

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2214

Introduced by

Senators Krebsbach, Klein, Kinnoin

Representatives Boucher, Poolman

1 A BILL for an Act to amend and reenact subsection 3 of section 65-05-08 and sections
2 65-05-09, 65-05-10, and 65-05.2-01 of the North Dakota Century Code, relating to maximum
3 wage-loss benefits payable by the workers compensation bureau and the waiting period for
4 supplementary workers compensation benefits; to provide for a study of long-term benefits; and
5 to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Subsection 3 of section 65-05-08 of the 1997
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 3. Any employee who is eligible for, or receiving disability or rehabilitation benefits
10 under this title shall report any wages earned, from part-time or full-time work from
11 any source. If an employee fails to report wages earned, the employee shall
12 refund to the bureau any disability or vocational rehabilitation benefits overpaid by
13 the bureau for that time period. To facilitate recovery of those benefits, the bureau
14 may offset future benefits payable, under section 65-05-29. If the employee
15 willfully ~~failed~~ fails to report wages earned, the employee is subject to the penalties
16 in section 65-05-33. An employee shall report whether the employee has
17 performed work or received wages. The bureau periodically shall ~~periodically~~
18 provide a form to all injured employees receiving disability or rehabilitation benefits
19 ~~that~~ which the injured employee must complete to retain eligibility for further
20 disability or rehabilitation benefits, regardless of the date of injury or claim filing.
21 The form will advise the injured employee of the possible penalties for failure to
22 report any work or activities as required by this section. An injured employee who
23 is receiving disability or vocational rehabilitation benefits must report any work
24 activities to the bureau whether or not the injured employee receives any wages.

1 An injured employee who is receiving disability or vocational rehabilitation benefits
2 also must report any other activity if the injured employee receives any money,
3 including prize winnings, from undertaking that activity, regardless of expenses or
4 whether there is a net profit. For purposes of this subsection, "work" does not
5 include routine daily activities of self-care or family care, or routine maintenance of
6 the home and yard, and "activities" does not include recreational gaming or
7 passive investment endeavors.

8 **SECTION 2. AMENDMENT.** Section 65-05-09 of the 1997 Supplement to the North
9 Dakota Century Code is amended and reenacted as follows:

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

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

29 **SECTION 3. AMENDMENT.** Section 65-05-10 of the 1997 Supplement to the North
30 Dakota Century Code is amended and reenacted as follows:

1 **65-05-10. Partial disability - Weekly benefit.** If the injury causes temporary partial
2 disability resulting in decrease of earning capacity, the disability benefit is sixty-six and
3 two-thirds percent of the difference between the injured employee's average weekly wages
4 before the injury and the employee's wage earning capacity after the injury in the same or
5 another employment. However, the partial disability benefits ~~plus dependency allowance and~~
6 ~~earning capacity~~ may not exceed ~~the weekly wage of the employee after deductions for social~~
7 ~~security and federal and state income tax~~ benefit rates as defined in section 65-05-09.

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

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

1 **65-05.2-01. Eligibility for supplementary benefits.** A workers' compensation
2 claimant who is receiving permanent total disability benefits, or death benefits, and who has
3 been receiving disability or death benefits for a period of ~~ten~~ seven consecutive years ~~or more~~
4 ~~as of June thirtieth of each year~~ is eligible for supplementary benefits. Eligibility for
5 supplementary benefits ~~starts on July first of each year and~~ lasts for as long as the claimant is
6 entitled to permanent total disability benefits or death benefits.

7 **SECTION 5. LONG-TERM BENEFITS STUDY.** During the 1999-2000 interim, the
8 bureau shall study the benefits available to persons receiving long-term disability or death
9 benefits from the bureau. The study must identify the advantages and disadvantages of the
10 current system, including the current system of supplementary benefits, and of any proposed
11 alternate system. The study must include recommendations on whether changes are needed
12 and the costs of any proposed changes. Before the 2001 legislative session, the bureau shall
13 report to an interim committee identified by the legislative council on the results of the study.

14 **SECTION 6. EFFECTIVE DATE.** Sections 2 and 3 and the reduction in the waiting
15 period in section 4 of this Act are effective for all claims for injuries occurring after July 31,
16 1999. The remainder of section 4 of this Act is effective August 1, 1999, for all claims
17 regardless of the date of injury.