individual is an  
4 independent contractor.

5 (7) An employer.

- 6 c. Persons employed by a subcontractor, or by an independent contractor  
7 operating under an agreement with the general contractor, for the purpose of  
8 this chapter are deemed to be employees of the general contractor who is  
9 liable and responsible for the payments of premium for the coverage of these  
10 employees until the subcontractor or independent contractor has secured the  
11 necessary coverage and paid the premium for the coverage. This subdivision  
12 does not impose any liability upon a general contractor other than liability to  
13 the bureau for the payment of premiums which are not paid by a  
14 subcontractor or independent contractor.

15 ~~46.~~ 17. "Employer" means a person who engages or received the services of another for  
16 remuneration unless the person performing the services is an independent  
17 contractor under the "common law" test. The term includes:

- 18 a. The state and all political subdivisions thereof.  
19 b. All public and quasi-public corporations in this state.  
20 c. Every person, partnership, limited liability company, association, and private  
21 corporation, including a public service corporation.  
22 d. The legal representative of any deceased employer.  
23 e. The receiver or trustee of any person, partnership, limited liability company,  
24 association, or corporation, having one or more employees as herein defined.  
25 f. The president, vice presidents, secretary, or treasurer of a business  
26 corporation, but not members of the board of directors of a business  
27 corporation who are not also officers of the corporation.  
28 g. The managers of a limited liability company.  
29 h. The president, vice presidents, secretary, treasurer, or board of directors of  
30 an association or cooperative organized under chapter 6-06, 10-12, 10-13,  
31 10-15, 36-08, or 49-21.

- i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.

~~47. "Employment" means employment by the state and all political subdivisions thereof, by all public and quasi-public corporations therein, and all private employments.~~

~~18. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease that:~~

- ~~a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;~~
- ~~b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;~~
- ~~c. Can be fairly traced to the employment; or~~
- ~~d. However, any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have 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 examination which fails to reveal any evidence of such a condition. An employer shall require a physical examination upon~~

1                   ~~employment, and annually thereafter, for any employee subject to this~~  
2                   ~~subdivision. Results of the examination must be used in rebuttal to a~~  
3                   ~~presumption afforded under this subdivision. For purposes of this~~  
4                   ~~subdivision, "law enforcement officer" means a person who is licensed to~~  
5                   ~~perform peace officer law enforcement duties under chapter 12-63 and is~~  
6                   ~~employed full time by the bureau of criminal investigation, the game and fish~~  
7                   ~~department, the state highway patrol, the parole and probation division, the~~  
8                   ~~North Dakota state university police department, the North Dakota state~~  
9                   ~~college of science police department, the university of North Dakota police~~  
10                  ~~department, a county sheriff's department, or a city police department. The~~  
11                  ~~presumption does not include a condition or impairment of health of a full time~~  
12                  ~~paid firefighter or law enforcement officer, who has been employed for ten~~  
13                  ~~years or less, if the condition or impairment is diagnosed more than two years~~  
14                  ~~after the employment as a full time paid firefighter or law enforcement officer~~  
15                  ~~ends. The presumption also does not include a condition or impairment of~~  
16                  ~~health of a full time paid firefighter or law enforcement officer, who has been~~  
17                  ~~employed more than ten years, if the condition or impairment is diagnosed~~  
18                  ~~more than five years after the employment as a full time paid firefighter or law~~  
19                  ~~enforcement officer ends.~~

20           ~~49.~~   "Fee schedule" means the relative value scale, conversion factors, fee schedules,  
21                   and medical aid rules adopted by the bureau.

22   ~~20.~~ 19.   "Fund" means the North Dakota workers' compensation fund.

23   ~~24.~~ 20.   "Grandchild" and the terms defined in subsections ~~6~~ 7 and ~~8~~ 9 include only a  
24                   person who, at the time of the death of the deceased employee, is under eighteen  
25                   years of age, or if over that age, is incapable of self-support.

