

WORKMEN'S COMPENSATION

CHAPTER 354

S. B. No. 34

(Legislative Research Committee)

WORKMEN'S COMPENSATION; BUREAU; PROCEDURE; INJURIES; ETC.

AN ACT

To amend and reenact subdivisions 5b3 and 5c and subsection 6 of section 65-0102; and sections 65-0109, 65-0201, 65-0205, 65-0425, 65-0427, 65-0505, 65-0511, 65-0512, 65-0513, 65-0517, 65-0801, 65-0518, 65-1001, and 65-1103 of the North Dakota Revised Code of 1943 as amended; and to repeal section 10 of chapter 344 of the North Dakota Session Laws of 1951 relating to workmen's compensation.

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

§ 1. **Amendment.**) Section 65-0205 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0205. Office Space For Bureau; Expenditures From Fund For Assistants And Supplies; Mileage.) The bureau shall be provided with office space in the state capitol. The bureau, at the expense of the fund, shall provide all necessary equipment, supplies, stationery, and furniture, and all clerical and other help necessary to carry out the provisions of this title. The members of the bureau and its assistants shall be entitled to receive from the fund for each mile actually and necessarily traveled in the performance of official duty by motor vehicle or team the sum provided in chapter 54-06, as amended. If travel is by a motor vehicle owned by the state, or by any department or political subdivision thereof, no allowance shall be paid for such mileage. Vouchers for mileage and expenses shall be sworn to and shall bear the approval of the chairman before payment is made therefor. Expenditures made under the provisions of this section, however, must be within the limitations designated by the legislative assembly in appropriation measures adopted from time to time.

§ 2. **Amendment.**) Section 65-0427 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0427. Payment Of Claims Where Employers In Default.) The payment of a judgment rendered in an action brought

against an employer for the collection of defaulted premiums, or the voluntary payment of the amount of premium, penalties, and costs prior to judgment shall entitle the employer and his employees to the benefits provided in this title from the date of the pay-in-order which bills the employer for the premiums. Where the injury is sustained in an employment when the premium is in default the injured employee shall be paid the same as where the premium is not in default.

§ 3. **Amendment.)** Section 65-0801 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0801. Extraterritorial Coverage When And How Furnished.) Compensation shall be paid on account of injuries occurring outside this state or because of death due to an injury occurring outside of this state only when:

1. The employee is a duly qualified peace officer of this state who received injury or was killed outside of this state in the course of his employment; or
2. The employee sustains an injury beyond the borders of this state in a service which is incidental to and is referable to the principal employment, the situs of which is within North Dakota;
3. The employer and the bureau previously shall have contracted for insurance protection for employees while working outside of this state in the employment in which the injury occurred, which employment is not incidental to or referable to the principal employment the localization and situs of which is not in North Dakota.

§ 4. **Amendment.)** Section 65-0518 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0518. Provisions Of Section 65-0517 Retroactive.) The provisions of section 65-0517 as amended establishing a minimum weekly wage of thirty dollars shall be retroactive as of July 1, 1953, and the bureau, upon application or upon its own motion, shall adjust compensation paid or payable since that date in accordance with this section.

§ 5. **Amendment.)** Section 65-1001 of the 1953 Supplement to the North Dakota Revised Code of 1943, approved March 9, 1951, is hereby amended and reenacted to read as follows:

65-1001. Appeal: Right Of; How Taken.) If the final action of the bureau denies the right of the claimant to participate at all in the 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, or if the bureau allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted. An appeal involving injuries received under insurance provided under contracts with extraterritorial coverage shall be triable in the district court of Burleigh County. Such appeal shall be taken in the manner provided in chapter 28-32 of the title Judicial Procedure, Civil. In such a proceeding the state's attorney of the county wherein the appeal is taken without additional compensation shall represent the bureau. The clerk of court of the county within which the appeal is taken shall notify the state's attorney of the filing of such appeal.

§ 6. Amendment.) Paragraph 3 of subdivision b and subdivision c of subsection 5; and subsection 6 of section 65-0102 of the North Dakota Revised Code of 1943, as amended, are hereby amended and reenacted to read as follows:

- 5b3. Any executive officer of a business concern shall mean only the president, vice presidents, secretary, or treasurer of a business corporation whose duties are solely those of such executive office, and if an executive officer also performs duties of a kind generally performed by an employee, such employment is not exempt;
- 5c. Persons employed by sub-contractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter shall be deemed to be employees of the general contractor who shall be liable and responsible for the payments of premium for the coverage of these employees until the sub-contractor or independent contractor has secured the necessary coverage and paid the premium therefor. This subdivision shall not be construed as imposing any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a sub-contractor or independent contractor;

[Note: Senate Bill 34 contained all of subsection 6 of section 65-0102 in brackets, in effect repealing the subsection by deletion. The provisions of subsection 6 are now incorporated into subsection 5b3.]

