

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1422
(Representative Berg)

AN ACT to amend and reenact subsection 26 of section 65-01-02 and section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation awards for permanent impairment; to provide for a study of workers' compensation permanent impairment awards; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 26 of section 65-01-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement ~~or recovery~~, and includes disfigurement resulting from an injury. ~~The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment", must be determined by clear and convincing medical evidence.~~

SECTION 2. AMENDMENT. Section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-12.2. Permanent impairment - Compensation - Time paid. When a compensable injury ~~results in~~ causes permanent ~~loss of, or loss of use of, a member of the body~~ impairment, the bureau shall determine a permanent impairment award on the following terms:

1. If the compensable injury causes permanent impairment and the permanent impairment award payable by the bureau is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the bureau under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the bureau. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The bureau shall adopt rules implementing any necessary procedures for award payments made under this subsection.
2. ~~If a compensable injury that occurs after July 31, 1995, causes permanent impairment, the~~ The bureau shall calculate the amount of the lump sum payable under subsection 1 award by multiplying thirty-three and one-third percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar on the date of the original injury, by the number of weeks specified in subsection 45 10. The bureau shall pay permanent impairment benefits under subsection 1 at the rate of one hundred twenty two dollars per week for a compensable injury that occurred before August 1, 1995.
3. The bureau shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the bureau has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.

4. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and ~~that which~~ were caused by the compensable injury. The bureau may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions, even if these conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.
5. An injured employee is ~~not~~ eligible for an evaluation ~~for~~ of permanent impairment ~~until the employee is at~~ only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the bureau the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. ~~A doctor making an evaluation for permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned.~~ If the report states that the employee is potentially eligible for a permanent impairment award, the bureau shall provide notice to the employee as provided by subsection 3. If the injured employee files a timely written request under subsection 3, the bureau shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.
6. ~~Unless otherwise provided by this section, a doctor evaluating the impairment of an injured employee shall use the edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" in effect on the date of the employee's evaluation to establish a rating for impairment of function. A doctor evaluating the impairment of an injured employee resulting from a mental disorder shall use the edition of the American psychiatric association's "Diagnostic and Statistical Manual of Mental Disorders" in effect on the date of the employee's evaluation to establish a rating for the impairment. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The bureau shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Until rules adopted under this subsection become effective, impairments must be evaluated under the fourth edition, third printing, of the guides.~~
7. The bureau shall deduct, on a whole body impairment basis, from ~~a subsequent an~~ award for impairment under this section, any previous impairment award ~~given or calculated on an earlier claim or the same claim~~ for that same member or body part under the workers' compensation laws of any jurisdiction.
8. ~~A rating for impairment of function from an injury to the spinal cord resulting in paraplegia, hemiplegia, or quadriplegia must be calculated based solely on the percentage the impairment of function bears to total impairment of function of the whole body.~~
9. ~~A rating for impairment of function of the cervical, thoracic, lumbar, or sacral spine must be calculated according to the doctor's diagnosis of the employee's injury or condition that is directly related to the compensable work injury. The rating may not include a rating for other factors, including loss of range of motion, pain, loss of strength, loss of sensation, and radiculopathy unless established by unequivocal electrodiagnostic evidence of nerve root compromise.~~
10. ~~A rating of impairment of function resulting from injuries other than amputations, injuries to the cervical, thoracic, lumbar, or sacral spine, and injuries to the spinal cord resulting in paraplegia, hemiplegia, or quadriplegia must be based on a diagnosis directly related to the compensable work injury, if the American medical association's "Guides to the Evaluation of Permanent Impairment" provide for an impairment on a diagnostic basis.~~
11. ~~A rating for impairment of function for loss of strength and sensation must be based on objective medical evidence of nerve damage.~~

12. ~~A rating of impairment of function due to loss of range of motion must be based on objective medical evidence of structural damage to a joint or loss of motor function.~~
13. An injured employee is not entitled to a permanent impairment award due solely to pain.
14. 9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under this section subsection 3, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment ~~that~~ which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
15. 10. If the injury causes permanent impairment, the award must be determined based on the percentage the of whole body impairment bears to total impairment must be determined in accordance with the first applicable whole body impairment the following schedule:

For one to fifteen percent impairment	0 weeks
For sixteen percent impairment	5 <u>10</u> weeks
For seventeen percent impairment	5 <u>10</u> weeks
For eighteen percent impairment	10 <u>15</u> weeks
For nineteen percent impairment	10 <u>15</u> weeks
For twenty percent impairment	15 <u>20</u> weeks
For twenty-one percent impairment	15 <u>20</u> weeks
For twenty-two percent impairment	20 <u>25</u> weeks
For twenty-three percent impairment	20 <u>25</u> weeks
For twenty-four percent impairment	20 <u>30</u> weeks
For twenty-five percent impairment	25 <u>30</u> weeks
For twenty-six percent impairment	30 <u>35</u> weeks
For twenty-seven percent impairment	35 weeks
For twenty-eight percent impairment	40 weeks
For twenty-nine percent impairment	45 weeks
For thirty percent impairment	50 weeks
For thirty-one percent impairment	60 weeks
For thirty-two percent impairment	70 weeks
For thirty-three percent impairment	80 weeks
For thirty-four percent impairment	90 weeks
For thirty-five percent impairment	100 weeks
For thirty-six percent impairment	110 weeks
For thirty-seven percent impairment	120 weeks
For thirty-eight percent impairment	130 weeks
For thirty-nine percent impairment	140 weeks
For forty percent impairment	150 weeks
For forty-one percent impairment	160 weeks
For forty-two percent impairment	170 weeks
For forty-three percent impairment	180 weeks
For forty-four percent impairment	190 weeks
For forty-five percent impairment	200 weeks
For forty-six percent impairment	210 weeks
For forty-seven percent impairment	220 weeks
For forty-eight percent impairment	230 weeks
For forty-nine percent impairment	240 weeks
For fifty percent impairment	250 <u>260</u> weeks
For fifty-one percent impairment	265 <u>280</u> weeks
For fifty-two percent impairment	280 <u>300</u> weeks
For fifty-three percent impairment	295 <u>320</u> weeks