26   ~~22.~~ 21.   "Hazardous employment" means any employment in which one or more  
27                   employees are employed regularly in the same business or in or about the  
28                   establishment except:

- 29           a.   Agricultural or domestic service.  
30           b.   Any employment of a common carrier by railroad.

1 c. Any employment for the transportation of property or persons by  
2 nonresidents, where, in such transportation, the highways are not traveled  
3 more than seven miles [11.27 kilometers] and return over the same route  
4 within the state of North Dakota.

5 d. All members of the clergy and employees of religious organizations engaged  
6 in the operation, maintenance, and conduct of the place of worship.

7 ~~23.~~ 22. "Health care provider" means a doctor or any recognized practitioner providing  
8 skilled services pursuant to the prescription of, or under the supervision or  
9 direction of, a doctor.

10 ~~24.~~ 23. "Orphan" means a child who has no lawful parent.

11 ~~25.~~ 24. "Parent" includes a stepparent and a parent by adoption.

12 ~~26.~~ 25. "Permanent impairment" means the loss of or loss of use of a member of the body  
13 existing after the date of maximum medical improvement or recovery, and includes  
14 disfigurement resulting from an injury if such disfigurement diminishes the ability of  
15 the employee to obtain employment. The loss must be determined in accordance  
16 with and based upon the most current edition of the American medical  
17 association's "Guides to the Evaluation of Permanent Impairment". Any  
18 impairment award, not expressly contemplated within the American medical  
19 association's "Guides to the Evaluation of Permanent Impairment", must be  
20 determined by clear and convincing medical evidence.

21 26. "Permanent total disability" means an employee is determined incapable of  
22 rehabilitation of earnings capacity as determined by the:

23 a. Nature of injury.

24 b. Degree of physical impairment.

25 c. Education.

26 d. Work history.

27 e. Vocational rehabilitation potential.

28 27. "Rehabilitation services" means nonmedical services reasonably necessary to  
29 restore a disabled employee to substantial gainful employment as defined by  
30 section 65-05.1-01 as near as possible. The term may include vocational  
31 evaluation, counseling, education, workplace modification, and vocational

retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.

28. "Seasonal employment" includes an occupation that has periods of forty-five consecutive days of not receiving wages.

29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.

30. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the bureau to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.

31. "Wages" means an employee's remuneration from all employment reportable ~~by employers~~ to the internal revenue service as earned income for federal income tax purposes ~~and lost as the result of a compensable work injury~~. For purposes of chapter 65-04, "wages" may not include dismissal or severance pay.

**SECTION 2. AMENDMENT.** Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-03. Person performing service for remuneration presumed an employee.**

Each person who performs services for another for a remuneration, ~~whether the same is paid as a salary, commission, or other considerations in lieu thereof, under any agreement or contract of hire, express or implied,~~ is presumed to be an employee of the person for whom the services are performed, unless it is proven that the person maintains a separate business establishment or holds that person out to render or renders services to the general public. In determining whether a person is an independent contractor or an employee, the test to be employed is under the "common law" test. The person who asserts that a person is an independent contractor under the "common law" test, rather than an employee, has the burden of proving that fact.

