

# WORKMEN'S COMPENSATION

## CHAPTER 579

SENATE BILL NO. 2158

(Committee on Industry, Business & Labor)

(At the request of the Workmen's Compensation Bureau)

## WORKMEN'S COMPENSATION

AN ACT to create a new section in title 65 relating to privacy of claimants' records; and to amend and reenact subsections 8, 17, 18, 19, 20, 21, and 22 of section 65-01-02, sections 65-01-03, 65-01-10, 65-02-05, 65-02-08, 65-04-17, 65-05-01, 65-05-02, 65-05-09, 65-05-12, 65-05-13, 65-05-14, 65-05-15, 65-05-16, 65-05-17, 65-05-19, 65-05-21, 65-05-25, 65-05-26, 65-05-28, 65-05-30, and 65-07-01 of the North Dakota Century Code, relating to definitions, presumption of employee status, waiver of rights to compensation, office space for the bureau, rulemaking power of the bureau, experience rating, filing of claims, form of claims, disability benefits, permanent impairment, scheduled injuries, partial loss of use, aggravation of pre-existing conditions, death benefits, death benefits to spouses and orphans, nondependency benefits, marriage settlement, lump sum settlement, burial expenses, medical examination of injured employees, release of medical information, and coverage of employers, volunteers, and the self-employed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 65-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

PRIVACY OF RECORDS AND HEARINGS.) The bureau shall keep the medical files of claimants closed to the public and may, at the request of a claimant, close the medical portion of the hearing to the public. However, an employer of a claimant shall have access to the file of the claimant. In the event that a source from outside the bureau requests in writing that information submitted by such source be kept confidential, such information may be released only upon court order.

SECTION 2. AMENDMENT.) Subsections 8, 17, 18, 19, 20, 21, and 22 of section 65-01-02 of the 1975 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

8. "Injury" shall mean an injury by accident arising out of

and 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. If an injury is due to heart attack or stroke, such heart attack or stroke must be causally related to the worker's employment, with reasonable medical certainty, and must have been precipitated by unusual stress. Such term, in addition to an injury by accident, shall include:

- a. Any disease which can be fairly traceable to the employment. 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 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.
  - b. An injury to artificial members.
17. "Spouse" shall include only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury;
  18. "Adopted" or "adoption" shall refer only to a legal adoption effected prior to the time of the injury.
  19. Any term shall include the singular and plural and either or both sexes where the context so requires.
  20. "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 or before July first of each year.
  21. "Weekly wage" shall mean the computation best calculated to give the weekly earnings of the employee.

SECTION 3. AMENDMENT.) Section 65-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-03. PERSON PERFORMING SERVICE FOR REMUNERATION PRESUMED AN EMPLOYEE.) Each person who performs services for another for a remuneration, whether the same is paid as a salary, commission, or other considerations in lieu thereof, under any agreement or contract of hire, express or implied, shall be presumed to be an employee of the person for whom the services are performed, unless he shall maintain a separate business establishment or shall hold himself out to or shall render services to the general public.

In determining whether a person is an independent contractor or employee, the primary test to be employed is the "right to control" test.

SECTION 4. AMENDMENT.) Section 65-01-10 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-10. WAIVER OF RIGHTS TO COMPENSATION VOID - DEDUCTION OF PREMIUM FROM EMPLOYEE PROHIBITED - PENALTY.) No agreement by an employee to waive his rights to compensation under the provisions of this title shall be valid except as provided in section 65-05-25. No agreement by any employee to pay any portion of the premium paid or payable by his employer into the fund shall be valid, and any employer who deducts any portion of such premium from the wages or salary of any employee entitled to the benefits of this title is guilty of an infraction.

