

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2389

Introduced by

Senators Nething, Klein, Robinson

Representatives Amerman, Kasper

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 for  
3 application.

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

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

7 **65-05-12.2. Permanent impairment - Compensation - Time paid.** ~~When A~~  
8 permanent impairment is not intended to be a periodic payment and is not intended to  
9 reimburse the employee for specific expenses related to the injury or wage loss. If a  
10 compensable injury causes permanent impairment, the organization shall determine a  
11 permanent impairment award on the following terms:

12 1. If the compensable injury causes permanent impairment and the permanent  
13 impairment award payable by the organization is at least two thousand dollars, the  
14 injured employee may defer payment of the permanent impairment award for a  
15 period of time not to exceed the date the employee reaches age sixty-five. A  
16 permanent impairment award payable by the organization under this subsection  
17 must be paid to the employee in a lump sum that consists of the amount of the  
18 award plus any interest that has accrued at the actuarial discount rate in use by  
19 the organization. The actuarial discount rate applied to the award is the average  
20 actuarial discount rate in effect for the period of deferment of the employee's  
21 award. The organization shall adopt rules implementing any necessary  
22 procedures for award payments made under this subsection.

23 2. ~~The~~ Except as otherwise provided under this subsection, before July first of each  
24 year, the organization shall calculate and adjust the dollar amount of the each

award in subsections 10 and 11 and implement the adjusted amounts on July first  
of that year. Annually, the organization shall publish the adjusted amounts. The  
organization shall calculate the adjusted amount of each award by multiplying  
thirty-three and one-third percent of increasing the current award amount by the  
same percentage as the increase in the current average weekly wage in this state  
on the date of the impairment evaluation from the preceding year, rounded to the  
next highest dollar, by the number of weeks specified in subsection 10. If the  
average weekly wage in this state remains the same from one year to the next or  
decreases, the award amounts in subsections 10 and 11 remain the same for that  
year and do not decrease. Notwithstanding contrary provisions under this  
subsection, effective August 1, 2007, the organization shall implement the first  
adjustment of the dollar amount of each award under subsections 10 and 11 in the  
manner provided under this subsection to reflect the increase in the average  
weekly wage in this state from 2006 to 2007.

3. The organization 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 organization 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 permanent impairment under this section only for those findings of impairment that are permanent and which were caused by the compensable injury. The organization 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 eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the

organization the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. If the report states that the employee is potentially eligible for a permanent impairment award, the organization shall provide notice to the employee as provided by subsection 3. If the injured employee files a timely written request under subsection 3, the organization shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.

6. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the fifth edition 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. Subject to rules adopted under this subsection, impairments must be evaluated under the fifth edition of the guides.

7. The organization shall deduct, on a whole body impairment basis, from an award for impairment under this section, any previous impairment award for that same member or body part under the ~~workforce safety and insurance workers'~~ compensation laws of any jurisdiction.

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

9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under 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 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.

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

For one to fifteen percent impairment	<del>0 weeks</del> <u>\$0</u>
For sixteen percent impairment	<del>10 weeks</del> <u>\$1,890</u>
For seventeen percent impairment	<del>10 weeks</del> <u>\$1,890</u>
For eighteen percent impairment	<del>15 weeks</del> <u>\$2,835</u>
For nineteen percent impairment	<del>15 weeks</del> <u>\$2,835</u>
For twenty percent impairment	<del>20 weeks</del> <u>\$3,780</u>
For twenty-one percent impairment	<del>20 weeks</del> <u>\$3,780</u>
For twenty-two percent impairment	<del>25 weeks</del> <u>\$4,725</u>
For twenty-three percent impairment	<del>25 weeks</del> <u>\$4,725</u>
For twenty-four percent impairment	<del>30 weeks</del> <u>\$5,670</u>
For twenty-five percent impairment	<del>30 weeks</del> <u>\$5,670</u>
For twenty-six percent impairment	<del>35 weeks</del> <u>\$6,615</u>
For twenty-seven percent impairment	<del>35 weeks</del> <u>\$6,615</u>
For twenty-eight percent impairment	<del>40 weeks</del> <u>\$7,560</u>
For twenty-nine percent impairment	<del>45 weeks</del> <u>\$8,505</u>
For thirty percent impairment	<del>50 weeks</del> <u>\$9,450</u>
For thirty-one percent impairment	<del>60 weeks</del> <u>\$11,340</u>
For thirty-two percent impairment	<del>70 weeks</del> <u>\$13,230</u>
For thirty-three percent impairment	<del>80 weeks</del> <u>\$15,120</u>
For thirty-four percent impairment	<del>90 weeks</del> <u>\$17,010</u>
For thirty-five percent impairment	<del>100 weeks</del> <u>\$18,900</u>
For thirty-six percent impairment	<del>110 weeks</del> <u>\$20,790</u>
For thirty-seven percent impairment	<del>120 weeks</del> <u>\$22,680</u>
For thirty-eight percent impairment	<del>130 weeks</del> <u>\$24,570</u>
For thirty-nine percent impairment	<del>140 weeks</del> <u>\$26,460</u>
For forty percent impairment	<del>150 weeks</del> <u>\$28,350</u>

