

HOUSE BILL NO. 1101

Introduced by

Industry, Business and Labor Committee

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to amend and reenact subsection 10 of section 65-05-08, sections
2 65-05-08.2, 65-05-09, and 65-05-10, subsection 4 of section 65-05-15, and sections 65-05-17
3 and 65-05-26 of the North Dakota Century Code, relating to workers' compensation
4 dependency allowances, preacceptance disability benefits, maximum disability benefits, travel
5 and other reimbursement, death benefits, and burial expenses; and to provide for application.

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

7 **SECTION 1. AMENDMENT.** Subsection 10 of section 65-05-08 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 10. The organization shall pay to an employee receiving disability benefits a
10 dependency allowance for each child of the employee at the rate of ~~ten~~ fifteen
11 dollars per week per child. ~~Effective July 1, 1989, this rate must be paid to each~~
12 ~~eligible employee regardless of the date of injury.~~

13 **SECTION 2. AMENDMENT.** Section 65-05-08.2 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **65-05-08.2. Preacceptance disability benefits.** If, after receiving a claim for benefits,
16 the organization determines that more information is needed to process the claim, but that the
17 information in the file indicates the injured employee is more likely than not entitled to disability
18 benefits, the organization may pay preacceptance disability benefits equal to the ~~minimum~~
19 weekly disability benefit allowed under section 65-05-09. The organization may continue to pay
20 preacceptance disability benefits to the employee during the period the claim is pending, unless
21 the injured employee is not cooperating with requests from the organization for additional
22 information needed to process the claim. The organization may not pay more than sixty days of
23 preacceptance benefits. The organization may only recover a payment made to an injured

1 employee under this section if that recovery is allowed under section 65-05-33. There is no
2 appeal from an organization decision not to pay preacceptance disability benefits.

3 **SECTION 3. AMENDMENT.** Section 65-05-09 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **65-05-09. Temporary total or permanent total disability - Weekly and aggregate**
6 **benefit.** If an injury causes temporary total or permanent total disability, the fund shall pay to
7 the disabled employee during that disability a weekly benefit equal to sixty-six and two-thirds
8 percent of the gross weekly wage of the employee, subject to a minimum of sixty percent and a
9 maximum of one hundred ~~ten~~ twenty-five percent of the average weekly wage in the state. If an
10 employee is disabled due to an injury, that employee's benefits will be based upon the
11 employee's wage and the organization benefit rates in effect on the date of first disability.

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

24 **SECTION 4. AMENDMENT.** Section 65-05-10 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **65-05-10. Partial disability - Weekly benefit.** If the injury causes temporary partial
27 disability resulting in decrease of earning capacity, the disability benefit is sixty-six and
28 two-thirds percent of the difference between the injured employee's average weekly wages
29 before the injury and the employee's wage-earning capacity after the injury in the same or
30 another employment. Partial disability benefits are subject to a maximum of one hundred ~~ten~~
31 twenty-five percent of the average weekly wage in the state. The combined partial disability

1 benefits, dependency allowance, and postinjury wage-earning capacity may not exceed the
2 preinjury weekly wage of the employee after deductions for social security and federal income
3 tax.

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

25 **SECTION 5. AMENDMENT.** Subsection 4 of section 65-05-15 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 4. When an injured worker is entitled to benefits on an aggravation basis, the
28 organization shall still pay costs of vocational rehabilitation, burial expenses under
29 section 65-05-26, travel, other personal reimbursement for seeking and obtaining
30 medical care under section 65-05-28, and dependency allowance on a one
31 hundred percent basis.

1 **SECTION 6. AMENDMENT.** Section 65-05-17 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **65-05-17. Weekly compensation allowances for death claims.** If death results from
4 an injury under the conditions specified in section 65-05-16, the fund shall pay to the following
5 persons, for the periods specified:

- 6 1. To the decedent's spouse or to the guardian of the children of the decedent, an
7 amount equal to the benefit rate for total disability under section 65-05-09. All
8 recipients of benefits under this subsection are eligible for benefits at the rate
9 provided in this section, regardless of the date of death of the deceased employee.
10 These benefits continue until the death of the decedent's spouse; or, if the
11 surviving children of the decedent are under the care of a guardian, until those
12 children no longer meet the definition of "child" in this title. If there is more than
13 one guardian for the children who survive the decedent, the organization shall
14 divide the death benefits equally among the children and shall pay benefits to the
15 children's guardians. Total death benefits, including supplementary benefits, paid
16 on any one claim may not exceed ~~two~~ three hundred ~~thirty~~ thousand dollars.
- 17 2. To each child of the deceased employee, the amount of ~~ten~~ fifteen dollars per
18 week. This rate must be paid to each eligible child regardless of the date of death.
19 The organization may pay the benefit directly to the child of the deceased
20 employee or to the surviving parent or guardian of the child. Dependency
21 allowance may not be reduced by the percentage of aggravation.
- 22 3. In addition to the payments provided under subsections 1 and 2, a payment in the
23 sum of ~~twelve~~ two thousand five hundred dollars to the decedent's spouse or the
24 guardian of the children of the decedent and ~~four~~ eight hundred dollars for each
25 dependent child. If there is more than one guardian of the decedent's surviving
26 children, the ~~twelve~~ two thousand five hundred dollars must be divided equally
27 among the children and paid to the children's guardians.

28 **SECTION 7. AMENDMENT.** Section 65-05-26 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **65-05-26. Burial expenses.** If death benefits are payable under section 65-05-16, the
2 fund shall pay to the facility handling the funeral arrangements of the deceased employee burial
3 expenses not to exceed ~~six ten thousand five hundred~~ dollars.

4 **SECTION 8. APPLICATION.** The increase in section 1 of this Act applies to
5 employees eligible for a dependency allowance on or after the effective date of this Act and
6 applies only to dependency allowance payments made on or after the effective date of this Act.
7 The amendment in section 2 of this Act applies to employees who have incurred claimed
8 injuries on or after the effective date of this Act. The increases in the maximums in section 3
9 and section 4 of this Act apply to employees who have incurred compensable injuries on or
10 after the effective date of this Act. The amendment in section 5 of this Act applies to expenses
11 incurred by employees on or after the effective date of this Act. The increases in section 6 and
12 section 7 of this Act apply to employee deaths resulting from injuries that occur on or after the
13 effective date of this Act.