

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2089**

Introduced by

Industry, Business and Labor Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to amend and reenact section 65-01-11 of the North Dakota Century Code,
2 relating to burden of proof in compensation matters; and to provide for application.

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

4 **SECTION 1. AMENDMENT.** Section 65-01-11 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **65-01-11. Burden of proof in compensation matters - Death certificate.**

7 If the organization or an employer claims that an employee is not entitled to the benefits of
8 the North Dakota workforce safety and insurance law because the employee's injury was
9 caused by the employee's willful intention to cause self-injury, or to injure another, or by reason
10 of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by
11 the employee, the burden of proving the exemption or forfeiture is upon the organization or
12 upon the person alleging the same; however, an alcohol concentration level at or above the limit
13 set by the United States secretary of transportation in ~~49 CFR 383.51~~ the Code of Federal
14 Regulations in effect on August 1, 2011, or a level of an illegally used controlled substance
15 sufficient to cause impairment found by a test ~~required~~ conducted by a physician, qualified
16 technician, chemist, or registered nurse ~~and performed as required by the United States~~
17 ~~secretary of transportation under 49 CFR part 40~~, at or above the cutoff level in ~~part 40~~ the Code
18 of Federal Regulations in effect on August 1, 2011, creates a rebuttable presumption that the
19 injury was due to impairment caused by the use of alcohol or the illegal use of a controlled
20 substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or
21 an employer or a doctor who has reasonable grounds to suspect an employee's alleged work
22 injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal
23 use of a controlled substance may request that the employee undergo testing to determine if
24 the employee had alcohol or the controlled substance in the employee's system at levels

1 greater than the limit set by the United States department of transportation at the time of the
2 injury. If an employee refuses to submit to a reasonable request to undergo a test to determine
3 if the employee was impaired or if an employee refuses to submit to a test for drugs or alcohol
4 after a work accident as mandated by company policy, the employee forfeits all entitlement to
5 workforce safety and insurance benefits arising out of that injury. Any claimant against the fund,
6 however, has the burden of proving by a preponderance of the evidence that the claimant is
7 entitled to benefits. If a claim for death benefits is filed, the official death certificate must be
8 considered as evidence of death and may not be used to establish the cause of death.

9 **SECTION 2. APPLICATION.** This Act applies to all claims regardless of date of injury.