

## WORKMEN'S COMPENSATION

### CHAPTER 354

Senate Bill No. 118

(Rue, Braun and Stucke and Nordhougen)

#### WORKMEN'S COMPENSATION; DEFINITIONS, RATES, ETC.

##### AN ACT

To amend and reenact subsection 8 of section 65-0102, sections 65-0207, 65-0428, 65-0512, 65-0527, 65-0801 of the North Dakota Revised Code of 1943; subsection 5, of section 65-0102, section 65-0202, 65-0503, 65-0509, 65-0513, 65-0517, 65-0526, 65-0802 and 65-1001 of the 1947 Supplement to the North Dakota Revised Code of 1943, relating to workmen's compensation; and declaring an emergency.

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

SECTION 1. AMENDMENT.) Subsection 5 of section 65-0102 of the 1947 Supplement to the North Dakota Revised Code of 1943 and subsection 8 of section 65-0102 of the North Dakota Revised Code of 1943 are hereby amended and reenacted to read as follows:

65-0102. DEFINITIONS.) Whenever used in this title:

5. "Employee" shall mean every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:

a. Such term shall include:

1. All elective officials of this state, 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;
2. Aliens;
3. Poor relief workers except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief; and
4. Minors, whether lawfully or unlawfully employed; a minor shall be deemed sui juris for the purposes of this act, and no other person shall have any cause of action or right to compensation for any injury to such minor

workman, but in the event of the award of a lump sum of compensation to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor;

b. Such term shall not include:

1. Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer;
2. Any person who is engaged in an illegal enterprise or occupation; nor
3. Any executive officer of a business concern who receives a salary of more than twenty-four hundred dollars per year;

c. Persons employed by a subcontractor or 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;

8. "Injury" shall mean only an injury arising in the course of employment including an injury caused by the willful act of a third person directed against an employee because of his employment, but such term shall not include an injury caused by the employee's willful intention to injure himself or to injure another, nor any injury received because of the use of narcotics or intoxicants while in the course of the employment. Such term, in addition to an injury by accident, shall include:

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. 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

b. An injury to artificial members;

SECTION 2. AMENDMENT.) Section 65-0202 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0202. OATH OF OFFICE; SALARY.) Before commencing to perform his duties, each commissioner shall file an oath of office in the usual form and shall be bonded by the state bonding department in the sum of five thousand dollars for the faithful discharge of his duties as such commissioner and the proper accounting for all moneys received by him as such officer. Each commissioner shall receive such salary as is appropriated by the legislative assembly.

SECTION 3. AMENDMENT.) Section 65-0207 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0207. BUREAU TO HAVE SEAL.) The bureau shall have a seal for the purpose of authentication, whenever authentication is required, upon which seal shall be inscribed the words "Workmen's Compensation Bureau — North Dakota — Seal."

SECTION 4. AMENDMENT.) Section 65-0428 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0428. COMPLYING EMPLOYERS NOT LIABLE FOR INJURIES TO OR DEATHS OF EMPLOYEES; COMMON LAW ACTIONS BARRED.) Employers who comply with the provisions of this chapter shall not be liable to respond in damages at common law or by statute for injury to or death of any employee, wherever occurring, during the period covered by the premiums paid into the fund.

SECTION 5. AMENDMENT.) Section 65-0503 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0503. JURISDICTION OF BUREAU TO HEAR QUESTIONS WITHIN ITS JURISDICTION; FINALITY OF DETERMINATION.) The bureau shall have full power and authority to hear and determine all questions within its jurisdiction, and its decisions, except as provided in chapter 10, of this title, shall be final. Before an award for permanent disability can be made to a claimant, the bureau shall give notification in writing, by registered mail, addressed to the employer of said claimant at his last known address, of their intention to make such award, outlining reasons and amount of such evaluation and giving the employer ten days in which to file a written protest to such award. If such protest is registered by the employer, the bureau shall set a date of hearing to show cause, if any there be, why such award should not be made, and

shall notify the employer of the date set, and the bureau shall order an examination of the claimant on or before the date set for the hearing by a duly qualified physician licensed to practice and practicing his profession in the state of North Dakota, designated by the employer.

SECTION 6. AMENDMENT.) Section 65-0509 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0509. 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 sixty-six and two-thirds percent of his weekly wage. In case of temporary total disability, there shall be paid to such disabled employee an additional sum of five dollars per week for a dependent spouse plus two dollars per week for each dependent child under the age of eighteen years, 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 spouse and children may be made direct to the spouse at the discretion of the bureau. In no event shall the total weekly payment to the totally disabled employee exceed the sum of thirty-seven dollars per week, and in no case shall the compensation award exceed the actual wage of the disabled employee except in those cases on which the minimum compensation award is applied.

SECTION 7. AMENDMENT.) Section 65-0512 of 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 twenty-two dollars 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 twenty-two dollars per weeks the difference between twenty-two dollars 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.

