

**FIRST ENGROSSMENT
with House Amendments**

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 organization shall calculate the amount of the award by multiplying thirty-three
24 and one-third percent of the average weekly wage in this state on the date of the

1 impairment evaluation, rounded to the next highest dollar, by the ~~number of weeks~~
2 permanent impairment multiplier specified in subsection 10.

3 3. The organization shall notify the employee by certified mail, to the last-known
4 address of the employee, when that employee becomes potentially eligible for a
5 permanent impairment award. After the organization has notified the employee,
6 the employee shall file, within one hundred eighty days from the date the employee
7 was notified, a written request for an evaluation for permanent impairment. Failure
8 to file the written request within the one hundred eighty-day period precludes an
9 award under this section.

10 4. An injured employee is entitled to compensation for permanent impairment under
11 this section only for those findings of impairment that are permanent and which
12 were caused by the compensable injury. The organization may not issue an
13 impairment award for impairment findings due to unrelated, noncompensable, or
14 preexisting conditions, even if these conditions were made symptomatic by the
15 compensable work injury, and regardless of whether section 65-05-15 applies to
16 the claim.

17 5. An injured employee is eligible for an evaluation of permanent impairment only
18 when all conditions caused by the compensable injury have reached maximum
19 medical improvement. The injured employee's doctor shall report to the
20 organization the date an employee has reached maximum medical improvement
21 and any evidence of impairment of function the injured employee has after that
22 date. If the report states that the employee is potentially eligible for a permanent
23 impairment award, the organization shall provide notice to the employee as
24 provided by subsection 3. If the injured employee files a timely written request
25 under subsection 3, the organization shall schedule an impairment evaluation by a
26 doctor qualified to evaluate the impairment.

27 6. A doctor evaluating permanent impairment shall include a clinical report in
28 sufficient detail to support the percentage ratings assigned. The organization shall
29 adopt administrative rules governing the evaluation of permanent impairment.
30 These rules must incorporate principles and practices of the fifth edition of the
31 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	0 weeks <u>permanent impairment multiplier of 0</u>
---------------------------------------	--

For sixteen percent impairment	40 weeks <u>permanent impairment multiplier of 10</u>
--------------------------------	--

For seventeen percent impairment	40 weeks <u>permanent impairment multiplier of 10</u>
----------------------------------	--

For eighteen percent impairment	45 weeks <u>permanent impairment</u>
---------------------------------	---

1		<u>multiplier of 15</u>
2	For nineteen percent impairment	45 weeks <u>permanent impairment</u>
3		<u>multiplier of 15</u>
4	For twenty percent impairment	20 weeks <u>permanent impairment</u>
5		<u>multiplier of 20</u>
6	For twenty-one percent impairment	20 weeks <u>permanent impairment</u>
7		<u>multiplier of 20</u>
8	For twenty-two percent impairment	25 weeks <u>permanent impairment</u>
9		<u>multiplier of 25</u>
10	For twenty-three percent impairment	25 weeks <u>permanent impairment</u>
11		<u>multiplier of 25</u>
12	For twenty-four percent impairment	30 weeks <u>permanent impairment</u>
13		<u>multiplier of 30</u>
14	For twenty-five percent impairment	30 weeks <u>permanent impairment</u>
15		<u>multiplier of 30</u>
16	For twenty-six percent impairment	35 weeks <u>permanent impairment</u>
17		<u>multiplier of 35</u>
18	For twenty-seven percent impairment	35 weeks <u>permanent impairment</u>
19		<u>multiplier of 35</u>
20	For twenty-eight percent impairment	40 weeks <u>permanent impairment</u>
21		<u>multiplier of 40</u>
22	For twenty-nine percent impairment	45 weeks <u>permanent impairment</u>
23		<u>multiplier of 45</u>
24	For thirty percent impairment	50 weeks <u>permanent impairment</u>
25		<u>multiplier of 50</u>
26	For thirty-one percent impairment	60 weeks <u>permanent impairment</u>
27		<u>multiplier of 60</u>
28	For thirty-two percent impairment	70 weeks <u>permanent impairment</u>
29		<u>multiplier of 70</u>
30	For thirty-three percent impairment	80 weeks <u>permanent impairment</u>