SECTION 5. AMENDMENT.) Section 65-02-05 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-05. OFFICE SPACE FOR BUREAU - EXPENDITURES FROM FUND FOR ASSISTANTS AND SUPPLIES - TRAVEL.) The bureau shall be provided with office space. The bureau, at the expense of the fund, shall provide all necessary equipment, supplies, stationery, and furniture, and all clerical and other help necessary to carry out the provisions of this title. The members of the bureau and its assistants shall be entitled to receive from the fund for each mile actually and necessarily traveled in the performance of official duty by motor vehicle the same rates in the same manner as other state officials. If travel is by a motor vehicle owned by the state, or by any department or political subdivision thereof, no allowance shall be paid for such mileage. Vouchers for travel and other administrative expenses shall bear the approval of the bureau and the department of accounts and purchases before payment is made therefor. Travel and other administrative expense payments shall be made by warrant-check prepared by the department of accounts and purchases drawn upon the state treasurer against the fund. Expenditures made under the provisions of this section, however, must be within the limitations designated by the legislative assembly in appropriation measures adopted from time to time.

SECTION 6. AMENDMENT.) Section 65-02-08 of the 1975

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

65-02-08. RULEMAKING 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 shall specify the amount allowable for court reporter and 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 7. AMENDMENT.) Section 65-04-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-17. EXPERIENCE RATING OF EMPLOYERS.) The bureau may establish a system for the experience rating of risks of employers contributing to the fund, and such system shall provide for the credit rating and the penalty rating of individual risks within such limitations as the bureau may establish from time to time.

SECTION 8. AMENDMENT.) Section 65-05-01 of the 1975 Supplement to 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 shall be filed 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 that a reasonable person knew or should have known that the injury was related to employment. 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.

SECTION 9. AMENDMENT.) Section 65-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-02. FORM IN WHICH CLAIM SHALL BE FILED.) Every claim shall be made on forms to be furnished by the bureau and shall contain all the information required by it. Each claim shall be signed by the person entitled to compensation or by the person acting on his behalf and, except in case of death, shall be accompanied by a certificate of the employee's physician stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown, the bureau may waive the provisions of this section.

SECTION 10. AMENDMENT.) Section 65-05-09 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-09. TEMPORARY TOTAL OR PERMANENT TOTAL DISABILITY - WEEKLY AND AGGREGATE COMPENSATION.) If an injury causes temporary total 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 the weekly wage of the claimant, computed to the next highest dollar, subject to a minimum of sixty percent and a maximum of one hundred percent of the average weekly wage in this state, computed to the next highest dollar. If an employee is disabled due to an injury, that employee's benefits will be based upon the wage at the time of the commencement of the first disability. However, if an employee suffers disability but is able to return to employment for a period of twelve months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher; and the benefits shall be those in effect at the time of that recurrence. In case of temporary total 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 directly to either parent or guardian at the discretion of the bureau. In no case shall the compensation or combined compensation and dependency award exceed the weekly wage of the claimant after deductions for taxes, 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 11. AMENDMENT.) Section 65-05-12 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-12. PERMANENT IMPAIRMENT - WEEKLY COMPENSATION - TIME PAID.) If the injury causes permanent impairment, other than scheduled injuries, as elsewhere provided for in this chapter, the percentage which such impairment bears to total impairment shall be determined, and the fund shall pay to the impaired employee a weekly compensation in the sum of forty dollars per week for the following periods:

- For a one percent impairment----- 5 weeks.
- For a ten percent impairment----- 50 weeks.
- For a twenty percent impairment-----100 weeks.
- For a thirty percent impairment-----150 weeks.
- For a forty percent impairment-----200 weeks.
- For a fifty percent impairment-----250 weeks.
- For a sixty percent impairment-----300 weeks.
- For a seventy percent impairment-----350 weeks.
- For a eighty percent impairment-----400 weeks.
- For a ninety percent impairment-----450 weeks.

SECTION 12. AMENDMENT.) Section 65-05-13 of the 1975 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 impaired employee a weekly compensation equal to forty dollars 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 impairment for the same injury, as elsewhere provided in this chapter.