SECTION 8. AMENDMENT.) Section 65-0513 of the 1947 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 twenty-two dollars per week for the following periods:

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 ;
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 ;
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.....	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 weeks;
29. In no case will the amount received for more than one finger exceed the amount provided in this schedule for loss of a hand;
30. For the loss of the metacarpal bone, (bones of the palm, for the corresponding thumb, finger, or fingers as above) add ten weeks to the number of weeks above;
31. Loss of use. Permanent loss of use of 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 that compensation for partial loss of use of said parts be allowed on a percentage basis; that 25% additional be allowed where it involves compensation for the following:
  - a. Loss of use of the master hand or any member or members thereof, and/or
  - b. Loss of use on a percentage basis of the master hand or any member or members thereof; and/or
  - c. Amputation of the master hand or any member or members thereof;
32. The loss of any part of a phalange is equal to the loss of the entire phalange.

If any employee dies, 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 dependents, which dependents shall be limited to the surviving spouse, minor children, and parents.

SECTION 9. AMENDMENT.) Section 65-0517 of the 1947 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 the 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 of age, 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 no widow, widower, or child. If there is a widower, widow 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 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 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 percentages 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, a 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 thirty-five dollars, and not less than twenty-five dollars. The increase in payments resulting from the enlargement of the salary base shall be payable to all pensioners and dependents but only from and after the taking effect of this act.

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 only to the claims filed from and after the taking effect of this act.

SECTION 10. AMENDMENT.) Section 65-0526 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0526. 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 three hundred dollars.

At the discretion of the bureau, when transportation of the corpus involves unusual distances for the purpose of burial, an additional award may be made for these expenses but such award shall not exceed the sum of one hundred dollars. This paragraph



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

SECTION 11. AMENDMENT.) Section 65-0527 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0527. BUREAU WITHOUT PROBATE PROCEEDINGS MAY PAY SPOUSE OF DECEASED CLAIMANT SUM DUE DECEASED.) If a compensation claimant dies and there is due to his or her estate any sum not exceeding one hundred fifty dollars, the bureau, without probate proceedings, may pay to the spouse of such claimant, if living, or in the event of his or her death or incompetency, to any adult person who has assumed or paid the expenses of the last illness or funeral expense of the said claimant, the balance remaining due as hereinbefore limited.

SECTION 12. AMENDMENT.) Section 65-0801 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0801. EXTRATERRITORIAL COVERAGE FURNISHED UNDER SPECIAL CONTRACT ONLY; EXCEPTION.) 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 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.

SECTION 13. AMENDMENT.) Section 65-0802 of the 1947 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0802. RECIPROCITY IN EXTRATERRITORIAL APPLICATION OF COMPENSATION ACTS OF VARIOUS STATES PROVIDED.) An employee who is a resident of another state and who is employed by an employer of another state and insured under the workmen's compensation act, or any similar act, of such other state, shall be exempted from the provisions of this title while temporarily within this state doing work for such nonresident employer, and such nonresident employer also shall be exempted if he has furnished to such employee workmen's compensation insurance in such other state covering his employment in North Dakota, and if extraterritorial coverage furnished by the bureau and granted to em-

ployers resident in North Dakota covering employment of his employees while working in such other state is recognized by such other state, and such employer and employee are exempted from the application of the workmen's compensation act or similar act of such other state. If the annual pay roll 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. North Dakota residents when working within the state of North Dakota for out of state employers who have complied with the provisions of this section shall be covered by the provisions of the state in which the employer is covered and shall be excluded from participation in the benefits of the North Dakota fund.

SECTION 14. AMENDMENT.) Section 65-1001 of the 1947 Supplement to the North Dakota Revised Code of 1943 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 the employment, or upon any other ground going to the basis of the claimant's right, the claimant may appeal to the district court of the county wherein the injury was inflicted. Provided, that the payment of doctor, hospital and medical bills by the bureau shall not be deemed, for the purpose of this section, a participation in the fund by the claimant. And provided further that said amendment shall be retroactive. 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 section 28-3201 of the title Judicial Procedure, Civil, as now or hereafter amended. In such a proceeding, the state's attorney of the county where 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.

SECTION 15. 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 19, 1949.

## CHAPTER 355

House Bill No. 126  
(Frank, Helm, Esterby and Moerke)

INJURY THROUGH NEGLIGENCE OF THIRD PERSON  
AN ACT

To amend and reenact section 65-0109 of the North Dakota Revised Code of 1943, relating to injury through negligence of third person.

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

SECTION 1. AMENDMENT.) Section 65-0109 of 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 the 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 obtain damages from, and proceed at law to recover damages against such other person. If compensation is claimed and awarded under this title, the fund shall be subrogated pro tanto to the rights of the injured employee or his dependents to the extent of amount of compensation paid. The action to recover such damages against such other person shall be brought in the name of the injured employee, or his dependents in the event of his death, in his or in his dependents' own right and name for the balance of compensation due him and as trustee for the workmen's compensation bureau for what it has paid on such claim. Expenses and costs of such litigation shall be prorated between claimant and bureau, should any damages be awarded. If no damages are awarded, the cost of the litigation shall be paid by the employee.

Approved March 10, 1949.