

WORKMEN'S COMPENSATION

CHAPTER 558

S. B. No. 225

(Lowe, Forkner, Unruh)

WEEKLY COMPENSATION FOR INJURED WORKERS

AN ACT

To create and enact subsection 21 of section 65-01-02 of the North Dakota Century Code, relating to the definition of average weekly wages; to amend and reenact sections 65-04-04.1, 65-05-09, 65-06-03 and 65-07-03 of the North Dakota Century Code, relating to weekly compensation for injured workers; and to repeal sections 65-01-04 and 65-05-11 of the North Dakota Century Code, relating to computation of weekly compensation.

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

Section 1.) Subsection 21 of section 65-01-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

21. "Average weekly wage in the state" shall mean the determination made of the average weekly wage in the state by the unemployment compensation division of the North Dakota employment security bureau on July 1 of each year.

Section 2. Amendment.) Section 65-04-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-04.1. Determination of Weekly Wage for Premium 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 Laws 16 and 346 of the United States Congress, the premium for workmen's compensation coverage shall be based on a minimum weekly wage of thirty dollars per week.

Section 3. Amendment.) Section 65-05-09 of the 1967

Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-09. Temporary or Permanent Disability—Weekly and Aggregate Compensation.) If an injury causes temporary, or permanent total disability, the fund shall pay to the disabled employee during such disability a weekly compensation equal to fifty-five percent of the average weekly wage in this state, computed to the next highest dollar, as shall be determined on July 1 of each year by the unemployment compensation division of the North Dakota employment security bureau. In case of temporary or permanent total disability, there shall be paid to such disabled employee an additional sum of five dollars per week for each dependent child under the age of eighteen years living or unborn at the date of the injury, or born during the period of disability; and for each child over eighteen years and incapable of self-support due to physical or mental disability and whose maintenance is the responsibility of the claimant. Dependency awards for the children may be made direct to either parent at the discretion of the bureau. In no case shall the combined compensation and dependency award exceed the net wage, after deductions for taxes, earned by the claimant at the time of the injury, except in the case of volunteer firemen and volunteer civil defense trainees. When a claimant who is permanently and totally disabled, and must be maintained in a nursing home or similar facility, has no dependent parent, spouse, or children, part or all of his weekly compensation may be used by the bureau to help defray the cost of such care.

Section 4. Amendment.) Section 65-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-06-03. Compensation Benefits—How Determined.) The basis of compensation and benefits to be paid to volunteer firemen and volunteer civil defense trainees under the terms of this chapter shall be fifty-five percent of the average weekly wage paid in the state, computed to the next highest dollar.

Section 5. Amendment.) Section 65-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-07-03. Determination of "Weekly Wage" for Premium Purposes.) If the bureau enters into a contract for employer's insurance, the premium for such protection 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 one thousand eight hundred twenty dollars per annum nor more than two thousand five hundred dollars per annum and shall be determined by the bureau.

Section 6. Repeal.) Section 65-01-04 of the North Dakota Century Code, and section 65-05-11 of the 1967 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 14, 1969.

CHAPTER 559

H. B. No. 265
(Kuehn, Metzger, Kelsch)

ATTORNEY'S FEES IN WORKMEN'S COMPENSATION PROCEEDINGS

AN ACT

To amend and reenact section 65-02-08 of the North Dakota Century Code, relating to attorney's fees in proceedings before the workmen's compensation bureau, and to amend and reenact section 65-10-03 of the North Dakota Century Code, relating to attorney's fees in appeals from the bureau, and declaring an emergency.

