

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2042

Introduced by

Legislative Council

(Workers' Compensation Review Committee)

1 A BILL for an Act to amend and reenact section 65-01-15.1 of the North Dakota Century Code,
2 relating to the workers' compensation presumption of compensability for firefighters and law
3 enforcement officers; and to provide for retroactive application.

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

5 **SECTION 1. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **65-01-15.1. Presumption of compensability for certain conditions of full-time paid**
8 **firefighters and law enforcement officers.**

9 1. Any condition or impairment of health of a full-time paid firefighter or law
10 enforcement officer caused by lung or respiratory disease, hypertension, heart
11 disease, or an exposure to a bloodborne pathogen as defined by section
12 23-07.5-01 occurring in the course of employment, or occupational cancer in a
13 full-time paid firefighter, resulting in total or partial disability or death is presumed
14 to have been suffered in the line of duty. The condition or impairment of health
15 may not be attributed to any disease existing before that total or partial disability or
16 death unless the contrary is shown by competent evidence.

17 2. As used in this section, an occupational cancer is one which arises out of
18 employment as a full-time paid firefighter and is due to injury due to exposure to
19 smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in
20 the performance of active duty as a full-time paid firefighter.

21 3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit
22 provided under this section unless that full-time paid firefighter or law enforcement
23 officer has completed five years of continuous service and has successfully
24 passed a medical examination which fails to reveal any evidence of such a

1 condition. An employer shall require a medical examination upon employment, for
2 any employee subject to this section. After the initial medical examination, an
3 employer shall require at least a periodic medical examination as follows: for one
4 to ten years of service, every five years; for eleven to twenty years of service,
5 every three years; and for twenty-one or more years of service, every year. The
6 periodic medical examination, at a minimum, must consist of a general medical
7 history of the individual and the individual's family; an occupational history
8 including contact with and an exposure to hazardous materials, toxic products,
9 contagious and infectious diseases, and to physical hazards; a physical
10 examination including measurement of height, weight, and blood pressure; and
11 laboratory and diagnostic procedures including a nonfasting total blood cholesterol
12 test and papanicolaou smear for women. If the medical examination reveals that
13 an employee falls into a recognized risk group, the employee must be referred to a
14 qualified health professional for future medical examination. If a medical
15 examination produces a false positive result for a condition covered under this
16 section, the organization shall consider the condition to be a compensable injury.
17 In the case of a false positive result, neither the coverage of the condition nor the
18 period of disability may exceed fifty-six days. This section does not affect an
19 employee's responsibility to document that the employee has not used tobacco as
20 required under section 65-01-15. Results of the examination must be used in
21 rebuttal to a presumption afforded under this section.

22 4. For purposes of this section, "law enforcement officer" means a person who is
23 licensed to perform peace officer law enforcement duties under chapter 12-63 and
24 is employed full time by the bureau of criminal investigation, the game and fish
25 department, the state highway patrol, the parole and probation division, the North
26 Dakota state university police department, the North Dakota state college of
27 science police department, the university of North Dakota police department, a
28 county sheriff's department, or a city police department.

29 5. The presumption does not include a condition or impairment of health of a full-time
30 paid firefighter or law enforcement officer, who has been employed for ten years or
31 less, if the condition or impairment is diagnosed more than two years after the

1 employment as a full-time paid firefighter or law enforcement officer ends. The
2 presumption also does not include a condition or impairment of health of a full-time
3 paid firefighter or law enforcement officer, who has been employed more than ten
4 years, if the condition or impairment is diagnosed more than five years after the
5 employment as a full-time paid firefighter or law enforcement officer ends.

6 **SECTION 2. RETROACTIVE APPLICATION.** This Act applies to all false positive
7 results occurring on or after December 1, 2004.