

Fifty-fifth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1269

Introduced by

Representative Berg

Senator Mutch

1 A BILL for an Act to create and enact a new section to chapter 65-01 of the North Dakota  
2 Century Code, relating to the presumption that certain conditions of paid firefighters and law  
3 enforcement officers are work-related; and to amend and reenact sections 65-01-02, 65-01-03,  
4 65-01-15, and 65-07-03 of the North Dakota Century Code, relating to definitions and the  
5 presumption of being an employee for purposes of workers' compensation.

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

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

9 **65-01-02. Definitions.** In this title:

- 10 1. "Acute care" means a short course of intensive diagnostic and therapeutic services  
11 provided immediately following a work injury with a rapid onset of pronounced  
12 symptoms.
- 13 2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of  
14 the injury.
- 15 ~~2.~~ 3. "Artificial members" includes only such devices as are substitutes for, and not mere  
16 aids to, a natural part, organ, limb, or other part of the body. The term does not  
17 include eyeglasses or contact lenses unless the eye is, or eyes are, injured as a  
18 result of a compensable injury, and such injury causes a change in sight which  
19 requires fitting of eyeglasses or contact lenses not previously worn by the injured  
20 worker, or requires a change in existing prescription.
- 21 ~~3.~~ 4. "Artificial replacements" means mechanical aids including braces, belts, casts, or  
22 crutches as may be reasonable and necessary due to compensable injury. ~~The~~  
23 ~~term does not include:~~

- a. ~~Personal items that are for the injured employee's personal use or hygiene, including hand massages, toothbrushes, slippers, shampoo, and soap;~~
- b. ~~Any product or item such as clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating doctor or health care provider;~~
- e. ~~All items of furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating doctor or health care provider;~~
- d. ~~Vitamins and food supplements except in those cases where the injury causes severe dietary problems, where the injury results in the employee's paraplegia or quadriplegia, or where the employee becomes wheelchair bound due to the injury;~~
- e. ~~Eye exams unless there is a reasonable potential for injury to the employee's eyes as a result of the injury;~~
- f. ~~Home gym or exercise equipment unless the bureau otherwise orders;~~
- g. ~~Memberships or monthly dues to health clubs, unless the bureau orders otherwise;~~
- h. ~~Private hospital or nursing home rooms except in cases of extreme medical necessity and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the difference in cost will be paid by the employee;~~
- i. ~~Serological tests (VDRL and RPR) for syphilis or any other venereal disease tests, pregnancy tests, or any other routine tests unless clearly necessitated by the injury; and~~
- j. ~~Aids or programs primarily intended to help the employee lose weight or stop smoking.~~

4. 5. "Average weekly wage" means the weekly wages the employee was receiving from all employments at the ~~time of injury~~ date of first disability. The average weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

- 1           a. For seasonal employment, one-fiftieth of the total wages from all occupations  
2           during the twelve months preceding the injury or during the tax year preceding  
3           the injury, or during the three tax years preceding the injury, whichever is  
4           highest and for which accurate, reliable, and complete records are readily  
5           available.
- 6           b. The "average weekly wage" of a self-employed employee is determined by  
7           the following formula: net profits based on preceding tax year or preceding  
8           fifty-two weeks whichever is higher if accurate, reliable, and complete records  
9           for those fifty-two weeks are readily available, plus depreciation, meal and  
10          travel expenses, and any expenses chargeable to use of personal residence  
11          as allowed under the federal tax laws.
- 12          ~~b.~~ c. Hourly or daily rate multiplied by number of hours or days worked per  
13          seven-day week.
- 14          ~~c.~~ d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
- 15          ~~d.~~ e. Biweekly rate divided by two.
- 16          ~~e.~~ ~~In seasonal employment, the average weekly wage is one-fiftieth of the total~~  
17          ~~wages the employee has earned from all occupations during the twelve~~  
18          ~~calendar months immediately preceding the injury or one-fiftieth of the~~  
19          ~~average annual income for the three year period immediately preceding the~~  
20          ~~injury, whichever is greater.~~
- 21          f. ~~If the average weekly wage of an employee cannot be ascertained, the wage~~  
22          ~~for the purposes of calculating compensation is the~~ The usual wage paid  
23          other employees engaged in similar occupations ~~where the wages are fixed.~~
- 24          g. ~~If there are special circumstances under which the average weekly~~ A wage  
25          ~~cannot be reasonably and fairly determined by applying subdivisions a~~  
26          ~~through f, an average weekly wage may be computed by dividing the~~  
27          ~~aggregate wages during the twelve months prior to the injury by fifty two~~  
28          ~~weeks, or the number of weeks actually worked if that number is less than~~  
29          ~~fifty two~~ approximating the weekly wage lost by the claimant during the period  
30          of disability.

