

Fifty-fifth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2343**

Introduced by

Senators Sand, Thompson

Representatives Carlson, Jacobs

1 A BILL for an Act to amend and reenact subsection 18 of section 65-01-02 of the North Dakota  
2 Century Code, relating to the presumption that certain conditions are related to a firefighter's or  
3 a law enforcement officer's work for purposes of workers' compensation coverage.

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

5 **SECTION 1. AMENDMENT.** Subsection 18 of section 65-01-02 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 18. "Fairly traceable to the employment" when used to modify the term "disease"  
8 means only a disease that:

- 9 a. Arises under conditions wherein it is apparent to the rational mind upon  
10 consideration of all the circumstances that there is a direct causal connection  
11 between the conditions under which the work is performed and the disease;  
12 b. Can be seen to have followed as a natural incident of the work as a result of  
13 the exposure occasioned by the nature of the employment;  
14 c. Can be fairly traced to the employment; or  
15 d. However, any condition or impairment of health of a full-time paid firefighter or  
16 law enforcement officer caused by lung or respiratory disease, hypertension,  
17 heart disease, or exposure to infectious disease as defined by sections  
18 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid  
19 firefighter, resulting in total or partial disability or death is presumed to have  
20 been suffered in the line of duty. The condition or impairment of health may  
21 not be attributed to any disease existing before that total or partial disability or  
22 death unless the contrary is shown by competent evidence. As used in this  
23 subdivision, an occupational cancer is one which arises out of employment as  
24 a full-time paid firefighter and is due to injury due to exposure to smoke,

1 fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the  
2 performance of active duty as a full-time paid firefighter. A full-time paid  
3 firefighter or law enforcement officer is not eligible for the benefit provided  
4 under this subdivision unless that full-time paid firefighter or law enforcement  
5 officer has completed five years of continuous service and has successfully  
6 passed a physical examination which fails to reveal any evidence of such a  
7 condition. An employer shall require a physical examination upon  
8 employment, ~~and annually thereafter~~, for any employee subject to this  
9 subdivision. For the first twenty years of employment or until the employee  
10 reaches forty-five years of age, the employer shall require a physical  
11 examination at least once every five years. After that, the employer shall  
12 require a physical examination every three years. This subdivision does not  
13 affect an employee's responsibility to document that the employee has not  
14 used tobacco as required under section 65-01-15. Results of the examination  
15 must be used in rebuttal to a presumption afforded under this subdivision. For  
16 purposes of this subdivision, "law enforcement officer" means a person who is  
17 licensed to perform peace officer law enforcement duties under chapter 12-63  
18 and is employed full time by the bureau of criminal investigation, the game  
19 and fish department, the state highway patrol, the parole and probation  
20 division, the North Dakota state university police department, the North  
21 Dakota state college of science police department, the university of North  
22 Dakota police department, a county sheriff's department, or a city police  
23 department. The presumption does not include a condition or impairment of  
24 health of a full-time paid firefighter or law enforcement officer, who has been  
25 employed for ten years or less, if the condition or impairment is diagnosed  
26 more than two years after the employment as a full-time paid firefighter or law  
27 enforcement officer ends. The presumption also does not include a condition  
28 or impairment of health of a full-time paid firefighter or law enforcement  
29 officer, who has been employed more than ten years, if the condition or  
30 impairment is diagnosed more than five years after the employment as a  
31 full-time paid firefighter or law enforcement officer ends.