

WORKMEN'S COMPENSATION

CHAPTER 483

S. B. No. 194
(Longmire, Lowe, Larsen)

DEFINITIONS

AN ACT

To amend and reenact subdivision a of subsection 4 and subdivision a of subsection 8 of section 65-01-02 of the North Dakota Century Code, relating to workmen's compensation definitions.

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

§ 1. Amendment.) Subdivision a of subsection 4 of section 65-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. "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 railroad; or
 3. Any employment for the transportation of property or persons by nonresidents, 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;

§ 2. Amendment.) Subdivision a of subsection 8 of section 65-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. Any disease which can be fairly traceable to the employment. Compensation shall not be paid, however, for any condition which existed prior to the happening of a compensable injury nor for any disability chargeable to such condition. Ordinary diseases of life to which the general public outside

of the employment is exposed shall not be compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected to in the course of his employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It need not have been foreseen or expected, but after it is contracted, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence; and

Approved February 24, 1967.

CHAPTER 484

H. B. No. 676

(Haugland, Solberg(2), Sanstead, Dornacker, Williamson, Link,
(Peterson(5), Stone, Backes, Fossum, Saugstad, Bullis)

COMPENSATION CLAIMS

AN ACT

To amend and reenact sections 65-05-01, 65-05-07, 65-05-08, 65-05-10, 65-05-13, 65-05-14, 65-05-17, and 65-05-26 of the North Dakota Century Code, relating to filing compensation claims, medical attention to injured employees, disability compensation, partial disability, scheduled injuries, permanent partial injuries, weekly compensation in death claims, and bureau burial expenses.

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

§ 1. **Amendment.)** Section 65-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-01. Claims for Compensation — When and Where Filed.) All original claims for compensation for disability or death shall be filed within sixty days after injury or death. For any reasonable cause shown, however, the bureau may allow original claims for compensation for disability or death to be filed at any time within one year after the injury or death. The date of injury for purposes of this section shall be the actual date of injury when such can be determined with certainty by the claimant and bureau. When the actual date of injury cannot be determined with certainty the date of

injury shall be the first date the injury or diseased condition culminates in a need for medical attention or an incapacity of the employee for work. No compensation or benefits shall be allowed under the provisions of this title to any person, except as provided in section 65-05-04, unless he or she, or someone on his or her behalf, shall file a written claim therefor within the time specified in this section. Such claim shall be filed by:

1. Delivering it at the office of the bureau or to any person whom the bureau by regulation may designate; or
2. Depositing it in the mail properly stamped and addressed to the bureau or to any person whom the bureau by regulation may designate.

§ 2. Amendment.) Section 65-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-07. Injured Employee Given Medical and Hospital Service Required—Furnished Artificial Limbs and Appliances for Rehabilitation.) Immediately after an injury sustained by an employee and during the resulting period of disability, the fund shall furnish to the employee such medical, surgical, and hospital service and supplies as the nature of the injury may require. If the injury causes permanent partial disability, the fund, in addition to the specific benefits provided, may furnish such artificial limbs, glasses, braces, equipment, or appliances or provide such course of study, training, or education as in the judgment of the bureau may be necessary to rehabilitate such injured employee.

§ 3. Amendment.) Section 65-05-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-08. 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 during disability.

§ 4. Amendment.) Section 65-05-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-10. Partial Disability—Weekly Compensation.) If the injury causes partial disability the fund shall pay to the disabled employee during such disability a weekly compensation to be fixed by the bureau.

§ 5. Amendment.) Section 65-05-13 of 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 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 65-05-12 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.

§ 6. Amendment.) Section 65-05-14 of 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.

§ 7. Amendment.) Section 65-05-17 of the 1965 Supplement to 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 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. The bureau in its discretion may make such payment directly to such surviving child or issue of the deceased employee or to the surviving parent or guardian of such child or issue.

In addition to the awards 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, and such additional award shall be charged to the bureau general fund.

§ 8. Amendment.) Section 65-05-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-26. Bureau Burial Expenses.) If death results from an injury within six years, the fund shall pay to the personal representatives of the deceased employee burial expenses not to exceed five hundred dollars.

Approved March 6, 1967.

CHAPTER 485

H. B. No. 747

(Allen, Haugland, Williamson, Unruh, Backes, Aas,
(Saugstad, Peterson(5), Dornacker, Sanstead)

TOTAL DISABILITY AND COMPENSATION

AN ACT

To amend and reenact section 65-05-09 of the North Dakota Century Code, relating to total disability; weekly and aggregate compensation.

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

§ 1. **Amendment.)** Section 65-05-09 of the 1965 Supplement to the North Dakota Century Code 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 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 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 seventy-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. The payments provided for in this section shall apply to all total disability claims which are the liability of the workmen's compensation bureau on and after July 1, 1967, without regard to the date of injury of the claimant.

