

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1247

Introduced by

Representatives Amerman, J. Kelsh, Potter

Senators Dotzenrod, Potter

1 A BILL for an Act to amend and reenact subsection 10 of section 65-05-08, subsection 2 of
2 section 65-05-09, section 65-05-10, and subsection 2 of section 65-05-17 of the North Dakota
3 Century Code, relating to workers' compensation dependency allowances.

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

5 **SECTION 1. AMENDMENT.** Subsection 10 of section 65-05-08 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 10. The organization shall pay to an employee receiving disability benefits a
8 dependency allowance for each child of the employee at the rate of ~~ten~~ thirty
9 dollars per week per child. Effective ~~July 1, 1989~~ August 1, 2009, this rate must be
10 paid to each eligible employee regardless of the date of injury.

11 **SECTION 2. AMENDMENT.** Subsection 2 of section 65-05-09 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 2. The disability benefit ~~or the combined disability benefit and dependency award~~
14 may not exceed the weekly wage of the employee after deductions for social
15 security and federal income tax.

16 **SECTION 3. AMENDMENT.** Section 65-05-10 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **65-05-10. Partial disability - Weekly benefit.** If the injury causes temporary partial
19 disability resulting in decrease of earning capacity, the disability benefit is sixty-six and
20 two-thirds percent of the difference between the injured employee's average weekly wages
21 before the injury and the employee's wage-earning capacity after the injury in the same or
22 another employment. Partial disability benefits are subject to a maximum of one hundred ten
23 percent of the average weekly wage in the state. The combined partial disability benefits;

1 ~~dependency allowance~~, and postinjury wage-earning capacity may not exceed the preinjury
2 weekly wage of the employee after deductions for social security and federal income tax.

- 3 1. The benefits provided by this section are available to any otherwise eligible worker,
4 providing the loss of earning capacity occurs after July 1, 1989. Partial loss of
5 earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed
6 by the organization.
- 7 2. Benefits must be paid during the continuance of partial disability, not to exceed a
8 period of five years. The organization may waive the five-year limit on the duration
9 of partial disability benefits in cases of catastrophic injury as defined in section
10 65-05.1-06.1 or when the injured worker is working and has long-term restrictions
11 verified by clear and convincing objective medical and vocational evidence that
12 limits the injured worker to working less than twenty-eight hours per week because
13 of the compensable work injury. This subsection is effective for partial loss of
14 earnings capacity occurring after June 30, 1991.
- 15 3. The employee's earnings capacity may be established by expert vocational
16 evidence of a capacity to earn in the statewide job pool where the worker lives.
17 Actual postinjury earnings are presumptive evidence of earnings capacity if the job
18 employs the employee to full work capacity in terms of hours worked per week, and
19 if the job is in a field related to the employee's transferable skills. The presumption
20 may be rebutted by competent evidence from a vocational expert that the
21 employee's actual earnings do not fairly reflect the employee's earnings capacity in
22 the statewide job pool, considering the employee's capabilities, education,
23 experience, and skills.

24 **SECTION 4. AMENDMENT.** Subsection 2 of section 65-05-17 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 2. To each child of the deceased employee, the amount of ~~ten~~ thirty dollars per week.
27 This rate must be paid to each eligible child regardless of the date of death. The
28 organization may pay the benefit directly to the child of the deceased employee or
29 to the surviving parent or guardian of the child. Dependency allowance may not be
30 reduced by the percentage of aggravation.