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1	For forty-one percent impairment	<del>160 weeks</del> <u>\$30,240</u>
2	For forty-two percent impairment	<del>170 weeks</del> <u>\$32,130</u>
3	For forty-three percent impairment	<del>180 weeks</del> <u>\$34,020</u>
4	For forty-four percent impairment	<del>190 weeks</del> <u>\$35,910</u>
5	For forty-five percent impairment	<del>200 weeks</del> <u>\$37,800</u>
6	For forty-six percent impairment	<del>210 weeks</del> <u>\$39,690</u>
7	For forty-seven percent impairment	<del>220 weeks</del> <u>\$41,580</u>
8	For forty-eight percent impairment	<del>230 weeks</del> <u>\$43,470</u>
9	For forty-nine percent impairment	<del>240 weeks</del> <u>\$45,360</u>
10	For fifty percent impairment	<del>260 weeks</del> <u>\$49,140</u>
11	For fifty-one percent impairment	<del>280 weeks</del> <u>\$52,920</u>
12	For fifty-two percent impairment	<del>300 weeks</del> <u>\$56,700</u>
13	For fifty-three percent impairment	<del>320 weeks</del> <u>\$60,480</u>
14	For fifty-four percent impairment	<del>340 weeks</del> <u>\$64,260</u>
15	For fifty-five percent impairment	<del>360 weeks</del> <u>\$68,040</u>
16	For fifty-six percent impairment	<del>380 weeks</del> <u>\$71,820</u>
17	For fifty-seven percent impairment	<del>400 weeks</del> <u>\$75,600</u>
18	For fifty-eight percent impairment	<del>420 weeks</del> <u>\$79,380</u>
19	For fifty-nine percent impairment	<del>440 weeks</del> <u>\$83,160</u>
20	For sixty percent impairment	<del>465 weeks</del> <u>\$87,885</u>
21	For sixty-one percent impairment	<del>490 weeks</del> <u>\$92,610</u>
22	For sixty-two percent impairment	<del>515 weeks</del> <u>\$97,335</u>
23	For sixty-three percent impairment	<del>540 weeks</del> <u>\$102,060</u>
24	For sixty-four percent impairment	<del>565 weeks</del> <u>\$106,785</u>
25	For sixty-five percent impairment	<del>590 weeks</del> <u>\$111,510</u>
26	For sixty-six percent impairment	<del>615 weeks</del> <u>\$116,235</u>
27	For sixty-seven percent impairment	<del>640 weeks</del> <u>\$120,960</u>
28	For sixty-eight percent impairment	<del>665 weeks</del> <u>\$125,685</u>
29	For sixty-nine percent impairment	<del>690 weeks</del> <u>\$130,410</u>
30	For seventy percent impairment	<del>715 weeks</del> <u>\$135,135</u>
31	For seventy-one percent impairment	<del>740 weeks</del> <u>\$139,860</u>

