

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2214
(Senators Krebsbach, Klein, Kinnoin)
(Representatives Boucher, Poolman)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

3. Any employee who is eligible for, or receiving disability or rehabilitation benefits under this title shall report any wages earned, from part-time or full-time work from any source. If an employee fails to report wages earned, the employee shall refund to the bureau any disability or vocational rehabilitation benefits overpaid by the bureau for that time period. To facilitate recovery of those benefits, the bureau may offset future benefits payable, under section 65-05-29. If the employee willfully ~~failed~~ fails to report wages earned, the employee is subject to the penalties in section 65-05-33. An employee shall report whether the employee has performed work or received wages. The bureau periodically shall ~~periodically~~ provide a form to all injured employees receiving disability or rehabilitation benefits ~~that which~~ the injured employee must complete to retain eligibility for further disability or rehabilitation benefits, regardless of the date of injury or claim filing. The form will advise the injured employee of the possible penalties for failure to report any work or activities as required by this section. An injured employee who is receiving disability or vocational rehabilitation benefits must report any work activities to the bureau whether or not the injured employee receives any wages. An injured employee who is receiving disability or vocational rehabilitation benefits also must report any other activity if the injured employee receives any money, including prize winnings, from undertaking that activity, regardless of expenses or whether there is a net profit. For purposes of this subsection, "work" does not include routine daily activities of self-care or family care, or routine maintenance of the home and yard, and "activities" does not include recreational gaming or passive investment endeavors.

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

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

1. If an employee suffers disability but is able to return to employment for a period of twelve consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher. The bureau benefit rates are those in effect at the time of that recurrence.

2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the employee after deductions for social security and federal income tax.
3. When an employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that employee's weekly benefit as is necessary may be used by the bureau to help defray the cost of the nursing home care.

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

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

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

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

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2214.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 97 Nays 0 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State