

Fifty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2125

Introduced by

Industry, Business and Labor Committee

(At the request of the Workers Compensation Bureau)

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 additional benefits for recipients of workers' compensation disability  
3 benefits; to amend and reenact section 65-05-09.3 of the North Dakota Century Code, relating  
4 to discontinuance of workers' compensation benefits upon retirement; to provide for retroactive  
5 application; and to declare an emergency.

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

7 **SECTION 1.** A new section to chapter 65-05 of the North Dakota Century Code is  
8 created and enacted as follows:

9 **Additional benefit payable.** If an injured employee's benefits cease under  
10 subsection 2 of section 65-05-09.3, the bureau shall pay to that employee every twenty-eight  
11 days a benefit based on the length of time the injured employee received disability benefits  
12 during the term of that claim. The bureau shall pay the injured employee's additional benefits  
13 until the employee's death or for a period of time not to exceed the total length of time the  
14 employee received disability benefits under sections 65-05-08, 65-05-08.1, 65-05-09, and  
15 65-05-10, and a vocational rehabilitation allowance under chapter 65-05.1, for that claim,  
16 whichever occurs first. The benefit is based on the disability benefit that was discontinued  
17 under subsection 2 of section 65-05-09.3, which is the injured employee's compensation rate  
18 less any applicable social security offset. The percentage of that final payment payable as the  
19 additional benefit is:

20 <u>At least 1 year and less than 3 years of disability</u>	<u>5 percent of weekly benefit</u>
21 <u>At least 3 years and less than 5 years of disability</u>	<u>10 percent of weekly benefit</u>
22 <u>At least 5 years and less than 7 years of disability</u>	<u>15 percent of weekly benefit</u>
23 <u>At least 7 years and less than 9 years of disability</u>	<u>20 percent of weekly benefit</u>
24 <u>At least 9 years and less than 11 years of disability</u>	<u>25 percent of weekly benefit</u>

At least 11 years and less than 13 years of disability	30 percent of weekly benefit
At least 13 years and less than 15 years of disability	35 percent of weekly benefit
At least 15 years and less than 17 years of disability	40 percent of weekly benefit
At least 17 years and less than 20 years of disability	45 percent of weekly benefit
Twenty or more years of disability	50 percent of weekly benefit.

However, the bureau shall pay to an injured employee who has been determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee, equal to one hundred percent of the final payment of the disability benefit that was discontinued under subsection 2 or 3 of section 65-05-09.3.

**SECTION 2. AMENDMENT.** Section 65-05-09.3 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-09.3. Retirement presumption - Termination of benefits upon retirement.**

1. An employee who has retired or voluntarily withdrawn from the labor force and who ~~is, at that time, was~~ not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits, or a rehabilitation allowance from the bureau is presumed retired from the labor market. The presumption may be rebutted by a preponderance of the evidence; however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement.
2. An injured employee ~~who is receiving permanent total, temporary total, or temporary partial disability benefits, or rehabilitation benefits, and who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who is at least sixty five years old and is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who attains retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits is considered to be retired.~~ The bureau may not pay any ~~permanent total, temporary total, or temporary partial~~ disability benefits, rehabilitation benefits, or ~~supplemental~~ supplementary benefits to an employee

1 who is considered retired; however, the ~~bureau is liable~~ employee remains eligible  
2 for payment of medical benefits and, permanent partial impairment benefits, and  
3 the additional benefit payable under section 1 of this Act. An employee who is  
4 determined to be catastrophically injured as defined by subdivision c of  
5 subsection 2 of section 65-05.1-06.1 is not subject to this section.

- 6 3. The bureau retains liability for disability benefits, rehabilitation benefits, permanent  
7 partial impairment benefits, and medical benefits for an injured employee who is  
8 eligible to receive receiving social security retirement benefits or other retirement  
9 benefits in lieu of social security; retirement benefits or who attains retirement age  
10 for social security retirement benefits unless the employee is not eligible to receive  
11 social security retirement benefits or other benefits in lieu of social security  
12 retirement benefits and who is gainfully employed; and who suffers an injury  
13 arising out of and in the course of that employment. The bureau may not pay  
14 disability or rehabilitation benefits under this subsection for more than three years,  
15 subject to section 65-05-09.2, for injuries occurring after the effective date for this  
16 Act.

- 17 4. This section applies to all persons who ~~retire or become eligible for~~ begin receiving  
18 social security retirement benefits or other retirement benefits in lieu of social  
19 security retirement benefits, or who attain retirement age for social security  
20 retirement benefits unless the employee proves the employee is not eligible to  
21 receive social security retirement benefits or other benefits in lieu of social security  
22 retirement benefits, after July 31, 1995.

23 **SECTION 3. RETROACTIVE APPLICATION.** This Act applies retroactively to  
24 August 1, 1995.

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