SECTION 13. AMENDMENT.) Section 65-05-14 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-14. SCHEDULED INJURIES - PARTIAL LOSS OF USE OF MEMBER - WEEKLY COMPENSATION TIME COMPENSATION PAYABLE.) If an injury causes the partial impairment of a member, the sight of an eye, or the hearing in an ear which is permanent, the fund shall pay to the impaired 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, the sight of an eye, or the hearing in an ear, which the partial loss of the use thereof bears to the total loss of the use of such member, eye, or ear.

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

SECTION 14. AMENDMENT.) Section 65-05-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-15. AGGRAVATION OF INJURY OR DISEASE - COMPENSATION AND BENEFITS NOT PAID FOR PREEXISTING CONDITION.) Compensation shall not be paid for any condition which existed prior to the happening of a compensable injury nor for any disability chargeable to such condition. In case of aggravation of a condition existing prior to a compensable injury, compensation, medical or hospital expenses, or death benefits, shall be allowed by the bureau and paid from the fund only for such proportion of the disability, death benefits, or expense arising from the aggravation of such prior condition as reasonably may be attributable to such compensable injury. If the degree of aggravation cannot be determined, the percentage award shall be fifty percent of total benefits recoverable if one hundred percent of the injury had been the result of employment. But any compensation paid on the basis of aggravation shall not be less than ten dollars per week unless the actual wages of claimant shall be less than ten dollars, in which event the actual wages shall be paid in compensation. However, in case of death due to an employment-aggravated condition, burial expenses and special benefits shall be paid in full pursuant to sections 65-05-17 and 65-05-26.



SECTION 15. AMENDMENT.) Section 65-05-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-16. DEATH BENEFITS NOT PAYABLE UNLESS DEATH OCCURS WITHIN ONE YEAR AFTER CESSATION OF DISABILITY AND SIX YEARS AFTER INJURY.) No benefits payable under the provisions of this chapter in the case of the death of an employee as the result of an injury sustained in the course of his employment shall be paid unless:

1. If there has been no disability preceding death, the death occurs within one year after the date of the injury.
2. If there has been disability preceding death, the death occurs within one year after the cessation of disability resulting from the injury.
3. If there has been disability which has continued to the time of death, the death occurs within six years after the date of injury.
4. In all events no death benefits shall be payable unless a claim is submitted within one year of the death and:
  - a. The death is a direct result of an accepted compensable injury; or
  - b. If no claim was submitted by the deceased, the claim for death benefits is submitted within one year of the injury.

SECTION 16. AMENDMENT.) Section 65-05-17 of the 1975 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 spouse or guardian of the orphaned child or children of the decedent, an amount equal to two-thirds of the weekly wage of the deceased, not to exceed the sum of seventy-five dollars per week, until the death or remarriage of the spouse; or, in the case of a guardian, until the orphaned child or children of the decedent reach the age of eighteen; or, if such child or children are incapable of self-support, until they are capable of self-support. Where there is more than one orphaned child of a decedent, death benefits shall be divided equally among guardians. In no case shall total death benefits be less than ten dollars per week.
2. To each surviving dependent 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 spouse or guardian of the orphaned child or children of the deceased and one hundred dollars for each dependent child. Where there is more than one guardian of orphaned children, the three hundred dollars shall be divided equally among such guardians.

SECTION 17. AMENDMENT.) Section 65-05-19 of the 1975 Supplement to 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 specified in section 65-05-16, the bureau shall pay a lump sum of two thousand dollars to the surviving nondependent child, or in equal shares to the surviving nondependent children. In the event that no nondependent child is living, the sum provided herein shall be paid in equal shares to the surviving parents of the deceased, and if there are none, then 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 18. AMENDMENT.) Section 65-05-21 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-21. MARRIAGE SETTLEMENT TO SPOUSE.) If a spouse who receives compensation under the provisions of section 65-05-17, subsection 1, remarries, there shall be paid to such spouse a lump sum equal to one hundred four weeks' compensation. If, prior to such marriage, such spouse has received a partial lump sum settlement which covers all or any portion of the said one hundred four weeks following such spouse's marriage, the amount of such partial lump sum settlement which covers all or any part of the said one hundred four weeks following such spouse's marriage shall be deducted from such marriage settlement, and the spouse shall receive only the remainder, if any, over and above such deduction. Any judgment annulling such marriage shall not reinstate the right of such spouse to compensation if the action for annulment is instituted more than six months after the marriage.

