

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1055
(Legislative Management)
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent partial impairment benefits; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-12.2. Permanent impairment - Compensation - Time paid.

A permanent impairment is not intended to be a periodic payment and is not intended to reimburse the employee for specific expenses related to the injury or wage loss. If a compensable injury causes permanent impairment, the organization shall determine a permanent impairment award on the following terms:

- ~~1.~~ If the compensable injury causes permanent impairment and the permanent impairment award payable by the organization is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty five. A permanent impairment award payable by the organization under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the organization. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The organization shall adopt rules implementing any necessary procedures for award payments made under this subsection.
- ~~2.~~ The organization shall calculate the amount of the award by multiplying ~~thirty-three and one-third~~thirty-five percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the permanent impairment multiplier specified in subsection 10.
- ~~3.2.~~ The organization shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the organization has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.
- ~~4.3.~~ An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and which were caused by the compensable injury. The organization may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions, even if these conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.
- ~~5.4.~~ An injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the organization the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. If the report states that the employee is potentially

eligible for a permanent impairment award, the organization shall conduct a review and provide notice to the employee as provided by subsection 32. If the injured employee files a timely written request under subsection 32, the organization shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.

- 6-5. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the ~~fifth~~sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Subject to rules adopted under this subsection, impairments must be evaluated under the ~~fifth~~sixth edition of the guides.
- 7-6. The organization shall deduct, on a ~~whole body~~permanent impairment multiplier basis, from an award for impairment under this section, any previous impairment award ~~for that same member or body part~~ under the workers' compensation laws of any jurisdiction.
- 8-7. An injured employee is not entitled to a permanent impairment award due solely to pain.
- 8. Other than an award identified in subsection 11, an award may not be issued unless specifically identified and quantified within the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment".
- 9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under subsection 32, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
- 10. If the injury causes permanent impairment, the award must be determined based on the percentage of whole body impairment in accordance with the following schedule:

For one to fifteen <u>thirteen</u> percent impairment	permanent impairment multiplier of 0
For <u>fourteen</u> percent impairment	<u>permanent impairment multiplier of 10</u>
For <u>fifteen</u> percent impairment	<u>permanent impairment multiplier of 10</u>
For sixteen percent impairment	permanent impairment multiplier of 40 <u>15</u>
For seventeen percent impairment	permanent impairment multiplier of 40 <u>15</u>
For eighteen percent impairment	permanent impairment multiplier of 45 <u>20</u>
For nineteen percent impairment	permanent impairment multiplier of 45 <u>20</u>
For twenty percent impairment	permanent impairment multiplier of 20 <u>25</u>
For twenty-one percent impairment	permanent impairment multiplier of 20 <u>25</u>
For twenty-two percent impairment	permanent impairment multiplier of 25 <u>30</u>

For twenty-three percent impairment	permanent impairment multiplier of 25 <u>30</u>
For twenty-four percent impairment	permanent impairment multiplier of 30
For twenty-five percent impairment	permanent impairment multiplier of 30 <u>35</u>
For twenty-six percent impairment	permanent impairment multiplier of 35
For twenty-seven percent impairment	permanent impairment multiplier of 35
For twenty-eight percent impairment	permanent impairment multiplier of 40
For twenty-nine percent impairment	permanent impairment multiplier of 45
For thirty percent impairment	permanent impairment multiplier of 50
For thirty-one percent impairment	permanent impairment multiplier of 60
For thirty-two percent impairment	permanent impairment multiplier of 70
For thirty-three percent impairment	permanent impairment multiplier of 80
For thirty-four percent impairment	permanent impairment multiplier of 90
For thirty-five percent impairment	permanent impairment multiplier of 100
For thirty-six percent impairment	permanent impairment multiplier of 110
For thirty-seven percent impairment	permanent impairment multiplier of 120
For thirty-eight percent impairment	permanent impairment multiplier of 130
For thirty-nine percent impairment	permanent impairment multiplier of 140
For forty percent impairment	permanent impairment multiplier of 150
For forty-one percent impairment	permanent impairment multiplier of 160
For forty-two percent impairment	permanent impairment multiplier of 170
For forty-three percent impairment	permanent impairment multiplier of 180
For forty-four percent impairment	permanent impairment multiplier of 190
For forty-five percent impairment	permanent impairment multiplier of 200
For forty-six percent impairment	permanent impairment multiplier of 210
For forty-seven percent impairment	permanent impairment multiplier of 220
For forty-eight percent impairment	permanent impairment multiplier of 230
For forty-nine percent impairment	permanent impairment multiplier of 240
For fifty percent impairment	permanent impairment multiplier of 260