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1	For seventy-two percent impairment	<del>765 weeks</del> <u>\$144,585</u>
2	For seventy-three percent impairment	<del>790 weeks</del> <u>\$149,310</u>
3	For seventy-four percent impairment	<del>815 weeks</del> <u>\$154,035</u>
4	For seventy-five percent impairment	<del>840 weeks</del> <u>\$158,760</u>
5	For seventy-six percent impairment	<del>865 weeks</del> <u>\$163,485</u>
6	For seventy-seven percent impairment	<del>890 weeks</del> <u>\$168,210</u>
7	For seventy-eight percent impairment	<del>915 weeks</del> <u>\$172,935</u>
8	For seventy-nine percent impairment	<del>940 weeks</del> <u>\$177,660</u>
9	For eighty percent impairment	<del>965 weeks</del> <u>\$182,385</u>
10	For eighty-one percent impairment	<del>990 weeks</del> <u>\$187,110</u>
11	For eighty-two percent impairment	<del>1015 weeks</del> <u>\$191,835</u>
12	For eighty-three percent impairment	<del>1040 weeks</del> <u>\$196,560</u>
13	For eighty-four percent impairment	<del>1065 weeks</del> <u>\$201,285</u>
14	For eighty-five percent impairment	<del>1090 weeks</del> <u>\$206,010</u>
15	For eighty-six percent impairment	<del>1115 weeks</del> <u>\$210,735</u>
16	For eighty-seven percent impairment	<del>1140 weeks</del> <u>\$215,460</u>
17	For eighty-eight percent impairment	<del>1165 weeks</del> <u>\$220,185</u>
18	For eighty-nine percent impairment	<del>1190 weeks</del> <u>\$224,910</u>
19	For ninety percent impairment	<del>1215 weeks</del> <u>\$229,635</u>
20	For ninety-one percent impairment	<del>1240 weeks</del> <u>\$234,360</u>
21	For ninety-two percent impairment	<del>1265 weeks</del> <u>\$239,085</u>
22	For ninety-three percent impairment	<del>1290 weeks</del> <u>\$243,810</u>
23	For ninety-four percent impairment	<del>1320 weeks</del> <u>\$249,480</u>
24	For ninety-five percent impairment	<del>1350 weeks</del> <u>\$255,150</u>
25	For ninety-six percent impairment	<del>1380 weeks</del> <u>\$260,820</u>
26	For ninety-seven percent impairment	<del>1410 weeks</del> <u>\$266,490</u>
27	For ninety-eight percent impairment	<del>1440 weeks</del> <u>\$272,160</u>
28	For ninety-nine percent impairment	<del>1470 weeks</del> <u>\$277,830</u>
29	For one hundred percent impairment	<del>1500 weeks</del> <u>\$283,500</u>
30	11. An amputation of a finger or toe at the level of the distal interphalangeal joint or	
31	proximal to that joint, or the thumb or the great toe at the interphalangeal joint or	

proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the ~~number of weeks~~ amount identified in the following schedule, the organization shall pay an award equal to the ~~number of weeks~~ amount set out in the following schedule:

For amputation of a thumb	<del>65 weeks</del> <u>\$12,285</u>
For amputation of the second or distal phalanx of the thumb	<del>28 weeks</del> <u>\$5,292</u>
For amputation of the first finger	<del>40 weeks</del> <u>\$7,560</u>
For amputation of the middle or second phalanx of the first finger	<del>28 weeks</del> <u>\$5,292</u>
For amputation of the third or distal phalanx of the first finger	<del>22 weeks</del> <u>\$4,159</u>
For amputation of the second finger	<del>30 weeks</del> <u>\$5,670</u>
For amputation of the middle or second phalanx of the	<del>22 weeks</del> <u>\$4,159</u>
second finger	
For amputation of the third or distal phalanx of the second finger	<del>14 weeks</del> <u>\$2,646</u>
For amputation of the third finger	<del>20 weeks</del> <u>\$3,780</u>
For amputation of the middle or second phalanx of the third finger	<del>16 weeks</del> <u>\$3,024</u>
For amputation of the fourth finger	<del>16 weeks</del> <u>\$3,024</u>
For amputation of the middle or second phalanx of the	<del>12 weeks</del> <u>\$2,268</u>
fourth finger	
For amputation of the leg at the hip	<del>234 weeks</del> <u>\$44,226</u>
For amputation of the leg at or above the knee	<del>195 weeks</del> <u>\$36,855</u>
For amputation of the leg at or above the ankle	<del>150 weeks</del> <u>\$28,350</u>
For amputation of a great toe	<del>30 weeks</del> <u>\$5,670</u>
For amputation of the second or distal phalanx of the great toe	<del>18 weeks</del> <u>\$3,402</u>
For amputation of any other toe	<del>12 weeks</del> <u>\$2,268</u>
For loss of an eye	<del>150 weeks</del> <u>\$28,350</u>

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other

1           impairments for the same work-related injury or condition, the organization shall  
2           issue an impairment award based on the greater of the ~~number of weeks~~ amount  
3           allowed for the combined rating established under the fifth edition of the American  
4           medical association's "Guides to the Evaluation of Permanent Impairment" or the  
5           ~~number of weeks~~ amount set forth in this subsection.

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

23          13. An attorney's fees are not payable unless there is a bona fide dispute as to the  
24          percentage of the employee's permanent impairment or unless there is a dispute  
25          as to the employee's eligibility for an award for permanent partial impairment. An  
26          attorney's fees payable in connection with a permanent impairment dispute may  
27          not exceed twenty percent of the additional amount awarded upon final resolution  
28          of the dispute, subject to the maximum fees established pursuant to section  
29          65-02-08.

30          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 2. APPLICATION.** This Act applies to permanent impairment award  
5                   determinations made after July 30, 2007.