

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1422

Introduced by

Representative Berg

1 A BILL for an Act to amend and reenact subsection 26 of section 65-01-02 and section
2 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation awards for
3 permanent impairment; to provide for a study of workers' compensation permanent impairment
4 awards; and to provide an effective date.

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

6 **SECTION 1. AMENDMENT.** Subsection 26 of section 65-01-02 of the 1997
7 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8 26. "Permanent impairment" means the loss of or loss of use of a member of the body
9 existing after the date of maximum medical improvement ~~or recovery~~, and includes
10 disfigurement resulting from an injury. ~~The loss must be determined in accordance~~
11 ~~with and based upon the most current edition of the American medical~~
12 ~~association's "Guides to the Evaluation of Permanent Impairment". Any~~
13 ~~impairment award, not expressly contemplated within the American medical~~
14 ~~association's "Guides to the Evaluation of Permanent Impairment", must be~~
15 ~~determined by clear and convincing medical evidence.~~

16 **SECTION 2. AMENDMENT.** Section 65-05-12.2 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **65-05-12.2. Permanent impairment - Compensation - Time paid.** When a
19 compensable injury ~~results in~~ causes permanent ~~loss of, or loss of use of, a member of the~~
20 ~~body~~ impairment, the bureau shall determine a permanent impairment award on the following
21 terms:

22 1. If the compensable injury causes permanent impairment and the permanent
23 impairment award payable by the bureau is at least two thousand dollars, the
24 injured employee may defer payment of the permanent impairment award for a

1 period of time not to exceed the date the employee reaches age sixty-five. A
2 permanent impairment award payable by the bureau under this subsection must
3 be paid to the employee in a lump sum that consists of the amount of the award
4 plus any interest that has accrued at the actuarial discount rate in use by the
5 bureau. The actuarial discount rate applied to the award is the average actuarial
6 discount rate in effect for the period of deferment of the employee's award. The
7 bureau shall adopt rules implementing any necessary procedures for award
8 payments made under this subsection.

9 2. ~~If a compensable injury that occurs after July 31, 1995, causes permanent~~
10 ~~impairment, the~~ The bureau shall calculate the amount of the ~~lump sum payable~~
11 ~~under subsection 4~~ award by multiplying thirty-three and one-third percent of the
12 average weekly wage in this state on the date of the impairment evaluation,
13 rounded to the next highest dollar ~~on the date of the original injury,~~ by the number
14 of weeks specified in subsection ~~45~~ 10. ~~The bureau shall pay permanent~~
15 ~~impairment benefits under subsection 4 at the rate of one hundred twenty two~~
16 ~~dollars per week for a compensable injury that occurred before August 1, 1995.~~

17 3. The bureau shall notify the employee by certified mail, to the last-known address of
18 the employee, when that employee becomes potentially eligible for a permanent
19 impairment award. After the bureau has notified the employee, the employee shall
20 file, within one hundred eighty days from the date the employee was notified, a
21 written request for an evaluation for permanent impairment. Failure to file the
22 written request within the one hundred eighty-day period precludes an award
23 under this section.

24 4. An injured employee is entitled to ~~compensation for a single~~ permanent
25 impairment award under this section and only for those findings of impairment ~~that~~
26 at the time of the impairment evaluation which are permanent and ~~that~~ which were
27 caused by the compensable injury. An injured employee is entitled to one
28 additional award if a subsequent evaluation establishes that the impairment
29 caused by the compensable injury is at least ten percent whole body greater than
30 the initial impairment for which payment was awarded. The bureau may not issue
31 an impairment award for impairment findings due to unrelated, noncompensable,

1 or preexisting conditions, even if these conditions were made symptomatic by the
2 compensable work injury, and regardless of whether section 65-05-15 applies to
3 the claim.

4 5. An injured employee is ~~not~~ eligible for an evaluation ~~for~~ of permanent impairment
5 ~~until the employee is at~~ only when all conditions caused by the compensable injury
6 have reached maximum medical improvement. The injured employee's doctor
7 shall report to the bureau the date an employee has reached maximum medical
8 improvement and any evidence of impairment of function the injured employee has
9 after that date. ~~A doctor making an evaluation for permanent impairment shall~~
10 ~~include a clinical report in sufficient detail to support the percentage ratings~~
11 ~~assigned.~~ If the report states that the employee is potentially eligible for a
12 permanent impairment award, the bureau shall provide notice to the employee as
13 provided by subsection 3. If the injured employee files a timely written request
14 under subsection 3, the bureau shall schedule an impairment evaluation by a
15 doctor qualified to evaluate the impairment.

