

WORKMEN'S COMPENSATION

CHAPTER 274

S. B. No. 37—(Stucke and Young)

WORKMEN'S COMPENSATION ACT, AMENDMENT

An Act amending and re-enacting the Workmen's Compensation Act by amending and re-enacting paragraphs 3 and 7 of section 2 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof; subsections A, C, E, F, G, G-e, G-f, G-l, and G-m of section 3 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof; subsection I of section 4 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof; paragraphs 5 and 9 of section 7 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof; paragraph 6 of section 8 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof; section 10 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof; and section 11 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof, all constituting parts of the Workmen's Compensation Act of the State of North Dakota and relating to the definition of the term "employee"; the term "injury"; providing for rehabilitation of injured persons; fixing awards which may be made; removing the limitation of awards; fixing the amount of interest to be computed and charged in lump sum settlements; providing for schedules of fees for legal, medical and hospital services; providing for the manner in which a surplus may be created and maintained; providing for the payment of awards in case of aggravation; providing for the collection of premiums in default and the settlement of the same; providing coverage for elected peace officers in cities and villages; and providing for relief to injured employees of non-complying employer.

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

§ 1. AMENDMENT.] That paragraphs 3 and 7 of section 2 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof are hereby amended and re-enacted to read as follows:

§ 2, paragraph 3. "Employee" means every person, engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship express or implied, oral or written, including aliens, and including poor relief workers, except workers engaged in repaying to counties relief monies which the counties have been compelled by statute to expend for poor relief and also including minors, whether such minors are lawfully or unlawfully employed, but excluding any person whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and excluding those engaged in illegal enterprises or occupations, and also excluding any executive officer of the business

concern who receives a salary of more than twenty-four hundred dollars (\$2,400.00) per year. Persons employed by a subcontractor or an independent contractor operating under an agreement with the general contractor, for the purposes of this Act shall be deemed to be employees of the general contractor. Where one performs services for another for a remuneration whether salary, commission or otherwise, he is presumed to be an employee unless the contrary is shown.

Paragraph 7. The term "injury" also includes injury to artificial members, and the term "artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb or other part of the body. Provided that dentures shall not be considered a substitute for but an aid to, as the terms are used in this Act. If the employer claims an exemption or forfeiture under any portion of this section, the burden of proof shall be upon him.

§ 2. AMENDMENT.] That subsection A of section 3 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 3-A. Immediately after an injury sustained by an employee and during the resulting period of disability, the North Dakota Workmen's Compensation Fund, shall furnish to such employee such medical, surgical and hospital service and supplies as the nature of the injury may require, and may, if such injury causes permanent partial disability, in addition to the specific benefits provided, furnish such artificial limbs, glasses, braces or appliances, or provide such course of study, training, or education which in the discretion of the Bureau may be necessary to rehabilitate such injured employee.

§ 3. AMENDMENT.] That subsection C of section 3 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 3-C. If the injury cause temporary or permanent total disability, the North Dakota Workmen's Compensation 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 in the case of temporary total disability, there shall be paid to such disabled employee an additional sum of \$1.00 per week for each dependent child under the age of eighteen (18) years or if over eighteen (18) years and incapable of self support as elsewhere defined in this Act. Provided further that in no event shall the total weekly payment to said disabled employee exceed the sum of \$25.00 per week.

