

WORKMEN'S COMPENSATION

CHAPTER 375

S. B. No. 269
(Frojen and Stucke)

DEFINITIONS; PREMIUM PAYMENTS; CLAIMS & COMPENSATION; EXTRATERRITORIAL RECIPROCITY— WORKMEN'S COMPENSATION

AN ACT

To amend and reenact Subsection 4 of Section 65-0102 of the North Dakota Revised Code of 1943, as amended and reenacted by Section 1 of Chapter 337 of the Session Laws of North Dakota for the year 1945, and Subsections 5c, 10 and 11 of Section 65-0102 of the North Dakota Revised Code of 1943, relating to definitions under the Workmen's Compensation Act; Section 65-0103, of the North Dakota Revised Code of 1943, relating to person performing service for remuneration presumed an employee; Section 65-0418, of the North Dakota Revised Code of 1943, relating to subsequent injury or aggravation of previous injury to disabled employee; Section 65-0502, of the North Dakota Revised Code of 1943, relating to form in which claim shall be filed; Section 65-0508, of the North Dakota Revised Code of 1943, relating to payment of compensation when disability is of five days duration or more; Section 65-0509, of the North Dakota Revised Code of 1943, as amended and reenacted by Section 2 of Chapter 337 of the Session Laws of North Dakota for the year 1945; relating to weekly and aggregate compensation for total disability; Section 65-0802, of the North Dakota Revised Code of 1943, relating to reciprocity in extraterritorial application of compensation acts of various states; and declaring an emergency.

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

§ 1. AMENDMENT.] That Subsection 4 of Section 65-0102 of the North Dakota Revised Code of 1943, as amended and reenacted by Section 1 of Chapter 337 of the Session Laws of North Dakota for the year 1945, and Subsections 5c, 10 and 11 of Section 65-0102 of the North Dakota Revised Code of 1943, is hereby amended and reenacted to read as follows:

65-0102. DEFINITIONS.] Whenever used in this title:

4a. "Hazardous employment" shall mean any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:

1. Agricultural or domestic service; or
 2. Any employment of a common carrier by steam railroad; or
 3. Any employment for the transportation of property or persons by non-residents, where, in such transportation, the highways are not traveled more than seven miles and return over the same route within the State of North Dakota; or
 4. All members of the clergy and employees of religious organizations engaged in the operation, maintenance and conduct of the place of worship;
- b. "Premises" shall mean that part of the employer's property upon or in which the employee is expected to perform services for his employer.
- 5c. Persons employed by a subcontractor must be covered under the provisions of the North Dakota Workmen's Compensation Act by the original or general contractor until such time as the subcontractor has complied with the provisions of this title;
10. "Artificial members" shall include only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body;
11. "Permanent partial disability" shall include disfigurement resulting from an injury if such disfigurement diminishes the ability of the employee to obtain employment.

§ 2. AMENDMENT.] That Section 65-0103, of the Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0103. PERSON PERFORMING SERVICE FOR REMUNERATION PRESUMED AN EMPLOYEE.] Each person who performs services for another for a remuneration, whether the same is paid as a salary, commission, or other considerations in lieu thereof, under any agreement or contract of hire, express or implied, shall be presumed to be an employee of the person for whom the services are performed, unless he shall maintain a separate business establishment and/or shall hold himself out to and/or shall render services to the general public.

§ 3. AMENDMENT.] That Section 65-0418, of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0418. SUBSEQUENT INJURY OR AGGRAVATION OF PREVIOUS INJURY TO DISABLED EMPLOYEE; CHARGE TO EMPLOYER'S RISK; CHARGE OF PART OF CLAIM TO SUBSEQUENT INJURY FUND.] Whenever a subsequent injury or aggravation to a previous injury occurs to an employee who has been injured previously in a different employment, the risk of the employer for whom such injured person was working at the time of such subsequent injury or aggravation to a previous injury shall be charged only with the amount of the awards resulting from such subsequent injury or aggravation. Whenever such subsequent injury or aggravation in connection with a previous injury results in further disability or an aggravation of a pre-existing injury which was received in the course of employment and regarding which the claimant's physician had certified the employee as being fit for employment, the compensation which is in excess of the amount to which the injured employee would have been entitled solely by reason of the subsequent injury or aggravation shall be charged to the subsequent injury fund and not to the classification or the risk to which the subsequent injury or aggravation is charged.