1       5- 6. "Average weekly wage in the state" means the determination made of the average  
2               weekly wage in the state by job service North Dakota on or before July first of each  
3               year, computed to the next highest dollar.

4       6- 7. "Brother" and "sister" ~~includes~~ include a stepbrother and a stepsister, a half brother  
5               and a half sister, and a brother and sister by adoption. The terms do not include a  
6               married brother or sister unless he or she actually is dependent.

7       7- 8. "Bureau" means the North Dakota workers compensation bureau, or the director,  
8               or any department heads, assistants, or employees of the bureau designated by  
9               the director, to act within the course and scope of their employment in  
10              administering the policies, powers, and duties of this title.

11      8- 9. "Child" means a child under eighteen years of age residing in the employee's  
12              household or to whom the employee has a legal obligation of support; or a child  
13              eighteen years of age or over and physically or mentally incapable of self-support  
14              who is actually dependent upon the employee for support; or any child between  
15              eighteen and twenty-two years of age who is enrolled as a full-time student in any  
16              accredited educational institution who is actually dependent upon the employee for  
17              support. This term includes a legitimate child, a stepchild, adopted child,  
18              posthumous child, foster child, and acknowledged illegitimate child, but shall not  
19              include a married child unless actually dependent.

20      9- 10. "Compensable injury" means an injury by accident arising out of and in the course  
21              of employment which must be established by medical evidence supported by  
22              objective medical findings.

23           a. The term "~~compensable injury~~", in addition to an injury by accident, includes:

- 24                   (1) ~~Any disease that can be fairly traceable to the employment. Ordinary~~  
25                      ~~diseases of life to which the general public outside of the employment is~~  
26                      ~~exposed are not compensable except where the disease follows as an~~  
27                      ~~incident to, and in its inception is~~ Disease caused by a hazard to which  
28                      an employee is subjected in the course of employment. The disease  
29                      must be incidental to the character of the business and not independent  
30                      of the relation of employer and employee. ~~The disease~~ Disease  
31                      includes impairment and effects from radiation ~~fairly traceable to the~~

employment. ~~It does not have to be foreseen or expected, but after it is contracted, it must have had its origin in a risk connected with the employment and have flowed from that source as a rational consequence. Preventive treatment for communicable diseases is not compensable under this title.~~

(2) An injury to artificial members.

(3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury ~~precipitated~~ caused by mental stimulus, ~~which must be causally related to~~ but only when caused by the employee's employment; with reasonable medical certainty, and ~~which must have been precipitated by~~ only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally 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.

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

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

(3) (4) An injury that arises out of an altercation in which the injured employee is ~~the initial physical~~ an aggressor.

(4) (5) An injury that arises out of an illegal act committed by the injured employee.

(5) (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.

(6) (7) Injuries attributable to a preexisting injury, disease, or other condition ~~which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. It is insufficient, however, to afford compensation under this title solely because, including when the employment acted~~ acts as a trigger to produce symptoms in ~~a latent and underlying the preexisting injury, disease, or other condition if the underlying condition would likely have progressed similarly in the absence of the employment trigger, unless the employment trigger is determined to be a substantial aggravating or accelerating factor. An underlying condition is a preexisting injury, disease, or infirmity~~ substantially accelerates its progression or substantially worsens its severity.