For fifty-one percent impairment	permanent impairment multiplier of 280
For fifty-two percent impairment	permanent impairment multiplier of 300
For fifty-three percent impairment	permanent impairment multiplier of 320
For fifty-four percent impairment	permanent impairment multiplier of 340
For fifty-five percent impairment	permanent impairment multiplier of 360
For fifty-six percent impairment	permanent impairment multiplier of 380
For fifty-seven percent impairment	permanent impairment multiplier of 400
For fifty-eight percent impairment	permanent impairment multiplier of 420
For fifty-nine percent impairment	permanent impairment multiplier of 440
For sixty percent impairment	permanent impairment multiplier of 465
For sixty-one percent impairment	permanent impairment multiplier of 490
For sixty-two percent impairment	permanent impairment multiplier of 515
For sixty-three percent impairment	permanent impairment multiplier of 540
For sixty-four percent impairment	permanent impairment multiplier of 565
For sixty-five percent impairment	permanent impairment multiplier of 590
For sixty-six percent impairment	permanent impairment multiplier of 615
For sixty-seven percent impairment	permanent impairment multiplier of 640
For sixty-eight percent impairment	permanent impairment multiplier of 665
For sixty-nine percent impairment	permanent impairment multiplier of 690
For seventy percent impairment	permanent impairment multiplier of 715
For seventy-one percent impairment	permanent impairment multiplier of 740
For seventy-two percent impairment	permanent impairment multiplier of 765
For seventy-three percent impairment	permanent impairment multiplier of 790
For seventy-four percent impairment	permanent impairment multiplier of 815
For seventy-five percent impairment	permanent impairment multiplier of 840
For seventy-six percent impairment	permanent impairment multiplier of 865
For seventy-seven percent impairment	permanent impairment multiplier of 890
For seventy-eight percent impairment	permanent impairment multiplier of 915

For seventy-nine percent impairment	permanent impairment multiplier of 940
For eighty percent impairment	permanent impairment multiplier of 965
For eighty-one percent impairment	permanent impairment multiplier of 990
For eighty-two percent impairment	permanent impairment multiplier of 1015
For eighty-three percent impairment	permanent impairment multiplier of 1040
For eighty-four percent impairment	permanent impairment multiplier of 1065
For eighty-five percent impairment	permanent impairment multiplier of 1090
For eighty-six percent impairment	permanent impairment multiplier of 1115
For eighty-seven percent impairment	permanent impairment multiplier of 1140
For eighty-eight percent impairment	permanent impairment multiplier of 1165
For eighty-nine percent impairment	permanent impairment multiplier of 1190
For ninety percent impairment	permanent impairment multiplier of 1215
For ninety-one percent impairment	permanent impairment multiplier of 1240
For ninety-two percent impairment	permanent impairment multiplier of 1265
For ninety-three percent impairment	permanent impairment multiplier of 1290
For ninety-four percent impairment	permanent impairment multiplier of 1320
For ninety-five percent impairment	permanent impairment multiplier of 1350
For ninety-six percent impairment	permanent impairment multiplier of 1380
For ninety-seven percent impairment	permanent impairment multiplier of 1410
For ninety-eight percent impairment	permanent impairment multiplier of 1440
For ninety-nine percent impairment	permanent impairment multiplier of 1470
For one hundred percent impairment	permanent impairment multiplier of 1500

11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the permanent impairment multiplier identified in the following schedule, the organization shall pay an award equal to the permanent impairment multiplier set out in the following schedule:

For amputation of a thumb	permanent impairment multiplier of 65
For amputation of the second or distal	permanent impairment

phalanx of the thumb	multiplier of 28
For amputation of the first finger	permanent impairment multiplier of 40
For amputation of the middle or second phalanx of the first finger	permanent impairment multiplier of 28
For amputation of the third or distal phalanx of the first finger	permanent impairment multiplier of 22
For amputation of the second finger	permanent impairment multiplier of 30
For amputation of the middle or second phalanx of the second finger	permanent impairment multiplier of 22
For amputation of the third or distal phalanx of the second finger	permanent impairment multiplier of 14
For amputation of the third finger	permanent impairment multiplier of 20
For amputation of the middle or second phalanx of the third finger	permanent impairment multiplier of 16
For amputation of the fourth finger	permanent impairment multiplier of 16
For amputation of the middle or second phalanx of the fourth finger	permanent impairment multiplier of 12
For amputation of the leg at the hip	permanent impairment multiplier of 234
For amputation of the leg at or above the knee	permanent impairment multiplier of 195
For amputation of the leg at or above the ankle	permanent impairment multiplier of 150
For amputation of a great toe	permanent impairment multiplier of 30
For amputation of the second or distal phalanx of the great toe	permanent impairment multiplier of 18
For amputation of any other toe	permanent impairment multiplier of 12
For loss of an eye	permanent impairment multiplier of 150
For the loss of vision of an eye which equals or exceeds 20/200 corrected	permanent impairment multiplier of 100

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the organization shall issue an impairment award based on the greater of the permanent impairment multiplier allowed for the combined rating established under the ~~fifth~~sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the permanent impairment multiplier set forth in this subsection.

12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment, all relevant medical evidence must be submitted to an independent doctor who has not treated the employee and who has not been consulted by the organization in relation to the injury upon which the impairment is based. The organization shall establish ~~lists a list~~ a list of doctors who ~~are qualified by the doctor's have the training, and experience, and area of practice to rate necessary to conduct an evaluation of permanent impairments caused by various types of injuries~~ impairment and to apply the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". The organization shall define, by rule, the process by which the organization ~~and the injured employees~~ shall choose

an independent doctor or doctors to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor or doctors chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the organization for an impairment award for a rating of impairment for a body part or condition the organization has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor or doctors if the employee disputes the findings of the independent doctor or doctors.

13. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.
14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.
15. If an injured employee qualifies for an additional award and the prior award was based upon the number of weeks, the impairment multiplier must be used to compare against the prior award of weeks in determining any additional award.

SECTION 2. APPLICATION. This Act applies to permanent partial impairment evaluations performed on or after the effective date of this Act.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1055.

House Vote: Yeas 85 Nays 5 Absent 4

Senate Vote: Yeas 35 Nays 11 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State