

**HOUSE BILL NO. 1271**

Introduced by

Representatives M. Nelson, Adams, Ista, Schneider

Senator Mathern

1 A BILL for an Act to create and enact a new section to chapter 65-05 of the North Dakota  
2 Century Code, relating to employer immunity; to amend and reenact subsection 11 of section  
3 65-01-02 of the North Dakota Century Code, relating to the definition of a compensable injury;  
4 to provide for retroactive application; and to declare an emergency.

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

6 **SECTION 1. AMENDMENT.** Subsection 11 of section 65-01-02 of the North Dakota Century  
7 Code is amended and reenacted as follows:

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

11 a. The term includes:

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

16 (2) An injury to artificial members.

17 (3) Injuries due to heart attack or other heart-related disease, stroke, and  
18 physical injury caused by mental stimulus, but only when caused by the  
19 employee's employment with reasonable medical certainty, and only when it  
20 is determined with reasonable medical certainty that unusual stress is at  
21 least fifty percent of the cause of the injury or disease as compared with all  
22 other contributing causes combined. Unusual stress means stress greater  
23 than the highest level of stress normally experienced or anticipated in that  
24 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 ~~pre-exist the workwork-related injury. The term includes a mental or~~  
11 ~~psychological condition caused by a single work-related traumatic event, a~~  
12 ~~series of work-related traumatic events, or a period of high work-related~~  
13 ~~stress or anxiety likely to result in injury.~~
- 14 b. The term does not include:
- 15 (1) Ordinary diseases of life to which the general public outside of employment  
16 is exposed or preventive treatment for communicable diseases, except that  
17 the organization may pay for preventive treatment for a health care provider  
18 as defined in section 23-07.5-01, firefighter, peace officer, correctional  
19 officer, court officer, law enforcement officer, emergency medical technician,  
20 or an individual trained and authorized by law or rule to render emergency  
21 medical assistance or treatment that is exposed to a bloodborne pathogen  
22 as defined in section 23-07.5-01 occurring in the course of employment and  
23 for exposure to rabies occurring in the course of employment.
- 24 (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an  
25 injury caused by the employee's willful intention to injure or kill another.
- 26 (3) Any injury caused by the use of intoxicants or the illegal use of controlled  
27 substances.
- 28 (4) An injury that arises out of an altercation in which the injured employee is an  
29 aggressor. This paragraph does not apply to public safety employees,  
30 including law enforcement officers or private security personnel who are

1 required to engage in altercations as part of their job duties if the altercation  
2 arises out of the performance of those job duties.

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

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

7 (7) Injuries attributable to a pre-existing injury, disease, or other condition,  
8 including when the employment acts as a trigger to produce symptoms in  
9 the pre-existing injury, disease, or other condition unless the employment  
10 substantially accelerates its progression or substantially worsens its  
11 severity. Pain is a symptom and may be considered in determining whether  
12 there is a substantial acceleration or substantial worsening of a pre-existing  
13 injury, disease, or other condition, but pain alone is not a substantial  
14 acceleration or a substantial worsening.

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

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

20 ~~(10) A mental injury arising from mental stimulus.~~

21 **SECTION 2.** A new section to chapter 65-05 of the North Dakota Century Code is created  
22 and enacted as follows:

23 **Employer immunity.**

24 1. As used in this section, "COVID-19" means:

25 a. Severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2 and  
26 any mutation or viral fragments of SARS-CoV-2; and

27 b. Any disease or condition caused by severe acute respiratory syndrome  
28 coronavirus 2 identified as SARS-CoV-2.

29 2. Notwithstanding any other provision of law, an employer is immune from civil liability  
30 for an act or omission resulting in a compensable injury to an employee sustained  
31 from exposure or potential exposure to COVID-19 if the act or omission was in

1           substantial compliance or was consistent with a federal or state statute, regulation, or  
2           order, or a municipal ordinance or mayoral order or directive related to COVID-19  
3           which was applicable to the employer or activity at issue at the time of the alleged  
4           exposure or potential exposure.

5           **SECTION 3. RETROACTIVE APPLICATION.** This Act applies retroactively to a claim for  
6 workers' compensation benefits filed after March 13, 2020, regardless of date of injury and  
7 applies to all civil actions filed after March 13, 2020.

8           **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.