§ 4. AMENDMENT.] That subsection E of section 3 of Chap-

ter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 3-E. If the injury cause permanent partial disability, the percentage which such disability bears to total disability, taking into consideration the employee's age and occupation, shall be determined, and the North Dakota Workmen's Compensation Fund shall pay to the disabled employee a weekly compensation equal to sixty-six and two-thirds per cent of his weekly wages, for the following periods:

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

and the following shall be the schedule of specific benefits to be allowed for specific injuries:

1. For loss of arm at shoulder -----	234	weeks
2. For loss of arm at or above elbow ----	213.5	weeks
3. For loss of hand at or above wrist ----	195	weeks
For loss of master hand 25% additional		
4. For loss of thumb -----	60	weeks
5. For loss of second or distal phalange of thumb -----	25	weeks
6. For loss of first finger -----	35	weeks
7. For loss of middle or second phalange of first finger -----	25	weeks
8. For loss of third or distal phalange of first finger -----	20	weeks
9. For loss of second finger -----	25	weeks
10. For loss of middle or second phalange of second finger -----	20	weeks
11. For loss of third or distal phalange of second finger -----	12	weeks
12. For loss of third finger -----	18	weeks
13. For loss of middle or second phalange of third finger -----	14	weeks
14. For loss of third or distal phalange of third finger -----	8	weeks
15. For loss of fourth finger -----	16	weeks
16. For loss of middle or second phalange of fourth finger -----	12	weeks

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| 17. | For loss of third or distal phalange of fourth finger ----- | 6 | weeks |
| 18. | For loss of leg at hip ----- | 234.0 | weeks |
| 19. | For loss of leg at or above knee ----- | 195.0 | weeks |
| 20. | For loss of foot at or above ankle ---- | 136.5 | weeks |
| 21. | For loss of great toe ----- | 25 | weeks |
| 22. | For loss of second or distal phalange of great toe ----- | 15 | weeks |
| 23. | For loss of any other toe ----- | 10 | weeks |
| 24. | For loss of middle or second phalange of any other toe ----- | 8 | weeks |
| 25. | For loss of third or distal phalange of any other toe ----- | 5 | weeks |
| 26. | For loss of an eye ----- | 100 | weeks |
| 27. | For loss of hearing in one ear ----- | 29.25 | weeks |
| 28. | For loss of hearing in both ears ----- | 156.00 | weeks |
| 29. | In no case will the amount received for more than one finger exceed the amount provided in this schedule for loss of hand. | | |
| 30. | For the loss of the metacarpal bone (bones of the palm) for corresponding thumb, finger, or fingers as above, add 10 weeks to the number of weeks as above. | | |
| 31. | Loss of use. 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. | | |
| 32. | For the permanent partial loss of use of a member or sight of an eye, $66 \frac{2}{3}$ per cent of the average weekly wage during that portion of the number of weeks the foregoing schedule provides for the loss of such members or sight of an eye which the partial loss of use thereof bears to the total loss of use of such member or sight of an eye. | | |
| 33. | The loss of any part of a phalange is equal to the loss of the entire phalange. | | |

If an employee dies, the right to any compensation, payable under subsection "E", unpaid at the date of his death is survived to and passes to his dependents, which dependents shall be limited to the surviving spouse, minor children and parents.

§ 5. AMENDMENT.] That subsection F of section 3 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 3-F. The weekly compensation for total disability shall not be more than Twenty Dollars (\$20.00) nor less than Nine Dollars (\$9.00) unless the employee's weekly wages are less than Nine Dollars (\$9.00) in which case his weekly compensation shall be the actual amount of his weekly wages. The weekly compensation for partial

disability shall not be more than Twenty Dollars (\$20.00), except as provided in Section -C above. If the injured person was, at the time of the injury, a minor or employed in a learner's capacity, and not physically or mentally defective, the Bureau shall, from time to time 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.

§ 6. AMENDMENT.] That subsection G of section 3 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 3-G. If death results from an injury within six years, the North Dakota Workmen's Compensation 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; provided, however, that no compensation shall be paid where death takes place more than one year after the cessation of disability resulting from the injury, or, if there has been no disability preceding death if death takes place more than one year after the injury.

§ 7. AMENDMENT.] That paragraph (e) of subsection G of section 3 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 3-G(e). 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 per cent; if both are wholly dependent twenty per cent 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 no widow, widower, or child. If there is a widower, widow or child, there shall be paid only so much of the foregoing percentages as, when added to the total of the percentages payable to the widow, widower and children, shall not exceed the total of sixty-six and two-thirds per cent.

