

HOUSE BILL NO. 1279

Introduced by

Representatives Roers Jones, Heinert, Jonas, Louser, Schauer, Thomas

Senators Barta, Larson, Lee

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 presumption of compensability for firefighters and law enforcement officers.~~for an
3 Act to create and enact section 65-01-15.2 of the North Dakota Century Code, relating to
4 compensability for cardiac events for firefighters and law enforcement officers; to amend and
5 reenact sections 65-01-15 and 65-01-15.1 of the North Dakota Century Code, relating to
6 documentation required for firefighters and law enforcement officers and the presumption of
7 compensability for firefighters and law enforcement officers; to provide for retroactive
8 application; and to declare an emergency.

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

10 ~~— **SECTION 1. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is~~
11 ~~amended and reenacted as follows:~~

12 ~~— **65-01-15.1. Presumption of compensability for certain conditions of full-time paid**~~
13 ~~**firefighters and law enforcement officers.**~~

14 ~~— 1. — Any condition or impairment of health of a full-time paid firefighter or law enforcement~~
15 ~~officer caused by lung or respiratory disease, hypertension, heart disease, or an~~
16 ~~exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the~~
17 ~~course of employment, or occupational cancer in a full-time paid firefighter, is~~
18 ~~presumed to have been suffered in the line of duty. The presumption may be rebutted~~
19 ~~by clear and convincing evidence the condition or impairment is not work-related.~~

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

1 ~~3. a. A full-time paid firefighter or law enforcement officer is not eligible for the benefit~~
2 ~~provided under this section unless that full-time paid firefighter or law~~
3 ~~enforcement officer has completed five years of continuous service and has~~
4 ~~successfully passed a medical examination which fails to reveal any evidence of~~
5 ~~such a condition. An employer shall require provide at no expense, a medical~~
6 ~~examination upon employment, for any employee subject to this section.~~

7 ~~b. After the initial medical examination, an employer shall require provide at no~~
8 ~~expense, at least a periodic medical examination as follows: for one to ten years~~
9 ~~of service, every five years; for eleven to twenty years of service, every three~~
10 ~~years; and for twenty-one or more years of service, every year. The periodic~~
11 ~~medical examination, at a minimum, must consist of a general medical history of~~
12 ~~the individual and the individual's family; an occupational history including contact~~
13 ~~with and an exposure to hazardous materials, toxic products, contagious and~~
14 ~~infectious diseases, and to physical hazards; a physical examination including~~
15 ~~measurement of height, weight, and blood pressure; and laboratory and~~
16 ~~diagnostic procedures including a nonfasting total blood cholesterol test indicating~~
17 ~~cardiovascular health to a reasonable degree of medical certainty.~~

18 ~~c. If the medical examination reveals that an employee falls into a recognized risk~~
19 ~~group, the employee must be referred to a qualified health professional for future~~
20 ~~medical examination.~~

21 ~~d. If a medical examination produces a false positive result for a condition covered~~
22 ~~under this section, the organization shall consider the condition to be a~~
23 ~~compensable injury. In the case of a false positive result, neither the coverage of~~
24 ~~the condition nor the period of disability may exceed fifty-six days.~~

25 ~~e. This section does not affect an employee's responsibility to document that the~~
26 ~~employee has not used tobacco as required under section 65-01-15. Results of~~
27 ~~the examination must be used in rebuttal to a presumption afforded under this~~
28 ~~section.~~

29 ~~4. For purposes of this section, "law enforcement officer" means a person an individual~~
30 ~~who is licensed to perform peace officer law enforcement duties under chapter 12-63~~
31 ~~and is employed full time by the bureau of criminal investigation, the game and fish~~

1 department, the state highway patrol, the parole and probation division, the North-
2 Dakota state university police department, the North Dakota state college of science
3 police department, the university of North Dakota police department, a county sheriff's
4 department, a city police department, or the parks and recreation department pursuant
5 to section 55-08-04.

6 ~~5. The presumption does not include a condition or impairment of health of a full-time~~
7 ~~paid firefighter or law enforcement officer, who has been employed for ten years or~~
8 ~~less, if the condition or impairment is diagnosed more than two years after the~~
9 ~~employment as a full-time paid firefighter or law enforcement officer ends. The~~
10 ~~presumption also does not include a condition or impairment of health of a full-time~~
11 ~~paid firefighter or law enforcement officer, who has been employed more than ten~~
12 ~~years, if the condition or impairment is diagnosed more than five years after the~~
13 ~~employment as a full-time paid firefighter or law enforcement officer ends.~~

14 **SECTION 1. AMENDMENT.** Section 65-01-15 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **65-01-15. Yearly documentation required for firefighter and law enforcement officer.**

17 Except for benefits for an exposure to a bloodborne pathogen as defined by section
18 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement
19 officer who uses tobacco is not eligible for the benefits provided under ~~section~~sections
20 65-01-15.1 and 65-01-15.2, unless the full-time paid firefighter or law enforcement officer
21 provides yearly documentation from a health care provider which indicates the full-time paid
22 firefighter or law enforcement officer has not used tobacco for the preceding two years.

