

**SENATE BILL NO. 2386**

Introduced by

Senators Behm, Schneider

Representative Froelich

1 A BILL for an Act to amend and reenact subsections 10, 25, and 29 of section 65-01-02 and  
2 section 65-05-15 of the North Dakota Century Code, relating to workers' compensation  
3 definitions for compensable injury, permanent total disability, and temporary total disability and  
4 workers' compensation aggravation awards.

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

6 **SECTION 1. AMENDMENT.** Subsections 10, 25, and 29 of section 65-01-02 of the  
7 North Dakota Century Code are amended and reenacted as follows:

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

11 a. The term includes:

12 (1) Disease caused by a hazard to which an employee is subjected in the  
13 course of employment. The disease must be incidental to the character  
14 of the business and not independent of the relation of employer and  
15 employee. Disease includes effects from radiation.

16 (2) An injury to artificial members.

17 (3) Injuries due to heart attack or other heart-related disease, stroke, and  
18 physical injury caused by mental stimulus, but only when caused by the  
19 employee's employment with reasonable medical certainty, and only  
20 when it is determined with reasonable medical certainty that unusual  
21 stress is at least fifty percent of the cause of the injury or disease as  
22 compared with all other contributing causes combined. Unusual stress  
23 means stress greater than the highest level of stress normally  
24 experienced or anticipated in that position or line of work.

- 1                   (4) Injuries arising out of employer-required or supplied travel to and from a  
2                   remote jobsite or activities performed at the direction or under the  
3                   control of the employer.
- 4                   (5) An injury caused by the willful act of a third person directed against an  
5                   employee because of the employee's employment.
- 6                   (6) A mental or psychological condition caused by a physical injury, but  
7                   only when the physical injury is determined with reasonable medical  
8                   certainty to be at least fifty percent of the cause of the condition as  
9                   compared with all other contributing causes combined, and only when  
10                  the condition did not preexist the work injury.
- 11                 b. The term does not include:
- 12                   (1) Ordinary diseases of life to which the general public outside of  
13                   employment is exposed or preventive treatment for communicable  
14                   diseases, except that the organization may pay for preventive treatment  
15                   for a health care provider as defined in section 23-07.5-01, firefighter,  
16                   peace officer, correctional officer, court officer, law enforcement officer,  
17                   emergency medical technician, or an individual trained and authorized  
18                   by law or rule to render emergency medical assistance or treatment  
19                   who is exposed to a bloodborne pathogen as defined in section  
20                   23-07.5-01 occurring in the course of employment and for exposure to  
21                   rabies occurring in the course of employment.
- 22                   (2) A willfully self-inflicted injury, including suicide or attempted suicide, or  
23                   an injury caused by the employee's willful intention to injure or kill  
24                   another.
- 25                   (3) Any injury caused by the use of intoxicants or the illegal use of  
26                   controlled substances.
- 27                   (4) An injury that arises out of an altercation in which the injured employee  
28                   is an aggressor. This paragraph does not apply to public safety  
29                   employees, including law enforcement officers or private security  
30                   personnel who are required to engage in altercations as part of their job

- 1 duties if the altercation arises out of the performance of those job  
2 duties.
- 3 (5) An injury that arises out of an illegal act committed by the injured  
4 employee.
- 5 (6) An injury that arises out of an employee's voluntary nonpaid  
6 participation in any recreational activity, including athletic events,  
7 parties, and picnics, even though the employer pays some or all of the  
8 cost of the activity.
- 9 (7) ~~Injuries~~ An injury attributable to a preexisting injury, disease, or other  
10 condition, including when the employment acts as a trigger to produce  
11 symptoms in the preexisting injury, disease, or other condition unless  
12 the employment substantially accelerates its progression or  
13 substantially worsens its severity. To qualify as a preexisting injury,  
14 disease, or other condition under this paragraph, the preexisting injury,  
15 disease, or other condition must have been diagnosed before the  
16 otherwise compensable injury occurred, and the injury, disease, or  
17 other condition must have caused previous work restrictions or  
18 interference with physical function during the six-month period  
19 preceding the occurrence of the otherwise compensable injury.
- 20 (8) A nonemployment injury that, although acting upon a prior  
21 compensable injury, is an independent intervening cause of injury.
- 22 (9) A latent or asymptomatic degenerative condition, caused in substantial  
23 part by employment duties, which is triggered or made active by a  
24 subsequent injury.
- 25 (10) A mental injury arising from mental stimulus.
- 26 25. "Permanent total disability" means ~~disability that is the direct result of a~~  
27 ~~compensable injury that prevents an employee from performing any work and~~  
28 ~~results from any one of the following conditions:~~
- 29 a. ~~Total and permanent loss of sight of both eyes;~~  
30 b. ~~Loss of both legs or loss of both feet at or above the ankle;~~  
31 c. ~~Loss of both arms or loss of both hands at or above the wrist;~~

