

Fifty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2343

Introduced by

Senators Sand, Thompson

Representatives Carlson, Jacobs

1 A BILL for an Act to amend and reenact subsection 18 of section 65-01-02 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.

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

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

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

- 9 a. Arises under conditions wherein it is apparent to the rational mind upon
10 consideration of all the circumstances that there is a direct causal connection
11 between the conditions under which the work is performed and the disease;
12 b. Can be seen to have followed as a natural incident of the work as a result of
13 the exposure occasioned by the nature of the employment;
14 c. Can be fairly traced to the employment; or
15 d. However, any condition or impairment of health of a full-time paid firefighter or
16 law enforcement officer caused by lung or respiratory disease, hypertension,
17 heart disease, or exposure to infectious disease as defined by sections
18 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid
19 firefighter, resulting in total or partial disability or death is presumed to have
20 been suffered in the line of duty. The condition or impairment of health may
21 not be attributed to any disease existing before that total or partial disability or
22 death unless the contrary is shown by competent evidence. As used in this
23 subdivision, an occupational cancer is one which arises out of employment as
24 a full-time paid firefighter and is due to injury due to exposure to smoke,

1 fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the
2 performance of active duty as a full-time paid firefighter. A full-time paid
3 firefighter or law enforcement officer is not eligible for the benefit provided
4 under this subdivision unless that full-time paid firefighter or law enforcement
5 officer has completed five years of continuous service and has successfully
6 passed a physical examination which fails to reveal any evidence of such a
7 condition. An employer shall require a physical examination upon
8 employment, ~~and annually thereafter~~, for any employee subject to this
9 subdivision. For the first twenty years of employment or until the employee
10 reaches forty-five years of age, the employer shall require a physical
11 examination at least once every five years. After that, the employer shall
12 require a physical examination every three years. This subdivision does not
13 affect an employee's responsibility to document that the employee has not
14 used tobacco as required under section 65-01-15. Results of the examination
15 must be used in rebuttal to a presumption afforded under this subdivision. For
16 purposes of this subdivision, "law enforcement officer" means a person who is
17 licensed to perform peace officer law enforcement duties under chapter 12-63
18 and is employed full time by the bureau of criminal investigation, the game
19 and fish department, the state highway patrol, the parole and probation
20 division, the North Dakota state university police department, the North
21 Dakota state college of science police department, the university of North
22 Dakota police department, a county sheriff's department, or a city police
23 department. The presumption does not include a condition or impairment of
24 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
26 more than two years after the employment as a full-time paid firefighter or law
27 enforcement officer ends. The presumption also does not include a condition
28 or impairment of health of a full-time paid firefighter or law enforcement
29 officer, who has been employed more than ten years, if the condition or
30 impairment is diagnosed more than five years after the employment as a
31 full-time paid firefighter or law enforcement officer ends.