

HOUSE BILL NO. 1055

Introduced by

Legislative Management

(Workers' Compensation Review Committee)

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 partial impairment benefits; 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.**

8 A 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 period~~
15 ~~of time not to exceed the date the employee reaches age sixty-five. A permanent~~
16 ~~impairment award payable by the organization under this subsection must be paid to~~
17 ~~the employee in a lump sum that consists of the amount of the award plus any interest~~
18 ~~that has accrued at the actuarial discount rate in use by the organization. The actuarial~~
19 ~~discount rate applied to the award is the average actuarial discount rate in effect for~~
20 ~~the period of deferment of the employee's award. The organization shall adopt rules~~
21 ~~implementing any necessary procedures for award payments made under this~~
22 ~~subsection.~~

23 2. The organization shall calculate the amount of the award by multiplying thirty-three
24 and one-third percent of the average weekly wage in this state on the date of the

1 impairment evaluation, rounded to the next highest dollar, by the permanent
2 impairment multiplier specified in subsection 10.

3 ~~3-2.~~ The organization shall notify the employee by certified mail, to the last-known address
4 of the employee, when that employee becomes potentially eligible for a permanent
5 impairment award. After the organization has notified the employee, the employee
6 shall file, within one hundred eighty days from the date the employee was notified, a
7 written request for an evaluation for permanent impairment. Failure to file the written
8 request within the one hundred eighty-day period precludes an award under this
9 section.

10 ~~4-3.~~ An injured employee is entitled to compensation for permanent impairment under this
11 section only for those findings of impairment that are permanent and which were
12 caused by the compensable injury. The organization may not issue an impairment
13 award for impairment findings due to unrelated, noncompensable, or preexisting
14 conditions, even if these conditions were made symptomatic by the compensable work
15 injury, and regardless of whether section 65-05-15 applies to the claim.

16 ~~5-4.~~ An injured employee is eligible for an evaluation of permanent impairment only when
17 all conditions caused by the compensable injury have reached maximum medical
18 improvement. The injured employee's doctor shall report to the organization the date
19 an employee has reached maximum medical improvement and any evidence of
20 impairment of function the injured employee has after that date. If the report states that
21 the employee is potentially eligible for a permanent impairment award, the
22 organization shall conduct a review and provide notice to the employee as provided by
23 subsection ~~3-2~~. If the injured employee files a timely written request under
24 subsection ~~3-2~~, the organization shall schedule an impairment evaluation by a doctor
25 qualified to evaluate the impairment.

26 ~~6-5.~~ A doctor evaluating permanent impairment shall include a clinical report in sufficient
27 detail to support the percentage ratings assigned. The organization shall adopt
28 administrative rules governing the evaluation of permanent impairment. These rules
29 must incorporate principles and practices of the ~~fifth~~sixth edition of the American
30 medical association's "Guides to the Evaluation of Permanent Impairment" modified to
31 be consistent with North Dakota law, to resolve issues of practice and interpretation,

1 and to address areas not sufficiently covered by the guides. Subject to rules adopted
2 under this subsection, impairments must be evaluated under the ~~fifth~~sixth edition of
3 the guides.

4 ~~7.6.~~ The organization shall deduct, on a ~~whole-body~~permanent impairment multiplier basis,
5 from an award for impairment under this section, any previous impairment award ~~for~~
6 ~~that same member or body part~~ under the workers' compensation laws of any
7 jurisdiction.

8 ~~8.7.~~ An injured employee is not entitled to a permanent impairment award due solely to
9 pain.

10 8. Other than an award identified in subsection 11, an award may not be issued unless
11 specifically identified and quantified within the sixth edition of the American medical
12 association's "Guides to the Evaluation of Permanent Impairment".