SECTION 19. AMENDMENT.) Section 65-05-25 of the 1975 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 disability, or permanent impairment 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 or a lump sum stipulated to by the claimant after an opportunity to seek legal counsel. 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 spouse 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.

SECTION 20. AMENDMENT.) Section 65-05-26 of the 1975 Supplement to 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 one thousand dollars.

SECTION 21. AMENDMENT.) Section 65-05-28 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-28. EXAMINATION OF INJURED EMPLOYEE - PAID EXPENSES - NO COMPENSATION PAID IF CLAIMANT REFUSES TO REASONABLY PARTICIPATE.) After suffering an injury, an employee, as frequently and at such times and places as reasonably may be required, shall submit himself to examination by a duly qualified physician designated or approved by the bureau. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. In case of any disagreement between physicians making an examination on the part of the bureau and the employee's physician, the bureau shall appoint an impartial physician duly qualified who shall make an examination and shall report thereon to the bureau. The employee, in the discretion of the bureau, may be paid his reasonable traveling and other expenses and loss of wages incurred in submitting to any such examination. If the employee refuses to

submit himself for, or in any way obstructs, any examination, or refuses reasonably to participate in medical treatments, his right to claim compensation under this title shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him.

SECTION 22. AMENDMENT.) Section 65-05-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-30. FILING OF CLAIM CONSTITUTES CONSENT TO USE OF INFORMATION RECEIVED BY DOCTOR.) The filing of a claim with the bureau shall constitute a consent to the use by the bureau, in any proceeding by it or to which it is a party in any court, of any information which was received by any doctor, hospital, or clinic in the course of any examination or treatment of the claimant. The filing of such claim shall authorize a doctor, hospital, or clinic to disclose any such information to the bureau or to its representative.

SECTION 23. AMENDMENT.) Section 65-07-01 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-07-01. EMPLOYER, SELF-EMPLOYED, AND VOLUNTEERS MAY SECURE COVERAGE.) Any employer, by special contract with the bureau, may secure insurance protection against injuries to his own person or for his own death when such injury or death occurs in the course of his work in an industry in which he has secured such protection against injuries to his employees. Self-employed persons may contract with the bureau for insurance protection for themselves. In addition, any volunteer organization, not otherwise provided for under this title, may contract with the bureau for such insurance protection for its own members while such members are engaged in the specific activity provided for in such contract.

Approved April 20, 1977

## CHAPTER 580

SENATE BILL NO. 2157  
(Committee on Industry, Business & Labor)  
(At the request of the Workmen's Compensation Bureau)

## CRIME VICTIMS REPARATIONS ACT AMENDMENTS

AN ACT to create and enact a new section to chapter 65-13 of the North Dakota Century Code, relating to excluding prisoners from coverage; to amend and reenact sections 65-13-03, 65-13-04, 65-13-05, subsection 7 of section 65-13-06, section 65-13-08, subsection 3 of section 65-13-17, and section 65-13-18 of the North Dakota Century Code, relating to definitions, making awards, powers and duties of the board, limitations on awards, denial of awards and hearings, appeals, and reports to the governor and legislature; and to repeal sections 65-13-07 and 65-13-09 of the North Dakota Century Code, relating to notice to the attorney general and procedure in contested cases; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:—

SECTION 1.) A new section to chapter 65-13 of the 1975 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

NO AWARD PAID TO INMATES.) No award of any kind shall be made under this Act to a victim injured while confined in any state, county, or city jail, prison, or other correctional facility.

