

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

- 1 Impairment" modified to be consistent with North Dakota law, to resolve issues of
2 practice and interpretation, and to address areas not sufficiently covered by the
3 guides. Subject to rules adopted under this subsection, impairments must be
4 evaluated under the ~~fifth~~ sixth edition of the guides.
- 5 ~~7.~~ 6. The organization shall deduct, on a ~~whole-body~~ permanent impairment multiplier
6 basis, from an award for impairment under this section, any previous impairment
7 award ~~for that same member or body part~~ under the workers' compensation laws of
8 any jurisdiction.
- 9 ~~8.~~ 7. An injured employee is not entitled to a permanent impairment award due solely to
10 pain.
- 11 8. Other than an award identified in subsection 11, an award may not be issued
12 unless specifically identified and quantified within the sixth edition of the American
13 medical association's "Guides to the Evaluation of Permanent Impairment".
- 14 9. If an employee dies, the right to any compensation payable pursuant to an
15 impairment evaluation previously requested by the employee under subsection ~~3~~
16 2, which remains unpaid on the date of the employee's death, survives and passes
17 to the employee's dependent spouse, minor children, parents, or estate, in that
18 order. If the employee dies, only those findings of impairment which are objectively
19 verifiable such as values for surgical procedures and amputations may be
20 considered in a rating for impairment. Impairment findings not supported by
21 objectively verifiable evidence may not be included in a rating for impairment. The
22 deceased employee's dependents or representatives shall request an impairment
23 award under this subsection within one year from the date of death of the
24 employee.
- 25 10. If the injury causes permanent impairment, the award must be determined based
26 on the percentage of whole body impairment in accordance with the following
27 schedule:
- | | |
|---|----------------------|
| 28 For one to fifteen percent impairment | permanent impairment |
| 29 | multiplier of 0 |
| 30 For sixteen percent impairment | permanent impairment |
| 31 | multiplier of 10 |

Sixty-second
Legislative Assembly

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

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

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

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

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

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
Legislative Assembly

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.