

balance remaining in the "Returned Soldiers Fund," created and existing under the provisions of Section 3187 C1 of the 1925 Supplement to the Compiled Laws of 1913, for the purpose of carrying out the provisions of Chapter 253 of the Laws of 1937 with reference to the recording of burial places of deceased war veterans, and for the purpose of providing proper storage and fireproof receptacles, and for the preservation and safekeeping of soldier records, of the citizens of the State of North Dakota who have served the United States as soldiers, sailors, or marines, in time of war.

§ 2. 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 14, 1939.

WORKMEN'S COMPENSATION

CHAPTER 251

S. B. No. 150—(Committee on Insurance)

WORKMEN'S COMPENSATION ACT, AMENDMENT

An act amending and re-enacting the Workmen's Compensation Act by amending and re-enacting Sub-section A and G of Section 3, Chapter 162, Session Laws of 1919 as amended by Chapter 260, Session Laws of 1929 and Chapter 286, Session Laws of 1935; Paragraph F of Section 4 of Chapter 162, Session Laws of 1919, as amended by Chapter 285, Session Laws of 1927 and Chapter 314, Session Laws of 1931; Paragraph I of Section 4 of Chapter 162, Session Laws of 1919, as amended by Chapter 314, Session Laws of 1931 and Chapter 286, Session Laws of 1935; the first paragraph of Section 5 of Chapter 162, Session Laws of 1919 as amended by Chapter 143, Session Laws of 1921 and which appears as Section 396a5 of the 1925 Supplement; the ninth and final paragraph of Section 7 of Chapter 162, Session Laws of 1919 as amended by Chapter 312, Session Laws of 1931; the fourth and fifth paragraphs of Section 8, Chapter 162, Session Laws of 1919 as amended by Chapter 315, Session Laws of 1931; and Section 23 of Chapter 162, Session Laws of 1919 which also appears as Section 396a23 of the 1925 Supplement.

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

§ 1. That Sub-section A and G of Section 3 of Chapter 162, Session Laws of 1919 as amended by Chapter 260, Session Laws of 1929 and Chapter 286, Session Laws of 1935, is hereby amended and re-enacted to read as follows:

A. Immediately after an injury sustained by an employee and

during the resulting period of disability, the North Dakota Workmen's Compensation Fund, shall furnish to such employee such medical, surgical and hospital service and supplies as the nature of the injury may require, and may, if such injury causes permanent partial disability, in addition to the specific benefits provided, furnish such artificial limbs, glasses, braces or appliances which in the discretion of the bureau may be necessary to re-habilitate such injured employee.

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.

(a) To the widow, if there is no child, thirty-five per cent. Such compensation shall be paid until her death or marriage. In case of marriage, there shall be paid to her a lump sum equal to 156 weeks' compensation, provided, however, that if prior to such marriage such widow has received a partial lump sum settlement which covers all or any portion of the said 156 weeks following her marriage, the amount of such partial lump sum settlement which covers all or any part of the said 156 weeks following her marriage shall be deducted from such marriage settlement, and the widow shall only receive the remainder, if any, over and above such deduction, and provided, further, that any judgment annulling such marriage shall not reinstate the right of such widow to compensation if the action for annulment is instituted more than six months after such marriage.

(b) To the widower, if there is no child, thirty-five per cent if wholly dependent for support upon the deceased employee at the time of her death. Such compensation shall be paid until his death or marriage.

(c) To the widow or widower if there is a child, or children, the compensation payable under clause (a) or (b), and in addition thereto ten per cent for each child, not exceeding, however, a total of sixty-six and two-thirds per cent for the widow or widower and the children. The compensation payable on account of any child shall cease when such child dies, marries or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support.

(d) To the children, if there is no widow or widower, twenty-five per cent for one child and ten per cent addition for each additional child, not exceeding, however, a total of sixty-six and two-thirds per cent, the compensation hereunder not to be for the specific children but to be divided share and share alike. Compensation for each child shall be paid until such child dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support becomes capable of self-support. Compensation for a child under legal age shall be paid to its guardian.

(e) To the parent, if one is wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, twenty-five per cent; if both are wholly dependent twenty per cent to each; if one or both are partially dependent, a proportionate amount in the discretion of the bureau. The foregoing percentages shall be paid only if there is no widow, widower, or child. If there is a widower, widow, or child, there shall be paid only so much of the foregoing percentages as, when added to the total of the percentages payable to the widow, widower and children, shall not exceed the total of sixty-six and two-thirds per cent; provided, that any compensation so payable to the parents, if there is a widow, widower or child, shall not be included in the limitation of \$15,000.00 referred to in Paragraph G.