13 9. If an employee dies, the right to any compensation payable pursuant to an impairment
14 evaluation previously requested by the employee under subsection ~~32~~, which remains
15 unpaid on the date of the employee's death, survives and passes to the employee's
16 dependent spouse, minor children, parents, or estate, in that order. If the employee
17 dies, only those findings of impairment which are objectively verifiable such as values
18 for surgical procedures and amputations may be considered in a rating for impairment.
19 Impairment findings not supported by objectively verifiable evidence may not be
20 included in a rating for impairment. The deceased employee's dependents or
21 representatives shall request an impairment award under this subsection within one
22 year from the date of death of the employee.

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

25 For one to ~~fifteen~~thirteen percent impairment permanent impairment
26 multiplier of 0

27 For fourteen percent impairment permanent impairment
28 multiplier of 10

29 For fifteen percent impairment permanent impairment
30 multiplier of 10

31 For sixteen percent impairment permanent impairment

Sixty-second
Legislative Assembly

1		multiplier of 40 <u>15</u>
2	For seventeen percent impairment	permanent impairment
3		multiplier of 40 <u>15</u>
4	For eighteen percent impairment	permanent impairment
5		multiplier of 45 <u>20</u>
6	For nineteen percent impairment	permanent impairment
7		multiplier of 45 <u>20</u>
8	For twenty percent impairment	permanent impairment
9		multiplier of 20 <u>25</u>
10	For twenty-one percent impairment	permanent impairment
11		multiplier of 20 <u>25</u>
12	For twenty-two percent impairment	permanent impairment
13		multiplier of 25 <u>30</u>
14	For twenty-three percent impairment	permanent impairment
15		multiplier of 25 <u>30</u>
16	For twenty-four percent impairment	permanent impairment
17		multiplier of 30
18	For twenty-five percent impairment	permanent impairment
19		multiplier of 30 <u>35</u>
20	For twenty-six percent impairment	permanent impairment
21		multiplier of 35
22	For twenty-seven percent impairment	permanent impairment
23		multiplier of 35
24	For twenty-eight percent impairment	permanent impairment
25		multiplier of 40
26	For twenty-nine percent impairment	permanent impairment
27		multiplier of 45
28	For thirty percent impairment	permanent impairment
29		multiplier of 50
30	For thirty-one percent impairment	permanent impairment
31		multiplier of 60

Sixty-second
Legislative Assembly

1	For thirty-two percent impairment	permanent impairment multiplier of 70
2		
3	For thirty-three percent impairment	permanent impairment multiplier of 80
4		
5	For thirty-four percent impairment	permanent impairment multiplier of 90
6		
7	For thirty-five percent impairment	permanent impairment multiplier of 100
8		
9	For thirty-six percent impairment	permanent impairment multiplier of 110
10		
11	For thirty-seven percent impairment	permanent impairment multiplier of 120
12		
13	For thirty-eight percent impairment	permanent impairment multiplier of 130
14		
15	For thirty-nine percent impairment	permanent impairment multiplier of 140
16		
17	For forty percent impairment	permanent impairment multiplier of 150
18		
19	For forty-one percent impairment	permanent impairment multiplier of 160
20		
21	For forty-two percent impairment	permanent impairment multiplier of 170
22		
23	For forty-three percent impairment	permanent impairment multiplier of 180
24		
25	For forty-four percent impairment	permanent impairment multiplier of 190
26		
27	For forty-five percent impairment	permanent impairment multiplier of 200
28		
29	For forty-six percent impairment	permanent impairment multiplier of 210
30		
31	For forty-seven percent impairment	permanent impairment