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

Section 1. Amendment.) Section 65-02-08 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-08. Rule-Making Power of the Bureau—Fees Prescribed by Bureau.) The bureau shall make, promulgate, and enforce such rules, not inconsistent with the provisions of this title, as may be necessary to carry out the provisions of this title. All fees on claims for legal, medical, and hospital services

rendered under this title to any claimant shall be in accordance with schedules of fees adopted or to be adopted by the bureau. The bureau, by rule, shall specify the amount allowable for attorney's fees in proceedings before the bureau and shall pay the same from the bureau general fund. Such attorney's fees shall constitute the entire remuneration for the claimant's attorney for all services before the bureau. Nothing provided herein shall be construed to prevent a claimant or employer from hiring or paying his or her own attorney.

Section 2. Amendment.) Section 65-10-03 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-10-03. Costs of Appeal Including Attorney's Fees Fixed by the Court.) The cost of the appeal, including an attorney's fee for the appellant's attorney, shall be set by the trial judge and taxed against the bureau. The bureau shall pay such attorney's fee from the bureau general fund. The amount of such attorney's fee shall be determined in the same manner as prescribed by rule of the bureau for attorney fees, adopted pursuant to this title, and the amount of attorney's fee already allowed in proceedings before the bureau shall be taken into consideration.

Such attorney's fee shall constitute the entire remuneration for the appellant's attorney for all services in connection with the appeal. Nothing provided herein shall be construed to prevent a claimant or employer from hiring or paying his or her own attorney.

Section 3. 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 29, 1969.

CHAPTER 560

S. B. No. 224

(Lowe, Forkner, Freed, Unruh, Sands, Nething)

VOCATIONAL REHABILITATION FOR INJURED PERSONS

AN ACT

To amend and reenact section 65-02-14 of the North Dakota Century Code, relating to aid in rehabilitating persons injured in employment.

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

Section 1. Amendment.) Section 65-02-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-14. Bureau To Aid in Rehabilitating Persons Injured in Employment.) The bureau shall cooperate with such federal or state agency as shall be charged with vocational education and vocational rehabilitation to the ends that persons injured in the course of employment may be restored to industry and that they may obtain training, education, and employment. An allowance for dependents of not to exceed twenty-five dollars per week may be paid from the fund during the rehabilitation period. Any claimant engaged in a program of rehabilitation, and for whom an allowance for dependents may be paid on the effective date of this Act shall be entitled to continue to receive such allowance for dependents for the remainder of his rehabilitation period.

Approved March 13, 1969.

CHAPTER 561

S. B. No. 281
(Kelly, Morgan, Van Horn)

COMPENSATION FOR SUBSEQUENT OR
AGGRAVATED INJURY

AN ACT

To amend and reenact section 65-04-18 of the North Dakota Century Code, relating to charges of certain workmen's compensation injuries to the subsequent injury fund.

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

Section 1. Amendment.) Section 65-04-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-18. Subsequent Injury or Aggravation of Previous Injury or Condition to Employee—Charge to Employer's Risk—Charge of Part of Claim to Subsequent Injury Fund.) Whenever a subsequent injury or aggravation of a previous injury or pre-existing condition occurs to an employee, the risk of the employer for whom such person was working at the time of such subsequent injury or aggravation shall be charged only with the amount of the awards resulting from such subsequent injury or aggravation. Whenever such subsequent injury or aggravation results in further disability or an aggravation of a pre-existing injury or condition, 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.

Approved March 4, 1969.

CHAPTER 562

H. B. No. 213

(W. Erickson, Grant, Wilkie, Aas, Anderson)

COMPENSATION FOR PERMANENT
PARTIAL DISABILITY

AN ACT

To amend and reenact section 65-05-12 of the North Dakota Century Code, relating to compensation for permanent partial disability.

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

Section 1. Amendment.) Section 65-05-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-12. Permanent Partial Disability—Weekly Compensation—Time Paid.) If the injury causes permanent partial disability, other than scheduled injuries, as elsewhere provided in this chapter, 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;

However, 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 fund, and not to the risk of the employer. This proviso shall also apply to payments made under 65-05-13.

Approved March 25, 1969.