(f) To the brothers, sisters, grandparents, and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his death, twenty per cent of such dependent; if more than one are wholly dependent, thirty per cent, divided among such dependents, share and share alike; if none of them are wholly dependent, but one or more are partly dependent, ten per cent divided among such dependents, share and share alike. The foregoing percentages shall be paid only if there is no widow, child, or dependent parent there shall be paid only so much of the foregoing percentages as, when added to the total percentages payable to the widow, widower, children and dependent parents, shall not exceed a total of sixty-six and two-thirds per cent; provided, that any compensation payable to any dependents under this paragraph, if there is a widow, widower, child or dependent parent, shall not be included in the limitation of \$15,000 referred to in Paragraph G.

(g) The compensation of each beneficiary under clause (e) may continue until such dependent parent dies, marries or ceases to be dependent, and the compensation of each beneficiary under clause (f) shall be paid for a period of eight years from the time of the death of the employee, unless before that time, he, if a grandparent, dies, marries or ceases to be dependent, or if a brother, sister or grandchild, dies, marries, or reaches the age of eighteen, or, if over eighteen, and incapable of self-support becomes capable of self-support. The compensation of a brother, sister or grandchild under legal age shall be paid to his or her guardian.

(h) Upon the cessation of compensation under this section

to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable, shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death; provided, however, that nothing herein contained shall be construed to increase the compensation of the children of a widow or widower upon his or her remarriage.

(i) In case there are two or more classes of persons entitled to compensation under this section, and the apportionment of such compensation, hereinbefore provided would result in injustice, the bureau may, in its discretion, modify the apportionment to meet the requirements of the case.

(j) If any person entitled to compensation under this section whose compensation by the terms of this section ceases upon his marriage, accepts any payments or compensation after his marriage, he or she shall be guilty of a misdemeanor.

(k) In computing compensation in case of death, the weekly wages of the deceased shall be considered to have been not more than thirty dollars, (\$30.00) nor less than eighteen dollars, (\$18.00) but the total weekly compensation shall not exceed the weekly wages of the deceased.

(l) 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.

(m) If death results from the injury within six years the North Dakota Workmen's Compensation Fund shall pay to the personal representative of the deceased employee, burial expenses not to exceed two hundred dollars (\$200.00).

(n) The provisions of this section shall be retroactive and the Workmen's Compensation Bureau upon application, or upon its own motion may adjust compensation previously awarded, or if compen-

sation has been refused may award compensation in accordance with the terms hereof.

(o) Provided, however, that if an injured employee dies and there is due to his estate any sums for medical or hospital attention or other expense payable by the bureau or for compensation where such compensation does not exceed eighty dollars (\$80.00), the bureau may pay to the widow of such employee, if living, or in the event of her death or incompetency, to any adult person who has assumed or paid the expenses of the last illness or funeral expense of the decedent employee the balance remaining due as hereinbefore limited without probate proceedings.

§ 2. Paragraph F of Section 4 of Chapter 162 Session Laws of 1919 as amended by Chapter 285, Session Laws of 1927 and Chapter 314 Session Laws 1931 is hereby amended and re-enacted to read as follows:

Paragraph F. "The bureau may make rules not inconsistent with this act for carrying out the provisions of this act. Process and procedure under the act shall be as summary and simple as reasonably may be; and to that end the bureau shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, but may make investigation in such manner and at such places as, in the judgment of the bureau, shall be best calculated to ascertain the substantial rights of all the parties and to carry out, justly and fairly, the spirit of the act. The bureau, any member thereof, or any employee of the bureau, to which in case of emergency the bureau shall delegate such power, shall have the power to examine witnesses and records, with or without subpoena; to administer oaths to witnesses; to require the attendance of witnesses without fee whenever the testimony is taken at the home, office or place of work of such witnesses; and generally to do anything requisite or necessary to facilitate or promote the efficient administration of this act."

§ 3. Paragraph I of Section 4 of Chapter 162, Session Laws of 1919, as amended by Chapter 314, Session Laws of 1931 and Chapter 286, Session Laws of 1935, is hereby amended and re-enacted to read as follows:

Paragraph 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. That the first paragraph of Section 5 of Chapter 162, Session Laws of 1919 as amended by Chapter 143, Session Laws of

1921 and which appears as Section 396a5 of the 1925 Supplement, be amended and re-enacted to read as follows :