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

3           **65-01-11. Burden of proof in compensation matters - Death certificate.** If the  
4 bureau or an employer claims that an employee is not entitled to the benefits of the North  
5 Dakota Workers' Compensation Law ~~by reason of the fact that~~ because the employee's injury  
6 was caused by the employee's willful intention to injure himself, or to injure another, or by  
7 reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled  
8 substance by the employee, the burden of proving ~~such~~ the exemption or forfeiture is upon the  
9 bureau or upon the person alleging the same; however, an alcohol concentration level at or  
10 above the limit set by the United States secretary of transportation in 49 CFR 383.51 or a level  
11 of an illegally used controlled substance sufficient to cause impairment found by a test required  
12 by a physician, qualified technician, chemist, or registered nurse and performed as required by  
13 the United States secretary of transportation under 49 CFR part 40, at or above the cutoff level  
14 in part 40, creates a rebuttable presumption that the injury was due to impairment caused by  
15 the use of alcohol or the illegal use of a controlled substance. An employer who has a  
16 mandatory drug alcohol testing policy for work accidents, or an employer or a doctor who has  
17 reasonable grounds to suspect an employee's alleged work injury was caused by the  
18 employee's voluntary impairment caused by use of alcohol or illegal use of a controlled  
19 substance may request that the employee undergo testing to determine if the employee had  
20 alcohol or the controlled substance in the employee's system at levels greater than the limit set  
21 by the United States department of transportation at the time of the injury. If an employee  
22 refuses to submit to a reasonable request to undergo a test to determine if the employee was  
23 impaired; or if an employee refuses to submit to a test for drugs or alcohol after a work accident  
24 as mandated by company policy, the employee forfeits all entitlement to workers' compensation  
25 benefits arising out of that injury. Any claimant against the fund, however, has the burden of  
26 proving by a preponderance of the evidence that the claimant is entitled to ~~participate in the~~  
27 ~~same~~ benefits. ~~In the event of~~ If a claim for death benefits is filed, the official death certificate  
28 must be considered as evidence of death and may not be used to establish the cause of death.

29           **SECTION 4.** A new section to chapter 65-01 of the North Dakota Century Code is  
30 created and enacted as follows:

1           **Presumption of compensability for certain conditions of full-time paid firefighters**  
2 **and law enforcement officers.** Any condition or impairment of health of a full-time paid  
3 firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart  
4 disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02,  
5 or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or  
6 death, is presumed to have been suffered in the line of duty. The condition or impairment of  
7 health may not be attributed to any disease existing before that total or partial disability or death  
8 unless the contrary is shown by competent evidence. As used in this section, an occupational  
9 cancer is one which arises out of employment as a full-time paid firefighter and is due to injury  
10 due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances  
11 while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter  
12 or law enforcement officer is not eligible for the benefit provided under this section unless that  
13 full-time paid firefighter or law enforcement officer has completed five years of continuous  
14 service and has successfully passed a physical examination which fails to reveal any evidence  
15 of such a condition. An employer shall require a physical examination upon employment, and  
16 annually thereafter, for any employee subject to this section. Results of the examination must  
17 be used in rebuttal to a presumption afforded under this section. For purposes of this section,  
18 "law enforcement officer" means a person who is licensed to perform peace officer law  
19 enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal  
20 investigation, the game and fish department, the state highway patrol, the parole and probation  
21 division, the North Dakota state university police department, the North Dakota state college of  
22 science police department, the university of North Dakota police department, a county sheriff's  
23 department, or a city police department. The presumption does not include a condition or  
24 impairment of health of a full-time paid firefighter or law enforcement officer, who has been  
25 employed for ten years or less, if the condition or impairment is diagnosed more than two years  
26 after the employment as a full-time paid firefighter or law enforcement officer ends. The  
27 presumption also does not include a condition or impairment of health of a full-time paid  
28 firefighter or law enforcement officer, who has been employed more than ten years, if the  
29 condition or impairment is diagnosed more than five years after the employment as a full-time  
30 paid firefighter or law enforcement officer ends.



**SECTION 5. AMENDMENT.** Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15. Yearly documentation required for firefighter and law enforcement officer.** Except for benefits for exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under ~~subdivision d of subsection 18 of section 65-01-02~~ 4 of this Act, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years. Any full-time paid firefighter or law enforcement officer employed on June 30, 1995, is not subject to this section until July 1, 1997.

**SECTION 6. AMENDMENT.** Section 65-07-03 of the North Dakota Century Code is amended and reenacted as follows:

**65-07-03. Determination of weekly wage for premium purposes.** If the bureau enters into a contract for insurance under this chapter, the premium for such protection shall be based on:

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as outlined in subdivision ~~a~~ b of subsection ~~4~~ 5 of section 65-01-02. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.
2. A reasonable wage as determined by the bureau for said employees in the same class of industry that the volunteer organization is engaged.

**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

- 1 study, the interim committee designated by the legislative council may review the proposed
- 2 legislation before it is introduced.