

HOUSE BILL NO. 1161

Introduced by

Industry, Business and Labor Committee

(At the request of the Workers Compensation Bureau)

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

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

5 **SECTION 1. AMENDMENT.** Section 65-05-12.2 of the 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **65-05-12.2. Permanent impairment - Compensation - Time paid.** When a
8 compensable injury causes permanent impairment, the bureau shall determine a permanent
9 impairment award on the following terms:

- 10 1. If the compensable injury causes permanent impairment and the permanent
11 impairment award payable by the bureau is at least two thousand dollars, the
12 injured employee may defer payment of the permanent impairment award for a
13 period of time not to exceed the date the employee reaches age sixty-five. A
14 permanent impairment award payable by the bureau under this subsection must be
15 paid to the employee in a lump sum that consists of the amount of the award plus
16 any interest that has accrued at the actuarial discount rate in use by the bureau.
17 The actuarial discount rate applied to the award is the average actuarial discount
18 rate in effect for the period of deferment of the employee's award. The bureau
19 shall adopt rules implementing any necessary procedures for award payments
20 made under this subsection.
- 21 2. The bureau shall calculate the amount of the award by multiplying thirty-three and
22 one-third percent of the average weekly wage in this state on the date of the
23 impairment evaluation, rounded to the next highest dollar, by the number of weeks
24 specified in subsection 10.

- 1 3. The bureau shall notify the employee by certified mail, to the last-known address of
2 the employee, when that employee becomes potentially eligible for a permanent
3 impairment award. After the bureau has notified the employee, the employee shall
4 file, within one hundred eighty days from the date the employee was notified, a
5 written request for an evaluation for permanent impairment. Failure to file the
6 written request within the one hundred eighty-day period precludes an award under
7 this section.
- 8 4. An injured employee is entitled to compensation for permanent impairment under
9 this section only for those findings of impairment that are permanent and which
10 were caused by the compensable injury. The bureau may not issue an impairment
11 award for impairment findings due to unrelated, noncompensable, or preexisting
12 conditions, even if these conditions were made symptomatic by the compensable
13 work injury, and regardless of whether section 65-05-15 applies to the claim.
- 14 5. An injured employee is eligible for an evaluation of permanent impairment only
15 when all conditions caused by the compensable injury have reached maximum
16 medical improvement. The injured employee's doctor shall report to the bureau the
17 date an employee has reached maximum medical improvement and any evidence
18 of impairment of function the injured employee has after that date. If the report
19 states that the employee is potentially eligible for a permanent impairment award,
20 the bureau shall provide notice to the employee as provided by subsection 3. If the
21 injured employee files a timely written request under subsection 3, the bureau shall
22 schedule an impairment evaluation by a doctor qualified to evaluate the
23 impairment.
- 24 6. A doctor evaluating permanent impairment shall include a clinical report in
25 sufficient detail to support the percentage ratings assigned. The bureau shall
26 adopt administrative rules governing the evaluation of permanent impairment.
27 These rules must incorporate principles and practices of the fifth edition of the
28 American medical association's "Guides to the Evaluation of Permanent
29 Impairment" modified to be consistent with North Dakota law, to resolve issues of
30 practice and interpretation, and to address areas not sufficiently covered by the
31 guides. ~~Until Subject to~~ rules adopted under this subsection ~~become effective,~~

1 impairments must be evaluated under the ~~fourth~~ fifth edition, ~~third printing~~, of the
2 guides.

3 7. The bureau shall deduct, on a whole body impairment basis, from an award for
4 impairment under this section, any previous impairment award for that same
5 member or body part under the workers' compensation laws of any jurisdiction.

6 8. An injured employee is not entitled to a permanent impairment award due solely to
7 pain.

8 9. If an employee dies, the right to any compensation payable pursuant to an
9 impairment evaluation previously requested by the employee under subsection 3,
10 which remains unpaid on the date of the employee's death, survives and passes to
11 the employee's dependent spouse, minor children, parents, or estate, in that order.
12 If the employee dies, only those findings of impairment which are objectively
13 verifiable such as values for surgical procedures and amputations may be
14 considered in a rating for impairment. Impairment findings not supported by
15 objectively verifiable evidence may not be included in a rating for impairment. The
16 deceased employee's dependents or representatives shall request an impairment
17 award under this subsection within one year from the date of death of the
18 employee.