§ 7. Amendment.) Section 65-0109 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0109. Injury Through Negligence Of Third Person; Option Of Employee; Fund Subrogated When Claim Filed.) When an injury or death for which compensation is payable under provisions of this title shall have been sustained under circumstances creating in some person other than the fund a legal liability to pay damages in respect thereto, the injured employee, or his dependents may claim compensation under this title and proceed at law to recover damages against such other person. The fund shall be subrogated pro tanto to the rights of the injured employee or his dependents to the extent of the amount of compensation paid or to be paid and the action against such other person may be brought by the injured employee, or his dependents in the event of his death, in his or in his dependents' own right and name and as trustee for the workmen's compensation bureau for what it has paid or what is to be paid on such claim if the claimant or his dependents do not institute suit within sixty days after date of injury the bureau may bring the action in its own name and as trustee for the claimant or his dependents. If the action is brought by the claimant or his dependents, the actual cost of such litigation shall be prorated between the claimant and the bureau should any damages be awarded and no fees shall be allowed for any recovery made for the bureau without first obtaining the bureau's approval thereon. If no damages are awarded the cost of litigation shall be paid by the party instituting the action.

§ 8. Amendment.) Section 65-0201 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0201. Workmen's Compensation Bureau; Membership; Terms Of Office.) The North Dakota workmen's compensation bureau shall be maintained for the administration of the provisions of this title. Such bureau shall consist of three workmen's compensation commissioners who shall be appointed by the governor. The terms of the commissioners shall be six years, and shall be arranged so that the term of one commissioner, and of only one, shall expire on the tenth day of July in each odd-numbered year. One of the commissioners shall be a representative of labor, one shall be a representative of the public, and one shall be a representative of the employers. The commissioners shall devote their entire time to the duties of the bureau, and each commissioner shall serve until his successor has been appointed and qualified. Any commissioner may be removed by the governor for cause.

§ 9. Amendment.) Section 65-0425 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0425. Service Of Nonresident Employer In Suit For Premium Or In Suit Against An Uninsured Employer.) If the employer in an action to collect delinquent premiums or for injuries sustained in his employment for which he did not carry the required insurance is a nonresident of this state, or a foreign corporation doing business in this state, service of the summons may be made upon any agent, representative, or foreman of said employer in this state, and where there is no agent, representative, or foreman upon whom service can be made service upon the secretary of state shall constitute personal service upon such nonresident employer who has either failed to secure the necessary coverage or who is delinquent in his premiums, or service may be made in any other manner designated by law.

§ 10. Amendment.) Section 65-0505 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0505. Payments Made To Insured Employees Injured In Course Of Employment And To Their Dependents.) The bureau shall disburse the fund for the payment of compensation and other benefits as provided in this chapter to employees, or to their dependents in case death has ensued, who:

1. Are subject to the provisions of this title;
2. Are employed by employers who are subject to this title; and
3. Have been injured in the course of their employment.

Where the injury is sustained outside the state of North Dakota and compensation is claimed and received through some other state act no compensation shall be allowed under this title.

§ 11. Amendment.) Section 65-0511 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0511. Maximum And Minimum Compensation Allowances; Total And Partial Disability.) The weekly compensation for total disability shall not be more than thirty-one dollars and fifty cents, except where an allowance for dependents is made in compliance with section 65-0509, nor less than fifteen dollars. The weekly compensation for partial disability shall not be more than thirty-one dollars and fifty cents. If the injured person, at the time of the injury, was a minor or was employed in a learner's capacity, and was not physically or mentally defective, the bureau from time to time shall determine the probable increase in weekly earning capacity of such person if such injury had not occurred, and shall base its award for compensation upon such probable weekly wage-earning capacity.