- 1           d. ~~Loss of any two of the members or faculties in subdivision a, b, or c;~~  
2           e. ~~Permanent and complete paralysis of both legs or both arms or of one leg and~~  
3           ~~one arm;~~  
4           f. ~~Third-degree burns that cover at least forty percent of the body and require~~  
5           ~~grafting;~~  
6           g. ~~A medically documented traumatic brain injury affecting cognitive and mental~~  
7           ~~functioning which renders an employee unable to provide self care and~~  
8           ~~requires supervision or assistance with a majority of the activities of daily~~  
9           ~~living; or~~  
10          h. ~~A compensable injury that results in a permanent partial impairment rating of~~  
11          ~~the whole body of at least twenty five percent pursuant to section 65-05-12.2.~~  
12          ~~If the employee has not reached maximum medical improvement within one~~  
13          ~~hundred four weeks, the employee may receive a permanent partial impairment~~  
14          ~~rating if a rating will assist the organization in assessing the employee's~~  
15          ~~capabilities. Entitlement to a rating is solely within the discretion of the~~  
16          ~~organization~~ an employee is determined incapable of rehabilitation of earnings  
17          capacity based on the:  
18          a. Nature of the injury;  
19          b. Degree of physical impairment;  
20          c. Employee's education level;  
21          d. Employee's work history;  
22          e. Employee's vocational rehabilitation potential; and  
23          f. Employee's age.  
24          29. ~~"Temporary total disability" means disability that results in the inability of an~~  
25          ~~employee to earn wages as a result of a compensable injury for which disability~~  
26          ~~benefits may not exceed a cumulative total of one hundred four weeks or the date~~  
27          ~~the employee reaches maximum medical improvement or maximum medical~~  
28          ~~recovery, whichever occurs first~~ a temporary total loss of earning capacity.

29           **SECTION 2. AMENDMENT.** Section 65-05-15 of the North Dakota Century Code is  
30          amended and reenacted as follows:

1           **65-05-15. Aggravation awards.** When a compensable injury combines with a  
2 noncompensable injury, disease, or other condition, the organization shall award benefits on an  
3 aggravation basis, on the following terms:

4           1. ~~In cases of a prior injury, disease, or other condition, known in advance of the work~~  
5 ~~injury, which has caused previous work restriction or interference with physical~~  
6 ~~function the progression of which is substantially accelerated by, or the severity of~~  
7 ~~which is substantially worsened by, a compensable injury~~ the case of a preexisting  
8 injury, disease, or other condition as provided under paragraph 7 of subdivision b  
9 of subsection 10 of section 65-01-02, the organization shall pay benefits during the  
10 period of acute care in full. The period of acute care is presumed to be sixty days  
11 immediately following the compensable injury, absent clear and convincing  
12 evidence to the contrary. Following the period of acute care, the organization shall  
13 pay benefits on an aggravation basis.

14           2. If the progression of a prior compensable injury is substantially accelerated by, or  
15 the severity of the compensable injury is substantially worsened by a  
16 noncompensable injury, disease, or other condition, the organization shall pay  
17 benefits on an aggravation basis.

18           3. The organization shall pay benefits on an aggravation basis as a percentage of the  
19 benefits to which the injured ~~worker~~ employee would otherwise be entitled, equal  
20 to the percentage of cause of the resulting condition that is attributable to the  
21 compensable injury. Benefits payable on an aggravation basis are presumed to be  
22 payable on a fifty percent basis. The party asserting a percentage other than the  
23 presumed fifty percent may rebut the presumption with clear and convincing  
24 evidence to the contrary.

25           4. When an injured ~~worker~~ employee is entitled to benefits on an aggravation basis,  
26 the organization shall still pay costs of vocational rehabilitation, burial expenses  
27 under section 65-05-26, and dependency allowance on a one hundred percent  
28 basis.