

HOUSE BILL NO. 1456

Introduced by

Representatives M. Nelson, Guggisberg

1 A BILL for an Act to create and enact a new section to chapter 65-01, a new section to chapter
2 65-05, a new section to chapter 65-06, and a new section to chapter 65-10 of the North Dakota
3 Century Code, relating to presumption of the treating physician, presumption of compensability,
4 and disputing the denial of a claim; and to amend and reenact subsection 10 of section
5 65-01-02, and sections 65-06-03, 65-10-01, and 65-10-03 of the North Dakota Century Code,
6 relating to the definition of a compensable injury, how compensation benefits are determined,
7 and the cost of an appeal.

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

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

- 11 10. "Compensable injury" means an injury by accident arising out of and in the course of
12 hazardous employment which must be established by medical evidence supported by
13 objective medical findings.
- 14 a. The term includes:
- 15 (1) Disease caused by a hazard to which an employee is subjected in the
16 course of employment. The disease must be incidental to the character of
17 the business and not independent of the relation of employer and employee.
18 Disease includes effects from radiation.
- 19 (2) An injury to artificial members.
- 20 (3) Injuries due to heart attack or other heart-related disease, stroke, and
21 physical injury caused by mental stimulus, but only when caused by the
22 employee's employment with reasonable medical certainty, and only when it
23 is determined with reasonable medical certainty that unusual stress is at
24 least fifty percent of the cause of the injury or disease as compared with all

1 other contributing causes combined. Unusual stress means stress greater
2 than the highest level of stress normally experienced or anticipated in that
3 position or line of work.

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

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

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

14 (7) Injuries attributable to a pre-existing injury, disease, or other condition,
15 including when the employment acts as a trigger to produce symptoms in
16 the pre-existing injury, disease, or other condition unless medical restrictions
17 were placed on the injured employee to prevent the pre-existing injury or
18 disease from worsening or reemerging.

19 b. The term does not include:

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

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

- 1 (3) Any injury caused by the use of intoxicants or the illegal use of controlled
2 substances.
- 3 (4) An injury that arises out of an altercation in which the injured employee is an
4 aggressor. This paragraph does not apply to public safety employees,
5 including law enforcement officers or private security personnel who are
6 required to engage in altercations as part of their job duties if the altercation
7 arises out of the performance of those job duties.
- 8 (5) An injury that arises out of an illegal act committed by the injured employee.
- 9 (6) An injury that arises out of an employee's voluntary nonpaid participation in
10 any recreational activity, including athletic events, parties, and picnics, even
11 though the employer pays some or all of the cost of the activity.
- 12 ~~(7) Injuries attributable to a pre-existing injury, disease, or other condition,~~
13 ~~including when the employment acts as a trigger to produce symptoms in~~
14 ~~the pre-existing injury, disease, or other condition unless the employment~~
15 ~~substantially accelerates its progression or substantially worsens its~~
16 ~~severity. Pain is a symptom and may be considered in determining whether~~
17 ~~there is a substantial acceleration or substantial worsening of a pre-existing~~
18 ~~injury, disease, or other condition, but pain alone is not a substantial~~
19 ~~acceleration or a substantial worsening.~~
- 20 ~~(8)~~ (8) A nonemployment injury that, although acting upon a prior compensable
21 injury, is an independent intervening cause of injury.
- 22 ~~(9)~~(8) A latent or asymptomatic degenerative condition, caused in substantial part
23 by employment duties, which is triggered or made active by a subsequent
24 injury.
- 25 ~~(10)~~ A mental injury arising from mental stimulus.

26 **SECTION 2.** A new section to chapter 65-01 of the North Dakota Century Code is created
27 and enacted as follows:

28 **Denial of claim dispute.**

- 29 1. Notwithstanding any other provision of law, if the organization denies a claim because
30 the injury is deemed by the organization to not have occurred during the course of the

- 1 injured employee's employment, the injured worker's health insurance company may
2 dispute the denial with the organization.
- 3 2. If after a dispute is filed under subsection 1, the organization determines the injury
4 arose out of and in the course of employment, the organization shall approve the
5 claim. If the organization determines the injury did not arise out of and in the course of
6 employment, the health insurance company shall cover the claim to the extent the
7 injured employee's insurance policy provides.
- 8 3. The insurance commissioner shall hear and determine any administrative appeal filed
9 by the organization or a health insurance company under this section.

