

**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. 2125  
(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 additional benefits for recipients of workers' compensation disability benefits; to amend and reenact section 65-05-09.3 of the North Dakota Century Code, relating to discontinuance of workers' compensation benefits upon retirement; to provide for retroactive application; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Additional benefit payable.** If an injured employee's benefits cease under subsection 2 of section 65-05-09.3, the bureau shall pay to that employee every twenty-eight days a benefit based on the length of time the injured employee received disability benefits during the term of that claim. The bureau shall pay the injured employee's additional benefits until the employee's death or for a period of time not to exceed the total length of time the employee received disability benefits under sections 65-05-08, 65-05-08.1, 65-05-09, and 65-05-10, and a vocational rehabilitation allowance under chapter 65-05.1, for that claim, whichever occurs first. The benefit is based on the disability benefit that was discontinued under subsection 2 of section 65-05-09.3, which is the injured employee's compensation rate less any applicable social security offset. The percentage of that final payment payable as the additional benefit is:

<u>At least 1 year and less than 3 years of disability</u>	<u>5 percent of weekly benefit</u>
<u>At least 3 years and less than 5 years of disability</u>	<u>10 percent of weekly benefit</u>
<u>At least 5 years and less than 7 years of disability</u>	<u>15 percent of weekly benefit</u>
<u>At least 7 years and less than 9 years of disability</u>	<u>20 percent of weekly benefit</u>
<u>At least 9 years and less than 11 years of disability</u>	<u>25 percent of weekly benefit</u>
<u>At least 11 years and less than 13 years of disability</u>	<u>30 percent of weekly benefit</u>
<u>At least 13 years and less than 15 years of disability</u>	<u>35 percent of weekly benefit</u>
<u>At least 15 years and less than 17 years of disability</u>	<u>40 percent of weekly benefit</u>
<u>At least 17 years and less than 20 years of disability</u>	<u>45 percent of weekly benefit</u>
<u>Twenty or more years of disability</u>	<u>50 percent of weekly benefit.</u>

However, the bureau shall pay to an injured employee who has been determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee, equal to one hundred percent of the final payment of the disability benefit that was discontinued under subsection 2 or 3 of section 65-05-09.3.

**SECTION 2. AMENDMENT.** Section 65-05-09.3 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-09.3. Retirement presumption - Termination of benefits upon retirement.**

1. An employee who has retired or voluntarily withdrawn from the labor force and who is, at that time, was not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits, or a rehabilitation allowance from the bureau is presumed retired from the labor market. The presumption may be rebutted by a preponderance of the evidence; however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement.

2. ~~An injured employee who is receiving permanent total, temporary total, or temporary partial disability benefits, or rehabilitation benefits, and who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits; or who is at least sixty five years old and is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who attains retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits is considered to be retired. The bureau may not pay any permanent total, temporary total, or temporary partial disability benefits, rehabilitation benefits, or supplemental supplementary benefits to an employee who is considered retired; however, the bureau is liable employee remains eligible for payment of medical benefits and, permanent partial impairment benefits, and the additional benefit payable under section 1 of this Act. An employee who is determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 is not subject to this section.~~
3. The bureau retains liability for disability benefits, rehabilitation benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is ~~eligible to receive~~ receiving social security retirement benefits or other retirement benefits in lieu of social security; retirement benefits or who attains retirement age for social security retirement benefits unless the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits and who is gainfully employed; and who suffers an injury arising out of and in the course of that employment. The bureau may not pay disability or rehabilitation benefits under this subsection for more than three years, subject to section 65-05-09.2, for injuries occurring after the effective date for this Act.
4. This section applies to all persons who ~~retire or become eligible for~~ begin receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who attain retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, after July 31, 1995.

**SECTION 3. RETROACTIVE APPLICATION.** This Act applies retroactively to August 1, 1995.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
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. 2125 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:      Yeas        46            Nays        0            Absent      3

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:      Yeas        96            Nays        0            Absent      1

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

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