

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2389

Introduced by

Senators Nething, Klein, Robinson

Representatives Amerman, Kasper

1 A BILL for an Act to amend and reenact section 65-05-12.2 of the North Dakota Century Code,
2 relating to workers' compensation permanent impairment awards; and to provide for
3 application.

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

5 **SECTION 1. AMENDMENT.** Section 65-05-12.2 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **65-05-12.2. Permanent impairment - Compensation - Time paid.** ~~When A~~
8 permanent impairment is not intended to be a periodic payment and is not intended to
9 reimburse the employee for specific expenses related to the injury or wage loss. If a
10 compensable injury causes permanent impairment, the organization shall determine a
11 permanent impairment award on the following terms:

12 1. If the compensable injury causes permanent impairment and the permanent
13 impairment award payable by the organization is at least two thousand dollars, the
14 injured employee may defer payment of the permanent impairment award for a
15 period of time not to exceed the date the employee reaches age sixty-five. A
16 permanent impairment award payable by the organization under this subsection
17 must be paid to the employee in a lump sum that consists of the amount of the
18 award plus any interest that has accrued at the actuarial discount rate in use by
19 the organization. The actuarial discount rate applied to the award is the average
20 actuarial discount rate in effect for the period of deferment of the employee's
21 award. The organization shall adopt rules implementing any necessary
22 procedures for award payments made under this subsection.

23 2. ~~The~~ Except as otherwise provided under this subsection, before July first of each
24 year, the organization shall calculate and adjust the dollar amount of the each

1 award in subsections 10 and 11 and implement the adjusted amounts on July first
2 of that year. Annually, the organization shall publish the adjusted amounts. The
3 organization shall calculate the adjusted amount of each award by multiplying
4 ~~thirty-three and one-third percent of~~ increasing the current award amount by the
5 same percentage as the increase in the current average weekly wage in this state
6 ~~on the date of the impairment evaluation from the preceding year,~~ rounded to the
7 next highest dollar, ~~by the number of weeks specified in subsection 10.~~ If the
8 average weekly wage in this state remains the same from one year to the next or
9 decreases, the award amounts in subsections 10 and 11 remain the same for that
10 year and do not decrease. Notwithstanding contrary provisions under this
11 subsection, effective August 1, 2007, the organization shall implement the first
12 adjustment of the dollar amount of each award under subsections 10 and 11 in the
13 manner provided under this subsection to reflect the increase in the average
14 weekly wage in this state from 2006 to 2007.

15 3. The organization shall notify the employee by certified mail, to the last-known
16 address of the employee, when that employee becomes potentially eligible for a
17 permanent impairment award. After the organization has notified the employee,
18 the employee shall file, within one hundred eighty days from the date the employee
19 was notified, a written request for an evaluation for permanent impairment. Failure
20 to file the written request within the one hundred eighty-day period precludes an
21 award under this section.

22 4. An injured employee is entitled to compensation for permanent impairment under
23 this section only for those findings of impairment that are permanent and which
24 were caused by the compensable injury. The organization may not issue an
25 impairment award for impairment findings due to unrelated, noncompensable, or
26 preexisting conditions, even if these conditions were made symptomatic by the
27 compensable work injury, and regardless of whether section 65-05-15 applies to
28 the claim.

29 5. An injured employee is eligible for an evaluation of permanent impairment only
30 when all conditions caused by the compensable injury have reached maximum
31 medical improvement. The injured employee's doctor shall report to the