16 6. ~~Unless otherwise provided by this section, a doctor evaluating the impairment of~~
17 ~~an injured employee shall use the edition of the American medical association's~~
18 ~~"Guides to the Evaluation of Permanent Impairment" in effect on the date of the~~
19 ~~employee's evaluation to establish a rating for impairment of function. A doctor~~
20 ~~evaluating the impairment of an injured employee resulting from a mental disorder~~
21 ~~shall use the edition of the American psychiatric association's "Diagnostic and~~
22 ~~Statistical Manual of Mental Disorders" in effect on the date of the employee's~~
23 ~~evaluation to establish a rating for the impairment.~~ A doctor evaluating permanent
24 impairment shall include a clinical report in sufficient detail to support the
25 percentage ratings assigned. The bureau shall adopt administrative rules
26 governing the evaluation of permanent impairment. These rules must incorporate
27 principles and practices of the American medical association's "Guides to the
28 Evaluation of Permanent Impairment" modified to be consistent with North Dakota
29 law, to resolve issues of practice and interpretation, and to address areas not
30 sufficiently covered by the guides. Until rules adopted under this subsection

- 1 become effective, impairments must be evaluated under the fourth edition, third
2 printing, of the guides.
- 3 7. The bureau shall deduct, on a whole body impairment basis, from ~~a subsequent an~~
4 award for impairment under this section, any previous impairment award ~~given or~~
5 ~~calculated on an earlier claim or the same claim~~ for that same member or body
6 part under the workers' compensation laws of any jurisdiction.
- 7 8. ~~A rating for impairment of function from an injury to the spinal cord resulting in~~
8 ~~paraplegia, hemiplegia, or quadriplegia must be calculated based solely on the~~
9 ~~percentage the impairment of function bears to total impairment of function of the~~
10 ~~whole body.~~
- 11 9. ~~A rating for impairment of function of the cervical, thoracic, lumbar, or sacral spine~~
12 ~~must be calculated according to the doctor's diagnosis of the employee's injury or~~
13 ~~condition that is directly related to the compensable work injury. The rating may~~
14 ~~not include a rating for other factors, including loss of range of motion, pain, loss of~~
15 ~~strength, loss of sensation, and radiculopathy unless established by unequivocal~~
16 ~~electrodiagnostic evidence of nerve root compromise.~~
- 17 10. ~~A rating of impairment of function resulting from injuries other than amputations,~~
18 ~~injuries to the cervical, thoracic, lumbar, or sacral spine, and injuries to the spinal~~
19 ~~cord resulting in paraplegia, hemiplegia, or quadriplegia must be based on a~~
20 ~~diagnosis directly related to the compensable work injury, if the American medical~~
21 ~~association's "Guides to the Evaluation of Permanent Impairment" provide for an~~
22 ~~impairment on a diagnostic basis.~~
- 23 11. ~~A rating for impairment of function for loss of strength and sensation must be~~
24 ~~based on objective medical evidence of nerve damage.~~
- 25 12. ~~A rating of impairment of function due to loss of range of motion must be based on~~
26 ~~objective medical evidence of structural damage to a joint or loss of motor function.~~
- 27 13. ~~An injured employee is not entitled to a permanent impairment award due solely to~~
28 ~~pain.~~
- 29 14. 9. If an employee dies, the right to any compensation payable pursuant to an
30 impairment evaluation previously requested by the employee ~~under this section~~
31 subsection 3, which remains unpaid on the date of the employee's death, survives

1 and passes to the employee's dependent spouse, minor children, parents, or
2 estate, in that order. If the employee dies, only those findings of impairment ~~that~~
3 which are objectively verifiable such as values for surgical procedures and
4 amputations may be considered in a rating for impairment. Impairment findings
5 not supported by objectively verifiable evidence may not be included in a rating for
6 impairment. The deceased employee's dependents or representatives shall
7 request an impairment award under this subsection within one year from the date
8 of death of the employee.

