

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

SENATE BILL NO. 2116
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to payment of workers compensation benefits to and scholarships for spouses and dependent children of employees who have died as the result of work-related injuries; to amend and reenact sections 65-05-16, 65-05-17, 65-05-26, and 65-05.2-02 of the North Dakota Century Code, relating to benefits for dependents of employees who have died as a result of work-related injuries; to repeal section 65-05-23 of the North Dakota Century Code, relating to apportionment of benefits in certain death cases; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-16 of the North Dakota Century Code is amended and reenacted as follows:

65-05-16. Death benefits ~~not payable unless death occurs within one year after cessation of disability and six years after injury.~~

1. ~~No~~ The bureau may pay benefits payable under the provisions of this chapter in the case of the death of an employee as the direct result of an injury sustained in the course of the employee's employment ~~shall be paid unless~~ when:
4. ~~a.~~ a. If there has been no disability preceding death, the death occurs within one year after the date of the injury;
2. ~~b.~~ b. If there has been disability preceding death, the death occurs within one year after the cessation of disability resulting from the injury; or
3. ~~c.~~ c. If there has been disability which has continued to the time of death, the death occurs within six years after the date of injury.
4. ~~2.~~ 2. ~~In all events no~~ The bureau may not pay death benefits ~~shall be payable~~ unless a claim is submitted within two years of the death and:
 - a. The death is a direct result of an accepted compensable injury; or
 - b. If no claim was submitted by the deceased, the claim for death benefits is submitted within two years of the injury.

SECTION 2. AMENDMENT. Section 65-05-17 of the North Dakota Century Code is amended and reenacted as follows:

65-05-17. Weekly compensation allowances for death claims. If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified, a weekly compensation:

1. To the decedent's spouse or to the guardian of the ~~orphaned child or~~ children of the decedent, an amount equal to sixty-six and two-thirds percent of the weekly wage of the ~~deceased decedent~~, at the bureau's benefit rate in effect on the date of death, and not to exceed ~~two hundred ten dollars per week~~ the state's average weekly wage in effect at the time of the death. These benefits continue until the death or remarriage of the decedent's spouse; or, ~~in the case~~ if the surviving children of the decedent are under the care of a

guardian, until the orphaned child or those children of the decedent no longer meet the definition of child "child" in this title. ~~Where~~ If there is more than one orphaned child of a guardian for the children who survive the decedent, the bureau shall divide the death benefits must be divided equally among the children and shall pay benefits to the children's guardians. ~~In no case may total~~ Total weekly death benefits paid may not be less than fifty sixty percent of the maximum weekly death benefits payable. ~~In no case may total~~ Total death benefits, including supplementary benefits, paid on any one claim may not exceed one hundred ninety-seven thousand dollars as a result of any employee's death.

2. To each child of the deceased employee, the amount of ten dollars per week ~~for each child~~. This rate must be paid to each eligible child regardless of the date of death. The bureau, ~~in its discretion,~~ may make this payment pay the benefit directly to the child of the deceased employee or to the surviving parent or guardian of the child. Dependency allowance may not be reduced by the percentage of aggravation ~~and must be paid in full~~.
3. In addition to the payments ~~herein~~ provided under subsections 1 and 2, the bureau shall make a payment in the sum of ~~three~~ six hundred dollars to the decedent's spouse or the guardian of the orphaned child or children of the ~~deceased~~ decedent and ~~one~~ two hundred dollars for each dependent child. ~~Where~~ there is more than one guardian of ~~orphaned the~~ decedent's surviving children, the ~~three~~ six hundred dollars must be divided equally among the children and paid to the children's guardians.

SECTION 3. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Scholarship fund - Rules. The bureau may establish a scholarship fund to provide scholarships for the spouse and dependent children of a worker who dies as a result of a compensable work-related injury, if the spouse and children have received benefits under section 65-05-17. Scholarships are payable to an accredited institution of higher education or an institution of technical education on behalf of a student attending that institution. The total amount awarded annually in scholarships may not exceed one hundred thousand dollars. The maximum amount payable on behalf of an applicant is one thousand five hundred dollars per year for no more than five years. Scholarships must be awarded by a panel chosen by the bureau. The bureau shall adopt rules establishing selection criteria and obligations associated with the program.

SECTION 4. AMENDMENT. Section 65-05-26 of the North Dakota Century Code is amended and reenacted as follows:

65-05-26. Bureau burial Burial expenses. ~~If death results from an injury within six years~~ benefits are payable under section 65-05-16, the fund shall pay to the personal representatives facility handling the funeral arrangements of the deceased employee burial expenses not to exceed two thousand five hundred thousand dollars.

SECTION 5. AMENDMENT. Section 65-05.2-02 of the North Dakota Century Code is amended and reenacted as follows:

65-05.2-02. Supplementary benefits - Amount. ~~Claimants~~ A claimant who are is eligible for supplementary benefits and who ~~are is~~ is receiving permanent total disability benefits ~~are or death benefits is~~ entitled to receive a weekly supplementary benefit ~~such that, when added to their the~~ such that, when added to their the weekly permanent total disability benefit ~~or death benefit, results in a combined benefit of at least sixty percent of the state's average weekly wage on July first of each year is their combined benefit.~~ or death benefit, results in a combined benefit of at least sixty percent of the state's average weekly wage on July first of each year is their combined benefit. ~~Claimants who are eligible for supplementary benefits and who are receiving death benefits are entitled to receive a weekly supplementary benefit such that, when added to their weekly death benefit, at least fifty percent of the maximum death benefit on July first of each year is their combined benefit. In no case may the.~~ An annual recalculation of supplemental supplementary benefits may not result in a rate less than the previous rate, notwithstanding an error in calculation. ~~If a claim has been accepted on an aggravation basis pursuant to under section 65-05-15 and the injured employee claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.~~

SECTION 6. REPEAL. Section 65-05-23 of the North Dakota Century Code is repealed.

SECTION 7. EFFECTIVE DATE. Sections 1, 2, 4, 5, and 6 of this Act are effective for all claims for death benefits filed after July 31, 1997. Section 3 of this Act is effective August 1, 1997, for all persons who have received benefits under section 65-05-17, regardless of the date eligibility for those benefits began, and is effective through July 31, 2001, and after that date is ineffective.

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-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2116.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 96 Nays 0 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State