19 10. If the injury causes permanent impairment, the award must be determined based
20 on the percentage of whole body impairment in accordance with the following
21 schedule:

22 For one to fifteen percent impairment	0 weeks
23 For sixteen percent impairment	10 weeks
24 For seventeen percent impairment	10 weeks
25 For eighteen percent impairment	15 weeks
26 For nineteen percent impairment	15 weeks
27 For twenty percent impairment	20 weeks
28 For twenty-one percent impairment	20 weeks
29 For twenty-two percent impairment	25 weeks
30 For twenty-three percent impairment	25 weeks
31 For twenty-four percent impairment	30 weeks

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1	For twenty-five percent impairment	30 weeks
2	For twenty-six percent impairment	35 weeks
3	For twenty-seven percent impairment	35 weeks
4	For twenty-eight percent impairment	40 weeks
5	For twenty-nine percent impairment	45 weeks
6	For thirty percent impairment	50 weeks
7	For thirty-one percent impairment	60 weeks
8	For thirty-two percent impairment	70 weeks
9	For thirty-three percent impairment	80 weeks
10	For thirty-four percent impairment	90 weeks
11	For thirty-five percent impairment	100 weeks
12	For thirty-six percent impairment	110 weeks
13	For thirty-seven percent impairment	120 weeks
14	For thirty-eight percent impairment	130 weeks
15	For thirty-nine percent impairment	140 weeks
16	For forty percent impairment	150 weeks
17	For forty-one percent impairment	160 weeks
18	For forty-two percent impairment	170 weeks
19	For forty-three percent impairment	180 weeks
20	For forty-four percent impairment	190 weeks
21	For forty-five percent impairment	200 weeks
22	For forty-six percent impairment	210 weeks
23	For forty-seven percent impairment	220 weeks
24	For forty-eight percent impairment	230 weeks
25	For forty-nine percent impairment	240 weeks
26	For fifty percent impairment	260 weeks
27	For fifty-one percent impairment	280 weeks
28	For fifty-two percent impairment	300 weeks
29	For fifty-three percent impairment	320 weeks
30	For fifty-four percent impairment	340 weeks
31	For fifty-five percent impairment	360 weeks

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1	For fifty-six percent impairment	380 weeks
2	For fifty-seven percent impairment	400 weeks
3	For fifty-eight percent impairment	420 weeks
4	For fifty-nine percent impairment	440 weeks
5	For sixty percent impairment	465 weeks
6	For sixty-one percent impairment	490 weeks
7	For sixty-two percent impairment	515 weeks
8	For sixty-three percent impairment	540 weeks
9	For sixty-four percent impairment	565 weeks
10	For sixty-five percent impairment	590 weeks
11	For sixty-six percent impairment	615 weeks
12	For sixty-seven percent impairment	640 weeks
13	For sixty-eight percent impairment	665 weeks
14	For sixty-nine percent impairment	690 weeks
15	For seventy percent impairment	715 weeks
16	For seventy-one percent impairment	740 weeks
17	For seventy-two percent impairment	765 weeks
18	For seventy-three percent impairment	790 weeks
19	For seventy-four percent impairment	815 weeks
20	For seventy-five percent impairment	840 weeks
21	For seventy-six percent impairment	865 weeks
22	For seventy-seven percent impairment	890 weeks
23	For seventy-eight percent impairment	915 weeks
24	For seventy-nine percent impairment	940 weeks
25	For eighty percent impairment	965 weeks
26	For eighty-one percent impairment	990 weeks
27	For eighty-two percent impairment	1015 weeks
28	For eighty-three percent impairment	1040 weeks
29	For eighty-four percent impairment	1065 weeks
30	For eighty-five percent impairment	1090 weeks
31	For eighty-six percent impairment	1115 weeks

1	For eighty-seven percent impairment	1140 weeks
2	For eighty-eight percent impairment	1165 weeks
3	For eighty-nine percent impairment	1190 weeks
4	For ninety percent impairment	1215 weeks
5	For ninety-one percent impairment	1240 weeks
6	For ninety-two percent impairment	1265 weeks
7	For ninety-three percent impairment	1290 weeks
8	For ninety-four percent impairment	1320 weeks
9	For ninety-five percent impairment	1350 weeks
10	For ninety-six percent impairment	1380 weeks
11	For ninety-seven percent impairment	1410 weeks
12	For ninety-eight percent impairment	1440 weeks
13	For ninety-nine percent impairment	1470 weeks
14	For one hundred percent impairment	1500 weeks
15	11. An amputation of a finger or toe at the level of the distal interphalangeal joint or	
16	proximal to that joint, or the thumb or the great toe at the interphalangeal joint or	
17	proximal to that joint, which is determined to result in a whole body impairment of	
18	less than sixteen percent <u>and which is not identified in the following schedule</u> , is	
19	payable as a sixteen percent impairment. <u>If an evaluation for the loss of an eye or</u>	
20	<u>for an amputation results in an award that is less than the number of weeks</u>	
21	<u>identified in the following schedule, the bureau shall pay an award equal to the</u>	
22	<u>number of weeks set out in the following schedule:</u>	
23	<u>For amputation of a thumb</u>	<u>65 weeks</u>
24	<u>For amputation of the second or distal phalanx of the</u>	<u>28 weeks</u>
25	<u>thumb</u>	
26	<u>For amputation of the first finger</u>	<u>40 weeks</u>
27	<u>For amputation of the middle or second phalanx of the first</u>	<u>28 weeks</u>
28	<u>finger</u>	
29	<u>For amputation of the third or distal phalanx of the first</u>	<u>22 weeks</u>
30	<u>finger</u>	
31	<u>For amputation of the second finger</u>	<u>30 weeks</u>