§ 12. Amendment.) Section 65-0512 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0512. Permanent Partial Disability; Weekly Compensation; Time Paid.) If the injury causes permanent partial disability, the percentage which such disability bears to total disability shall be determined, and the fund shall pay to the disabled employee a weekly compensation in the sum of thirty-one dollars and fifty cents per week for the following periods:

For a one percent disability	5 weeks;
For a ten percent disability	50 weeks;
For a twenty percent disability	100 weeks;
For a thirty percent disability	150 weeks;
For a forty percent disability	200 weeks;
For a fifty percent disability	250 weeks;
For a sixty percent disability	300 weeks;
For a seventy percent disability	350 weeks;
For an eighty percent disability	400 weeks;
For a ninety percent disability	450 weeks;

Provided, however, that where an injured employee is earning a salary which at sixty-six and two-thirds percent of said salary did not produce an award of thirty-one dollars and fifty cents per week the difference between thirty-one dollars and fifty cents per week and sixty-six and two-thirds percent of the actual salary be charged to the general fund, and not to the risk of the employer. This proviso shall also apply to payments made under 65-0513.

§ 13. Amendment.) Section 65-0513 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0513. Scheduled Injuries; Permanent Loss Of Member; Weekly Compensation; Time Compensation Payable.) If the injury causes the loss of a member, the fund shall pay to the disabled employee a weekly compensation equal to thirty-one dollars and fifty cents per week for the following periods:

1. For loss of arm at shoulder	250 weeks;
2. For loss of arm at or above elbow	220 weeks;
3. For the loss of hand at or above wrist	200 weeks;
4. For loss of thumb	65 weeks;
5. For loss of second or distal phalange of thumb	28 weeks;
6. For loss of first finger	40 weeks;

7. For loss of middle or second phalange of first finger	28 weeks;
8. For loss of third or distal phalange of first finger	22 weeks;
9. For loss of second finger	30 weeks;
10. For loss of middle or second phalange of second finger	22 weeks;
11. For loss of third or distal phalange of second finger	14 weeks;
12. For loss of third finger	20 weeks;
13. For loss of middle or second phalange of third finger	16 weeks;
14. For loss of third or distal phalange of third finger	10 weeks;
15. For loss of fourth finger	16 weeks;
16. For loss of middle or second phalange of fourth finger	12 weeks;
17. For loss of third or distal phalange of fourth finger	6 weeks;
18. For loss of leg at hip	234 weeks;
19. For loss of leg at or above knee	195 weeks;
20. For loss of foot at or above ankle	150 weeks;
21. For loss of great toe	30 weeks;
22. For loss of second or distal phalange of great toe	18 weeks;
23. For loss of any other toe	12 weeks;
24. For loss of middle or second phalange of any other toe	10 weeks;
25. For loss of third or distal phalange of any other toe	7 weeks;
26. For loss of an eye	150 weeks;
27. For loss of hearing in one ear	50 weeks;
28. For loss of hearing in both ears	200 weeks;

The amount paid for the loss of more than one finger of one hand shall not exceed the amount provided in this schedule for the loss of a hand. For the loss of the metacarpal bone, of the palm, together with the corresponding thumb or finger ten weeks shall be added to the number of weeks of payment. The permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg, or eye shall be considered as the equivalent of the loss of such thumb, finger, toe, arm, hand, foot, leg or eye, and compensation for partial loss of use of said parts shall be allowed on a percentage basis. Twenty-five percent additional shall be allowed as compensation for the loss of use of the

master hand or any member or members thereof. The loss of use on a percentage basis of the master hand or any member or members thereof, or the amputation of the master hand or any member or members thereof. The loss of any part of a phalange shall be considered equal to the loss of the entire phalange. If any employee dies from some independent cause, the right of any compensation payable under section 65-0512 of this section, unpaid at the date of his death shall survive and pass to his dependent spouse, minor children, parents, or his estate and in that order named.

§ 14. Amendment.) Section 65-0517 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0517. Weekly Compensation For Death.) If death results from an injury under the conditions specified in section 65-0516, the 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:

1. To the widow, if there is no child, forty-five percent, and such compensation shall be paid until her death or remarriage;
2. To the widower, if there is no child, forty-five percent if he was wholly dependent upon the support of the deceased employee at the time of her death, and such compensation shall be paid until his death or remarriage;
3. To the widow or widower, if there is a child, the compensation payable under subsections 1 or 2, and in addition thereto, ten percent for each child. Such compensation, however, shall not exceed a total of seventy-five percent 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 years, or, if over eighteen years of age and incapable of self-support, becomes capable of self-support;
4. To the children, if there is no widow or widower, twenty-five percent for one child and ten percent additional for each additional child, not exceeding, however, a total of seventy-five percent. The compensation hereunder shall not be for the specific children but shall be divided share and share alike. Compensation for each child shall be paid until such child dies, marries, or reaches the age of eighteen years, or if over eighteen years of age and incapable of self-support, becomes capable of self-support. Compensation for a child under legal age shall be paid to its guardian;