- 1 organization the date an employee has reached maximum medical improvement
2 and any evidence of impairment of function the injured employee has after that
3 date. If the report states that the employee is potentially eligible for a permanent
4 impairment award, the organization shall provide notice to the employee as
5 provided by subsection 3. If the injured employee files a timely written request
6 under subsection 3, the organization shall schedule an impairment evaluation by a
7 doctor qualified to evaluate the impairment.
- 8 6. A doctor evaluating permanent impairment shall include a clinical report in
9 sufficient detail to support the percentage ratings assigned. The organization shall
10 adopt administrative rules governing the evaluation of permanent impairment.
11 These rules must incorporate principles and practices of the fifth edition of the
12 American medical association's "Guides to the Evaluation of Permanent
13 Impairment" modified to be consistent with North Dakota law, to resolve issues of
14 practice and interpretation, and to address areas not sufficiently covered by the
15 guides. Subject to rules adopted under this subsection, impairments must be
16 evaluated under the fifth edition of the guides.
- 17 7. The organization shall deduct, on a whole body impairment basis, from an award
18 for impairment under this section, any previous impairment award for that same
19 member or body part under the ~~workforce safety and insurance~~ workers'
20 compensation laws of any jurisdiction.
- 21 8. An injured employee is not entitled to a permanent impairment award due solely to
22 pain.
- 23 9. If an employee dies, the right to any compensation payable pursuant to an
24 impairment evaluation previously requested by the employee under subsection 3,
25 which remains unpaid on the date of the employee's death, survives and passes to
26 the employee's dependent spouse, minor children, parents, or estate, in that order.
27 If the employee dies, only those findings of impairment which are objectively
28 verifiable such as values for surgical procedures and amputations may be
29 considered in a rating for impairment. Impairment findings not supported by
30 objectively verifiable evidence may not be included in a rating for impairment. The
31 deceased employee's dependents or representatives shall request an impairment

1 award under this subsection within one year from the date of death of the
2 employee.

3 10. If the injury causes permanent impairment, the award must be determined based
4 on the percentage of whole body impairment in accordance with the following
5 schedule:

6	For one to fifteen percent impairment	0 weeks <u>\$0</u>
7	For sixteen percent impairment	10 weeks <u>\$1,890</u>
8	For seventeen percent impairment	10 weeks <u>\$1,890</u>
9	For eighteen percent impairment	15 weeks <u>\$2,835</u>
10	For nineteen percent impairment	15 weeks <u>\$2,835</u>
11	For twenty percent impairment	20 weeks <u>\$3,780</u>
12	For twenty-one percent impairment	20 weeks <u>\$3,780</u>
13	For twenty-two percent impairment	25 weeks <u>\$4,725</u>
14	For twenty-three percent impairment	25 weeks <u>\$4,725</u>
15	For twenty-four percent impairment	30 weeks <u>\$5,670</u>
16	For twenty-five percent impairment	30 weeks <u>\$5,670</u>
17	For twenty-six percent impairment	35 weeks <u>\$6,615</u>
18	For twenty-seven percent impairment	35 weeks <u>\$6,615</u>
19	For twenty-eight percent impairment	40 weeks <u>\$7,560</u>
20	For twenty-nine percent impairment	45 weeks <u>\$8,505</u>
21	For thirty percent impairment	50 weeks <u>\$9,450</u>
22	For thirty-one percent impairment	60 weeks <u>\$11,340</u>
23	For thirty-two percent impairment	70 weeks <u>\$13,230</u>
24	For thirty-three percent impairment	80 weeks <u>\$15,120</u>
25	For thirty-four percent impairment	90 weeks <u>\$17,010</u>
26	For thirty-five percent impairment	100 weeks <u>\$18,900</u>
27	For thirty-six percent impairment	110 weeks <u>\$20,790</u>
28	For thirty-seven percent impairment	120 weeks <u>\$22,680</u>
29	For thirty-eight percent impairment	130 weeks <u>\$24,570</u>
30	For thirty-nine percent impairment	140 weeks <u>\$26,460</u>
31	For forty percent impairment	150 weeks <u>\$28,350</u>

