

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO. 2386

Introduced by

Senators Behm, Schneider

Representative Froelich

1 A BILL for an Act to amend and reenact subsections 10, 25, and 29 of section 65-01-02 and
2 section 65-05-15 of the North Dakota Century Code, relating to workers' compensation
3 definitions for compensable injury, permanent total disability, and temporary total disability and
4 workers' compensation aggravation awards.

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

6 **SECTION 1. AMENDMENT.** Subsections 10, 25, and 29 of section 65-01-02 of the
7 North Dakota Century Code are amended and reenacted as follows:

8 10. "Compensable injury" means an injury by accident arising out of and in the course
9 of hazardous employment which must be established by medical evidence
10 supported by objective medical findings.

11 a. The term includes:

12 (1) Disease caused by a hazard to which an employee is subjected in the
13 course of employment. The disease must be incidental to the character
14 of the business and not independent of the relation of employer and
15 employee. Disease includes effects from radiation.

16 (2) An injury to artificial members.

17 (3) Injuries due to heart attack or other heart-related disease, stroke, and
18 physical injury caused by mental stimulus, but only when caused by the
19 employee's employment with reasonable medical certainty, and only
20 when it is determined with reasonable medical certainty that unusual
21 stress is at least fifty percent of the cause of the injury or disease as
22 compared with all other contributing causes combined. Unusual stress
23 means stress greater than the highest level of stress normally
24 experienced or anticipated in that position or line of work.

(4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.

(5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.

(6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not preexist the work injury.

b. The term does not include:

(1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.

(2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.

(3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.

(4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job

- 1 duties if the altercation arises out of the performance of those job
2 duties.
- 3 (5) An injury that arises out of an illegal act committed by the injured
4 employee.
- 5 (6) An injury that arises out of an employee's voluntary nonpaid
6 participation in any recreational activity, including athletic events,
7 parties, and picnics, even though the employer pays some or all of the
8 cost of the activity.
- 9 (7) ~~Injuries~~ An injury attributable to a preexisting injury, disease, or other
10 condition, including when the employment acts as a trigger to produce
11 symptoms in the preexisting injury, disease, or other condition unless
12 the employment substantially accelerates its progression or
13 substantially worsens its severity. To qualify as a preexisting injury,
14 disease, or other condition under this paragraph, the preexisting injury,
15 disease, or other condition must have been diagnosed before the
16 otherwise compensable injury occurred, and the injury, disease, or
17 other condition must have caused previous work restrictions or
18 interference with physical function during the six-month period
19 preceding the occurrence of the otherwise compensable injury.
- 20 (8) A nonemployment injury that, although acting upon a prior
21 compensable injury, is an independent intervening cause of injury.
- 22 (9) A latent or asymptomatic degenerative condition, caused in substantial
23 part by employment duties, which is triggered or made active by a
24 subsequent injury.
- 25 (10) A mental injury arising from mental stimulus.
- 26 25. "Permanent total disability" means ~~disability that is the direct result of a~~
27 ~~compensable injury that prevents an employee from performing any work and~~
28 ~~results from any one of the following conditions:~~
- 29 a. ~~Total and permanent loss of sight of both eyes;~~
30 b. ~~Loss of both legs or loss of both feet at or above the ankle;~~
31 c. ~~Loss of both arms or loss of both hands at or above the wrist;~~

- ~~d. Loss of any two of the members or faculties in subdivision a, b, or c;~~
 - ~~e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;~~
 - ~~f. Third-degree burns that cover at least forty percent of the body and require grafting;~~
 - ~~g. A medically documented traumatic brain injury affecting cognitive and mental functioning which renders an employee unable to provide self care and requires supervision or assistance with a majority of the activities of daily living; or~~
 - ~~h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty five percent pursuant to section 65-05-12.2.~~
- ~~If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization an employee is determined incapable of rehabilitation of earnings capacity based on the:~~
- a. Nature of the injury;
 - b. Degree of physical impairment;
 - c. Employee's education level;
 - d. Employee's work history;
 - e. Employee's vocational rehabilitation potential; and
 - f. Employee's age.

29. ~~"Temporary total disability" means disability that results in the inability of an employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first~~ a temporary total loss of earning capacity.

SECTION 2. AMENDMENT. Section 65-05-15 of the North Dakota Century Code is amended and reenacted as follows:

1 **65-05-15. Aggravation awards.** When a compensable injury combines with a
2 noncompensable injury, disease, or other condition, the organization shall award benefits on an
3 aggravation basis, on the following terms:

- 4 1. ~~In cases of a prior injury, disease, or other condition, known in advance of the work~~
5 ~~injury, which has caused previous work restriction or interference with physical~~
6 ~~function the progression of which is substantially accelerated by, or the severity of~~
7 ~~which is substantially worsened by, a compensable injury~~ the case of a preexisting
8 injury, disease, or other condition as provided under paragraph 7 of subdivision b
9 of subsection 10 of section 65-01-02, the organization shall pay benefits during the
10 period of acute care in full. The period of acute care is presumed to be sixty days
11 immediately following the compensable injury, absent clear and convincing
12 evidence to the contrary. Following the period of acute care, the organization shall
13 pay benefits on an aggravation basis.
- 14 2. If the progression of a prior compensable injury is substantially accelerated by, or
15 the severity of the compensable injury is substantially worsened by a
16 noncompensable injury, disease, or other condition, the organization shall pay
17 benefits on an aggravation basis.
- 18 3. The organization shall pay benefits on an aggravation basis as a percentage of the
19 benefits to which the injured ~~worker~~ employee would otherwise be entitled, equal
20 to the percentage of cause of the resulting condition that is attributable to the
21 compensable injury. Benefits payable on an aggravation basis are presumed to be
22 payable on a fifty percent basis. The party asserting a percentage other than the
23 presumed fifty percent may rebut the presumption with clear and convincing
24 evidence to the contrary.
- 25 4. When an injured ~~worker~~ employee is entitled to benefits on an aggravation basis,
26 the organization shall still pay costs of vocational rehabilitation, burial expenses
27 under section 65-05-26, and dependency allowance on a one hundred percent
28 basis.