23 **SECTION 2. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **65-01-15.1. Presumption of compensability for certain conditions of full-time paid**
26 **firefighters and law enforcement officers.**

- 27 1. Any condition or impairment of health of a full-time paid firefighter or law enforcement
28 officer caused by lung or respiratory disease, hypertension, heart disease, or an
29 exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the
30 course of employment, or occupational cancer in a full-time paid firefighter, is

1 presumed to have been suffered in the line of duty. The presumption may be rebutted
2 by clear and convincing evidence the condition or impairment is not work-related.

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

7 3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit
8 provided under this section unless that full-time paid firefighter or law enforcement
9 officer has completed five years of continuous service and has successfully passed a
10 medical examination which fails to reveal any evidence of such a condition. The five
11 years of continuous service requirement may include full-time paid service outside the
12 state. An employer shall ~~require~~provide at no expense a medical examination upon
13 employment, for any employee subject to this section.

14 a. After the initial medical examination, an employer shall ~~require~~provide at no
15 expense at least a periodic medical examination as follows: for one to ten years
16 of service, every five years; for eleven to twenty years of service, every three
17 years; and for twenty-one or more years of service, every year. The periodic
18 medical examination, at a minimum, must consist of a general medical history of
19 the individual and the individual's family; an occupational history including contact
20 with and an exposure to hazardous materials, toxic products, contagious and
21 infectious diseases, and to physical hazards; a physical examination including
22 measurement of height, weight, and blood pressure; and laboratory and
23 diagnostic procedures ~~including a nonfasting total blood cholesterol test~~indicating
24 cardiovascular health to a reasonable degree of medical certainty.

25 b. If the medical examination reveals that an employee falls into a recognized risk
26 group, the employee must be referred to a qualified health professional for future
27 medical examination.

28 c. If a medical examination produces a false positive result for a condition covered
29 under this section, the organization shall consider the condition to be a
30 compensable injury. In the case of a false positive result, neither the coverage of
31 the condition nor the period of disability may exceed fifty-six days. This section

1 does not affect an employee's responsibility to document that the employee has
2 not used tobacco as required under section 65-01-15. Results of the examination
3 must be used in rebuttal to a presumption afforded under this section.

4 4. For purposes of this section, "law enforcement officer" means ~~a person~~an individual
5 who is licensed to perform peace officer law enforcement duties under chapter 12-63
6 and is employed full time by the bureau of criminal investigation, the game and fish
7 department, the state highway patrol, the parole and probation division, the North
8 Dakota state university police department, the North Dakota state college of science
9 police department, the university of North Dakota police department, a county sheriff's
10 department, a city police department, or the parks and recreation department pursuant
11 to section 55-08-04.

12 5. The presumption does not include a condition or impairment of health of a full-time
13 paid firefighter or law enforcement officer, who has been employed for ten years or
14 less, if the condition or impairment is diagnosed more than two years after the
15 employment as a full-time paid firefighter or law enforcement officer ends. The
16 presumption also does not include a condition or impairment of health of a full-time
17 paid firefighter or law enforcement officer, who has been employed more than ten
18 years, if the condition or impairment is diagnosed more than five years after the
19 employment as a full-time paid firefighter or law enforcement officer ends.

20 **SECTION 3.** Section 65-01-15.2 of the North Dakota Century Code is created and enacted
21 as follows:

22 **65-01-15.2. Presumption of compensability for cardiac events of full-time paid**
23 **firefighters and law enforcement officers.**

24 1. A heart attack, stroke, vascular rupture, or other similar cardiac event, is presumed to
25 be a compensable injury when a full-time paid firefighter or law enforcement officer:

26 a. Engages in a situation involving strenuous physical law enforcement activity, fire
27 suppression activity, or emergency response activity, or participates in a training
28 exercise involving strenuous physical activity; and

29 b. The heart attack, stroke, vascular rupture, or other similar cardiac event occurs
30 no later than forty-eight hours after the full-time paid firefighter or law

1 enforcement officer engaged or participated in the activity listed under
2 subdivision a.

3 2. The presumption under subsection 1 may be rebutted by clear and convincing
4 evidence the condition or impairment was not work-related.

5 3. This section applies to any full-time paid firefighter or law enforcement officer who has
6 less than five years of continuous service.

7 4. A full-time paid firefighter or law enforcement officer is not eligible for the benefit
8 provided under this section unless the full-time paid firefighter or law enforcement
9 officer has successfully passed a medical examination that failed to reveal any
10 evidence of a cardiovascular condition.

11 5. For purposes of this section, "law enforcement officer" means an individual who is
12 licensed to perform peace officer law enforcement duties under chapter 12-63 and is
13 employed full-time by the bureau of criminal investigation, the game and fish
14 department, the state highway patrol, the parole and probation division, the North
15 Dakota state university police department, the North Dakota state college of science
16 police department, the university of North Dakota police department, a county sheriff's
17 department, a city police department, or the parks and recreation department pursuant
18 to section 55-08-04.

19 **SECTION 4. RETROACTIVE APPLICATION.** This Act applies retroactively to a claim for
20 workers' compensation benefits filed after October 1, 2021, regardless of date of injury. A
21 full-time paid firefighter or law enforcement officer who submitted a claim for benefits between
22 October 1, 2021, and the effective date of this Act may resubmit the claim if the initial claim was
23 denied by the organization for not being a compensable injury.

24 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.