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1	For forty-one percent impairment	160 weeks <u>\$30,240</u>
2	For forty-two percent impairment	170 weeks <u>\$32,130</u>
3	For forty-three percent impairment	180 weeks <u>\$34,020</u>
4	For forty-four percent impairment	190 weeks <u>\$35,910</u>
5	For forty-five percent impairment	200 weeks <u>\$37,800</u>
6	For forty-six percent impairment	210 weeks <u>\$39,690</u>
7	For forty-seven percent impairment	220 weeks <u>\$41,580</u>
8	For forty-eight percent impairment	230 weeks <u>\$43,470</u>
9	For forty-nine percent impairment	240 weeks <u>\$45,360</u>
10	For fifty percent impairment	260 weeks <u>\$49,140</u>
11	For fifty-one percent impairment	280 weeks <u>\$52,920</u>
12	For fifty-two percent impairment	300 weeks <u>\$56,700</u>
13	For fifty-three percent impairment	320 weeks <u>\$60,480</u>
14	For fifty-four percent impairment	340 weeks <u>\$64,260</u>
15	For fifty-five percent impairment	360 weeks <u>\$68,040</u>
16	For fifty-six percent impairment	380 weeks <u>\$71,820</u>
17	For fifty-seven percent impairment	400 weeks <u>\$75,600</u>
18	For fifty-eight percent impairment	420 weeks <u>\$79,380</u>
19	For fifty-nine percent impairment	440 weeks <u>\$83,160</u>
20	For sixty percent impairment	465 weeks <u>\$87,885</u>
21	For sixty-one percent impairment	490 weeks <u>\$92,610</u>
22	For sixty-two percent impairment	515 weeks <u>\$97,335</u>
23	For sixty-three percent impairment	540 weeks <u>\$102,060</u>
24	For sixty-four percent impairment	565 weeks <u>\$106,785</u>
25	For sixty-five percent impairment	590 weeks <u>\$111,510</u>
26	For sixty-six percent impairment	615 weeks <u>\$116,235</u>
27	For sixty-seven percent impairment	640 weeks <u>\$120,960</u>
28	For sixty-eight percent impairment	665 weeks <u>\$125,685</u>
29	For sixty-nine percent impairment	690 weeks <u>\$130,410</u>
30	For seventy percent impairment	715 weeks <u>\$135,135</u>
31	For seventy-one percent impairment	740 weeks <u>\$139,860</u>

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1	For seventy-two percent impairment	765 weeks <u>\$144,585</u>
2	For seventy-three percent impairment	790 weeks <u>\$149,310</u>
3	For seventy-four percent impairment	815 weeks <u>\$154,035</u>
4	For seventy-five percent impairment	840 weeks <u>\$158,760</u>
5	For seventy-six percent impairment	865 weeks <u>\$163,485</u>
6	For seventy-seven percent impairment	890 weeks <u>\$168,210</u>
7	For seventy-eight percent impairment	915 weeks <u>\$172,935</u>
8	For seventy-nine percent impairment	940 weeks <u>\$177,660</u>
9	For eighty percent impairment	965 weeks <u>\$182,385</u>
10	For eighty-one percent impairment	990 weeks <u>\$187,110</u>
11	For eighty-two percent impairment	1015 weeks <u>\$191,835</u>
12	For eighty-three percent impairment	1040 weeks <u>\$196,560</u>
13	For eighty-four percent impairment	1065 weeks <u>\$201,285</u>
14	For eighty-five percent impairment	1090 weeks <u>\$206,010</u>
15	For eighty-six percent impairment	1115 weeks <u>\$210,735</u>
16	For eighty-seven percent impairment	1140 weeks <u>\$215,460</u>
17	For eighty-eight percent impairment	1165 weeks <u>\$220,185</u>
18	For eighty-nine percent impairment	1190 weeks <u>\$224,910</u>
19	For ninety percent impairment	1215 weeks <u>\$229,635</u>
20	For ninety-one percent impairment	1240 weeks <u>\$234,360</u>
21	For ninety-two percent impairment	1265 weeks <u>\$239,085</u>
22	For ninety-three percent impairment	1290 weeks <u>\$243,810</u>
23	For ninety-four percent impairment	1320 weeks <u>\$249,480</u>
24	For ninety-five percent impairment	1350 weeks <u>\$255,150</u>
25	For ninety-six percent impairment	1380 weeks <u>\$260,820</u>
26	For ninety-seven percent impairment	1410 weeks <u>\$266,490</u>
27	For ninety-eight percent impairment	1440 weeks <u>\$272,160</u>
28	For ninety-nine percent impairment	1470 weeks <u>\$277,830</u>
29	For one hundred percent impairment	1500 weeks <u>\$283,500</u>
30	11. An amputation of a finger or toe at the level of the distal interphalangeal joint or	
31	proximal to that joint, or the thumb or the great toe at the interphalangeal joint or	

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1 proximal to that joint, which is determined to result in a whole body impairment of
2 less than sixteen percent and which is not identified in the following schedule, is
3 payable as a sixteen percent impairment. If an evaluation for the loss of an eye or
4 for an amputation results in an award that is less than the ~~number of weeks~~
5 amount identified in the following schedule, the organization shall pay an award
6 equal to the ~~number of weeks~~ amount set out in the following schedule:

