

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO.

Introduced by

Representative S. Meyer

1 A BILL for an Act to amend and reenact section 65-05-09.1 of the North Dakota Century Code,  
2 relating to workers' compensation social security offset.

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

4 **SECTION 1. AMENDMENT.** Section 65-05-09.1 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **65-05-09.1. Social security offset.** When an injured employee, or spouse or  
7 dependent of an injured employee, is eligible for and is receiving permanent total or temporary  
8 total disability benefits under section 65-05-09, and is also eligible for, is receiving, or will  
9 receive, benefits under title II of the Social Security Act [42 U.S.C. 423], the aggregate benefits  
10 payable under section 65-05-09 must be reduced, ~~but not below zero,~~ by an amount equal as  
11 nearly as practicable to the lesser of: one-half of such federal social security benefit or the  
12 amount appropriate to ensure the combined amount of the workers' compensation and social  
13 security benefits does not exceed eighty percent of the injured employee's average current  
14 earnings. Under this section, the aggregate benefits payable under section 65-05-09 may not  
15 be reduced below zero and the combined payments after the reduction may not be less than  
16 the amount of total social security benefits before the reduction. The federal benefit, or primary  
17 insurance amount, must be determined by the social security administration. The amount to be  
18 offset must equal the primary insurance amount rounded to the next lowest dollar less credit for  
19 either the entire amount of attorney's fees and costs, or the fees and costs paid to an  
20 authorized representative of the employee as allowed by the social security administration,  
21 withheld from past-due social security benefits or paid directly by the claimant for representation  
22 before the social security administration. The amount of the offset computed by the  
23 organization initially must remain the same throughout the period of eligibility and may not be  
24 affected by any increase or decrease in federal benefits.

1 Any injured employee, or dependent of an injured employee, receiving permanent total  
2 or temporary total disability benefits under section 65-05-09 and whose benefits are offset as  
3 provided herein, is not eligible for any escalation of benefits which would adversely affect the  
4 organization's right to offset workforce safety and insurance benefits against social security  
5 benefits, as provided for in this chapter. This offset will become effective on January 1, 1980,  
6 provided that it meets the criteria necessary to allow states to offset federal benefits under  
7 title II of the Social Security Act [42 U.S.C. 424a]. Providing further that:

- 8 1. If the receipt of social security benefits results in an overpayment of temporary or  
9 permanent total disability benefits by the organization, a refund of any  
10 overpayment must be made by the injured worker or that overpayment must be  
11 taken from future temporary total or permanent total disability benefits or  
12 permanent partial impairment awards, on the current claim or any future claim filed,  
13 at a recovery rate to be determined by the organization.
- 14 2. If a claim has been accepted on an aggravation basis and the injured worker is  
15 eligible for social security benefits, the organization's offset must be proportionally  
16 calculated.
- 17 3. If any person described in this section refuses to authorize the release of  
18 information concerning the amount of benefits payable under the Social Security  
19 Act, the organization's estimate of the amount is deemed to be correct until the  
20 actual amount is established and no adjustment may be made for any period of  
21 time covered by the refusal.