

highway or in or along the banks of any natural water course any of the noxious weeds above described. And such misdemeanor shall be punishable by a fine of not to exceed fifty dollars nor less than ten dollars. The time and manner of destroying such weeds shall be prescribed by the board of county commissioners, and the same shall be published at least two weeks in some newspaper in the county, not less than two weeks before the time so prescribed; and if there is no newspaper published in the county, then written notice of the same shall be posted, the same as election notices are posted, in lieu of such publications.

Approved March 4, 1935.

WORKMEN'S COMPENSATION

CHAPTER 286

H. B. No. 263—(Marks)

DISBURSEMENT WORKMEN'S COMPENSATION FUND

An Act amending and re-enacting Section 2 of Chapter 162 of the Session Laws of North Dakota for the year 1919 and acts amendatory thereof; Section 3C, Section 3G and Section 3G(1) of Chapter 260 of the Session Laws of North Dakota for the year 1929; Sub-section B, Sub-section D and Sub-section 1 of Section 4 of Chapter 162 of the Session Laws of North Dakota for the year 1919 as amended by Chapter 314 of the Session Laws of North Dakota for the year 1931; Section 10-I of Chapter 162 of the Session Laws of North Dakota for the year 1919 and acts amendatory thereof; Section 13 of Chapter 162 of the Session Laws of North Dakota for the year 1919 and Section 17 of Chapter 162 of the Session Laws of North Dakota for the year 1919, all constituting parts of the Workmen's Compensation Act of the State of North Dakota and further making it illegal to employ workers not protected by Workmen's Compensation Insurance and giving the Workmen's Compensation Bureau power to enjoin such unlawful employments.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 2 of Chapter 162 of the Session Laws of North Dakota for the year 1919 and acts amendatory thereof, is hereby amended and re-enacted to read as follows:

§ 2. Whenever used in this act, "Employment" includes employment by the state and all political subdivisions thereof, and all public and quasi-public corporations therein, and all private employments.

"Hazardous employment" means any employment in which one or more employees are regularly employed in the same business or in or about the same establishment, except agriculture and domes-

tic service, and except also any employment of a common carrier by steam railroad.

"Employee" means every person engaged in a hazardous employment under any appointment, or contract of hire, or apprenticeship express or implied, oral or written, including aliens, and including poor relief workers, except workers engaged in repaying to counties relief monies which the counties have been compelled by statute to expend for poor relief and also including minors, whether such minors are lawfully or unlawfully employed, but excluding any person whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and excluding those engaged in illegal enterprises or occupations, and also excluding any executive officer of the business concern who receives a salary of more than twenty-four hundred dollars (\$2400.00) per year.

"Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, and every person, partnership, association, and private corporation, including any public service corporations, and the legal representative of any deceased employer, or the receiver or trustee of a person, partnership, association or corporation, carrying on a hazardous employment.

"Injury" means only an injury arising in the course of employment, including an injury caused by the wilful act of a third person directed against an employee because of his employment, but shall not include injuries caused by the employee's wilful intention to injure himself or to injure another, or by his voluntary intoxication. The term "injury" includes in addition to any injury by accident, any disease approximately caused by the employment. If the employer claims an exemption or forfeiture under this section, the burden of proof shall be upon him.

"Partial Disability" includes disfigurement resulting from an injury such as to diminish ability to obtain employment.

"Wages" shall include the market value of board, lodging, fuel and other advantages which can be estimated in money which the employee receives from the employer as a part of his remuneration.

"Weekly Wages" shall be computed in such a manner as is best calculated to give the average weekly earnings of the workman during the twelve months preceding his injury; provided that where, by reason of the shortness of the time during which the workman has been in the employment or the terms of the employment, it is impracticable to compute the rate of remuneration, regard may be had to the average weekly earnings which, during the twelve months previous to the injury, were being earned by a person in the same grade of employment at the same work by the employer of the injured workman, or if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district. If a workman at the time of the injury is regularly employed in a higher grade of work than formerly during the

year and with a larger regular wage, only such larger wages shall be taken in consideration in computing his average weekly wages.

"Child" includes step-children, adopted children, posthumous children, and acknowledged illegitimate children but does not include married children unless dependent. "Brother" and "Sister" include step-brothers and step-sisters, half-brothers and half-sisters, and brothers and sisters by adoption but do not include married brothers nor married sisters unless dependent. All of the above terms and the term "grandchild" include only persons who at the time of the death of the deceased employee are under eighteen years of age or over that age and incapable of self-support. "Parent" includes step-parents and parents by adoption. "Widow" includes only decedent's wife living with or dependent for support upon him at the time of his injury. "Widower" includes only the decedent's husband dependent for support upon her at the time of her injury. "Adopted" and "adoption" includes only legal adoption prior to the time of the injury.

Any term shall include the singular and plural and both sexes where the context so requires.

