

HOUSE BILL NO. 1376

Introduced by

Representatives S. Kelsh, Becker, N. Johnson, Kreun, Gruchalla, Guggisberg, M. Nelson

Senators Murphy, Sorvaag

1 A BILL for an Act to amend and reenact subsection 10 of section 65-01-02 of the North Dakota
2 Century Code, relating to workers' compensation coverage of mental injuries arising from a
3 mental stimulus; and to provide for application.

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

5 **SECTION 1. AMENDMENT.** Subsection 10 of section 65-01-02 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 10. "Compensable injury" means an injury by accident arising out of and in the course of
8 hazardous employment which must be established by medical evidence supported by
9 objective medical findings.

10 a. The term includes:

11 (1) Disease caused by a hazard to which an employee is subjected in the
12 course of employment. The disease must be incidental to the character of
13 the business and not independent of the relation of employer and employee.
14 Disease includes effects from radiation.

15 (2) An injury to artificial members.

16 (3) Injuries due to heart attack or other heart-related disease, stroke, and
17 physical injury caused by mental stimulus, but only when caused by the
18 employee's employment with reasonable medical certainty, and only when it
19 is determined with reasonable medical certainty that unusual stress is at
20 least fifty percent of the cause of the injury or disease as compared with all
21 other contributing causes combined. Unusual stress means stress greater
22 than the highest level of stress normally experienced or anticipated in that
23 position or line of work.

1 (4) Injuries arising out of employer-required or supplied travel to and from a
2 remote jobsite or activities performed at the direction or under the control of
3 the employer.

4 (5) An injury caused by the willful act of a third person directed against an
5 employee because of the employee's employment.

6 (6) A mental or psychological condition caused by a physical injury, but only
7 when the physical injury is determined with reasonable medical certainty to
8 be at least fifty percent of the cause of the condition as compared with all
9 other contributing causes combined, and only when the condition did not
10 preexist the work injury.

11 (7) A mental injury arising from mental stimulus if the injured employee is a first
12 responder and the injured employee establishes by a preponderance of the
13 evidence that the condition causing the mental injury was extraordinary and
14 unusual in comparison to the normal conditions of the particular
15 employment and that there is medical causation between the mental injury
16 and the employment conditions. Under this paragraph, a mental injury
17 arising from mental stimulus does not include a mental injury that results
18 from an event or series of events that are incidental to normal employer and
19 employee relations, including a personnel action by the employer such as a
20 disciplinary action, work evaluation, transfer, promotion, demotion, salary
21 review, or termination. As used in this paragraph, the term "first responder"
22 means a law enforcement officer, a firefighter, or emergency medical
23 services personnel as defined under section 23-27-02.

24 b. The term does not include:

25 (1) Ordinary diseases of life to which the general public outside of employment
26 is exposed or preventive treatment for communicable diseases, except that
27 the organization may pay for preventive treatment for a health care provider
28 as defined in section 23-07.5-01, firefighter, peace officer, correctional
29 officer, court officer, law enforcement officer, emergency medical technician,
30 or an individual trained and authorized by law or rule to render emergency
31 medical assistance or treatment who is exposed to a bloodborne pathogen

1 as defined in section 23-07.5-01 occurring in the course of employment and
2 for exposure to rabies occurring in the course of employment.

3 (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an
4 injury caused by the employee's willful intention to injure or kill another.

5 (3) Any injury caused by the use of intoxicants or the illegal use of controlled
6 substances.

7 (4) An injury that arises out of an altercation in which the injured employee is an
8 aggressor. This paragraph does not apply to public safety employees,
9 including law enforcement officers or private security personnel who are
10 required to engage in altercations as part of their job duties if the altercation
11 arises out of the performance of those job duties.

12 (5) An injury that arises out of an illegal act committed by the injured employee.

13 (6) An injury that arises out of an employee's voluntary nonpaid participation in
14 any recreational activity, including athletic events, parties, and picnics, even
15 though the employer pays some or all of the cost of the activity.

16 (7) Injuries attributable to a preexisting injury, disease, or other condition,
17 including when the employment acts as a trigger to produce symptoms in
18 the preexisting injury, disease, or other condition unless the employment
19 substantially accelerates its progression or substantially worsens its
20 severity.

21 (8) A nonemployment injury that, although acting upon a prior compensable
22 injury, is an independent intervening cause of injury.

23 (9) A latent or asymptomatic degenerative condition, caused in substantial part
24 by employment duties, which is triggered or made active by a subsequent
25 injury.

26 (10) A mental injury arising from mental stimulus which is not otherwise covered
27 under paragraph 7 of subdivision a.

28 **SECTION 2. APPLICATION.** This Act applies to injuries that occur on or after the effective
29 date of this Act.