CHAPTER 563

H. B. No. 212

(W. Erickson, Grant, Wilkie, Aas, Anderson)

WORKMEN'S COMPENSATION PAYMENT
SCHEDULE

AN ACT

To amend and reenact section 65-05-13 of the North Dakota Century Code, as amended, relating to compensation for scheduled injuries.

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

Section 1. Amendment.) Section 65-05-13 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-13. 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 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 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 65-05-12 or 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.

Recovery under this section shall bar an additional award of permanent partial disability for the same injury, as elsewhere provided in this chapter.

Approved March 13, 1969.

CHAPTER 564

H. B. No. 214

(Erickson, W. Grant, Wilkie, Aas, Anderson)

COMPENSATION PAYMENT FOR PERMANENT
PARTIAL LOSS OF MEMBERS

AN ACT

To amend and reenact section 65-05-14 of the North Dakota Century Code, as amended, relating to compensation for permanent partial loss of use of members.

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

Section 1. Amendment.) Section 65-05-14 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-14. Scheduled Injuries—Permanent Partial Loss of Use of Member—Weekly Compensation Time—Compensation Payable.) If an injury causes the permanent partial loss of the use of a member or of the sight of an eye, the fund shall pay to the disabled employee a weekly compensation for that proportion of the number of weeks specified in the schedule in section 65-05-13 for the loss of such member or of the sight of an eye, which the partial loss of the use thereof bears to the total loss of the use of such member or eye.

Recovery under this section shall bar an additional award of permanent partial disability for the same injury, as elsewhere provided in this chapter.

Approved March 13, 1969.

CHAPTER 565

H. B. No. 269

(Metzger, Kuehn, Burke, Sanstead)

WORKMEN'S COMPENSATION NONDEPENDENCY
PAYMENTS

AN ACT

To amend and reenact section 65-05-19 of the North Dakota Century Code, relating to payment of nondependency payments in certain workmen's compensation claims; and to repeal section 65-05-20 of the North Dakota Century Code, relating to nondependency payments in lieu of dependency compensation.

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

Section 1. Amendment.) Section 65-05-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-19. Providing Nondependency Payments in Certain Cases.) If the death of an employee with no surviving spouse or children results from an injury within the time limited in section 65-05-16, the bureau shall pay:

1. A lump sum of one thousand dollars to the surviving parent, or in equal shares to the surviving parents. In the event that neither parent is living, the sum provided herein shall be paid in equal shares to the deceased employee's living brothers and sisters. Where there are no living brothers or sisters, the sum herein shall be paid in equal shares to the surviving grandparents, if any, of the deceased employee.

Section 2. Repeal.) Section 65-05-20 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1969.

CHAPTER 566

H. B. No. 240

(Opedahl, Halcrow, Giffey, Metzger, Sanstead)

LUMP SUM WORKMEN'S COMPENSATION PAYMENTS

AN ACT

To amend and reenact section 65-05-25 of the North Dakota Century Code, as amended, relating to the payment of lump sums in certain workmen's compensation claims.

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

Section 1. Amendment.) Section 65-05-25 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-25. Lump Sum Settlement—Granted in Discretion of Bureau—How Computed.) In case of death, permanent total, or permanent partial disability, the bureau, if it determines it is in the best interest of the claimant, may pay a lump sum equal to the present value of all future payments of compensation computed at two and one-half percent discount compounded annually. The probability of the beneficiary's or claimant's death before the expiration of the period during which he is entitled to compensation shall be determined by reference to generally accepted mortality studies. In case of the widow or widower of a deceased employee, the lump sum shall not exceed compensation for four hundred sixteen weeks and the probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. If at the expiration of a period for which lump sum settlement was made hereunder, the claimant is still alive and has not remarried, the bureau, in its discretion, may again assume liability and resume pension payments. The bureau may also grant a partial lump sum settlement, based upon the same computations as the complete lump sum. Any decision of the bureau rendered under this section may be appealed to the district court as provided for in chapter 65-10, and the district court shall render its decision sustaining the decision of the

bureau, reversing it, or remanding it back to the bureau with instructions.