Sixty-second
Legislative Assembly

1		multiplier of 220
2	For forty-eight percent impairment	permanent impairment
3		multiplier of 230
4	For forty-nine percent impairment	permanent impairment
5		multiplier of 240
6	For fifty percent impairment	permanent impairment
7		multiplier of 260
8	For fifty-one percent impairment	permanent impairment
9		multiplier of 280
10	For fifty-two percent impairment	permanent impairment
11		multiplier of 300
12	For fifty-three percent impairment	permanent impairment
13		multiplier of 320
14	For fifty-four percent impairment	permanent impairment
15		multiplier of 340
16	For fifty-five percent impairment	permanent impairment
17		multiplier of 360
18	For fifty-six percent impairment	permanent impairment
19		multiplier of 380
20	For fifty-seven percent impairment	permanent impairment
21		multiplier of 400
22	For fifty-eight percent impairment	permanent impairment
23		multiplier of 420
24	For fifty-nine percent impairment	permanent impairment
25		multiplier of 440
26	For sixty percent impairment	permanent impairment
27		multiplier of 465
28	For sixty-one percent impairment	permanent impairment
29		multiplier of 490
30	For sixty-two percent impairment	permanent impairment
31		multiplier of 515

Sixty-second
Legislative Assembly

1	For sixty-three percent impairment	permanent impairment multiplier of 540
2		
3	For sixty-four percent impairment	permanent impairment multiplier of 565
4		
5	For sixty-five percent impairment	permanent impairment multiplier of 590
6		
7	For sixty-six percent impairment	permanent impairment multiplier of 615
8		
9	For sixty-seven percent impairment	permanent impairment multiplier of 640
10		
11	For sixty-eight percent impairment	permanent impairment multiplier of 665
12		
13	For sixty-nine percent impairment	permanent impairment multiplier of 690
14		
15	For seventy percent impairment	permanent impairment multiplier of 715
16		
17	For seventy-one percent impairment	permanent impairment multiplier of 740
18		
19	For seventy-two percent impairment	permanent impairment multiplier of 765
20		
21	For seventy-three percent impairment	permanent impairment multiplier of 790
22		
23	For seventy-four percent impairment	permanent impairment multiplier of 815
24		
25	For seventy-five percent impairment	permanent impairment multiplier of 840
26		
27	For seventy-six percent impairment	permanent impairment multiplier of 865
28		
29	For seventy-seven percent impairment	permanent impairment multiplier of 890
30		
31	For seventy-eight percent impairment	permanent impairment

Sixty-second
Legislative Assembly

1		multiplier of 915
2	For seventy-nine percent impairment	permanent impairment
3		multiplier of 940
4	For eighty percent impairment	permanent impairment
5		multiplier of 965
6	For eighty-one percent impairment	permanent impairment
7		multiplier of 990
8	For eighty-two percent impairment	permanent impairment
9		multiplier of 1015
10	For eighty-three percent impairment	permanent impairment
11		multiplier of 1040
12	For eighty-four percent impairment	permanent impairment
13		multiplier of 1065
14	For eighty-five percent impairment	permanent impairment
15		multiplier of 1090
16	For eighty-six percent impairment	permanent impairment
17		multiplier of 1115
18	For eighty-seven percent impairment	permanent impairment
19		multiplier of 1140
20	For eighty-eight percent impairment	permanent impairment
21		multiplier of 1165
22	For eighty-nine percent impairment	permanent impairment
23		multiplier of 1190
24	For ninety percent impairment	permanent impairment
25		multiplier of 1215
26	For ninety-one percent impairment	permanent impairment
27		multiplier of 1240
28	For ninety-two percent impairment	permanent impairment
29		multiplier of 1265
30	For ninety-three percent impairment	permanent impairment
31		multiplier of 1290