SECTION 2. AMENDMENT.) Section 65-13-03 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-13-03. DEFINITIONS.) As used in this chapter the words and phrases in this section have the meanings indicated:

1. "Board" means the workmen's compensation bureau.
2. "Claimant" means any of the following claiming reparations under this chapter: a victim, a dependent of a deceased victim, or a representative of either.
3. "Collateral source" means a source of benefits or

advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to him. However, welfare benefits will not be deemed a collateral source unless claimant was receiving such benefits prior to the injury.

4. "Criminally injurious conduct" means conduct that:
  - a. Occurs in this state;
  - b. Results in bodily injury or death; and
  - c. Is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct was a minor or lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death.
5. "Dependent" means a natural person wholly or partially dependent upon the victim for care or support and includes a child of the victim born after his death.
6. "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Non-economic detriment is not loss. Economic detriment caused by pain and suffering or physical impairment is also economic loss.
  - a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of five hundred dollars for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.
  - b. "Work loss" means loss of income from work the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he

- was capable of performing but unreasonably failed to undertake.
- c. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.
  - d. "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to his dependents, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the decedent's death.
  - e. "Dependent's replacement services loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.
  - f. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other non-pecuniary damage.
  - g. "Victim" means a person who suffers bodily injury or death as a result of (1) criminally injurious conduct, (2) the good faith effort of any person to prevent criminally injurious conduct, or (3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.
7. "Bodily injury" means any harm which requires medical treatment and results in economic loss and includes pregnancy and nervous shock.

SECTION 3. AMENDMENT.) Section 65-13-04 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-13-04. AWARD OF REPARATIONS.) The board shall award reparations for economic loss arising directly from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met.

SECTION 4. AMENDMENT.) Section 65-13-05 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-13-05. POWERS AND DUTIES OF THE BOARD.) In addition to the powers and duties specified elsewhere in this chapter, the board has the following powers and duties:

1. The duty to establish and maintain a principal office and other necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation.
2. The duty to adopt rules to implement this chapter.
3. The duty to prescribe forms for applications for reparations.
4. The duty to hear and determine all matters relating to claims for reparations, and the power to reinvestigate or reopen claims without regard to statutes of limitations or periods of prescription.
5. The power to request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to determine whether, and the extent to which, a claimant qualifies for reparations. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under this chapter.
6. The power to subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence.
7. The power to take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge.
8. The duty to make available for public inspection all board decisions and opinions, rules, written statements of policy, and interpretations formulated, adopted, or used by the board in discharging its functions.
9. The duty to publicize widely the availability of reparations and information regarding the filing of claims therefor.

SECTION 5. AMENDMENT.) Subsection 7 of section 65-13-06 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. Reparations may not be awarded if the economic loss prior to deduction of collateral sources is less than one hundred dollars.

SECTION 6. AMENDMENT.) Section 65-13-08 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:



65-13-08. INFORMAL HEARING - REHEARING.) After an informal hearing on the papers submitted, at which the claimant need not be present, the board may accept, deny, or reduce a claim or set it for rehearing. If a claim is reduced or denied by the board, the claimant may request a rehearing or appeal the decision. The claimant must be notified of such right to rehearing or appeal. Rehearings and appeals will be governed by chapter 28-32 of the North Dakota Century Code.

SECTION 7. AMENDMENT.) Subsection 3 of section 65-13-17 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A final decision of the board is subject to judicial review on appeal by the claimant to the district court.

SECTION 8. AMENDMENT.) Section 65-13-18 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-13-18. REPORTS.) The board shall prepare and transmit biennially to the governor and the legislative assembly a report of its activities, including a brief description of the facts, the amount of reparations awarded in each case, and a statistical summary of claims and awards made and denied.

SECTION 9. REPEAL.) Sections 65-13-07 and 65-13-09 of the 1975 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 10. 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 31, 1977