Approved March 4, 1967.

CHAPTER 486

S. B. No. 198
(Longmire)

SETTLEMENTS BY WORKMEN'S COMPENSATION BUREAU

AN ACT

To amend and reenact section 65-05-25 of the North Dakota Century Code, relating to decisions of the workmen's compensation bureau in making lump sum settlements from the workmen's compensation fund.

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

§ 1. **Amendment.**) Section 65-05-25 of 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, or of permanent total or permanent partial disability, the bureau, if it determines that it is for the best interest of the beneficiary, may pay to such beneficiary 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 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. In case of compensation to 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 beneficiary 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 February 24, 1967.

CHAPTER 487

H. B. No. 859
(Dornacker)

CONFLICTS OF JURISDICTION

AN ACT

To create section 65-08-04 of the North Dakota Century Code, providing for agreements between states relating to conflicts of jurisdiction; to amend sections 65-08-01 and 65-08-02, relating to extraterritorial coverage, when and how furnished, and reciprocity in extraterritorial application of compensation Acts of various states provided.

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

§ 1. **Amendment.**) Section 65-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-08-01. 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. A North Dakota 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;
2. A North Dakota 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. A North Dakota 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 incidental to or referable to the principal employment the localization and situs of which is not in North Dakota;
4. A North Dakota employer or his authorized agent has hired an employee, who is a resident of another state, for temporary employment the situs of which is located in another state, and where such temporary employment is necessary to the principal employment of such employer, provided that such other state recognizes the coverage under this title as a sole remedy of the employee against the employer for such injury or death.

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

65-08-02. Reciprocity in Extraterritorial Application of Compensation Acts of Various States Provided.) An employee who is a resident of another state and his employer from another state shall be exempted from the provisions of this title while such nonresident employee is temporarily within the state of North Dakota doing work for such nonresident employer:

1. If that employer has furnished to such employee workmen's compensation insurance under the Workmen's Compensation Act, or any similar act, of such other state, covering such employee's employment in North Dakota.
2. If the extraterritorial coverage furnished by this title 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;
3. If the employers and employees resident in North Dakota who are covered by the provisions of this title are likewise exempted from the application of the Workmen's Compensation Act, or any similar act, of such other state.

If the annual payroll expended within North Dakota by a nonresident employer exceeds one thousand dollars then the out-of-state employer shall no longer be considered as operating in North Dakota on a temporary basis, unless there is an agreement between the North Dakota workmen's compensation bureau and a similar agency of the other state where the employer is a resident, and such agreement provides otherwise.

The benefits under the Workmen's Compensation Act or similar laws of the other state, or other remedies under a like act or laws are the exclusive remedy against the employer for any resulting injury or death suffered by such employee while working for that employer in the state of North Dakota.

§ 3.) Section 65-08-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

65-08-04. Agreements Between States Relating to Conflicts of Jurisdiction.) The workmen's compensation bureau, through the action of a majority of the commissioners, shall have authority to enter into agreements with the workmen's compensation agencies of other states relating to conflicts of

jurisdiction where the contract of employment is in one state and the injuries are received in the other state, or where there is a dispute as to the boundaries or jurisdiction of the states and when such agreements have been executed and made public by the respective state agencies, the rights of the employee hired in such other state and injured while temporarily employed in North Dakota, or hired in North Dakota and injured while temporarily employed in another state, or where the jurisdiction is otherwise uncertain, shall be determined pursuant to such agreements and confined to the jurisdiction provided in such agreements. Where such an agreement exists, any provisions of this chapter which conflict with the provisions of that agreement shall be superseded by the provisions of that agreement.

Approved March 4, 1967.

CHAPTER 488

S. B. No. 312

(Morgan, Meschke, Nothing)

APPEALS FROM BUREAU DECISION

AN ACT

To amend and reenact section 65-10-01 and 65-10-03 of the North Dakota Century Code, relating to appeals from decision of bureau, and costs of appeal.

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

§ 1. Amendment.) Section 65-10-01 of the 1965 Supplement to the North Dakota Century Code 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 or of a county agreed to by stipulation of the appellant and the bureau. 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 extra-territorial 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.

§ 2. **Amendment.)** Section 65-10-03 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-10-03. Costs of Appeal Including Attorneys' Fees Fixed by the Court.) The cost of the appeal, including an attorney's fee for the prevailing attorney, shall be set by the trial judge and taxed against the bureau. The bureau shall pay such attorney fee from the bureau general fund. The court shall set such attorney fee as follows:

1. Not to exceed twenty percent of the amount allowed on appeal to the date of judgment over and above the award given by the bureau;
2. Not to exceed twenty percent of the amount allowed on appeal to the date of judgment when no award was given by the bureau.

Such attorney fee shall cover and constitute the entire remuneration for the prevailing attorney for all services in connection with the appeal.

Approved February 24, 1967.