

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1161
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

AN ACT to amend and reenact section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent impairment awards; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-12.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-12.2. Permanent impairment - Compensation - Time paid. When a compensable injury causes permanent impairment, the bureau shall determine a permanent impairment award on the following terms:

1. If the compensable injury causes permanent impairment and the permanent impairment award payable by the bureau is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the bureau under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the bureau. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The bureau shall adopt rules implementing any necessary procedures for award payments made under this subsection.
2. The bureau shall calculate the amount of the award by multiplying thirty-three and one-third percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the number of weeks specified in subsection 10.
3. The bureau shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the bureau has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.
4. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and which were caused by the compensable injury. The bureau may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions, even if these conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.
5. An injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the bureau the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. If the report states that the employee is potentially eligible for a permanent impairment award, the bureau shall provide notice to the employee as provided by subsection 3. If the injured employee files a timely written

request under subsection 3, the bureau shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.

6. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The bureau shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. ~~Until Subject to~~ rules adopted under this subsection ~~become effective~~, impairments must be evaluated under the ~~fourth~~ fifth edition, ~~third printing~~, of the guides.
7. The bureau shall deduct, on a whole body impairment basis, from an award for impairment under this section, any previous impairment award for that same member or body part under the workers' compensation laws of any jurisdiction.
8. An injured employee is not entitled to a permanent impairment award due solely to pain.
9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under subsection 3, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
10. If the injury causes permanent impairment, the award must be determined based on the percentage of whole body impairment in accordance with the following schedule:

For one to fifteen percent impairment	0 weeks
For sixteen percent impairment	10 weeks
For seventeen percent impairment	10 weeks
For eighteen percent impairment	15 weeks
For nineteen percent impairment	15 weeks
For twenty percent impairment	20 weeks
For twenty-one percent impairment	20 weeks
For twenty-two percent impairment	25 weeks
For twenty-three percent impairment	25 weeks
For twenty-four percent impairment	30 weeks
For twenty-five percent impairment	30 weeks
For twenty-six percent impairment	35 weeks
For twenty-seven percent impairment	35 weeks
For twenty-eight percent impairment	40 weeks
For twenty-nine percent impairment	45 weeks
For thirty percent impairment	50 weeks
For thirty-one percent impairment	60 weeks
For thirty-two percent impairment	70 weeks
For thirty-three percent impairment	80 weeks
For thirty-four percent impairment	90 weeks
For thirty-five percent impairment	100 weeks
For thirty-six percent impairment	110 weeks
For thirty-seven percent impairment	120 weeks
For thirty-eight percent impairment	130 weeks

For thirty-nine percent impairment	140 weeks
For forty percent impairment	150 weeks
For forty-one percent impairment	160 weeks
For forty-two percent impairment	170 weeks
For forty-three percent impairment	180 weeks
For forty-four percent impairment	190 weeks
For forty-five percent impairment	200 weeks
For forty-six percent impairment	210 weeks
For forty-seven percent impairment	220 weeks
For forty-eight percent impairment	230 weeks
For forty-nine percent impairment	240 weeks
For fifty percent impairment	260 weeks
For fifty-one percent impairment	280 weeks
For fifty-two percent impairment	300 weeks
For fifty-three percent impairment	320 weeks
For fifty-four percent impairment	340 weeks
For fifty-five percent impairment	360 weeks
For fifty-six percent impairment	380 weeks
For fifty-seven percent impairment	400 weeks
For fifty-eight percent impairment	420 weeks
For fifty-nine percent impairment	440 weeks
For sixty percent impairment	465 weeks
For sixty-one percent impairment	490 weeks
For sixty-two percent impairment	515 weeks
For sixty-three percent impairment	540 weeks
For sixty-four percent impairment	565 weeks
For sixty-five percent impairment	590 weeks
For sixty-six percent impairment	615 weeks
For sixty-seven percent impairment	640 weeks
For sixty-eight percent impairment	665 weeks
For sixty-nine percent impairment	690 weeks
For seventy percent impairment	715 weeks
For seventy-one percent impairment	740 weeks
For seventy-two percent impairment	765 weeks
For seventy-three percent impairment	790 weeks
For seventy-four percent impairment	815 weeks
For seventy-five percent impairment	840 weeks
For seventy-six percent impairment	865 weeks
For seventy-seven percent impairment	890 weeks
For seventy-eight percent impairment	915 weeks
For seventy-nine percent impairment	940 weeks
For eighty percent impairment	965 weeks
For eighty-one percent impairment	990 weeks
For eighty-two percent impairment	1015 weeks
For eighty-three percent impairment	1040 weeks
For eighty-four percent impairment	1065 weeks
For eighty-five percent impairment	1090 weeks
For eighty-six percent impairment	1115 weeks
For eighty-seven percent impairment	1140 weeks
For eighty-eight percent impairment	1165 weeks
For eighty-nine percent impairment	1190 weeks
For ninety percent impairment	1215 weeks
For ninety-one percent impairment	1240 weeks
For ninety-two percent impairment	1265 weeks
For ninety-three percent impairment	1290 weeks
For ninety-four percent impairment	1320 weeks

