

Introduced by

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.** A permanent
8 impairment is not intended to be a periodic payment and is not intended to reimburse the
9 employee for specific expenses related to the injury or wage loss. If a compensable injury
10 causes permanent impairment, the organization shall determine a permanent impairment award
11 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~~
15 ~~period of time not to exceed the date the employee reaches age sixty five. A~~
16 ~~permanent impairment award payable by the organization under this subsection~~
17 ~~must be paid to the employee in a lump sum that consists of the amount of the~~
18 ~~award plus any interest that has accrued at the actuarial discount rate in use by the~~
19 ~~organization. The actuarial discount rate applied to the award is the average~~
20 ~~actuarial discount rate in effect for the period of deferment of the employee's~~
21 ~~award. The organization shall adopt rules implementing any necessary procedures~~
22 ~~for award payments made under this 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
4 address of the employee, when that employee becomes potentially eligible for a
5 permanent impairment award. After the organization has notified the employee,
6 the employee shall file, within one hundred eighty days from the date the employee
7 was notified, a written request for an evaluation for permanent impairment. Failure
8 to file the written request within the one hundred eighty-day period precludes an
9 award under this section.
- 10 ~~4.~~ 3. An injured employee is entitled to compensation for permanent impairment under
11 this section only for those findings of impairment that are permanent and which
12 were caused by the compensable injury. The organization may not issue an
13 impairment award for impairment findings due to unrelated, noncompensable, or
14 preexisting conditions, even if these conditions were made symptomatic by the
15 compensable work injury, and regardless of whether section 65-05-15 applies to
16 the claim.
- 17 ~~5.~~ 4. An injured employee is eligible for an evaluation of permanent impairment only
18 when all conditions caused by the compensable injury have reached maximum
19 medical improvement. The injured employee's doctor shall report to the
20 organization the date an employee has reached maximum medical improvement
21 and any evidence of impairment of function the injured employee has after that
22 date. If the report states that the employee is potentially eligible for a permanent
23 impairment award, the organization shall conduct a review and provide notice to
24 the employee as provided by subsection ~~3~~ 2. If the injured employee files a timely
25 written request under subsection ~~3~~ 2, the organization shall schedule an
26 impairment evaluation by a doctor qualified to evaluate the impairment.
- 27 ~~6.~~ 5. A doctor evaluating permanent impairment shall include a clinical report in
28 sufficient detail to support the percentage ratings assigned. The organization shall
29 adopt administrative rules governing the evaluation of permanent impairment.
30 These rules must incorporate principles and practices of the ~~fifth~~ sixth edition of the
31 American medical association's "Guides to the Evaluation of Permanent

Sixty-second
Legislative Assembly

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

Sixty-second
Legislative Assembly

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| 1 | | multiplier of 70 |
| 2 | For thirty-three percent impairment | permanent impairment |
| 3 | | multiplier of 80 |
| 4 | For thirty-four percent impairment | permanent impairment |
| 5 | | multiplier of 90 |
| 6 | For thirty-five percent impairment | permanent impairment |
| 7 | | multiplier of 100 |
| 8 | For thirty-six percent impairment | permanent impairment |
| 9 | | multiplier of 110 |
| 10 | For thirty-seven percent impairment | permanent impairment |
| 11 | | multiplier of 120 |
| 12 | For thirty-eight percent impairment | permanent impairment |
| 13 | | multiplier of 130 |
| 14 | For thirty-nine percent impairment | permanent impairment |
| 15 | | multiplier of 140 |
| 16 | For forty percent impairment | permanent impairment |
| 17 | | multiplier of 150 |
| 18 | For forty-one percent impairment | permanent impairment |
| 19 | | multiplier of 160 |
| 20 | For forty-two percent impairment | permanent impairment |
| 21 | | multiplier of 170 |
| 22 | For forty-three percent impairment | permanent impairment |
| 23 | | multiplier of 180 |
| 24 | For forty-four percent impairment | permanent impairment |
| 25 | | multiplier of 190 |
| 26 | For forty-five percent impairment | permanent impairment |
| 27 | | multiplier of 200 |
| 28 | For forty-six percent impairment | permanent impairment |
| 29 | | multiplier of 210 |
| 30 | For forty-seven percent impairment | permanent impairment |
| 31 | | multiplier of 220 |