10 **SECTION 3.** A new section to chapter 65-05 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Fraud by employee.**

13 Notwithstanding any other provision of law, in cases of fraud, the organization shall
14 establish by clear and convincing evidence the injured employee received benefits to which the
15 employee was not entitled. If the organization in a case of fraud claims an employee is
16 performing work, the work performed by the injured employee must be paid labor.

17 **SECTION 4. AMENDMENT.** Section 65-06-03 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **65-06-03. Compensation benefits - How determined.**

20 The

- 21 1. Except as provided under subsection 2, the organization shall determine the basis of
22 compensation and benefits to be paid to a volunteer firefighter, an emergency or
23 disaster volunteer, volunteer health practitioner, or a community emergency response
24 team member under the terms of this chapter shall be determined in accordance with
25 the provisions of section 65-05-09; provided, however, that the average weekly wage-
26 of the claimant shall be determined from a computation of income derived from.
- 27 2. Under this section, the organization shall determine the average weekly wage of the
28 claimant based on the greater of the claimant's business or employment for which
29 coverage is required or otherwise secured at the date of first disability or the state's
30 average weekly wage, regardless of whether coverage was secured.

1 **SECTION 5.** A new section to chapter 65-06 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Presumption of compensability for certain conditions of volunteer responders and**
4 **health practitioners.**

5 If, within twenty-four hours of a volunteer firefighter, emergency or disaster volunteer,
6 community emergency response team member, or volunteer health practitioner performing
7 volunteer services or participating in training under this chapter, the volunteer experiences an
8 injury due to heart attack or other heart-related disease, stroke, or physical injury caused by
9 mental stimulus, it is presumed with reasonable medical certainty the injury was caused by the
10 employee's employment.

11 **SECTION 6. AMENDMENT.** Section 65-10-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **65-10-01. Appeal from decision of organization.**

- 14 1. If the final action of the organization denies the right of the claimant to participate at all
15 in the fund on the ground that the injury was self-inflicted, or on the ground that the
16 accident did not arise in the course of employment, or upon any other ground going to
17 the basis of the claim, or if the organization allows the claimant to participate in the
18 fund to a lesser degree than that claimed by the claimant, if such allowance is less
19 than the maximum allowance provided by this title, the claimant may appeal to the
20 district court of the county wherein the injury was inflicted or of the county in which the
21 claimant resides. An employer may also appeal a decision of the organization in any
22 injury case or an organization decision issued under chapter 65-04, in the manner
23 prescribed in this section. An appeal involving injuries allegedly covered by insurance
24 provided under contracts with extraterritorial coverage shall be triable in the district
25 court of Burleigh County. Any appeal under this section shall be taken in the manner
26 provided in chapter 28-32. Any appeal to the district court shall be heard on the record,
27 transmitted from the organization, and, in the discretion of the court, additional
28 evidence may be presented pertaining to the questions of law involved in the appeal.
- 29 2. Notwithstanding subsection 1, an injured employee may appeal a dispute arising out
30 of a denial of benefits, including treatment methods or testing methods recommended
31 by the injured employee's treating physician, in the manner provided in chapter 28-32.

1 3. Notwithstanding subsection 1, an injured employee may request the insurance
2 commissioner to review an order issued by the organization and issue an opinion
3 before the injured employee files an appeal in the manner provided in chapter 28-32.

4 **SECTION 7. AMENDMENT.** Section 65-10-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **65-10-03. Cost of appeal and attorney's fees fixed by the organization.**

7 The organization shall pay the cost of the judicial appeal and the attorney's fees for an
8 injured employee's attorney if the employee prevails as provided under section 65-02-08. The
9 maximum fee set by the organization may be exceeded upon application of the injured
10 employee to the organization, upon a finding the claim had clear and substantial merit, and the
11 legal or factual issues involved in the appeal were unusually complex, but a rate must be the
12 average rate paid by the organization for the organization's attorney in the three most recent
13 appeals. A court may not order that the maximum fee be exceeded.

14 **SECTION 8.** A new section to chapter 65-10 of the North Dakota Century Code is created
15 and enacted as follows:

16 **Presumption of treating physician.**

17 Notwithstanding any other provision of law, in any administrative appeal, a treating
18 physician's opinion or medical determination must be presumed correct unless the opinion or
19 medical determination is rebutted by clear and convincing evidence based on objective medical
20 findings.