

HOUSE BILL NO. 1060

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Corrections and Rehabilitation)

1 A BILL for an Act to amend and reenact sections 65-01-15, 65-01-15.1, and 65-01-15.2 of the
2 North Dakota Century Code, relating to the presumption of compensability for correctional
3 officers.

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

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

7 **65-01-15. Yearly documentation required for firefighter, correctional officer, and law**
8 **enforcement officer.**

9 Except for benefits for an exposure to a bloodborne pathogen as defined by section
10 23-07.5-01 occurring in the course of employment, a full-time paid firefighter, correctional officer,
11 or law enforcement officer who uses tobacco is not eligible for the benefits provided under
12 sections 65-01-15.1 and 65-01-15.2, unless the full-time paid firefighter, correctional officer, or
13 law enforcement officer provides yearly documentation from a health care provider which
14 indicates the full-time paid firefighter, correctional officer, or law enforcement officer has not
15 used tobacco for the preceding two years.

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

18 **65-01-15.1. Presumption of compensability for certain conditions of full-time paid**
19 **firefighters, correctional officers, and law enforcement officers.**

20 1. Any condition or impairment of health of a full-time paid firefighter, correctional officer,
21 or law enforcement officer caused by lung or respiratory disease, hypertension, heart
22 disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01
23 occurring in the course of employment, or occupational cancer in a full-time paid
24 firefighter, is presumed to have been suffered in the line of duty. The presumption may

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

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

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

29 c. If a medical examination produces a false positive result for a condition covered
30 under this section, the organization shall consider the condition to be a
31 compensable injury. In the case of a false positive result, neither the coverage of

1 the condition nor the period of disability may exceed fifty-six days. This section
2 does not affect an employee's responsibility to document that the employee has
3 not used tobacco as required under section 65-01-15. Results of the examination
4 must be used in rebuttal to a presumption afforded under this section.

5 4. For purposes of this section, ~~"law enforcement officer"~~:

6 a. "Correctional officer" means an individual who completed the department of
7 corrections and rehabilitation's basic correctional officer course and is employed
8 full-time to provide supervision and security at a correctional facility by the
9 department of corrections and rehabilitation; and

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

19 5. The presumption does not include a condition or impairment of health of a full-time
20 paid firefighter, correctional officer, or law enforcement officer, who has been
21 employed for ten years or less, if the condition or impairment is diagnosed more than
22 two years after the employment as a full-time paid firefighter, correctional officer, or
23 law enforcement officer ends. The presumption also does not include a condition or
24 impairment of health of a full-time paid firefighter, correctional officer, or law
25 enforcement officer, who has been employed more than ten years, if the condition or
26 impairment is diagnosed more than five years after the employment as a full-time paid
27 firefighter, correctional officer, or law enforcement officer ends.

28 **SECTION 3. AMENDMENT.** Section 65-01-15.2 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **65-01-15.2. Presumption of compensability for cardiac events of full-time paid**
2 **firefighters, correctional officers, and law enforcement officers.**

- 3 1. A heart attack, stroke, vascular rupture, or other similar cardiac event, is presumed to
4 be a compensable injury when a full-time paid firefighter, correctional officer, or law
5 enforcement officer:
- 6 a. Engages in a situation involving strenuous physical law enforcement or
7 correctional officer activity, fire suppression activity, or emergency response
8 activity, or participates in a training exercise involving strenuous physical activity;
9 and
- 10 b. The heart attack, stroke, vascular rupture, or other similar cardiac event occurs
11 no later than forty-eight hours after the full-time paid firefighter, correctional
12 officer, or law enforcement officer engaged or participated in the activity listed
13 under subdivision a.
- 14 2. The presumption under subsection 1 may be rebutted by clear and convincing
15 evidence the condition or impairment was not work related.
- 16 3. This section applies to any full-time paid firefighter, correctional officer, or law
17 enforcement officer who has less than five years of continuous service.
- 18 4. A full-time paid firefighter, correctional officer, or law enforcement officer is not eligible
19 for the benefit provided under this section unless the full-time paid firefighter,
20 correctional officer, or law enforcement officer has successfully passed a medical
21 examination that failed to reveal any evidence of a cardiovascular condition.
- 22 5. For purposes of this section, "~~law enforcement officer~~":
- 23 a. "Correctional officer" means an individual who is employed as a correctional
24 officer by the department of corrections and rehabilitation; and
- 25 b. "Law enforcement officer" means an individual who is licensed to perform peace
26 officer law enforcement duties under chapter 12-63 and is employed full time by
27 the bureau of criminal investigation, the game and fish department, the state
28 highway patrol, the parole and probation division, the North Dakota state
29 university police department, the North Dakota state college of science police
30 department, the university of North Dakota police department, the Bismarck state
31 college police department, a county sheriff's department, a city police

- 1 department, or the parks and recreation department pursuant to section
- 2 55-08-04.