1		<u>multiplier of 80</u>
2	For thirty-four percent impairment	<u>90 weeks permanent impairment</u>
3		<u>multiplier of 90</u>
4	For thirty-five percent impairment	<u>100 weeks permanent impairment</u>
5		<u>multiplier of 100</u>
6	For thirty-six percent impairment	<u>110 weeks permanent impairment</u>
7		<u>multiplier of 110</u>
8	For thirty-seven percent impairment	<u>120 weeks permanent impairment</u>
9		<u>multiplier of 120</u>
10	For thirty-eight percent impairment	<u>130 weeks permanent impairment</u>
11		<u>multiplier of 130</u>
12	For thirty-nine percent impairment	<u>140 weeks permanent impairment</u>
13		<u>multiplier of 140</u>
14	For forty percent impairment	<u>150 weeks permanent impairment</u>
15		<u>multiplier of 150</u>
16	For forty-one percent impairment	<u>160 weeks permanent impairment</u>
17		<u>multiplier of 160</u>
18	For forty-two percent impairment	<u>170 weeks permanent impairment</u>
19		<u>multiplier of 170</u>
20	For forty-three percent impairment	<u>180 weeks permanent impairment</u>
21		<u>multiplier of 180</u>
22	For forty-four percent impairment	<u>190 weeks permanent impairment</u>
23		<u>multiplier of 190</u>
24	For forty-five percent impairment	<u>200 weeks permanent impairment</u>
25		<u>multiplier of 200</u>
26	For forty-six percent impairment	<u>210 weeks permanent impairment</u>
27		<u>multiplier of 210</u>
28	For forty-seven percent impairment	<u>220 weeks permanent impairment</u>
29		<u>multiplier of 220</u>
30	For forty-eight percent impairment	<u>230 weeks permanent impairment</u>

1		<u>multiplier of 230</u>
2	For forty-nine percent impairment	240 weeks <u>permanent impairment</u>
3		<u>multiplier of 240</u>
4	For fifty percent impairment	260 weeks <u>permanent impairment</u>
5		<u>multiplier of 260</u>
6	For fifty-one percent impairment	280 weeks <u>permanent impairment</u>
7		<u>multiplier of 280</u>
8	For fifty-two percent impairment	300 weeks <u>permanent impairment</u>
9		<u>multiplier of 300</u>
10	For fifty-three percent impairment	320 weeks <u>permanent impairment</u>
11		<u>multiplier of 320</u>
12	For fifty-four percent impairment	340 weeks <u>permanent impairment</u>
13		<u>multiplier of 340</u>
14	For fifty-five percent impairment	360 weeks <u>permanent impairment</u>
15		<u>multiplier of 360</u>
16	For fifty-six percent impairment	380 weeks <u>permanent impairment</u>
17		<u>multiplier of 380</u>
18	For fifty-seven percent impairment	400 weeks <u>permanent impairment</u>
19		<u>multiplier of 400</u>
20	For fifty-eight percent impairment	420 weeks <u>permanent impairment</u>
21		<u>multiplier of 420</u>
22	For fifty-nine percent impairment	440 weeks <u>permanent impairment</u>
23		<u>multiplier of 440</u>
24	For sixty percent impairment	465 weeks <u>permanent impairment</u>
25		<u>multiplier of 465</u>
26	For sixty-one percent impairment	490 weeks <u>permanent impairment</u>
27		<u>multiplier of 490</u>
28	For sixty-two percent impairment	515 weeks <u>permanent impairment</u>
29		<u>multiplier of 515</u>
30	For sixty-three percent impairment	540 weeks <u>permanent impairment</u>