§ 2. AMENDMENT.] That Section 3C, Section 3G and Section 3G(1) of Chapter 260 of the Session Laws of North Dakota for the year 1929 are hereby amended and re-enacted to read as follows:

C. If the injury cause temporary or permanent total disability, the North Dakota Workmen's Compensation Fund shall pay to the disabled employee during such disability, a weekly compensation equal to sixty-six and two-thirds per cent of his weekly wage. Provided, however, that if the disability be permanent total disability, the total amount payable shall not exceed (\$15,000) fifteen thousand dollars for all claims based upon injuries or disability received upon and after March 7th, 1929.

G. If death results from an injury within six years, the North Dakota Workmen's Compensation Fund shall pay to the following persons, for the periods specified, a weekly compensation equal to the following percentages of the deceased employee's weekly wages; provided, however, that no compensation shall be paid where death takes place more than one year after the cessation of disability resulting from the injury, or, if there has been no disability preceding death, if death takes place more than one year after the injury, and provided, further, that the total amount payable shall not exceed the sum of \$15,000.00 in addition to the amounts paid for compensation and medical and hospital expense during temporary disability, for all claims based upon injuries or disability received upon or after March 7th, 1929.

G(1). In case of death or of permanent, total, or of permanent partial disability, and if the Bureau determines that it is for the best interest of the beneficiary, the liability for compensation to such beneficiary may be discharged by the payment of a lump sum equal

to the present value of all future payments of compensation computed at four per cent discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality; but in case of compensation to the widow or widower of the deceased employee, such lump sum shall not exceed 416 weeks' compensation. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. The bureau may also grant a partial lump sum settlement based upon the same computations as the complete lump sum which partial settlement shall be a complete discharge of whatever portion or percentage of the annuities is covered thereby.

§ 3. AMENDMENT.] That Sub-section B, Sub-section D and Sub-section I of Section 4 of Chapter 162 of the Session Laws of North Dakota for the year 1919 as amended by Chapter 314 of the Session Laws of North Dakota for the year 1931, are hereby amended and re-enacted to read as follows:

§ 4 B. The terms of the Commissioners shall be six years, and, in order to provide for the expiration of one of said terms every two years, the terms of the Commissioners now in office are to expire as follows: Representative of the Public to expire January tenth, 1939; Representative of the Employers to expire January tenth, 1941; Representative of Labor to expire January tenth, 1937. Each Commissioner shall receive a salary of two thousand two hundred and forty dollars (\$2,240.00) per year. Before commencing upon the execution of his duties each Commissioner shall file an oath of office in the usual form and shall be bonded by the State Bonding Department for the sum of five thousand dollars (\$5,000.00) for the faithful discharge of his duties as such and the proper accounting for all moneys received by him as such officer.

D. The Bureau may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this act. The salaries and compensation of the members of the Bureau, of the Secretary and all actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants, and all other expenses of the Bureau herein authorized, and the premium to be paid by the State Treasurer for the bond to be furnished by him, shall be paid out of the Workmen's Compensation Fund. The Bureau may also employ an Assistant Attorney General, as its full time attorney, whenever the Bureau is able to pay the entire salary drawn by such Assistant.

I. The Bureau is hereby vested with full power and jurisdiction over, and shall have the supervision of, every employment and place of employment subject to this act, and shall, whenever necessary adequately to enforce and administer this act, issue and enforce all necessary and proper rules and safety regulations, and may

designate some suitable person to inspect the premises of any employer to determine if such regulations or rules are being followed or complied with.

§ 4. AMENDMENT.] Section 10-i of Chapter 162 of the Session Laws of North Dakota for the year 1919 and acts amendatory thereof, is hereby amended and re-enacted to read as follows:

10-i. The Workmen's Compensation Bureau shall disburse the Workmen's Compensation Fund to such employees of the employers as have paid into the said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, wherever such injuries have occurred, or to their dependents in case death has ensued, and such payment or payments to such injured employees, or to their dependents in case death has ensued, shall be in lieu of any and all rights of action whatsoever against the employer of such injured or deceased employee, but no compensation shall be paid on account of injuries occurring outside of the State of North Dakota, nor because of death due to an injury occurring outside of the State of North Dakota, unless such employee is an appointive peace officer of any county in this state, receiving injury or meeting with death outside of the State of North Dakota in the course of his employment, or unless the employer and the Bureau shall have previously contracted for insurance protection for employees while working outside of the State in the employment in which the injury occurred. Providing that no such contract, with the exception as herein stated, shall be issued to any employer unless his principal plant and main or general office is located in North Dakota, and at least two-thirds of whose entire payroll is used or expended for work performed in the State of North Dakota, and appeals relative to the injuries received under such insurance outside of the State of North Dakota shall be triable in the District Court of Burleigh County, North Dakota.

§ 5. AMENDMENT.] That Section 13 of Chapter 162 of the Session Laws of North Dakota for the year 1919 is hereby amended and re-enacted to read as follows:

§ 13. The State Treasurer shall be the custodian of the Workmen's Compensation Fund and all disbursements therefrom shall be paid by him upon vouchers authorized by the Workmen's Compensation Bureau. Provided, however, that all warrants drawn upon the Workmen's Compensation Fund and paid by the State Treasurer beginning with warrants dated July 1st, 1935, shall be returned to the Workmen's Compensation Bureau and shall be kept in the files thereof.

