

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1422

Introduced by

Representative Berg

1 A BILL for an Act to amend and reenact subsection 26 of section 65-01-02 and section
2 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation awards for
3 permanent impairment; to provide for a study of workers' compensation permanent impairment
4 awards; and to provide an effective date.

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

6 **SECTION 1. AMENDMENT.** Subsection 26 of section 65-01-02 of the 1997
7 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8 26. "Permanent impairment" means the loss of or loss of use of a member of the body
9 existing after the date of maximum medical improvement ~~or recovery~~, and includes
10 disfigurement resulting from an injury. ~~The loss must be determined in accordance~~
11 ~~with and based upon the most current edition of the American medical~~
12 ~~association's "Guides to the Evaluation of Permanent Impairment". Any~~
13 ~~impairment award, not expressly contemplated within the American medical~~
14 ~~association's "Guides to the Evaluation of Permanent Impairment", must be~~
15 ~~determined by clear and convincing medical evidence.~~

16 **SECTION 2. AMENDMENT.** Section 65-05-12.2 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **65-05-12.2. Permanent impairment - Compensation - Time paid.** When a
19 compensable injury ~~results in~~ causes permanent ~~loss of, or loss of use of, a member of the~~
20 ~~body~~ impairment, the bureau shall determine a permanent impairment award on the following
21 terms:

22 1. If the compensable injury causes permanent impairment and the permanent
23 impairment award payable by the bureau is at least two thousand dollars, the
24 injured employee may defer payment of the permanent impairment award for a

period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the bureau under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the bureau. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The bureau shall adopt rules implementing any necessary procedures for award payments made under this subsection.

2. ~~If a compensable injury that occurs after July 31, 1995, causes permanent impairment, the~~ The bureau shall calculate the amount of the lump sum payable under subsection 4 ~~award by multiplying thirty-three and one-third percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar on the date of the original injury, by the number of weeks specified in subsection 45 10. The bureau shall pay permanent impairment benefits under subsection 1 at the rate of one hundred twenty two dollars per week for a compensable injury that occurred before August 1, 1995.~~
3. The bureau shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the bureau has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.
4. An injured employee is entitled to ~~compensation for a single~~ permanent impairment award under this section and only for those findings of impairment that at the time of the impairment evaluation which are permanent and that which were caused by the compensable injury. An injured employee is entitled to one additional award if a subsequent evaluation establishes that the impairment caused by the compensable injury is at least ten percent whole body greater than the initial impairment for which payment was awarded. The bureau may not issue an impairment award for impairment findings due to unrelated, noncompensable,

or preexisting conditions, even if these conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.

5. An injured employee is ~~not~~ eligible for an evaluation ~~for~~ of permanent impairment ~~until the employee is at~~ only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the bureau the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. ~~A doctor making an evaluation for permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned.~~ If the report states that the employee is potentially eligible for a permanent impairment award, the bureau shall provide notice to the employee as provided by subsection 3. If the injured employee files a timely written request under subsection 3, the bureau shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.

6. ~~Unless otherwise provided by this section, a doctor evaluating the impairment of an injured employee shall use the edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" in effect on the date of the employee's evaluation to establish a rating for impairment of function. A doctor evaluating the impairment of an injured employee resulting from a mental disorder shall use the edition of the American psychiatric association's "Diagnostic and Statistical Manual of Mental Disorders" in effect on the date of the employee's evaluation to establish a rating for the impairment.~~ A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The bureau shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Until rules adopted under this subsection