§ 4. AMENDMENT.] That Section 65-0502, of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0502. FORM IN WHICH CLAIM SHALL BE FILED.] Every claim shall be made on forms to be furnished by the bureau and shall contain all the information required by it. Each claim shall be signed by the person entitled to compensation or by the person acting on his behalf in the presence of two witnesses who shall sign their names to said instrument as witnesses, and, except in case of death, shall be accompanied by a certificate of the employee's physician stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown, the bureau may waive the provisions of this section.

§ 5. AMENDMENT.] That Section 65-0508, of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0508. COMPENSATION NOT PAID UNLESS PERIOD OF DISABILITY IS OF FIVE DAYS DURATION OR MORE; PAID FROM DATE OF INJURY.] No compensation will be paid for disability, the duration of which is less than five days. If the period of disability is of five days duration or more compensation shall be paid from the date of the injury.

§ 6. AMENDMENT.] That Section 65-0509, of the North Dakota Revised Code of 1943, as amended and reenacted by

Section 2 of Chapter 337 of the Session Laws of North Dakota for the year 1945, is hereby amended and reenacted to read as follows:

65-0509. TOTAL DISABILITY; WEEKLY AND AGGREGATE COMPENSATION.] If the injury causes temporary or permanent total disability, the 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 that the provisions herein relating to permanent total disability shall be retroactive. In case of temporary total disability, there shall be paid to such disabled employee an additional sum of two dollars per week for each dependent child under the age of eighteen years, and for each child over eighteen years incapable of self support as elsewhere defined in this title. In no event shall the total weekly payment to said disabled employee exceed the sum of thirty-two dollars per week.

§ 7. AMENDMENT.] That Section 65-0802 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0802. RECIPROCITY IN EXTRATERRITORIAL APPLICATION OF COMPENSATION ACTS OF VARIOUS STATES PROVIDED.] An employee who is a resident of another state and who is employed by an employer of another state and insured under the Workmen's Compensation Act, or any similar act, of such other state, shall be exempted from the provisions of this title while temporarily within this state doing work for such non-resident employer, and such nonresident employer also shall be exempted if he has furnished to such employee workmen's compensation insurance in such other state covering his employment in North Dakota, and if extraterritorial coverage furnished by the 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 are exempted from the application of the Workmen's Compensation Act or similar act of such other state. If the annual payroll expended within North Dakota by a non-resident employer exceeds one hundred dollars then the out of state employer shall no longer be considered as operating in North Dakota on a temporary basis. Resident North Dakota employees though employed by out of state employers must at all times be covered by benefits comparable with the provisions of the North Dakota Act.

§ 8. EMERGENCY.] That 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 21, 1947.

CHAPTER 376

H. B. No. 233

(Brickner, Brady, Yirchott, Fitch, Johnson of Cass, Stormon and Skaar)

INVESTMENT OF FUNDS OF WORKMEN'S COMPENSATION PURPOSES

AN ACT

Amending and reenacting Section 65-0431 of the North Dakota Revised Code of 1943 relating to the authorization for investment of funds of the workmen's compensation bureau.

