

Sixty-first  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1064

Introduced by

Legislative Council

(Workers' Compensation Review Committee)

1 A BILL for an Act to amend and reenact sections 65-05-09, 65-05.2-01, and 65-05.2-02 of the  
2 North Dakota Century Code, relating to cost-of-living adjustments for workers' compensation  
3 total disability benefits; to provide for application; to provide an effective date; and to declare an  
4 emergency.

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

6 **SECTION 1. AMENDMENT.** Section 65-05-09 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **65-05-09. Temporary total or permanent total disability - Weekly and aggregate**  
9 **benefit.** If an injury causes temporary total or permanent total disability, the fund shall pay to  
10 the disabled employee during that disability a weekly benefit equal to sixty-six and two-thirds  
11 percent of the gross weekly wage of the employee, subject to a minimum of sixty percent and a  
12 maximum of one hundred ten percent of the average weekly wage in the state. If an employee  
13 is disabled due to an injury, that employee's benefits will be based upon the employee's wage  
14 and the organization benefit rates in effect on the date of first disability.

- 15 1. If an employee suffers disability but is able to return to employment for a period of  
16 ~~twelve~~ three consecutive calendar months or more, that employee's benefits will  
17 be based upon the wage in effect at the time of the recurrence of the disability or  
18 upon the wage that employee received prior to the injury, whichever is higher. The  
19 organization benefit rates are those in effect at the time of that recurrence.
- 20 2. The disability benefit or the combined disability benefit and dependency award  
21 may not exceed the weekly wage of the employee after deductions for social  
22 security and federal income tax.
- 23 3. When an employee is permanently and totally disabled, must be maintained in a  
24 nursing home or similar facility, and has no dependent parent, spouse, or children,

1 as much of that employee's weekly benefit as is necessary may be used by the  
2 organization to help defray the cost of the nursing home care.

3 **SECTION 2. AMENDMENT.** Section 65-05.2-01 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **65-05.2-01. Eligibility for supplementary benefits.**

- 6 1. For claims filed before January 1, 2006, a workforce safety and insurance claimant  
7 who is receiving temporary total disability benefits, permanent total disability  
8 benefits, or death benefits, and who has been receiving disability or death benefits  
9 for a period of ~~seven~~ three consecutive years is eligible for supplementary  
10 benefits. Eligibility for supplementary benefits under this subsection lasts as long  
11 as the claimant is entitled to temporary total disability benefits, permanent total  
12 disability benefits, or death benefits.
- 13 2. For claims filed after December 31, 2005, a workforce safety and insurance  
14 claimant who is receiving permanent total disability benefits or death benefits and  
15 who has been receiving disability or death benefits for a period of at least three  
16 consecutive years is eligible for supplementary benefits. Eligibility for  
17 supplementary benefits under this subsection lasts as long as the claimant is  
18 entitled to permanent total disability benefits or death benefits.

19 **SECTION 3. AMENDMENT.** Section 65-05.2-02 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **65-05.2-02. Supplementary benefits - Amount.**

- 22 1. A claimant whose weekly benefit rate is less than sixty percent of the state's  
23 average weekly wage, who is eligible for supplementary benefits and who is  
24 receiving temporary total disability benefits, permanent total disability benefits, or  
25 death benefits regardless of the date of death, is entitled to receive a weekly  
26 supplementary benefit that, when added to the weekly temporary total disability  
27 benefit, permanent total disability benefit, or death benefit, equals the ratio of that  
28 claimant's weekly benefit to the state's average weekly wage on the date of the  
29 claimant's first disability, times the state's average weekly wage in effect at the  
30 date eligibility for supplementary benefits is achieved. The organization shall  
31 determine on an annual basis, for a claimant who receives a supplementary

1 benefit under this subsection, supplementary benefit increases equal to a  
2 percentage of that claimant's combined weekly benefit. That percentage is equal  
3 to the annual percentage change in the state's average weekly wage. For  
4 purposes of this section, combined weekly benefit means the weekly benefit for  
5 which the claimant is eligible before any applicable social security offset plus the  
6 amount of weekly supplementary benefits for which the claimant is eligible.

7 2. A claimant whose weekly benefit rate is greater than or equal to sixty percent of  
8 the state's average weekly wage, who is eligible for supplementary benefits and  
9 who is receiving temporary total disability benefits, permanent total disability  
10 benefits, or death benefits regardless of the date of death, is entitled to receive a  
11 weekly supplementary benefit equal to a percentage of that claimant's weekly  
12 benefit. That percentage is equal to the annual percentage change in the state's  
13 average weekly wage. The organization shall determine on an annual basis, for  
14 that claimant, supplementary benefit increases equal to a percentage of that  
15 claimant's combined weekly benefit. That percentage is equal to the annual  
16 percentage change in the state's average weekly wage.

17 3. An annual recalculation of supplementary benefits may not result in a rate less  
18 than the previous rate. If a claim has been accepted on an aggravation basis  
19 under section 65-05-15 and the claimant is eligible for supplementary benefits, the  
20 claimant's supplementary benefit must be proportionally calculated.

21 **SECTION 4. APPLICATION.** Sections 2 and 3 of this Act apply to temporary total  
22 disability recipients or permanent total disability recipients who filed a claim before January 1,  
23 2006, and whose first date of eligibility for supplementary benefits under this Act occurs after  
24 June 30, 2009.

25 **SECTION 5. EFFECTIVE DATE.** This Act becomes effective on July 1, 2009.

26 **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.