- 1 become effective, impairments must be evaluated under the fourth edition, third
2 printing, of the guides.
- 3 7. The bureau shall deduct, on a whole body impairment basis, from ~~a subsequent an~~
4 award for impairment under this section, any previous impairment award ~~given or~~
5 ~~calculated on an earlier claim or the same claim~~ for that same member or body
6 part under the workers' compensation laws of any jurisdiction.
- 7 8. ~~A rating for impairment of function from an injury to the spinal cord resulting in~~
8 ~~paraplegia, hemiplegia, or quadriplegia must be calculated based solely on the~~
9 ~~percentage the impairment of function bears to total impairment of function of the~~
10 ~~whole body.~~
- 11 9. ~~A rating for impairment of function of the cervical, thoracic, lumbar, or sacral spine~~
12 ~~must be calculated according to the doctor's diagnosis of the employee's injury or~~
13 ~~condition that is directly related to the compensable work injury. The rating may~~
14 ~~not include a rating for other factors, including loss of range of motion, pain, loss of~~
15 ~~strength, loss of sensation, and radiculopathy unless established by unequivocal~~
16 ~~electrodiagnostic evidence of nerve root compromise.~~
- 17 10. ~~A rating of impairment of function resulting from injuries other than amputations,~~
18 ~~injuries to the cervical, thoracic, lumbar, or sacral spine, and injuries to the spinal~~
19 ~~cord resulting in paraplegia, hemiplegia, or quadriplegia must be based on a~~
20 ~~diagnosis directly related to the compensable work injury, if the American medical~~
21 ~~association's "Guides to the Evaluation of Permanent Impairment" provide for an~~
22 ~~impairment on a diagnostic basis.~~
- 23 11. ~~A rating for impairment of function for loss of strength and sensation must be~~
24 ~~based on objective medical evidence of nerve damage.~~
- 25 12. ~~A rating of impairment of function due to loss of range of motion must be based on~~
26 ~~objective medical evidence of structural damage to a joint or loss of motor function.~~
- 27 13. ~~An injured employee is not entitled to a permanent impairment award due solely to~~
28 ~~pain.~~
- 29 14. 9. If an employee dies, the right to any compensation payable pursuant to an
30 impairment evaluation previously requested by the employee ~~under this section~~
31 subsection 3, which remains unpaid on the date of the employee's death, survives

and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment ~~that~~ which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.

~~45- 10.~~ 10. If the injury causes permanent impairment, the award must be determined based on the percentage the of whole body impairment bears to total impairment must be determined in accordance with ~~the first applicable whole body impairment the~~ following schedule:

For one to fifteen percent impairment	0 weeks
For sixteen percent impairment	5 <u>10</u> weeks
For seventeen percent impairment	5 <u>10</u> weeks
For eighteen percent impairment	40 <u>15</u> weeks
For nineteen percent impairment	40 <u>15</u> weeks
For twenty percent impairment	45 <u>20</u> weeks
For twenty-one percent impairment	45 <u>20</u> weeks
For twenty-two percent impairment	20 <u>25</u> weeks
For twenty-three percent impairment	20 <u>25</u> weeks
For twenty-four percent impairment	20 <u>30</u> weeks
For twenty-five percent impairment	25 <u>30</u> weeks
For twenty-six percent impairment	30 <u>35</u> weeks
For twenty-seven percent impairment	35 weeks
For twenty-eight percent impairment	40 weeks
For twenty-nine percent impairment	45 weeks
For thirty percent impairment	50 weeks
For thirty-one percent impairment	60 weeks
For thirty-two percent impairment	70 weeks
For thirty-three percent impairment	80 weeks

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1	For thirty-four percent impairment	90 weeks
2	For thirty-five percent impairment	100 weeks
3	For thirty-six percent impairment	110 weeks
4	For thirty-seven percent impairment	120 weeks
5	For thirty-eight percent impairment	130 weeks
6	For thirty-nine percent impairment	140 weeks
7	For forty percent impairment	150 weeks
8	For forty-one percent impairment	160 weeks
9	For forty-two percent impairment	170 weeks
10	For forty-three percent impairment	180 weeks
11	For forty-four percent impairment	190 weeks
12	For forty-five percent impairment	200 weeks
13	For forty-six percent impairment	210 weeks
14	For forty-seven percent impairment	220 weeks
15	For forty-eight percent impairment	230 weeks
16	For forty-nine percent impairment	240 weeks
17	For fifty percent impairment	250 weeks
18	For fifty-one percent impairment	265 weeks
19	For fifty-two percent impairment	280 weeks
20	For fifty-three percent impairment	295 weeks
21	For fifty-four percent impairment	310 weeks
22	For fifty-five percent impairment	325 weeks
23	For fifty-six percent impairment	340 weeks
24	For fifty-seven percent impairment	355 weeks
25	For fifty-eight percent impairment	370 weeks
26	For fifty-nine percent impairment	385 weeks
27	For sixty percent impairment	400 weeks
28	For sixty-one percent impairment	415 weeks
29	For sixty-two percent impairment	430 weeks
30	For sixty-three percent impairment	445 weeks
31	For sixty-four percent impairment	460 weeks