7	For amputation of a thumb	65 weeks <u>\$12,285</u>
8	For amputation of the second or distal phalanx of the thumb	28 weeks <u>\$5,292</u>
9	For amputation of the first finger	40 weeks <u>\$7,560</u>
10	For amputation of the middle or second phalanx of the first finger	28 weeks <u>\$5,292</u>
11	For amputation of the third or distal phalanx of the first finger	22 weeks <u>\$4,159</u>
12	For amputation of the second finger	30 weeks <u>\$5,670</u>
13	For amputation of the middle or second phalanx of the	22 weeks <u>\$4,159</u>
14	second finger	
15	For amputation of the third or distal phalanx of the second finger	14 weeks <u>\$2,646</u>
16	For amputation of the third finger	20 weeks <u>\$3,780</u>
17	For amputation of the middle or second phalanx of the third finger	16 weeks <u>\$3,024</u>
18	For amputation of the fourth finger	16 weeks <u>\$3,024</u>
19	For amputation of the middle or second phalanx of the	12 weeks <u>\$2,268</u>
20	fourth finger	
21	For amputation of the leg at the hip	234 weeks <u>\$44,226</u>
22	For amputation of the leg at or above the knee	195 weeks <u>\$36,855</u>
23	For amputation of the leg at or above the ankle	150 weeks <u>\$28,350</u>
24	For amputation of a great toe	30 weeks <u>\$5,670</u>
25	For amputation of the second or distal phalanx of the great toe	18 weeks <u>\$3,402</u>
26	For amputation of any other toe	12 weeks <u>\$2,268</u>
27	For loss of an eye	150 weeks <u>\$28,350</u>
28	The award for the amputation of more than one finger of one hand may not exceed	
29	an award for the amputation of a hand. The award for the amputation of more than	
30	one toe of one foot may not exceed an award for the amputation of a foot. If any of	
31	the amputations or losses set out in this subsection combine with other	

1 impairments for the same work-related injury or condition, the organization shall
2 issue an impairment award based on the greater of the ~~number of weeks~~ amount
3 allowed for the combined rating established under the fifth edition of the American
4 medical association's "Guides to the Evaluation of Permanent Impairment" or the
5 ~~number of weeks~~ amount set forth in this subsection.

6 12. If there is a medical dispute regarding the percentage of an injured employee's
7 permanent impairment, all relevant medical evidence must be submitted to an
8 independent doctor who has not treated the employee and who has not been
9 consulted by the organization in relation to the injury upon which the impairment is
10 based. The organization shall establish lists of doctors who are qualified by the
11 doctor's training, experience, and area of practice to rate permanent impairments
12 caused by various types of injuries. The organization shall define, by rule, the
13 process by which the organization and the injured employee choose an
14 independent doctor or doctors to review a disputed permanent impairment
15 evaluation or rating. The decision of the independent doctor or doctors chosen
16 under this process is presumptive evidence of the degree of permanent
17 impairment of the employee which can only be rebutted by clear and convincing
18 evidence. This subsection does not impose liability on the organization for an
19 impairment award for a rating of impairment for a body part or condition the
20 organization has not determined to be compensable as a result of the injury. The
21 employee bears the expense of witness fees of the independent doctor or doctors
22 if the employee disputes the findings of the independent doctor or doctors.

23 13. An attorney's fees are not payable unless there is a bona fide dispute as to the
24 percentage of the employee's permanent impairment or unless there is a dispute
25 as to the employee's eligibility for an award for permanent partial impairment. An
26 attorney's fees payable in connection with a permanent impairment dispute may
27 not exceed twenty percent of the additional amount awarded upon final resolution
28 of the dispute, subject to the maximum fees established pursuant to section
29 65-02-08.

30 14. An attorney may not seek or obtain from an employee through a contingent fee
31 arrangement, or on a percentage basis, costs or fees payable in connection with

1 the award or denial of compensation for permanent impairment. A permanent
2 impairment award is exempt from the claims of creditors, including an employee's
3 attorney, except as provided by section 65-05-29.

4 **SECTION 2. APPLICATION.** This Act applies to permanent impairment award
5 determinations made after July 30, 2007.