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

§ 1. AMENDMENT.] That Section 65-0431 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0431. INVESTMENT OF FUND AUTHORIZED; CONTINUING APPROPRIATION.] The bureau, upon a resolution to that effect duly entered upon the minutes of the bureau, concurred in by a majority of the commissioners, and when duly authorized so to do by a resolution duly adopted by the industrial commission of the state of North Dakota, may invest excess moneys in the fund in bonds of the United States of America, bonds and mortgages or other securities the payment of which is guaranteed by the United States of America, bonds of the state of North Dakota or of any other state, or in certificates of indebtedness of the state of North Dakota, or in bonds or certificates of indebtedness of any political subdivision of the state of North Dakota. Before any investment is made in any securities, however, the securities shall be approved by the attorney general as to the form and legality thereof. The state treasurer shall be the custodian of all such bonds and certificates, and the bureau shall deliver any securities so purchased to the state treasurer as such custodian. This section shall constitute a continuing appropriation out of the fund of all moneys that may be required for the making of the investments authorized by this section. The bureau, or any commissioner or other officer thereof,

who shall invest any moneys in the fund without first having obtained the authorization of the industrial commission as provided in this section shall be guilty of a misdemeanor.

Approved March 11, 1947.

CHAPTER 377

H. B. No. 231

(Brickner, Brady, Yirchott, Fitch, Johnson of Cass, Stormon and Skaar)

WORKMEN'S COMPENSATION BUREAU JURISDICTION

AN ACT

To amend and reenact Section 65-0503 of the North Dakota Revised Code of 1943, relating to jurisdiction of the workmen's compensation bureau to hear questions within its jurisdiction.

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

§ 1. AMENDMENT.] That Section 65-0503 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0503. JURISDICTION OF BUREAU TO HEAR QUESTIONS WITHIN ITS JURISDICTION; FINALITY OF DETERMINATION.] The Bureau shall have full power and authority to hear and determine all questions within its jurisdiction, and its decisions, except as provided in Chapter 10, of this title, shall be final. Before an award for permanent disability can be made to a claimant, the bureau shall give notification in writing, by registered mail, to the employer of said claimant of their intention to make such award, outlining reasons and amount of such evaluation and giving the employer ten days in which to file a written protest to such award. If such protest is registered by the employer, the bureau shall set a date of hearing to show cause, if any there be, why such award should not be made, and shall notify the employer of the date set, and the bureau shall order an examination of the claimant on or before the date set for the hearing by a duly qualified physician licensed to practice and practicing his profession in the State of North Dakota, designated by the employer.

Approved March 15, 1947.

CHAPTER 378

H. B. No. 257
(Westby, Stormon, Ohnstad)

APPOINTMENT OF SAFETY ENGINEER

AN ACT

Relating to the appointment of a safety engineer, his qualifications and salary; providing for office space, expenditures from fund for assistants and supplies; powers and duties of safety engineer; providing that safety engineer shall not be an agent, manager, superintendent or interested in any business or corporation in State; removal of safety engineer; appropriation; saving clause.

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

§ 1. APPOINTMENT; TERM OF OFFICE.] The commissioners of the North Dakota workmen's compensation bureau shall appoint a state safety engineer who shall hold office at the will of the bureau.

§ 2. QUALIFICATIONS OF SAFETY ENGINEER.] No person shall be eligible to the office of safety engineer unless he:

1. Has successfully completed a standard professional engineering curriculum leading to a bachelors degree in a college or university of recognized standing, plus one year of professional safety engineering experience of the type described in Section 5 of this Act; or
2. Has successfully completed two years of standard professional engineering curriculum in a college or university of recognized standing, plus two years of progressive professional safety engineering experience of the type described in Section 5 of this Act; or
3. Four years of progressive professional safety engineering experience which would include experience of the type described in Section 5 of this Act.

Part of the experience shall have been within the last three years, except where applicant's safety career was interrupted by military service. In any case the education and/or experience must have demonstrated, on the part of the applicant, the ability to perform the duties as described in Section 5 of this Act.

§ 3. SALARY OF SAFETY ENGINEER.] The salary of the safety engineer shall be not more than five thousand dollars per annum, plus necessary travel expenses.