(7) (8) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.

(8) (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment subsequent injury.

~~(9)~~ (10) A mental injury arising from mental stimulus or a mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except an action that is the intentional infliction of emotional harm.

~~40- 11. "Date of first disability" and "loss of earnings date" mean~~ means the first full date the employee was unable to work in relation to a compensable injury. ~~These terms do not apply to recurrent disabilities.~~

44- 12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.

~~42.~~ 13. "Director" means the director of the bureau.

14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.

a. ~~Permanent total disability is permanent in nature and total in character, and is paid to an employee who is not capable of rehabilitation of earnings capacity, which depend upon the following factors:~~

- (1) Nature of injury;
- (2) Degree of physical impairment;
- (3) Age;
- (4) Education;
- (5) Work history; and
- (6) Vocational rehabilitation potential.

b. ~~Temporary total disability is total in character but temporary in nature and is paid to the employee until maximum medical recovery with work release to~~

any occupation for which the employee is reasonably suited by aptitude,  
education, experience, or training.

e. ~~Partial disability exists when the following are present and must be paid  
pursuant to section 65-05-10:~~

(1) ~~The employee has a permanent physical inability to perform certain  
work;~~

(2) ~~The employee is able to do some work subject to the disability;~~

(3) ~~The employee has an actual loss of earning capacity that is causally  
related to the disability; and~~

(4) ~~The employee has not undergone training under chapter 65-05-1.~~

44. 15. "Doctor" means doctor of medicine, chiropractor, osteopathy, dentist, optometrist,  
podiatrist, or psychologist acting within the scope of the doctor's license.

45. 16. "Employee" means ~~every~~ a person engaged in ~~a hazardous employment under  
any appointment, contract of hire, or apprenticeship, express or implied, oral or  
written, who performs services for another for remuneration unless the person is  
an independent contractor under the "common law" test, and:~~

a. The term includes:

(1) All elective and appointed officials of this state and its political  
subdivisions, including municipal corporations and including the  
members of the legislative assembly, all elective officials of the several  
counties of this state, and all elective peace officers of any city.

(2) Aliens.

(3) County general assistance workers except those who are engaged in  
repaying to counties moneys that the counties have been compelled by  
statute to expend for county general assistance.

(4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui  
juris for the purposes of this title, and no other person has any claim for  
relief or right to claim workers' compensation benefits for any injury to a  
minor worker, but in the event of the award of a lump sum of  
~~compensation~~ benefits to a minor employee, the lump sum may be paid  
only to the legally appointed guardian of the minor.



b. The term does not include:

- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse or child of the employer dwelling in the household of the employer.
- (4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
  - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
  - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
  - (c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.
- (7) An employer.

1 c. Persons employed by a subcontractor, or by an independent contractor  
2 operating under an agreement with the general contractor, for the purpose of  
3 this chapter are deemed to be employees of the general contractor who is  
4 liable and responsible for the payments of premium for the coverage of these  
5 employees until the subcontractor or independent contractor has secured the  
6 necessary coverage and paid the premium for the coverage. This subdivision  
7 does not impose any liability upon a general contractor other than liability to  
8 the bureau for the payment of premiums which are not paid by a  
9 subcontractor or independent contractor.