The State Treasurer is hereby authorized to deposit any portion of the Workmen's Compensation Fund not needed for immediate use in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such Treasurer;

and any interest earned by such portion of the Workmen's Compensation Fund as may be deposited by the State Treasurer in pursuance of authority herein given, shall be collected by him and placed to the credit of such Fund.

The State Treasurer shall give a separate and additional bond in such amount as may be fixed by the Governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the Workmen's Compensation Fund.

§ 6. AMENDMENT.] Section 17 of Chapter 162 of the Session Laws of North Dakota for the year 1919 is hereby amended and re-enacted to read as follows:

§ 17. The Bureau shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final. Provided, however, in case the final action of such Bureau denies the right of the claimant to participate at all in the Workmen's Compensation Fund on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant, within thirty (30) days after the notice of the final action of such Bureau may, by filing his appeal in the District Court for the county wherein the injury was inflicted and serving a copy thereof upon the Workmen's Compensation Bureau by registered mail, be entitled to a trial in the ordinary way. In such a proceeding, the state's attorney of the county without additional compensation, shall represent the Workmen's Compensation Bureau, and shall be notified by the clerk forthwith of the filing of such appeal.

Within thirty (30) days after the filing of his appeal, the appellant shall file a petition in the ordinary form against such Bureau as defendant, and serve a copy thereof by registered mail upon the Workmen's Compensation Bureau, and further pleadings shall be had in said cause, according to the rules of civil procedure, and the Court shall determine the right of the claimant; and if it determines the right in his favor, shall fix his compensation within the limits prescribed in this act, and any final judgment so obtained shall be paid by the Workmen's Compensation Bureau out of the Workmen's Compensation Fund in the same manner as awards are paid by such Bureau.

The cost of such proceedings, including a reasonable attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the Bureau, which fee shall cover and constitute the entire remuneration for the claimant's attorney for all services in connection with such appeal, it being the intention to relieve the claimant of all expense for attorney fees.

Either party shall have the right to prosecute error as in the ordinary civil cases, and appeals to the Supreme Court in such cases shall be triable de novo.

§ 7. EMPLOYMENT OF THOSE UNPROTECTED BY INSURANCE UNLAWFUL: ENJOINING THEREOF.] It is hereby declared unlawful for any person, firm or corporation whomsoever to employ anyone, or receive the fruits of the labor of any person, in a hazardous employment as herein defined, when such employee is not protected by Workmen's Compensation Insurance in full force and effect.

The Workmen's Compensation Bureau may enjoin by proper application to the courts of this State the unlawful employment of uninsured workers.

Approved March 13, 1935.

CHAPTER 287

S. B. No. 287—(Bonzer)

COMPENSATION INSURANCE EMPLOYEES NAT'L RECOVERY WORK PROJECTS, RATES, ETC.

An Act authorizing the Workmen's Compensation Bureau to carry compensation insurance on employees on National Recovery Work Projects and to calculate and determine rates on a state wide experience basis.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. The Workmen's Compensation Bureau is hereby authorized and directed to carry compensation insurance on all employees now engaged or who may hereafter be engaged in the State of North Dakota National Recovery Work Projects where premiums for such insurance is paid from funds furnished by the Federal Government, and to calculate and determine the rates for such compensation insurance on a statewide experience basis.

Approved March 12, 1935.

CHAPTER 288

S. B. No. 286—(Bonzer)

VALIDATION WORKMEN'S COMPENSATION INSURANCE PAYMENTS BY STATE OR MUNICIPALITIES

An Act validating payments heretofore made by state or municipalities for payments of Workmen's Compensation Insurance; authorizing municipalities to pay such premiums with any moneys except special levies and to draw special warrants for premiums where funds are unavailable and repealing all acts in conflict herewith, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. VALIDATION.] All payments made by the State or any of the municipalities of the State of North Dakota of premiums for

Workmen's Compensation Insurance upon employees of such State or municipalities from whatsoever funds of such state or municipality except sinking and interest funds, are hereby declared valid for all purposes and the officials making such payments are hereby absolved from all responsibility, civil or criminal, because of such payments.

§ 2. POWER TO UTILIZE FUNDS FOR PAYMENT OF PREMIUMS DUE TO WORKMEN'S COMPENSATION BUREAU.] The State of North Dakota or any municipality thereof, may, when necessary, use any funds of such state or municipality, except those raised by special levies, for the payment of premiums due the Workmen's Compensation Fund of the State of North Dakota for insurance upon employees of the said state or municipalities respectively, and may, if there are no funds upon hand from which such payments may be made, issue special warrants against their respective general funds for the payment of such premiums, which warrants shall be paid in their order the same as any other warrants of such district.

§ 3. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

§ 4. EMERGENCY.] This act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 7, 1935.