

HOUSE BILL NO. 1493

Introduced by

Representatives N. Johnson, Berg, Clark, Froseth, Ruby

Senator Klein

1 A BILL for an Act to amend and reenact section 65-01-11 of the North Dakota Century Code,
2 relating to workers' compensation incentives for employers to have preemployment,
3 postaccident, and random testing for alcohol and controlled substances; and to provide for
4 application.

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

6 **SECTION 1. AMENDMENT.** Section 65-01-11 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **65-01-11. Burden of proof in compensation matters - Death certificate.**

9 1. If the organization or an employer claims that an employee is not entitled to the
10 benefits of the North Dakota ~~workforce safety and insurance~~ workers'
11 compensation law because the employee's injury was caused by the employee's
12 willful intention to cause self-injury, or to injure another, or by reason of the
13 voluntary impairment caused by use of alcohol or illegal use of a controlled
14 substance by the employee, the burden of proving the exemption or forfeiture is
15 upon the organization or upon the person alleging the same; however, an alcohol
16 concentration level at or above the limit set by the United States secretary of
17 transportation in 49 CFR 383.51 or a level of an illegally used controlled substance
18 sufficient to cause impairment found by a test required by a physician, qualified
19 technician, chemist, or registered nurse and performed as required by the United
20 States secretary of transportation under 49 CFR part 40, at or above the cutoff
21 level in part 40, creates a rebuttable presumption that the injury was due to
22 impairment caused by the use of alcohol or the illegal use of a controlled
23 substance.

- 1 2. An employer who has a mandatory drug alcohol testing policy for work accidents,
2 or an employer or a doctor who has reasonable grounds to suspect an employee's
3 alleged work injury was caused by the employee's voluntary impairment caused by
4 use of alcohol or illegal use of a controlled substance may request that the
5 employee undergo testing to determine if the employee had alcohol or the
6 controlled substance in the employee's system at levels greater than the limit set
7 by the United States department of transportation at the time of the injury.
- 8 3. If an employee refuses to submit to a reasonable request to undergo a test to
9 determine if the employee was impaired or if an employee refuses to submit to a
10 test for drugs or alcohol after a work accident as mandated by company policy, the
11 employee forfeits all entitlement to ~~workforce safety and insurance~~ workers'
12 compensation benefits arising out of that injury. Any claimant against the fund,
13 however, has the burden of proving by a preponderance of the evidence that the
14 claimant is entitled to benefits.
- 15 4. For injuries occurring after June 30, 2007, if a claimant successfully rebuts the
16 presumption under this section, no more than fifty percent of the chargeable costs
17 of that claim may be assessed against the employer for the purposes of experience
18 rating if the employer has preemployment testing for the illegal use of a controlled
19 substance, postaccident testing for alcohol and the illegal use of a controlled
20 substance, and random testing programs for alcohol and the illegal use of a
21 controlled substance which were previously registered with the organization.
- 22 5. For injuries occurring before July 1, 2007, if a claimant successfully rebuts the
23 presumption under this section, no more than fifty percent of the chargeable costs
24 of that claim may be assessed against the employer for purposes of experience
25 rating if the employer provides sufficient documentation the testing programs
26 outlined in subsection 4 were in place at the time of the injury.
- 27 6. If a claim for death benefits is filed, the official death certificate must be considered
28 as evidence of death and may not be used to establish the cause of death.

29 **SECTION 2. APPLICATION.** Subsection 5 of section 65-01-11 under section 1 of this
30 Act is not applicable to employer account renewal periods before July 1, 2007.