

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

SENATE BILL NO. 2089
(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact section 65-01-11 of the North Dakota Century Code, relating to burden of proof in compensation matters; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-11 of the North Dakota Century Code is amended and reenacted as follows:

65-01-11. Burden of proof in compensation matters - Death certificate.

If the organization or an employer claims that an employee is not entitled to the benefits of the North Dakota workforce safety and insurance law because the employee's injury was caused by the employee's willful intention to cause self-injury, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving the exemption or forfeiture is upon the organization or upon the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in ~~49 CFR 383.54~~the Code of Federal Regulations in effect on August 1, 2011, or a level of an illegally used controlled substance sufficient to cause impairment found by a test ~~required~~conducted by a physician, qualified technician, chemist, or registered nurse ~~and performed as required by the United States secretary of transportation under 49 CFR part 40,~~ at or above the cutoff level in ~~part 40~~the Code of Federal Regulations in effect on August 1, 2011, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or an employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated by company policy, the employee forfeits all entitlement to workforce safety and insurance benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to benefits. If a claim for death benefits is filed, the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

SECTION 2. APPLICATION. This Act applies to all claims regardless of date of injury.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2089.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

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