1	For sixty-five percent impairment	475 weeks
2	For sixty-six percent impairment	490 weeks
3	For sixty-seven percent impairment	505 weeks
4	For sixty-eight percent impairment	520 weeks
5	For sixty-nine percent impairment	535 weeks
6	For seventy percent impairment	550 weeks
7	For seventy-one percent impairment	565 weeks
8	For seventy-two percent impairment	580 weeks
9	For seventy-three percent impairment	595 weeks
10	For seventy-four percent impairment	610 weeks
11	For seventy-five percent impairment	625 weeks
12	For seventy-six percent impairment	640 weeks
13	For seventy-seven percent impairment	655 weeks
14	For seventy-eight percent impairment	670 weeks
15	For seventy-nine percent impairment	685 weeks
16	For eighty percent impairment	700 weeks
17	For eighty-one percent impairment	715 weeks
18	For eighty-two percent impairment	730 weeks
19	For eighty-three percent impairment	745 weeks
20	For eighty-four percent impairment	760 weeks
21	For eighty-five percent impairment	775 weeks
22	For eighty-six percent impairment	790 weeks
23	For eighty-seven percent impairment	805 weeks
24	For eighty-eight percent impairment	820 weeks
25	For eighty-nine percent impairment	835 weeks
26	For ninety to one hundred percent impairment	1000 weeks
27	46- 11. <u>11.</u> An amputation of a finger or toe at the level of the distal interphalangeal joint or	
28	proximal to that joint, or the thumb or the great toe at the interphalangeal joint or	
29	proximal to that joint, which is determined by the American medical association's	
30	"Guides to the Evaluation of Permanent Impairment" to result in a whole body	

1 impairment of less than sixteen percent is payable as a sixteen percent
2 impairment.

3 ~~47.~~ 12. If there is a medical dispute regarding the percentage of an injured employee's
4 permanent impairment ~~is disputed~~, all relevant medical evidence must be
5 submitted to an independent doctor who has not treated the employee and who
6 has not been consulted by the bureau in relation to the injury upon which the
7 impairment is based. The bureau shall establish ~~a comprehensive list~~ lists of
8 doctors who are ~~medical specialists within the state~~ qualified by their training,
9 experience, and area of practice to rate permanent impairments caused by various
10 types of injuries. The bureau shall define, by rule, the process by which the
11 bureau and the injured employee choose an independent doctor or doctors to
12 review a disputed permanent impairment evaluation or rating. The decision of the
13 independent doctor or doctors chosen under this process is presumptive evidence
14 of the degree of permanent impairment of the employee which can only be
15 rebutted by clear and convincing evidence. This subsection does not impose
16 liability on the bureau for an impairment award for a rating of impairment for a body
17 part or condition the bureau has not determined to be compensable as a result of
18 the injury. The employee bears the expense of witness fees of the independent
19 doctor or doctors if the employee disputes the findings of the independent doctor
20 or doctors.

21 ~~48.~~ 13. ~~The bureau shall establish, by rule, a reasonable hourly rate and a maximum fee~~
22 ~~to compensate an employee's attorney for legal services rendered as a result of~~
23 ~~the award or denial of compensation for permanent impairment.~~ An attorney's fees
24 are not payable unless there is a bona fide dispute as to the percentage of the
25 employee's permanent impairment or unless there is a dispute as to the
26 employee's eligibility for an award for permanent partial impairment. An attorney's
27 fees payable in connection with a permanent impairment dispute may not exceed
28 twenty percent of the additional amount awarded upon final resolution of the
29 dispute, subject to the maximum fees established pursuant to section 65-02-08.

30 ~~49.~~ 14. An attorney may not seek or obtain from an employee through a contingent fee
31 arrangement, or on a percentage basis, costs or fees payable in connection with

1 the award or denial of compensation for permanent impairment. A permanent
2 impairment award is exempt from the claims of creditors, including an employee's
3 attorney, except as provided by section 65-05-29.

4 **SECTION 3. PERMANENT IMPAIRMENT AWARDS STUDY.** During the 1999-2000
5 interim, the bureau shall study the awards provided to injured employees with permanent
6 impairments caused by compensable work injuries. The study must identify the advantages
7 and disadvantages of the current system and of any proposed alternate system. The study
8 must include recommendations on whether changes are needed and the cost of any proposed
9 changes. Before the 2001 legislative session, the bureau shall report the results of the study to
10 an interim committee identified by the legislative council.

11 **SECTION 4. EFFECTIVE DATE.** Sections 1 and 2 of this Act apply to all impairment
12 evaluations performed after July 31, 1999, regardless of the date of injury or date of claim filing.