10 ~~46.~~ 17. "Employer" means a person who engages or received the services of another for  
11 remuneration unless the person performing the services is an independent  
12 contractor under the "common law" test. The term includes:

- 13 a. The state and all political subdivisions thereof.  
14 b. All public and quasi-public corporations in this state.  
15 c. Every person, partnership, limited liability company, association, and private  
16 corporation, including a public service corporation.  
17 d. The legal representative of any deceased employer.  
18 e. The receiver or trustee of any person, partnership, limited liability company,  
19 association, or corporation, having one or more employees as herein defined.  
20 f. The president, vice presidents, secretary, or treasurer of a business  
21 corporation, but not members of the board of directors of a business  
22 corporation who are not also officers of the corporation.  
23 g. The managers of a limited liability company.  
24 h. The president, vice presidents, secretary, treasurer, or board of directors of an  
25 association or cooperative organized under chapter 6-06, 10-12, 10-13,  
26 10-15, 36-08, or 49-21.  
27 i. The clerk, assessor, treasurer, or any member of the board of supervisors of  
28 an organized township, if the person is not employed by the township in any  
29 other capacity.

- 1        17. ~~"Employment" means employment by the state and all political subdivisions~~  
2        ~~thereof, by all public and quasi-public corporations therein, and all private~~  
3        ~~employments.~~
- 4        18. ~~"Fairly traceable to the employment" when used to modify the term "disease"~~  
5        ~~means only a disease that:~~
- 6        a. ~~Arises under conditions wherein it is apparent to the rational mind upon~~  
7        ~~consideration of all the circumstances that there is a direct causal connection~~  
8        ~~between the conditions under which the work is performed and the disease;~~
- 9        b. ~~Can be seen to have followed as a natural incident of the work as a result of~~  
10       ~~the exposure occasioned by the nature of the employment;~~
- 11       c. ~~Can be fairly traced to the employment; or~~
- 12       d. ~~However, any condition or impairment of health of a full-time paid firefighter or~~  
13       ~~law enforcement officer caused by lung or respiratory disease, hypertension,~~  
14       ~~heart disease, or exposure to infectious disease as defined by sections~~  
15       ~~23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid~~  
16       ~~firefighter, resulting in total or partial disability or death is presumed to have~~  
17       ~~been suffered in the line of duty. The condition or impairment of health may~~  
18       ~~not be attributed to any disease existing before that total or partial disability or~~  
19       ~~death unless the contrary is shown by competent evidence. As used in this~~  
20       ~~subdivision, an occupational cancer is one which arises out of employment as~~  
21       ~~a full-time paid firefighter and is due to injury due to exposure to smoke,~~  
22       ~~fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the~~  
23       ~~performance of active duty as a full-time paid firefighter. A full-time paid~~  
24       ~~firefighter or law enforcement officer is not eligible for the benefit provided~~  
25       ~~under this subdivision unless that full-time paid firefighter or law enforcement~~  
26       ~~officer has completed five years of continuous service and has successfully~~  
27       ~~passed a physical examination which fails to reveal any evidence of such a~~  
28       ~~condition. An employer shall require a physical examination upon~~  
29       ~~employment, and annually thereafter, for any employee subject to this~~  
30       ~~subdivision. Results of the examination must be used in rebuttal to a~~  
31       ~~presumption afforded under this subdivision. For purposes of this subdivision,~~

~~"law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.~~

~~49.~~ "Fee schedule" means the relative value scale, conversion factors, fee schedules, and medical aid rules adopted by the bureau.

~~20.~~ 19. "Fund" means the North Dakota workers' compensation fund.

~~24.~~ 20. "Grandchild" and the terms defined in subsections ~~6~~ 7 and ~~8~~ 9 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.

~~22.~~ 21. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:

- a. Agricultural or domestic service.
- b. Any employment of a common carrier by railroad.
- c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.

d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.

~~23.~~ 22. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.

~~24.~~ 23. "Orphan" means a child who has no lawful parent.

~~25.~~ 24. "Parent" includes a stepparent and a parent by adoption.

~~26.~~ 25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement or recovery, and includes disfigurement resulting from an injury if such disfigurement diminishes the ability of the employee to obtain employment. The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment", must be determined by clear and convincing medical evidence.

26. "Permanent total disability" means an employee is determined incapable of rehabilitation of earnings capacity as determined by the:

a. Nature of injury.

b. Degree of physical impairment.

c. Education.

d. Work history.

e. Vocational rehabilitation potential.

