

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1261

Introduced by

Representative M. Nelson

1 A BILL for an Act to create and enact a new section to chapter 65-06 of the North Dakota
2 Century Code, relating to workers' compensation coverage of certain volunteers; to amend and
3 reenact subsection 10 of section 65-01-02 and section 65-06-03 of the North Dakota Century
4 Code, relating to workers' compensation coverage for mental injuries and of certain volunteers;
5 and to provide for application.

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

7 **SECTION 1. AMENDMENT.** Subsection 10 of section 65-01-02 of the North Dakota
8 Century Code is amended and reenacted as follows:

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

12 a. The term includes:

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

17 (2) An injury to artificial members.

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

1 than the highest level of stress normally experienced or anticipated in that
2 position or line of work.

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

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

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

13 b. The term does not include:

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

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

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

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

- 1 (5) An injury that arises out of an illegal act committed by the injured employee.
- 2 (6) An injury that arises out of an employee's voluntary nonpaid participation in
- 3 any recreational activity, including athletic events, parties, and picnics, even
- 4 though the employer pays some or all of the cost of the activity.
- 5 (7) Injuries attributable to a pre-existing injury, disease, or other condition,
- 6 including when the employment acts as a trigger to produce symptoms in
- 7 the pre-existing injury, disease, or other condition unless the employment
- 8 substantially accelerates its progression or substantially worsens its
- 9 severity. Pain is a symptom and may be considered in determining whether
- 10 there is a substantial acceleration or substantial worsening of a pre-existing
- 11 injury, disease, or other condition, but pain alone is not a substantial
- 12 acceleration or a substantial worsening.
- 13 (8) A nonemployment injury that, although acting upon a prior compensable
- 14 injury, is an independent intervening cause of injury.
- 15 (9) A latent or asymptomatic degenerative condition, caused in substantial part
- 16 by employment duties, which is triggered or made active by a subsequent
- 17 injury.
- 18 ~~(10) A mental injury arising from mental stimulus.~~

19 **SECTION 2. AMENDMENT.** Section 65-06-03 of the North Dakota Century Code is

20 amended and reenacted as follows:

21 **65-06-03. Compensation benefits - How determined.**

22 The

- 23 1. Except as provided under subsection 2, the organization shall determine the basis of
- 24 compensation and benefits to be paid to a volunteer firefighter, an emergency or
- 25 disaster volunteer, a volunteer health practitioner, or a community emergency
- 26 response team member under the terms of this chapter shall be determined in
- 27 accordance with the provisions of section 65-05-09; provided, however, that the
- 28 average weekly wage of the claimant shall be determined from a computation of
- 29 income derived from.
- 30 2. Under this section, the organization shall determine the average weekly wage of the
- 31 claimant based on the greater of the claimant's business or employment for which

1 coverage is required or otherwise secured at the date of first disability or the state's
2 average weekly wage, regardless of whether coverage was secured.

3 **SECTION 3.** A new section to chapter 65-06 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Presumption of compensability for certain conditions of volunteer firefighter,**
6 **emergency or disaster volunteer, emergency response team member, or volunteer health**
7 **practitioner.**

8 If, within twenty-four hours of a volunteer firefighter, emergency or disaster volunteer,
9 community emergency response team member, or volunteer health practitioner performing
10 volunteer services or participating in training under this chapter, the volunteer experiences an
11 injury due to heart attack or other heart-related disease, stroke, or physical injury caused by
12 mental stimulus, it is presumed with reasonable medical certainty the injury was caused by the
13 employee's employment.

14 **SECTION 4. APPLICATION.** This Act applies to injuries taking place on or after the
15 effective date of this Act.