Approved March 13, 1969.

CHAPTER 567

H. B. No. 233

(Opedahl, I. Solberg, Hickle, Gackle)

ASSESSMENT OF PREMIUMS AGAINST MUNICIPALITIES

AN ACT

To amend and reenact section 65-06-04 of the North Dakota Century Code, relating to the assessment of workmen's compensation premiums against municipalities with volunteer firemen and volunteer civil defense trainees.

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

Section 1. Amendment.) Section 65-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-06-04. Assessment of Premiums.) For the purpose of making assessments of premiums to be charged against municipalities for protection of volunteer firemen and volunteer civil defense trainees, the bureau shall make such survey as may seem advisable to ascertain the probable annual expenditures necessary to be paid out of the fund to carry out the provisions of this chapter, and shall fix the annual charges and assessments which shall be made against municipalities employing volunteer firemen and volunteer civil defense trainees. Such charge shall be a fixed sum for each one hundred of the population of the municipality involved, the same to be uniform as to all such municipalities but in proportion to the population thereof. In determining the amount of premium charge, the bureau may apply the system of experience rating provided in this title, as applied to other risks. The bureau may also establish a minimum charge or assessment to be applicable to municipalities where the fixed rate or charge multiplied by the number of hundreds of the population thereof would amount to less than the amount of such minimum charge or assessment. The population

of a municipality shall be that shown by the latest official North Dakota state or United States government census, whichever may be the later.

Approved March 25, 1969.

CHAPTER 568

H. B. No. 241

(Opedahl, Halcrow, Giffey, Metzger, Sanstead)

APPLICATION FOR WORKMEN'S COMPENSATION IN LIEU OF CIVIL ACTION AGAINST EMPLOYER

AN ACT

To amend and reenact section 65-09-02 of the North Dakota Century Code, relating to application for compensation in lieu of civil action against an employer.

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

Section 1. Amendment.) Section 65-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-09-02. Application for Compensation—Hearing.) Any employee whose employer has failed to comply with the provisions of chapter 65-04, who has been injured in the course of his employment, wheresoever such injury has occurred, or his dependents, in case death has ensued, in lieu of proceedings against his employer by civil action in court, may file his application with the bureau for an award of compensation in accordance with the terms of this title. The bureau shall hear and determine such application for compensation in like manner as in other claims before the bureau. After the filing of such claim by said injured employee, or his dependents, in case of death, unless waived by the claimant and employer, the bureau shall set a date for a hearing on said claim and notice of said hearing shall be served by registered or certified mail on all interested parties, except that the service on the employer shall be made in the manner now provided for the service of a summons in a civil action

and said hearing shall be held upon at least ten days' notice. At such hearing witnesses shall be heard for and in behalf of the claimant and employer and any interested party.

Approved March 12, 1969.

CHAPTER 569

H. B. No. 167
(Kuehn, Simonson)

INSPECTION OF EXEMPT BOILERS UPON REQUEST

AN ACT

To provide for the inspection of certain boilers.

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

Section 1. Inspection of Exempt Boilers.) Any boiler exempt from the provisions of section 65-12-04 may be inspected by the boiler inspector when the owner, his agent, or the user of such boiler makes written request for inspection to the North Dakota workmen's compensation bureau.

Fees shall be imposed as provided in section 65-12-11 for inspections done pursuant to this Act.

Approved March 13, 1969.

CHAPTER 570

S. B. No. 482
(Committee on Delayed Bills)

FEE FOR INSPECTING CERTAIN
BOILERS

AN ACT

To create and enact subsection 4 of section 65-12-11 of the North Dakota Century Code, relating to the fee for inspection of certain boilers.

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

Section 1.) Subsection 4 of section 65-12-11 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

4. Boilers used exclusively for exhibition purposes-----five dollars.

Approved March 28, 1969.