1	<u>For amputation of the middle or second phalanx of the second</u>	<u>22 weeks</u>
2	<u>finger</u>	
3	<u>For amputation of the third or distal phalanx of the second</u>	<u>14 weeks</u>
4	<u>finger</u>	
5	<u>For amputation of the third finger</u>	<u>20 weeks</u>
6	<u>For amputation of the middle or second phalanx of the third</u>	<u>16 weeks</u>
7	<u>finger</u>	
8	<u>For amputation of the fourth finger</u>	<u>16 weeks</u>
9	<u>For amputation of the middle or second phalanx of the fourth</u>	<u>12 weeks</u>
10	<u>finger</u>	
11	<u>For amputation of the leg at the hip</u>	<u>234 weeks</u>
12	<u>For amputation of the leg at or above the knee</u>	<u>195 weeks</u>
13	<u>For amputation of the leg at or above the ankle</u>	<u>150 weeks</u>
14	<u>For amputation of a great toe</u>	<u>30 weeks</u>
15	<u>For amputation of the second or distal phalanx of the great</u>	<u>18 weeks</u>
16	<u>toe</u>	
17	<u>For amputation of any other toe</u>	<u>12 weeks</u>
18	<u>For loss of an eye</u>	<u>150 weeks</u>
19	<u>The award for the amputation of more than one finger of one hand may not exceed</u>	
20	<u>an award for the amputation of a hand. The award for the amputation of more than</u>	
21	<u>one toe of one foot may not exceed an award for the amputation of a foot. If any of</u>	
22	<u>the amputations or losses set out in this subsection combine with other</u>	
23	<u>impairments for the same work-related injury or condition, the bureau shall issue</u>	
24	<u>an impairment award based on the greater of the number of weeks allowed for the</u>	
25	<u>combined rating established under the fifth edition of the American medical</u>	
26	<u>association's "Guides to the Evaluation of Permanent Impairment" or the number of</u>	
27	<u>weeks set forth in this subsection.</u>	
28	12. If there is a medical dispute regarding the percentage of an injured employee's	
29	permanent impairment, all relevant medical evidence must be submitted to an	
30	independent doctor who has not treated the employee and who has not been	
31	consulted by the bureau in relation to the injury upon which the impairment is	

1 based. The bureau shall establish lists of doctors who are qualified by ~~their~~ the
2 doctor's training, experience, and area of practice to rate permanent impairments
3 caused by various types of injuries. The bureau shall define, by rule, the process
4 by which the bureau and the injured employee choose an independent doctor or
5 doctors to review a disputed permanent impairment evaluation or rating. The
6 decision of the independent doctor or doctors chosen under this process is
7 presumptive evidence of the degree of permanent impairment of the employee
8 which can only be rebutted by clear and convincing evidence. This subsection
9 does not impose liability on the bureau for an impairment award for a rating of
10 impairment for a body part or condition the bureau has not determined to be
11 compensable as a result of the injury. The employee bears the expense of witness
12 fees of the independent doctor or doctors if the employee disputes the findings of
13 the independent doctor or doctors.

14 13. An attorney's fees are not payable unless there is a bona fide dispute as to the
15 percentage of the employee's permanent impairment or unless there is a dispute
16 as to the employee's eligibility for an award for permanent partial impairment. An
17 attorney's fees payable in connection with a permanent impairment dispute may
18 not exceed twenty percent of the additional amount awarded upon final resolution
19 of the dispute, subject to the maximum fees established pursuant to section
20 65-02-08.

21 14. An attorney may not seek or obtain from an employee through a contingent fee
22 arrangement, or on a percentage basis, costs or fees payable in connection with
23 the award or denial of compensation for permanent impairment. A permanent
24 impairment award is exempt from the claims of creditors, including an employee's
25 attorney, except as provided by section 65-05-29.

26 **SECTION 2. EFFECTIVE DATE.** This Act is effective for impairment evaluations
27 performed after July 31, 2001.