9 ~~45.~~ 10. If the injury causes permanent impairment, the award must be determined based
10 on the percentage the of whole body impairment bears to total impairment must be
11 ~~determined~~ in accordance with ~~the first applicable whole body impairment the~~
12 following schedule:

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| 13 | For one to fifteen percent impairment | 0 weeks |
| 14 | For sixteen percent impairment | 5 <u>10</u> weeks |
| 15 | For seventeen percent impairment | 5 <u>10</u> weeks |
| 16 | For eighteen percent impairment | 40 <u>15</u> weeks |
| 17 | For nineteen percent impairment | 40 <u>15</u> weeks |
| 18 | For twenty percent impairment | 45 <u>20</u> weeks |
| 19 | For twenty-one percent impairment | 45 <u>20</u> weeks |
| 20 | For twenty-two percent impairment | 20 <u>25</u> weeks |
| 21 | For twenty-three percent impairment | 20 <u>25</u> weeks |
| 22 | For twenty-four percent impairment | 20 <u>30</u> weeks |
| 23 | For twenty-five percent impairment | 25 <u>30</u> weeks |
| 24 | For twenty-six percent impairment | 30 <u>35</u> weeks |
| 25 | For twenty-seven percent impairment | 35 weeks |
| 26 | For twenty-eight percent impairment | 40 weeks |
| 27 | For twenty-nine percent impairment | 45 weeks |
| 28 | For thirty percent impairment | 50 weeks |
| 29 | For thirty-one percent impairment | 60 weeks |
| 30 | For thirty-two percent impairment | 70 weeks |
| 31 | For thirty-three percent impairment | 80 weeks |

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| 1 | For thirty-four percent impairment | 90 weeks |
| 2 | For thirty-five percent impairment | 100 weeks |
| 3 | For thirty-six percent impairment | 110 weeks |
| 4 | For thirty-seven percent impairment | 120 weeks |
| 5 | For thirty-eight percent impairment | 130 weeks |
| 6 | For thirty-nine percent impairment | 140 weeks |
| 7 | For forty percent impairment | 150 weeks |
| 8 | For forty-one percent impairment | 160 weeks |
| 9 | For forty-two percent impairment | 170 weeks |
| 10 | For forty-three percent impairment | 180 weeks |
| 11 | For forty-four percent impairment | 190 weeks |
| 12 | For forty-five percent impairment | 200 weeks |
| 13 | For forty-six percent impairment | 210 weeks |
| 14 | For forty-seven percent impairment | 220 weeks |
| 15 | For forty-eight percent impairment | 230 weeks |
| 16 | For forty-nine percent impairment | 240 weeks |
| 17 | For fifty percent impairment | 250 weeks |
| 18 | For fifty-one percent impairment | 265 weeks |
| 19 | For fifty-two percent impairment | 280 weeks |
| 20 | For fifty-three percent impairment | 295 weeks |
| 21 | For fifty-four percent impairment | 310 weeks |
| 22 | For fifty-five percent impairment | 325 weeks |
| 23 | For fifty-six percent impairment | 340 weeks |
| 24 | For fifty-seven percent impairment | 355 weeks |
| 25 | For fifty-eight percent impairment | 370 weeks |
| 26 | For fifty-nine percent impairment | 385 weeks |
| 27 | For sixty percent impairment | 400 weeks |
| 28 | For sixty-one percent impairment | 415 weeks |
| 29 | For sixty-two percent impairment | 430 weeks |
| 30 | For sixty-three percent impairment | 445 weeks |
| 31 | For sixty-four percent impairment | 460 weeks |