1		<u>multiplier of 540</u>
2	For sixty-four percent impairment	565 weeks <u>permanent impairment</u>
3		<u>multiplier of 565</u>
4	For sixty-five percent impairment	590 weeks <u>permanent impairment</u>
5		<u>multiplier of 590</u>
6	For sixty-six percent impairment	615 weeks <u>permanent impairment</u>
7		<u>multiplier of 615</u>
8	For sixty-seven percent impairment	640 weeks <u>permanent impairment</u>
9		<u>multiplier of 640</u>
10	For sixty-eight percent impairment	665 weeks <u>permanent impairment</u>
11		<u>multiplier of 665</u>
12	For sixty-nine percent impairment	690 weeks <u>permanent impairment</u>
13		<u>multiplier of 690</u>
14	For seventy percent impairment	715 weeks <u>permanent impairment</u>
15		<u>multiplier of 715</u>
16	For seventy-one percent impairment	740 weeks <u>permanent impairment</u>
17		<u>multiplier of 740</u>
18	For seventy-two percent impairment	765 weeks <u>permanent impairment</u>
19		<u>multiplier of 765</u>
20	For seventy-three percent impairment	790 weeks <u>permanent impairment</u>
21		<u>multiplier of 790</u>
22	For seventy-four percent impairment	815 weeks <u>permanent impairment</u>
23		<u>multiplier of 815</u>
24	For seventy-five percent impairment	840 weeks <u>permanent impairment</u>
25		<u>multiplier of 840</u>
26	For seventy-six percent impairment	865 weeks <u>permanent impairment</u>
27		<u>multiplier of 865</u>
28	For seventy-seven percent impairment	890 weeks <u>permanent impairment</u>
29		<u>multiplier of 890</u>
30	For seventy-eight percent impairment	915 weeks <u>permanent impairment</u>

1		<u>multiplier of 915</u>
2	For seventy-nine percent impairment	<u>940 weeks permanent impairment</u>
3		<u>multiplier of 940</u>
4	For eighty percent impairment	<u>965 weeks permanent impairment</u>
5		<u>multiplier of 965</u>
6	For eighty-one percent impairment	<u>990 weeks permanent impairment</u>
7		<u>multiplier of 990</u>
8	For eighty-two percent impairment	<u>1015 weeks permanent impairment</u>
9		<u>multiplier of 1015</u>
10	For eighty-three percent impairment	<u>1040 weeks permanent impairment</u>
11		<u>multiplier of 1040</u>
12	For eighty-four percent impairment	<u>1065 weeks permanent impairment</u>
13		<u>multiplier of 1065</u>
14	For eighty-five percent impairment	<u>1090 weeks permanent impairment</u>
15		<u>multiplier of 1090</u>
16	For eighty-six percent impairment	<u>1115 weeks permanent impairment</u>
17		<u>multiplier of 1115</u>
18	For eighty-seven percent impairment	<u>1140 weeks permanent impairment</u>
19		<u>multiplier of 1140</u>
20	For eighty-eight percent impairment	<u>1165 weeks permanent impairment</u>
21		<u>multiplier of 1165</u>
22	For eighty-nine percent impairment	<u>1190 weeks permanent impairment</u>
23		<u>multiplier of 1190</u>
24	For ninety percent impairment	<u>1215 weeks permanent impairment</u>
25		<u>multiplier of 1215</u>
26	For ninety-one percent impairment	<u>1240 weeks permanent impairment</u>
27		<u>multiplier of 1240</u>
28	For ninety-two percent impairment	<u>1265 weeks permanent impairment</u>
29		<u>multiplier of 1265</u>
30	For ninety-three percent impairment	<u>1290 weeks permanent impairment</u>

1		<u>multiplier of 1290</u>
2	For ninety-four percent impairment	4320 weeks <u>permanent impairment</u>
3		<u>multiplier of 1320</u>
4	For ninety-five percent impairment	4350 weeks <u>permanent impairment</u>
5		<u>multiplier of 1350</u>
6	For ninety-six percent impairment	4380 weeks <u>permanent impairment</u>
7		<u>multiplier of 1380</u>
8	For ninety-seven percent impairment	4410 weeks <u>permanent impairment</u>
9		<u>multiplier of 1410</u>
10	For ninety-eight percent impairment	4440 weeks <u>permanent impairment</u>
11		<u>multiplier of 1440</u>
12	For ninety-nine percent impairment	4470 weeks <u>permanent impairment</u>
13		<u>multiplier of 1470</u>
14	For one hundred percent impairment	4500 weeks <u>permanent impairment</u>
15		<u>multiplier of 1500</u>
16	11. An amputation of a finger or toe at the level of the distal interphalangeal joint or	
17	proximal to that joint, or the thumb or the great toe at the interphalangeal joint or	
18	proximal to that joint, which is determined to result in a whole body impairment of	
19	less than sixteen percent and which is not identified in the following schedule, is	
20	payable as a sixteen percent impairment. If an evaluation for the loss of an eye or	
21	for an amputation results in an award that is less than the number of weeks	
22	<u>permanent impairment multiplier</u> identified in the following schedule, the	
23	organization shall pay an award equal to the number of weeks <u>permanent</u>	
24	<u>impairment multiplier</u> set out in the following schedule:	
25	For amputation of a thumb	65 weeks <u>permanent impairment</u>
26		<u>multiplier of 65</u>
27	For amputation of the second or distal	28 weeks <u>permanent impairment</u>
28	phalanx of the thumb	<u>multiplier of 28</u>
29	For amputation of the first finger	40 weeks <u>permanent impairment</u>
30		<u>multiplier of 40</u>
31	For amputation of the middle or second	28 weeks <u>permanent impairment</u>