1	For ninety-four percent impairment	permanent impairment
2		multiplier of 1320
3	For ninety-five percent impairment	permanent impairment
4		multiplier of 1350
5	For ninety-six percent impairment	permanent impairment
6		multiplier of 1380
7	For ninety-seven percent impairment	permanent impairment
8		multiplier of 1410
9	For ninety-eight percent impairment	permanent impairment
10		multiplier of 1440
11	For ninety-nine percent impairment	permanent impairment
12		multiplier of 1470
13	For one hundred percent impairment	permanent impairment
14		multiplier of 1500
15	11. An amputation of a finger or toe at the level of the distal interphalangeal joint or	
16	proximal to that joint, or the thumb or the great toe at the interphalangeal joint or	
17	proximal to that joint, which is determined to result in a whole body impairment of less	
18	than sixteen percent and which is not identified in the following schedule, is payable as	
19	a sixteen percent impairment. If an evaluation for the loss of an eye or for an	
20	amputation results in an award that is less than the permanent impairment multiplier	
21	identified in the following schedule, the organization shall pay an award equal to the	
22	permanent impairment multiplier set out in the following schedule:	
23	For amputation of a thumb	permanent impairment
24		multiplier of 65
25	For amputation of the second or distal	permanent impairment
26	phalanx of the thumb	multiplier of 28
27	For amputation of the first finger	permanent impairment
28		multiplier of 40
29	For amputation of the middle or second	permanent impairment
30	phalanx of the first finger	multiplier of 28
31	For amputation of the third or distal	permanent impairment

Sixty-second
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1	phalanx of the first finger	multiplier of 22
2	For amputation of the second finger	permanent impairment
3		multiplier of 30
4	For amputation of the middle or second	permanent impairment
5	phalanx of the second finger	multiplier of 22
6	For amputation of the third or distal	permanent impairment
7	phalanx of the second finger	multiplier of 14
8	For amputation of the third finger	permanent impairment
9		multiplier of 20
10	For amputation of the middle or second	permanent impairment
11	phalanx of the third finger	multiplier of 16
12	For amputation of the fourth finger	permanent impairment
13		multiplier of 16
14	For amputation of the middle or second	permanent impairment
15	phalanx of the fourth finger	multiplier of 12
16	For amputation of the leg at the hip	permanent impairment
17		multiplier of 234
18	For amputation of the leg at or above	permanent impairment
19	the knee	multiplier of 195
20	For amputation of the leg at or above	permanent impairment
21	the ankle	multiplier of 150
22	For amputation of a great toe	permanent impairment
23		multiplier of 30
24	For amputation of the second or	permanent impairment
25	distal phalanx of the great toe	multiplier of 18
26	For amputation of any other toe	permanent impairment
27		multiplier of 12
28	For loss of an eye	permanent impairment
29		multiplier of 150
30	For the loss of vision of an eye which	permanent impairment
31	equals or exceeds 20/200 corrected	multiplier of 100

1 The award for the amputation of more than one finger of one hand may not exceed an
2 award for the amputation of a hand. The award for the amputation of more than one
3 toe of one foot may not exceed an award for the amputation of a foot. If any of the
4 amputations or losses set out in this subsection combine with other impairments for
5 the same work-related injury or condition, the organization shall issue an impairment
6 award based on the greater of the permanent impairment multiplier allowed for the
7 combined rating established under the ~~fifth~~sixth edition of the American medical
8 association's "Guides to the Evaluation of Permanent Impairment" or the permanent
9 impairment multiplier set forth in this subsection.

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

29 13. An attorney's fees are not payable unless there is a bona fide dispute as to the
30 percentage of the employee's permanent impairment or unless there is a dispute as to
31 the employee's eligibility for an award for permanent partial impairment. An attorney's

1 fees payable in connection with a permanent impairment dispute may not exceed
2 twenty percent of the additional amount awarded upon final resolution of the dispute,
3 subject to the maximum fees established pursuant to section 65-02-08.

4 14. An attorney may not seek or obtain from an employee through a contingent fee
5 arrangement, or on a percentage basis, costs or fees payable in connection with the
6 award or denial of compensation for permanent impairment. A permanent impairment
7 award is exempt from the claims of creditors, including an employee's attorney, except
8 as provided by section 65-05-29.

9 15. If an injured employee qualifies for an additional award and the prior award was based
10 upon the number of weeks, the impairment multiplier must be used to compare against
11 the prior award of weeks in determining any additional award.

12 **SECTION 2. APPLICATION.** This Act applies to permanent partial impairment evaluations
13 performed on or after the effective date of this Act.