

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED 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~~ medical examination which fails to reveal any evidence of
7 such a condition. An employer shall require a ~~physical~~ medical examination
8 upon employment, ~~and annually thereafter~~, for any employee subject to this
9 subdivision. After the initial medical examination, an employer shall require at
10 least a periodic medical examination as follows: for one to ten years of
11 service, every five years; for eleven to twenty years of service, every three
12 years; and for twenty-one or more years of service, every year. The periodic
13 medical examination, at a minimum, must consist of a general medical history
14 of the individual and the individual's family; an occupational history including
15 contact and an exposure to hazardous materials, toxic products, contagious
16 and infectious diseases, and to physical hazards; a physical exam including
17 measurement of height, weight, and blood pressure; and laboratory and
18 diagnostic procedures including a nonfasting total blood cholesterol test and
19 papanicolaou smear for women. If the medical examination reveals that an
20 employee falls into a recognized risk group, the employee must be referred to
21 a qualified health professional for future medical examination. For the first
22 twenty years of employment or until the employee reaches forty-five years of
23 age, the employer shall require a physical examination at least once every
24 five years. After that, the employer shall require a physical examination every
25 three years. This subdivision does not affect an employee's responsibility to
26 document that the employee has not used tobacco as required under section
27 65-01-15. Results of the examination must be used in rebuttal to a
28 presumption afforded under this subdivision. For purposes of this
29 subdivision, "law enforcement officer" means a person who is licensed to
30 perform peace officer law enforcement duties under chapter 12-63 and is
31 employed full time by the bureau of criminal investigation, the game and fish

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