For fifty-four percent impairment	310 <u>340</u> weeks
For fifty-five percent impairment	325 <u>360</u> weeks
For fifty-six percent impairment	340 <u>380</u> weeks
For fifty-seven percent impairment	355 <u>400</u> weeks
For fifty-eight percent impairment	370 <u>420</u> weeks
For fifty-nine percent impairment	385 <u>440</u> weeks
For sixty percent impairment	400 <u>465</u> weeks
For sixty-one percent impairment	415 <u>490</u> weeks
For sixty-two percent impairment	430 <u>515</u> weeks
For sixty-three percent impairment	445 <u>540</u> weeks
For sixty-four percent impairment	460 <u>565</u> weeks
For sixty-five percent impairment	475 <u>590</u> weeks
For sixty-six percent impairment	490 <u>615</u> weeks
For sixty-seven percent impairment	505 <u>640</u> weeks
For sixty-eight percent impairment	520 <u>665</u> weeks
For sixty-nine percent impairment	535 <u>690</u> weeks
For seventy percent impairment	550 <u>715</u> weeks
For seventy-one percent impairment	565 <u>740</u> weeks
For seventy-two percent impairment	580 <u>765</u> weeks
For seventy-three percent impairment	595 <u>790</u> weeks
For seventy-four percent impairment	610 <u>815</u> weeks
For seventy-five percent impairment	625 <u>840</u> weeks
For seventy-six percent impairment	640 <u>865</u> weeks
For seventy-seven percent impairment	655 <u>890</u> weeks
For seventy-eight percent impairment	670 <u>915</u> weeks
For seventy-nine percent impairment	685 <u>940</u> weeks
For eighty percent impairment	700 <u>965</u> weeks
For eighty-one percent impairment	715 <u>990</u> weeks
For eighty-two percent impairment	730 <u>1015</u> weeks
For eighty-three percent impairment	745 <u>1040</u> weeks
For eighty-four percent impairment	760 <u>1065</u> weeks
For eighty-five percent impairment	775 <u>1090</u> weeks
For eighty-six percent impairment	790 <u>1115</u> weeks
For eighty-seven percent impairment	805 <u>1140</u> weeks
For eighty-eight percent impairment	820 <u>1165</u> weeks
For eighty-nine percent impairment	835 <u>1190</u> weeks
For ninety to one hundred percent impairment	1000 <u>1215</u> weeks
<u>For ninety-one percent impairment</u>	<u>1240</u> weeks
<u>For ninety-two percent impairment</u>	<u>1265</u> weeks
<u>For ninety-three percent impairment</u>	<u>1290</u> weeks
<u>For ninety-four percent impairment</u>	<u>1320</u> weeks
<u>For ninety-five percent impairment</u>	<u>1350</u> weeks
<u>For ninety-six percent impairment</u>	<u>1380</u> weeks
<u>For ninety-seven percent impairment</u>	<u>1410</u> weeks
<u>For ninety-eight percent impairment</u>	<u>1440</u> weeks
<u>For ninety-nine percent impairment</u>	<u>1470</u> weeks
<u>For one hundred percent impairment</u>	<u>1500</u> weeks

46. 11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined by the American medical association's "~~Guides to the Evaluation of Permanent Impairment~~" to result in a whole body impairment of less than sixteen percent is payable as a sixteen percent impairment.
47. 12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment ~~is disputed~~, all relevant medical evidence must be submitted to an independent doctor who has not treated the employee and who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish a ~~comprehensive list~~ lists of doctors who are ~~medical specialists within the state~~ qualified by

their training, experience, and area of practice to rate permanent impairments caused by various types of injuries. The bureau shall define, by rule, the process by which the bureau and the injured employee choose an independent doctor or doctors to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor or doctors chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the bureau for an impairment award for a rating of impairment for a body part or condition the bureau has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor or doctors if the employee disputes the findings of the independent doctor or doctors.

- 48: 13. ~~The bureau shall establish, by rule, a reasonable hourly rate and a maximum fee to compensate an employee's attorney for legal services rendered as a result of the award or denial of compensation for permanent impairment.~~ An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.
- 49: 14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

SECTION 3. PERMANENT IMPAIRMENT AWARDS STUDY. During the 1999-2000 interim, the bureau shall study the awards provided to injured employees with permanent impairments caused by compensable work injuries. The study must include involvement from labor, employers, medical providers, and organizations representing those constituencies, and must identify the advantages and disadvantages of the current system and of any proposed alternate system. The study must include recommendations on whether changes are needed, including changes to the threshold for qualifying for an award, and the cost of any proposed changes. Before the 2001 legislative session, the bureau shall report the results of the study to an interim committee identified by the legislative council.

SECTION 4. EFFECTIVE DATE. Sections 1 and 2 of this Act apply to all impairment evaluations performed after July 31, 1999, regardless of the date of injury or date of claim filing.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1422.

House Vote: Yeas 91 Nays 5 Absent 2

Senate Vote: Yeas 44 Nays 4 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State