5. 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 percent; if both are wholly dependent, twenty percent 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 a widow, widower, or child. If there is a widow, widower, or child, there shall be paid only such part of the foregoing percentages that, when added to the total of the percentages payable to the widow, widower, and children, the sum shall not exceed the total of seventy-five percent. The compensation of each such beneficiary may continue until such parent dies, remarries or ceases to be a dependent.
6. To a brother, sister, grandparent, or grandchild who is wholly dependent upon the deceased employee for support at the time of his death, twenty percent; if no more than one are wholly dependent, thirty percent divided among such dependents, share and share alike; if none of them are wholly dependent but one or more are partly dependent, ten percent divided among such dependents, share and share alike. The foregoing percentages shall be paid only if there is no widow, widower, child or dependent parent. If there is a widow, widower, child or dependent parent, there shall be paid only such part of the foregoing percentages that, when added to the total percentage payable to the widow, widower, children, and dependent parents, the sum shall not exceed a total of seventy-five percent. The compensation of each such beneficiary 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, remarries, or ceases to be dependent, or if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen years, or if over eighteen years of age 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 guardian.

The weekly wages of the deceased employee shall be considered to have been not more than forty dollars, and not less than thirty dollars.

In addition to the awards made to a pensioner herein the commissioners shall make an award in the sum of three hundred dollars to the widow of the deceased and one hundred dollars to each dependent child, the total amount of such additional award not to exceed six hundred dollars, and such additional award shall be charged to the general fund. This

paragraph shall apply to claims filed from and after the taking effect of this Act.

§ 15. Amendment.) Section 65-1103 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-1103. Salary Of Safety Engineer.) The salary of the safety engineer shall be the sum appropriated for that purpose by the legislative assembly, plus necessary travel expenses.

§ 16. Repeal.) Section 10 of chapter 344 of the North Dakota Session Laws of 1951 is hereby repealed.

Approved March 11, 1955.

CHAPTER 355

H. B. No. 561

(Fristad, Schmidt and Knudson (Morton))

BOILER INSPECTION AND CERTIFICATE REQUIREMENT

AN ACT

To amend and reenact subsection 3 of section 65-1204, sections 65-1206 and 65-1211 of the 1953 Supplement to the North Dakota Revised Code of 1943 relating to boiler inspection and certificate requirements.

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

§ 1. Amendment.) Subsection 3 of section 65-1204 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

3. Boilers carrying a pressure of not more than fifteen pounds per square inch which are equipped with safety devices approved by the bureau unless located in theatres, schools, hospitals, licensed homes for the aged, orphanages or publicly owned buildings.

§ 2. Amendment.) Section 65-1206 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-1206. Certificate Of Inspection.) A certificate of inspection for each boiler inspected shall be issued by the bureau upon payment direct to the bureau of a fee of two dollars. Such inspection certificate shall be valid for a period of not

more than fourteen months for power boilers and twenty-six months for low pressure heating boilers. No certificate of inspection shall be issued for any boiler not in a safe condition to be operated. The inspection fees for the inspection of non-insured boilers must be paid before a certificate of inspection is issued.

§ 3. **Amendment.**) Section 65-1211 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-1211. Inspection Fees.) The owner or user of a boiler required by this Act to be inspected by the boiler inspector, shall pay to the bureau, upon completion of inspection, fees in accordance with the following schedule:

1. Internal inspections of power boilers:
 - a. Not more than 100 square feet of heating surfacefour dollars
 - b. Over one hundred and not more than two thousand five hundred square feet of heating surfaceten dollars
 - c. Over two thousand five hundred square feet of heating surfacetwelve dollars
2. Internal inspections of low pressure heating boilers:
 - a. Boilers without a manholethree dollars
 - b. Boilers with a manholeten dollars
3. External inspections of all boilersthree dollars

Not more than fifteen dollars shall be charged or collected for any and all inspections, as above, of any boiler in any one year except for special inspections made upon request as hereafter provided. All other inspections made by the boiler inspector including shop inspections and special inspections when requested by the owner or user of a boiler, shall be charged for on the scale applicable to an internal inspection plus any additional expenses incurred in connection therewith.

Approved February 8, 1955.