§ 8. AMENDMENT.] That paragraph (f) of subsection G of section 3 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 3-G(f). To the brothers, sisters, grandparents, and grand children, if one is wholly dependent upon the deceased employee for support at the time of his death, twenty per cent to such dependent; if more than one are wholly dependent, thirty per cent, divided among such dependents, share and share alike; if none of them are wholly dependent but one or more are partly dependent, ten per cent di-

vided among such dependents, share and share alike. The foregoing percentages shall be paid only if there is no widow, child, or dependent parent. If there is a widow, widower, child or dependent parent, there shall be paid only so much of the foregoing percentages as, when added to the total percentages payable to the widow, widower, children and dependent parents, shall not exceed a total of sixty-six and two-thirds per cent.

§ 9. AMENDMENT.] That paragraph (1) of subsection G of section 3 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 3-G(1). In case of death or permanent total, or permanent partial disability, and if the Bureau determines that it is for the best interest of the beneficiary, the liability for compensation to such beneficiary may be discharged by the payment of a lump sum equal to the present value of all future payments of compensation computed at two and one half per cent 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 Tables of Mortality; but in case of compensation to the widow or widower of the deceased employee, such lump sum shall not exceed 416 weeks' compensation. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. The Bureau may also grant a partial lump sum settlement based upon the same computations as the complete lump sum which partial settlement shall be a complete discharge of whatever portion or percentage of the annuities is covered thereby.

§ 10. AMENDMENT.] That paragraph (m) of subsection G of section 3 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 3-G(m). All fees on claims for legal, medical and hospital services rendered under this Act to any claimant shall be in accordance with schedules of fees adopted or to be adopted by the Commissioners of the Workmen's Compensation Bureau and subject to the approval of such Commission. The Bureau, by rule, shall specify the amount allowable for attorney's fees in proceedings before the Bureau and the method of enforcing collection thereof from the client when his claim has been allowed. For services rendered in the District Court and Supreme Court the attorneys fees shall be subject to the approval of the judge of the District Court, as herein in this Act otherwise provided. If death results from the injury within six years the North Dakota Workmen's Compensation Fund shall pay to the personal representative of the deceased employee, burial expenses not to exceed Two Hundred Dollars (\$200.00).

§ 11. AMENDMENT.] That paragraphs 5 and 9 of section 7 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof are hereby amended and re-enacted to read as follows:

§ 7, paragraph 5. Ten (10) per cent of the money that is paid into the Workmen's Compensation Fund shall be set aside for the creation of a surplus until such surplus shall amount to the sum of Fifty Thousand Dollars (\$50,000.00), after which time the sum of five (5) per cent of all the money paid into such Workmen's Compensation Fund shall be credited to such surplus fund, until such time as, in the judgment of the Bureau, such surplus shall be sufficiently large to guarantee the Workmen's Compensation Fund from year to year. After which time such transfer of said funds to the surplus may be discontinued temporarily for one or more years or until such time as in the judgment of the Bureau the transfer of five (5) per cent of all money paid into such Workmen's Compensation Fund to such surplus shall again be necessary.

Paragraph 9. In case of aggravation of any injury or disease existing prior to a compensable injury, compensation, medical, hospital or funeral expense, or death benefits, shall be allowed by the Bureau and paid from the Workmen's Compensation Fund only for such proportion of the disability, death benefits or expense arising from the aggravation of such prior disease or injury as may reasonably be attributable to such compensable injury. But any compensation paid on the basis of aggravation shall not be less than Six Dollars (\$6.00) per week unless the actual wages of claimant shall be less than Six Dollars (\$6.00) in which event the actual wages shall be paid in compensation.