§ 4. SAFETY ENGINEER: POWERS AND DUTIES RELATING TO ACCIDENT PREVENTION.] The safety engineer shall:

1. Study a plant for industrial hazards and designs, means for preventing accidents or reducing their frequency;
2. Upon request examine plans and specifications for new machinery and equipment to ascertain if all safety precautions have been included;
3. Upon request offer advice or methods of determining the amount of weight that can be placed on the plant floor with safety;
4. Inspect machinery to determine places where danger of injury exists;
5. Study each accident to overcome its cause;
6. Educate workers to dangers existing in plants through a safety first campaign;
7. Initiate community accident prevention programs and cooperate and assist established programs of accident prevention;
8. Conduct research and develop safety engineering techniques and practices to eliminate the causes of accidents to employees covered by this Act;
9. Evaluate the effectiveness of safety programs and develop and recommend the cooperative measures indicated;
10. Make studies and recommendations on special safety problems as they arise;
11. Maintain a comprehensive library of technical accident prevention references;
12. Seek to periodically publicize causes of major accidents and methods of prevention without referring to names or places;
13. Provide accident prevention information and safety consultation.

§ 5. SAFETY ENGINEER NOT TO BE AGENT, MANAGER, SUPERINTENDENT NOR INTERESTED IN ANY BUSINESS OR CORPORATION IN STATE.] The safety engineer, while he is in office, shall not act as an agent for any business or corporation, nor as the superintendent or manager of any business or corporation. He shall not be interested in any business or corporation as owner, lessee or otherwise.

§ 6. REMOVAL OF SAFETY ENGINEER.] If the workmen's compensation bureau finds that the safety engineer is negligent in his duties, is incompetent to perform the same or is guilty of malfeasance or misfeasance in office, the bureau shall declare the office of safety engineer vacant and shall proceed in compliance with the provisions of this title to fill the vacancy.

§ 7. APPROPRIATION.] There is hereby appropriated out of any moneys in the state treasury in the Workmen's Compensation fund, not otherwise appropriated, the sum of ten thousand dollars, or so much thereof as may be necessary for the purpose of carrying out the provisions of this Act.

§ 8. SAVING CLAUSE.] If any section of this Act shall be held unconstitutional, the remaining provisions shall be given full force and effect as if the part held unconstitutional had not been included therein.

Approved March 15, 1947.

CHAPTER 379

H. B. No. 232

(Brickner, Brady, Yirchott, Fitch, Johnson of Cass, Stormon, Skaar)

DETERMINATION OF WEEKLY WAGE FOR PREMIUM AND WORKMEN'S COMPENSATION PURPOSES

AN ACT

To amend and reenact Section 65-0703 of the North Dakota Revised Code of 1943, relating to the determination of weekly wage for premium and compensation purposes under the workmen's compensation.

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

§ 1. AMENDMENT.] That Section 65-0703 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0703. DETERMINATION OF "WEEKLY WAGE" FOR PREMIUM AND COMPENSATION PURPOSES.] If the bureau enters into a contract for employer's insurance, the premium for such protection and any compensation paid thereunder shall be based on a reasonable weekly wage for employees in the same class of industry. Such reasonable weekly wage shall

not amount to less than \$1820 per annum nor more than \$2500 per annum and shall be determined by the bureau.

Approved March 11, 1947.

CHAPTER 380

H. B. No. 310
(Schuler, Rudolf)

DETERMINATION OF WEEKLY WAGE FOR PREMIUM AND WORK- MEN'S COMPENSATION PURPOSES WHERE VETERAN-ON- THE JOB TRAINEES ARE EMPLOYED

AN ACT

To determine the weekly wage for workmen's compensation premium and compensation purposes where veteran-on-the-job trainees are employed; and declaring an emergency.

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

§ 1. DETERMINATION OF WEEKLY WAGE FOR PREMIUM AND COMPENSATION PURPOSES TO VETERAN-ON-THE-JOB TRAINEE.] Whenever an employer employs a person known as a veteran-on-the-job trainee, as defined under Public Law 16 and 346 of the United States Congress, the premium for workmen's compensation coverage and any compensation paid thereunder shall be based on a minimum weekly wage of thirty dollars per week.

§ 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 15, 1947.