

## WORKMEN'S COMPENSATION

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### CHAPTER 451

S. B. No. 250

(Larson, Kautzmann, Dahlund, Mahoney)

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#### DEFINITION OF EMPLOYEE

##### AN ACT

To amend and reenact subdivision 1 of subdivision a of subsection 5 of section 65-01-02 of the North Dakota Century Code, relating to the definition of employee under workmen's compensation.

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

**§ 1. Amendment.)** Subdivision 1 of subdivision a of subsection 5 of section 65-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city or village;

Approved March 15, 1965.

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### CHAPTER 452

H. B. No. 898

(Jungroth)

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#### THIRD PARTY ACTIONS

##### AN ACT

To amend and reenact section 65-01-09 of the North Dakota Century Code, relating to third party actions and workmen's compensation bureau subrogation.

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

**§ 1. Amendment.)** Section 65-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**65-01-09. 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 to the rights of the injured employee or his dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount paid or to be paid in compensation and benefits for the injured employee 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 the subrogation interest of the bureau. If the injured employee 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 injured employee or his dependents and retain its subrogation interest. Within 60 days after both the injured employee and the bureau have declined to commence an action against a third person as provided above, the employer may bring the action in his own name and/or in the name of the employee, and in trust for the bureau and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or his dependents, or the employer as provided above and the bureau shall pay fifty percent of the costs of the action, exclusive of attorney fee, when such costs are incurred. Should there be no recovery of damages in the action this shall be a cost of the bureau to be paid from the bureau general fund. When there is recovery of damages in the action the costs of the action, exclusive of attorneys fees, shall be pro-rated and adjusted on the percentage of the total subrogation interest of the bureau recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured employees attorney from the bureau general fund as follows: 1. Twenty percent of the subrogation interest recovered for the bureau when legal action is not commenced. 2. Twenty-five percent of the subrogation interest recovered for the bureau when action is commenced and settled before judgment. 3. Thirty-three and a half percent of the subrogation interest recovered for the bureau when recovered through judgment.

The above provisions as to costs of the action and attorney fees is effective only when the injured employee advises the

bureau in writing the name and address of his attorney, and that he has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages.

Approved March 8, 1965.

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## CHAPTER 453

H. B. No. 896  
(Jungroth)

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### REPRESENTATION BY ATTORNEY GENERAL

#### AN ACT

To amend and reenact section 65-01-12 of the North Dakota Century Code, relating to attorney general representing the workmen's compensation bureau.

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

§ 1. **Amendment.)** Section 65-01-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**65-01-12. Attorney General to Represent Bureau.)** Upon the request of the bureau, the attorney general shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this title or for the recovery of any money due the fund or of any penalty provided for in this title, and shall defend all suits, actions, or proceedings brought against the bureau or any member thereof in his official capacity.

Approved March 8, 1965.



## CHAPTER 454

H. B. No. 746

(Lundene, Shablow, Haugland, Larson (Richland), Staven)

## TERM OF CHAIRMAN

## AN ACT

To amend and reenact section 65-02-04 of the North Dakota Century Code providing for the appointment and term of a chairman for the workmen's compensation bureau.

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

§ 1. **Amendment.)** Section 65-02-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**65-02-04. Chairman of the Bureau.)** The governor shall designate one of the commissioners as chairman of the bureau. The term of such commissioner as chairman shall not exceed two years and shall expire on the tenth day of July in each odd numbered year.

Approved March 2, 1965.

## CHAPTER 455

H. B. No. 897

(Jungroth)

## RULES AND FEES

## AN ACT

To amend and reenact section 65-02-08 of the North Dakota Century Code, relating to workmen's compensation bureau rule-making power and fee schedules.

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

§ 1. **Amendment.)** Section 65-02-08 of 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.

Approved March 8, 1965.

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## CHAPTER 456

H. B. No. 745

(Lundene, Shablow, Haugland, Staven, Larson (Richland) )

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### AMOUNT OF BENEFITS

#### AN ACT

To amend and reenact sections 65-05-09 and 65-05-11 of the North Dakota Century Code, relating to the amount of workmen's compensation benefits.

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

§ 1. **Amendment.)** Section 65-05-09 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

**65-05-09. 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 eighty percent of his weekly wage, subject to the maximum and minimum limitations contained in section 65-05-11. In case of temporary or permanent total disability, there shall be paid to such disabled employee an additional sum of three 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 of the disabled employee; 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 event shall the total weekly payment to the totally disabled exceed the sum of sixty-five dollars per week, and in no case shall the compensation and dependency award exceed the actual wage of the disabled employee

except in those cases on which the minimum compensation award is applied.

§ 2. **Amendment.)** Section 65-05-11 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

**65-05-11. Maximum and Minimum Compensation Allowances—Total and Partial Disability.)** The weekly compensation for total disability shall not be more than fifty dollars, except where an allowance for dependents is made in compliance with section 65-05-09, nor less than fifteen dollars. The weekly compensation for temporary partial disability with partial allowance for dependents shall not be more than fifty dollars. These provisions shall be applicable to all total disability and temporary partial disability awards for injuries as defined in this title occurring on or after July 1, 1965. 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.

Approved March 5, 1965.

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## CHAPTER 457

H. B. No. 922

(Ruddy, Kvasager, Boustead)

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### ALLOWANCES FOR DEATH CLAIMS

#### AN ACT

To amend and reenact section 65-05-17 of the North Dakota Century Code, relating to weekly compensation in death claims.

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

§ 1. **Amendment.)** Section 65-05-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**65-05-17. Weekly Compensation Allowances for Death Claims.)** If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified, a weekly compensation:

1. To the widow the amount of twenty-five dollars until her death or remarriage;
2. To the widower if he was wholly dependent upon the support of the deceased employee at the time of her death the amount of twenty-five dollars until his death or remarriage;
3. To the widow or widower, if there is a child, the compensation payable under subsections 1 and 2, and in addition thereto, when there is no parent said payments shall be made to the guardian of such child, children or issue and the payments shall cease as to any child or issue of the deceased employee upon his or her reaching the age of eighteen years, dies, marries, or if incapable of self-support when it becomes capable of self-support or is adopted. For each surviving child or issue of said deceased employee born within ten months after the employee's date of death the amount of seven dollars until such child dies, marries, or reaches the age of eighteen years, or if such child is incapable of self-support until it becomes capable of self-support.

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 for 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 bureau general fund.

Approved March 15, 1965.

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## CHAPTER 458

H. B. No. 894  
(Jungroth)

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### APPEALS

#### AN ACT

To amend and reenact section 65-10-01 of the North Dakota Century Code Supplement, relating to appeals from decisions of the workmen's compensation bureau.

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

**§ 1. Amendment.)** Section 65-10-01 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

**65-10-01. Appeal from Decision of Bureau.)** 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 employer may also appeal a decision of the bureau in any injury case in the manner prescribed in this section. An appeal involving injuries received under insurance provided under contracts with extraterritorial coverage shall be triable in the district court of Burleigh County. Any appeal under this section shall be taken in the manner provided in chapter 28-32. Any appeal to the district court shall be heard on the record, transmitted from the bureau, and, in the discretion of the court, additional evidence may be presented pertaining to the questions of law involved in the appeal.

Approved March 8, 1965.