1	phalanx of the first finger	<u>multiplier of 28</u>
2	For amputation of the third or distal	22 weeks <u>permanent impairment</u>
3	phalanx of the first finger	<u>multiplier of 22</u>
4	For amputation of the second finger	30 weeks <u>permanent impairment</u>
5		<u>multiplier of 30</u>
6	For amputation of the middle or second	22 weeks <u>permanent impairment</u>
7	phalanx of the second finger	<u>multiplier of 22</u>
8	For amputation of the third or distal	14 weeks <u>permanent impairment</u>
9	phalanx of the second finger	<u>multiplier of 14</u>
10	For amputation of the third finger	20 weeks <u>permanent impairment</u>
11		<u>multiplier of 20</u>
12	For amputation of the middle or second	16 weeks <u>permanent impairment</u>
13	phalanx of the third finger	<u>multiplier of 16</u>
14	For amputation of the fourth finger	16 weeks <u>permanent impairment</u>
15		<u>multiplier of 16</u>
16	For amputation of the middle or second	12 weeks <u>permanent impairment</u>
17	phalanx of the fourth finger	<u>multiplier of 12</u>
18	For amputation of the leg at the hip	234 weeks <u>permanent impairment</u>
19		<u>multiplier of 234</u>
20	For amputation of the leg at or above	195 weeks <u>permanent impairment</u>
21	the knee	<u>multiplier of 195</u>
22	For amputation of the leg at or above	150 weeks <u>permanent impairment</u>
23	the ankle	<u>multiplier of 150</u>
24	For amputation of a great toe	30 weeks <u>permanent impairment</u>
25		<u>multiplier of 30</u>
26	For amputation of the second or	18 weeks <u>permanent impairment</u>
27	distal phalanx of the great toe	<u>multiplier of 18</u>
28	For amputation of any other toe	12 weeks <u>permanent impairment</u>
29		<u>multiplier of 12</u>
30	For loss of an eye	150 weeks <u>permanent impairment</u>
31		<u>multiplier of 150</u>

1 The award for the amputation of more than one finger of one hand may not exceed
2 an award for the amputation of a hand. The award for the amputation of more than
3 one toe of one foot may not exceed an award for the amputation of a foot. If any of
4 the amputations or losses set out in this subsection combine with other
5 impairments for the same work-related injury or condition, the organization shall
6 issue an impairment award based on the greater of the ~~number of weeks~~
7 permanent impairment multiplier allowed for the combined rating established under
8 the fifth edition of the American medical association's "Guides to the Evaluation of
9 Permanent Impairment" or the ~~number of weeks~~ permanent impairment multiplier
10 set forth in this subsection.

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

28 13. An attorney's fees are not payable unless there is a bona fide dispute as to the
29 percentage of the employee's permanent impairment or unless there is a dispute
30 as to the employee's eligibility for an award for permanent partial impairment. An
31 attorney's fees payable in connection with a permanent impairment dispute may

1 not exceed twenty percent of the additional amount awarded upon final resolution
2 of the dispute, subject to the maximum fees established pursuant to section
3 65-02-08.

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

9 15. If an injured employee qualifies for an additional award and the prior award was
10 based upon the number of weeks, the impairment multiplier must be used to
11 compare against the prior award of weeks in determining any additional award.

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