Every employer shall furnish the bureau upon request the information required by it to carry out the purposes of this act. It is further provided that if the Workmen's Compensation Bureau finds that any person, firm, private corporation or any public service corporation, either within or without the State of North Dakota, is an employer within the meaning of this act, it shall determine the date when he or it becomes such, which finding and determination for all purposes of this act shall be prima facie but not conclusive evidence thereof, unless it can be otherwise shown by the employer affected. The bureau shall forthwith give notice of said action to the employer, who shall immediately thereafter furnish the bureau with a payroll covering the period included in said finding, not exceeding twelve (12) months last past, together with an estimated payroll for twelve (12) months next succeeding from the date of such finding, and comply with all provisions of the Workmen's Compensation Act, and all amendments thereto, which information shall be furnished on blanks to be prepared by the bureau; and it shall be the duty of the bureau to furnish such blanks to employers free of charges upon request therefor. Every employer receiving from the bureau any blank, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give to the bureau in writing good and sufficient reasons for such failure. The bureau may require that the information herein required to be furnished be verified under oath, and returned to the bureau within the period fixed by it or by law. The bureau or any member thereof, or any person employed by the bureau for that purpose, shall have the right to examine under oath any employer, officer, agent or employee thereof for the purpose of ascertaining any information, which such employer is required by this act to furnish to the bureau. Any employer knowing himself to be subject to the operation of the Workmen's Compensation Act who wilfully fails to report himself to the bureau as such shall be liable to a penalty to be fixed by the bureau in not exceeding the sum of \$100.00. Any employer who shall fail or refuse to furnish to the bureau the annual statement herein required or who shall fail or refuse to furnish such other information as may be required by the bureau under authority of this section, shall be liable to a penalty to be fixed by order of the bureau but not to exceed \$500.00. Such penalties to be collected in civil action brought against said employer in the name of the State; all such penalties, when collected, shall be paid into the North Dakota Workmen's Compensation Fund and become a part thereof.

§ 5. The ninth and final paragraph of Section 7 of Chapter

162, Session Laws 1919 as amended by Chapter 312, Session Laws of 1931, is hereby amended and re-enacted to read as follows:

In case of aggravation of any injury or disease existing prior to a compensable injury, compensation, medical, hospital or funeral expense, or death benefits, shall be allowed by the bureau and paid from the Workmen's Compensation Fund only for such proportion of the disability, death benefits or expense, arising from the aggravation of such prior disease or injury as may reasonably be attributable to such compensable injury.

§ 6. The fourth and fifth paragraphs of Section 8 of Chapter 162, Session Laws 1919, as amended by Chapter 315, Session Laws of 1931, is hereby amended and re-enacted to read as follows:

Whether the premium is paid in full or in installments the first payment shall be in default one month from the date of the pay-in-order, and subsequent installments shall be in default, respectively; in case of semi-annual payments, six months from the date of the pay-in-order; and in case of quarterly payments three months, six months, and nine months from the date of the pay-in-order. Provided, however, that the bureau by its proper order and by an endorsement and notification to that effect upon the settlement sheet statement and pay-in-order sent to the employer may require payment of a premium within any time less than one month which is in the bureau's judgment reasonable and necessary to secure payment of the premium, of each employer whose employment within the State of North Dakota is likely to continue less than one month, and in such cases default shall begin at the end of the time allowed by the bureau for payment of premium.

Whenever any employer defaults in the payment of any premium, or any installment thereof, or in the filing of any bond herein, required, penalties shall attach as follows: Three dollars (\$3.00) for the first fifteen (15) days of default; five dollars (\$5.00) for the next fifteen (15) days of default; and one (1%) per cent of the premium for each thirty days of default thereafter, but not less than two dollars (\$2.00). Provided, however, that when the premium is paid within twelve months of the date of the pay-in-order originally billing such premiums, the penalty for such first year shall not exceed the amount of the premium to which such penalties attach.

§ 7. That Section 23 of Chapter 162, Session Laws of 1919, which also appears as Section 396a23 of the 1925 Supplement, is hereby amended and re-enacted to read as follows:

Whoever makes, in any affidavit required or in any claim for compensation, or in any employer's report required by the bureau in connection with any claim for compensation, any statement, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than two thousand dollars (\$2,000.00) or by im-

prisonment for not more than one year, or by both such fine and imprisonment.

Approved March 16, 1939.

CHAPTER 252

S. B. No. 246—(Senators Fowler - Beaton)

EXEMPTING CERTAIN EMPLOYEES FROM WORKMEN COMPENSATION ACT REQUIREMENTS

An act exempting employees who are residents of and who are insured under the Workmen's Compensation Act or similar statute of another State from the application of the North Dakota Workmen's Compensation Act where such other State recognizes extraterritorial coverage furnished to North Dakota employers for their employees while working in such other State.

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

§ 1. Employees who are residents of another State and who are employed by employers of another State and are insured under the Workmen's Compensation Act or similar acts of such other State, shall be exempted from the provisions of the North Dakota Workmen's Compensation Act while temporarily within this State doing work for such non-resident employer and such employer shall likewise be exempted if such non-resident employer has furnished Workmen's Compensation insurance coverage to such employee in such other State, covering his employment in North Dakota, and if extraterritorial coverage furnished by the North Dakota Workmen's Compensation Bureau and granted to employers resident in North Dakota covering employment of his employees while working in such other State is recognized by such other State, and such employer and employee is exempted from the application of the Workmen's Compensation Act or similar act of such other State.

§ 2. A certificate from the executive secretary or other duly authorized officer of the Workmen's Compensation Bureau or similar bureau of another State certifying that the employer of such other State is insured thereunder and has provided extraterritorial coverage insuring his employees while working within the State of North Dakota shall be prima facie evidence that such employer carries such compensation insurance.

Approved March 13, 1939.