For ninety-five percent impairment	1350 weeks
For ninety-six percent impairment	1380 weeks
For ninety-seven percent impairment	1410 weeks
For ninety-eight percent impairment	1440 weeks
For ninety-nine percent impairment	1470 weeks
For one hundred percent impairment	1500 weeks

11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the number of weeks identified in the following schedule, the bureau shall pay an award equal to the number of weeks set out in the following schedule:

<u>For amputation of a thumb</u>	<u>65 weeks</u>
<u>For amputation of the second or distal phalanx of the thumb</u>	<u>28 weeks</u>
<u>For amputation of the first finger</u>	<u>40 weeks</u>
<u>For amputation of the middle or second phalanx of the first finger</u>	<u>28 weeks</u>
<u>For amputation of the third or distal phalanx of the first finger</u>	<u>22 weeks</u>
<u>For amputation of the second finger</u>	<u>30 weeks</u>
<u>For amputation of the middle or second phalanx of the second finger</u>	<u>22 weeks</u>
<u>For amputation of the third or distal phalanx of the second finger</u>	<u>14 weeks</u>
<u>For amputation of the third finger</u>	<u>20 weeks</u>
<u>For amputation of the middle or second phalanx of the third finger</u>	<u>16 weeks</u>
<u>For amputation of the fourth finger</u>	<u>16 weeks</u>
<u>For amputation of the middle or second phalanx of the fourth finger</u>	<u>12 weeks</u>
<u>For amputation of the leg at the hip</u>	<u>234 weeks</u>
<u>For amputation of the leg at or above the knee</u>	<u>195 weeks</u>
<u>For amputation of the leg at or above the ankle</u>	<u>150 weeks</u>
<u>For amputation of a great toe</u>	<u>30 weeks</u>
<u>For amputation of the second or distal phalanx of the great toe</u>	<u>18 weeks</u>
<u>For amputation of any other toe</u>	<u>12 weeks</u>
<u>For loss of an eye</u>	<u>150 weeks</u>

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the bureau shall issue an impairment award based on the greater of the number of weeks allowed for the combined rating established under the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the number of weeks set forth in this subsection.

12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment, all relevant medical evidence must be submitted to an independent doctor who has not treated the employee and who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish lists of doctors who are qualified by ~~their~~ the doctor's training, experience, and area of practice to rate

permanent impairments caused by various types of injuries. The bureau shall define, by rule, the process by which the bureau and the injured employee choose an independent doctor or doctors to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor or doctors chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the bureau for an impairment award for a rating of impairment for a body part or condition the bureau has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor or doctors if the employee disputes the findings of the independent doctor or doctors.

13. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.
14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

SECTION 2. EFFECTIVE DATE. This Act is effective for impairment evaluations performed after July 31, 2001.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1161.

House Vote: Yeas 95 Nays 0 Absent 3

Senate Vote: Yeas 46 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State