

WORKMEN'S COMPENSATION

CHAPTER 312

(H. B. No. 209—Cox by Request.)

CLASSIFICATION OF EMPLOYMENTS

An Act to amend and re-enact Section 396a7 of the Supplement to the Compiled Laws of 1913.

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

§ 1. AMENDMENT.] That Section 396a7 of the Supplement to the Compiled Laws of North Dakota for 1913 be and the same is hereby amended and re-enacted to read as follows:

§ 396a7. Classification of employments; premium rates; payment into fund; second injuries; premiums in case of. The Workmen's Compensation Bureau shall classify employments with respect to their degrees of hazard, and shall determine the risks of different classifications, and shall fix the rates of premium for each of said classifications sufficiently high to provide for the payment of the expenditures of the Bureau, the payment of compensation according to the schedules established by this Act, and for the maintenance of adequate reserves and surplus by the North Dakota Workmen's Compensation Fund, to the end that such fund may be kept at all times in an entirely solvent condition.

The Bureau may establish a system of merit rating within any class which will tend to equitable treatment of individual employers.

It shall be the duty of the Workmen's Compensation Bureau, in the exercise of the powers and discretion conferred upon it, ultimately to fix and maintain, for each class of occupation, the lowest possible rates of premium consistent with the payment of compensation according to schedule, the payment of expenditures of the Bureau, the maintenance of a solvent compensation fund, and the creation and maintenance of a reasonable surplus after the payment of legitimate claims for injury and death that it may authorize to be paid from the Workmen's Compensation Fund for the benefit of the injured and the dependents of deceased employees, and in order that said object may be accomplished, the Bureau shall observe the following requirements in classifying occupations and fixing the rates of premium for the risks of the same.

It shall keep an accurate account of the moneys paid in premiums by each of the several classes of occupations or industries and the disbursements on account of injuries and death of employees thereof, and it shall also keep an account of the moneys received from each individual employer and the amount disbursed from the Workmen's Compensation Fund on account of injuries and death of the employees of each employer.

Ten (10) per cent of the moneys 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 moneys 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.

Every employer subject to this Act shall pay, annually, into the Workmen's Compensation Fund the amount of premium determined and fixed by the Bureau for the employment or occupation of such employer, the amount of which premium to be so paid by such employer to be determined by the classification, rules and rates made and published by the Bureau; and a receipt or certificate specifying that such payment has been made shall immediately be mailed to such employer by the Bureau, which receipt or certificate, attested by the seal of the Bureau, shall be prima facie evidence of the payment of such premium. The Bureau may make provisions so that premiums fall due on different dates to the end that the business of the Bureau may be distributed as evenly as possible throughout the year.

In the event that the amount of premium collected from any employer at the beginning of any premium period is ascertained and calculated by using the estimated expenditures for wages for the period of time covered by such premium payments, as a basis, an adjustment of the amount of such premiums shall be made at the end of said period, the actual amount of such premium to be determined from the actual expenditure of wages for said period.

Whenever a subsequent injury occurs to an employee who has been injured previously in a different employment, the risk of the employer for whom such injured person was working at the time of such subsequent injury shall be charged only with the amount of the awards resulting from such subsequent injury; and whenever such subsequent injury, in connection with a previous injury, results in a permanent total disability, the compensation which is in excess of the amount to which the injured employee would have been entitled solely by the subsequent injury shall be charged to the surplus fund and not to the classification or the risk to which the subsequent injury is charged.

In case of aggravation of any disease existing prior to a compensable injury, compensation shall be allowed only for such proportion of the disability due to the aggravation of such prior disease as may reasonably be attributable to the injury.

§ 2. All Acts and parts of Acts in conflict herewith are hereby repealed.

§ 3. EMERGENCY.] This Act is declared an emergency measure and shall be in full force and effect from and after the date of its passage and approval.

Approved March 11, 1931.

CHAPTER 313

(H. B. No. 188—Jardine.)