Sixty-second
Legislative Assembly

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

Sixty-second
Legislative Assembly

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| 1 | | multiplier of 540 |
| 2 | For sixty-four percent impairment | permanent impairment |
| 3 | | multiplier of 565 |
| 4 | For sixty-five percent impairment | permanent impairment |
| 5 | | multiplier of 590 |
| 6 | For sixty-six percent impairment | permanent impairment |
| 7 | | multiplier of 615 |
| 8 | For sixty-seven percent impairment | permanent impairment |
| 9 | | multiplier of 640 |
| 10 | For sixty-eight percent impairment | permanent impairment |
| 11 | | multiplier of 665 |
| 12 | For sixty-nine percent impairment | permanent impairment |
| 13 | | multiplier of 690 |
| 14 | For seventy percent impairment | permanent impairment |
| 15 | | multiplier of 715 |
| 16 | For seventy-one percent impairment | permanent impairment |
| 17 | | multiplier of 740 |
| 18 | For seventy-two percent impairment | permanent impairment |
| 19 | | multiplier of 765 |
| 20 | For seventy-three percent impairment | permanent impairment |
| 21 | | multiplier of 790 |
| 22 | For seventy-four percent impairment | permanent impairment |
| 23 | | multiplier of 815 |
| 24 | For seventy-five percent impairment | permanent impairment |
| 25 | | multiplier of 840 |
| 26 | For seventy-six percent impairment | permanent impairment |
| 27 | | multiplier of 865 |
| 28 | For seventy-seven percent impairment | permanent impairment |
| 29 | | multiplier of 890 |
| 30 | For seventy-eight percent impairment | permanent impairment |
| 31 | | multiplier of 915 |

Sixty-second
Legislative Assembly

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

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

Sixty-second
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| 1 | For amputation of the second finger | permanent impairment |
| 2 | | multiplier of 30 |
| 3 | For amputation of the middle or second | permanent impairment |
| 4 | phalanx of the second finger | multiplier of 22 |
| 5 | For amputation of the third or distal | permanent impairment |
| 6 | phalanx of the second finger | multiplier of 14 |
| 7 | For amputation of the third finger | permanent impairment |
| 8 | | multiplier of 20 |
| 9 | For amputation of the middle or second | permanent impairment |
| 10 | phalanx of the third finger | multiplier of 16 |
| 11 | For amputation of the fourth finger | permanent impairment |
| 12 | | multiplier of 16 |
| 13 | For amputation of the middle or second | permanent impairment |
| 14 | phalanx of the fourth finger | multiplier of 12 |
| 15 | For amputation of the leg at the hip | permanent impairment |
| 16 | | multiplier of 234 |
| 17 | For amputation of the leg at or above | permanent impairment |
| 18 | the knee | multiplier of 195 |
| 19 | For amputation of the leg at or above | permanent impairment |
| 20 | the ankle | multiplier of 150 |
| 21 | For amputation of a great toe | permanent impairment |
| 22 | | multiplier of 30 |
| 23 | For amputation of the second or | permanent impairment |
| 24 | distal phalanx of the great toe | multiplier of 18 |
| 25 | For amputation of any other toe | permanent impairment |
| 26 | | multiplier of 12 |
| 27 | For loss of an eye | permanent impairment |
| 28 | | multiplier of 150 |
| 29 | For the loss of vision of an eye which | permanent impairment |
| 30 | 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
2 an award for the amputation of a hand. The award for the amputation of more than
3 one toe of one foot may not exceed an award for the amputation of a foot. If any of
4 the amputations or losses set out in this subsection combine with other
5 impairments for the same work-related injury or condition, the organization shall
6 issue an impairment award based on the greater of the permanent impairment
7 multiplier allowed for the combined rating established under the ~~fifth~~ sixth edition of
8 the American medical association's "Guides to the Evaluation of Permanent
9 Impairment" or the permanent 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~~
15 ~~the doctor's~~ have the training, and experience, ~~and area of practice to rate~~
16 necessary to conduct an evaluation of permanent impairments caused by various
17 ~~types of injuries~~ impairment and to apply the sixth edition of the American medical
18 association's "Guides to the Evaluation of Permanent Impairment". The
19 organization shall define, by rule, the process by which the organization ~~and the~~
20 ~~injured employee~~ shall choose an independent doctor or doctors to review a
21 disputed permanent impairment evaluation or rating. The decision of the
22 independent doctor or doctors chosen under this process is presumptive evidence
23 of the degree of permanent impairment of the employee which can only be
24 rebutted by clear and convincing evidence. This subsection does not impose
25 liability on the organization for an impairment award for a rating of impairment for a
26 body part or condition the organization has not determined to be compensable as a
27 result of the injury. The employee bears the expense of witness fees of the
28 independent doctor or doctors if the employee disputes the findings of the
29 independent doctor or doctors.
- 30 13. An attorney's fees are not payable unless there is a bona fide dispute as to the
31 percentage of the employee's permanent impairment or unless there is a dispute

1 as to the employee's eligibility for an award for permanent partial impairment. An
2 attorney's fees payable in connection with a permanent impairment dispute may
3 not exceed twenty percent of the additional amount awarded upon final resolution
4 of the dispute, subject to the maximum fees established pursuant to section
5 65-02-08.

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

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