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| 1 | For sixty-five percent impairment | 475 weeks |
| 2 | For sixty-six percent impairment | 490 weeks |
| 3 | For sixty-seven percent impairment | 505 weeks |
| 4 | For sixty-eight percent impairment | 520 weeks |
| 5 | For sixty-nine percent impairment | 535 weeks |
| 6 | For seventy percent impairment | 550 weeks |
| 7 | For seventy-one percent impairment | 565 weeks |
| 8 | For seventy-two percent impairment | 580 weeks |
| 9 | For seventy-three percent impairment | 595 weeks |
| 10 | For seventy-four percent impairment | 610 weeks |
| 11 | For seventy-five percent impairment | 625 weeks |
| 12 | For seventy-six percent impairment | 640 weeks |
| 13 | For seventy-seven percent impairment | 655 weeks |
| 14 | For seventy-eight percent impairment | 670 weeks |
| 15 | For seventy-nine percent impairment | 685 weeks |
| 16 | For eighty percent impairment | 700 weeks |
| 17 | For eighty-one percent impairment | 715 weeks |
| 18 | For eighty-two percent impairment | 730 weeks |
| 19 | For eighty-three percent impairment | 745 weeks |
| 20 | For eighty-four percent impairment | 760 weeks |
| 21 | For eighty-five percent impairment | 775 weeks |
| 22 | For eighty-six percent impairment | 790 weeks |
| 23 | For eighty-seven percent impairment | 805 weeks |
| 24 | For eighty-eight percent impairment | 820 weeks |
| 25 | For eighty-nine percent impairment | 835 weeks |
| 26 | For ninety to one hundred percent impairment | 1000 weeks |
| 27 | 46. <u>11.</u> An amputation of a finger or toe at the level of the distal interphalangeal joint or | |
| 28 | proximal to that joint, or the thumb or the great toe at the interphalangeal joint or | |
| 29 | proximal to that joint, which is determined by the American medical association's | |
| 30 | "Guides to the Evaluation of Permanent Impairment" to result in a whole body | |

1 impairment of less than sixteen percent is payable as a sixteen percent
2 impairment.

3 ~~47.~~ 12. If there is a medical dispute regarding the percentage of an injured employee's
4 permanent impairment ~~is disputed~~, all relevant medical evidence must be
5 submitted to an independent doctor who has not treated the employee and who
6 has not been consulted by the bureau in relation to the injury upon which the
7 impairment is based. The bureau shall establish ~~a comprehensive list~~ lists of
8 doctors who are ~~medical specialists within the state~~ qualified by their training,
9 experience, and area of practice to rate permanent impairments caused by various
10 types of injuries. The bureau shall define, by rule, the process by which the
11 bureau and the injured employee choose an independent doctor or doctors to
12 review a disputed permanent impairment evaluation or rating. The decision of the
13 independent doctor or doctors chosen under this process is presumptive evidence
14 of the degree of permanent impairment of the employee which can only be
15 rebutted by clear and convincing evidence. This subsection does not impose
16 liability on the bureau for an impairment award for a rating of impairment for a body
17 part or condition the bureau has not determined to be compensable as a result of
18 the injury. The employee bears the expense of witness fees of the independent
19 doctor or doctors if the employee disputes the findings of the independent doctor
20 or doctors.

21 ~~48.~~ 13. ~~The bureau shall establish, by rule, a reasonable hourly rate and a maximum fee~~
22 ~~to compensate an employee's attorney for legal services rendered as a result of~~
23 ~~the award or denial of compensation for permanent impairment~~. An attorney's fees
24 are not payable unless there is a bona fide dispute as to the percentage of the
25 employee's permanent impairment or unless there is a dispute as to the
26 employee's eligibility for an award for permanent partial impairment. An attorney's
27 fees payable in connection with a permanent impairment dispute may not exceed
28 twenty percent of the additional amount awarded upon final resolution of the
29 dispute, subject to the maximum fees established pursuant to section 65-02-08.

30 ~~49.~~ 14. An attorney may not seek or obtain from an employee through a contingent fee
31 arrangement, or on a percentage basis, costs or fees payable in connection with

1 the award or denial of compensation for permanent impairment. A permanent
2 impairment award is exempt from the claims of creditors, including an employee's
3 attorney, except as provided by section 65-05-29.

4 **SECTION 3. PERMANENT IMPAIRMENT AWARDS STUDY.** During the 1999-2000
5 interim, the bureau shall study the awards provided to injured employees with permanent
6 impairments caused by compensable work injuries. The study must identify the advantages
7 and disadvantages of the current system and of any proposed alternate system. The study
8 must include recommendations on whether changes are needed and the cost of any proposed
9 changes. Before the 2001 legislative session, the bureau shall report the results of the study to
10 an interim committee identified by the legislative council.

11 **SECTION 4. EFFECTIVE DATE.** Sections 1 and 2 of this Act apply to all impairment
12 evaluations performed after July 31, 1999, regardless of the date of injury or date of claim filing.