§ 12. AMENDMENT.] That paragraph 6 of section 8 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 8, paragraph 6. Within twenty days after any such default the Bureau shall certify the account in default to the Attorney General for the collection of the premium and accrued penalties, together with the further accruing penalties, and whenever an account has been so certified to the Attorney General the Commission shall have authority to adjust or compromise the same upon recommendation of the Attorney General.

§ 13. AMENDMENT.] That section 10 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 10. That all elective officials of the State of North Dakota, including the members of the Legislative Assembly, and all elective officials of the several counties of the State, and all elective peace officers of any city or village, shall be considered as employees of the State of North Dakota and of the counties thereof and of the

other political subdivisions, as the case may be, within the meaning of the North Dakota Workmen's Compensation Act, as amended.

§ 14. AMENDMENT.] That section 11 of Chapter 162 of the Session Laws of 1919 and acts amendatory thereof is hereby amended and re-enacted to read as follows:

§ 11. Employers subject to this Act who shall fail to comply with the provisions of sections Six (6) and Seven (7) hereof shall not be entitled to the benefits of this Act during the period of such noncompliance, but shall be liable to their employees for damages suffered by reason of injuries sustained in the course of employment, and also to the personal representatives of such employees where death results from such injuries, and in such action the employer shall not avail himself or itself of the following common law defenses: The defense of the fellow-servant rule, the defense of the assumption of risk, and the defense of contributory negligence.

Such employer shall be also subject to the provisions of Section Eight (8).

Any employee, whose employer has failed to comply with the provisions of Sections Six (6) and Seven (7) hereof, who has been injured in the course of his employment, wheresoever such injury has occurred, or his dependents, in case death has ensued, may, in lieu of proceedings against his employer by civil action in Court, file his application with the Workmen's Compensation Bureau for an award of compensation in accordance with the terms of this Act, and 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, the Bureau shall set a date for a hearing on said claim and notice of said hearing shall be served by registered 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 (10) days notice. At such hearing witnesses shall be heard for and in behalf of the claimant and employer and any interested party. If the testimony adduced is sufficient to substantiate the prayer of the claimant, the Bureau shall make findings of fact and issue conclusions of law and make an order of award and copies of said findings, conclusions and order shall be served upon the claimant, the employer and all interested parties by registered mail, provided, however, that the service upon the employer shall be made in the manner now provided for the service of a summons in a civil action. The employer shall in like manner and at the same time be served with a notice that if he shall within Thirty (30) days fail to pay such award or perfect an appeal therefrom to the District Court in the manner now provided by law for such appeals, that the Bureau will present a petition to the District Court having jurisdiction in the

matter, which petition will contain the original findings of fact, conclusions of law and order for award in said matter and which petition will present to such Court proof of the award and of the failure of the employer to pay such award or the taking of appeal therefrom, and the said Court will be asked to enter a judgment in favor of the Bureau and against the employer together with such reasonable costs and attorneys fees allowed by the Bureau and that upon the said Court having made its order for judgment there shall be filed with the Clerk of the District Court of the County in which the employer resides, if he is an individual, or in the county where it has its principal place of business, if the employer is a corporation, a certified record of the proceedings had before the Bureau and that thereupon the judgment will be entered upon the docket of the District Court of said county as a judgment in favor of the Bureau and against the employer and shall have the full force and effect of a judgment of such court; and no exemptions except absolute exemptions shall be allowed against any levy under executions pursuant to any judgment recovered in such action. All original claims for compensation for disability or death contemplated by this section shall be made within sixty days after such injury or death. For any reasonable cause shown the Bureau may allow original claims for disability or death to be made at any time within one year. A final judgment against the employer, recovered in the manner provided herein, shall entitle such claimant to the compensation provided by this Act for such injury or death and such compensation shall be paid from the general fund of the Bureau and any sum then or thereafter recovered on account of such judgment shall be paid to the Workmen's Compensation Bureau and credited to the Workmen's Compensation fund.

§ 15. REPEAL.] All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 20, 1943.