27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.

28. "Seasonal employment" includes an occupation that has periods of forty-five consecutive days of not receiving wages.

29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.

30. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the bureau to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.

31. "Wages" means an employee's remuneration from all employment reportable ~~by employers~~ to the internal revenue service as earned income for federal income tax purposes ~~and lost as the result of a compensable work injury~~. For purposes of chapter 65-04, "wages" may not include dismissal or severance pay.

**SECTION 2. AMENDMENT.** Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-03. Person performing service for remuneration presumed an employee.**

Each person who performs services for another for a remuneration, ~~whether the same is paid as a salary, commission, or other considerations in lieu thereof, under any agreement or contract of hire, express or implied,~~ is presumed to be an employee of the person for whom the services are performed, unless it is proven that the person maintains a separate business establishment or holds that person out to render or renders services to the general public. In determining whether a person is an independent contractor or an employee, the test to be employed is under the "common law" test. The person who asserts that a person is an independent contractor under the "common law" test, rather than an employee, has the burden of proving that fact.

**SECTION 3.** A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

**Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.** Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart

disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02,  
or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or  
death, is presumed to have been suffered in the line of duty. The condition or impairment of  
health may not be attributed to any other cause unless the contrary is shown by competent  
evidence. As used in this section, an occupational cancer is one which arises out of  
employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes,  
or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active  
duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not  
eligible for the benefit provided under this section unless that full-time paid firefighter or law  
enforcement officer has completed five years of continuous service and has successfully  
passed a physical examination which fails to reveal any evidence of such a condition. An  
employer shall require a physical examination upon employment, and annually thereafter, for  
any employee subject to this section. Results of the examination must be used in rebuttal to a  
presumption afforded under this section. For purposes of this section, "law enforcement officer"  
means a person who is licensed to perform peace officer law enforcement duties under  
chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and  
fish department, the state highway patrol, the parole and probation division, the North Dakota  
state university police department, the North Dakota state college of science police department,  
the university of North Dakota police department, a county sheriff's department, or a city police  
department. The presumption does not include a condition or impairment of health of a full-time  
paid firefighter or law enforcement officer, who has been employed for ten years or less, if the  
condition or impairment is diagnosed more than two years after the employment as a full-time  
paid firefighter or law enforcement officer ends. The presumption also does not include a  
condition or impairment of health of a full-time paid firefighter or law enforcement officer, who  
has been employed more than ten years, if the condition or impairment is diagnosed more than  
five years after the employment as a full-time paid firefighter or law enforcement officer ends.

**SECTION 4. AMENDMENT.** Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15. Yearly documentation required for firefighter and law enforcement officer.** Except for benefits for exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, a full-time paid firefighter or law enforcement officer who uses

1 tobacco is not eligible for the benefits provided under ~~subdivision d of subsection 18 of section~~  
2 ~~65-01-02 3 of this Act~~, unless the full-time paid firefighter or law enforcement officer provides  
3 yearly documentation from a physician which indicates that the full-time paid firefighter or law  
4 enforcement officer has not used tobacco for the preceding two years. Any full-time paid  
5 firefighter or law enforcement officer employed on June 30, 1995, is not subject to this section  
6 until July 1, 1997.

7 **SECTION 5. AMENDMENT.** Section 65-07-03 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **65-07-03. Determination of weekly wage for premium purposes.** If the bureau  
10 enters into a contract for insurance under this chapter, the premium for such protection shall be  
11 based on:

- 12 1. The amount of money derived on an annual basis from the business of an  
13 employer or self-employed person as outlined in subdivision ~~a~~ b of subsection ~~4~~ 5  
14 of section 65-01-02. This amount may not be less than the limited payroll required  
15 to be reported for an employee in subsection 1 of section 65-04-04.2.
- 16 2. A reasonable wage as determined by the bureau for said employees in the same  
17 class of industry that the volunteer organization is engaged.