COMPENSATION INJURIES OCCURRING OUTSIDE OF STATE

An Act to amend and re-enact Section 10 of Chapter 350 of the Laws of North Dakota for the year 1923, providing for the payment of compensation out of the Workmen's Compensation Fund and providing that compensation shall be paid for injuries and deaths from injuries occurring outside of the State of North Dakota only under circumstances as provided in the act, and legalizing and validating claims arisen under said act subsequent to July 1st, 1930.

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

§ 1. AMENDMENT.] That Section 10 of Chapter 350 of the Laws of North Dakota for 1923, relating to the disbursement of the Workmen's Compensation Fund to employees, who have been injured in the course of their employment, wherever such injuries have occurred, is hereby re-enacted to read as follows:

§ 10. The Workmen's Compensation Bureau shall disburse the Workmen's Compensation Fund to such employees of employers as have paid into the said Fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, wherever such injuries have occurred, or to their dependents in case death has ensued, and such payment or payments to such injured employees, or to their dependents in case death has ensued, shall be in lieu of any and all rights of action whatsoever against the employer of such injured or deceased employee, but no compensation shall be paid on account of injuries occurring outside of the State of North Dakota, nor because of death due to an injury occurring outside of the State of North Dakota, unless such employee is an appointive peace officer of any County of this State, receiving injury or meeting with death outside of the State of North Dakota in the course of his employment, or, unless the employer and the Bureau shall have previously contracted for insurance protection for employees while working outside of the State in the employment in which the injury occurred. Providing that no such contract, with the exception as herein stated, shall be issued to any employer unless his principal plant and main or general office is located in North Dakota, and at least two-thirds of whose entire payroll is used or expended for work performed in the State of North Dakota.

“§ 2. The Workmens Compensation Bureau is hereby authorized and directed to consider, allow and pay all claims for injuries received by any appointive peace officer of any County of this

State outside of the State in the course of his employment and in pursuance of his duties subsequent to July 1st, 1930 and also to consider, allow and pay all claims made by any claimant for injuries occurring outside the State and whose claim was rejected by said Bureau subsequent to July 1st, 1930, and it appears that the full premium applicable to the class to which said claimant belonged for injuries occurring inside the State, was paid into the Fund by the claimant's employer."

"§ 3. EFFECT OF PARTIAL INVALIDITY.] The object sought to be accomplished by this enactment is to provide for the payment of claims for injuries sustained, by appointive peace officers of any county of this state, outside of the State of North Dakota in the course of their employment and in pursuance of their duties as provided in this act. And it is hereby declared that if any of the provisions of the act in any manner contravene the provisions of the Constitution, the remaining provisions would have been enacted by this Legislative Assembly even though such provisions had been eliminated from the act. Hence, if any of the provisions are found to be violative of the Constitution the remaining provisions shall not be affected by such invalidity but shall remain in full force and effect.

§ 4. 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 11, 1931.

CHAPTER 314
(H. B. No. 207—Cox)

POWERS AND DUTIES WORKMEN'S COMPENSATION BUREAU
An Act to amend Section 4 of Chapter 162 of the Session Laws of North Dakota for the year 1919, as amended by Chapter 285 of the Session Laws for 1927.

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

§ 1. AMENDMENT.] Section 4 of Chapter 162 of the Session Laws of North Dakota for the year 1919, as amended by Chapter 285 of the Session Laws of North Dakota for the year 1927, is hereby amended and re-enacted to read as follows:

§ 4. (A) A Workmens' Compensation Bureau is hereby created, consisting of three (3) Workmen's Compensation Commissioners to be appointed by the Governor. The Commissioners shall devote their entire time to the duties of the Bureau. One of the Commissioners shall be a representative of labor, one shall be a representative of the public, and one shall be a representative of the employers. Any or all of the Commissioners may be removed for cause.

Such newly re-organized Bureau shall at its first meeting held in July, A. D. 1931, and biennially thereafter at its first July meeting, select from its membership a chairman of such Bureau, who shall act in such capacity for a term of two years, or until his successor is selected and qualified.

(B) The terms of the Commissioners shall be six years, and, in order to provide for the expiration of one of said terms every two years, the terms of the Commissioners now in office are to expire as follows: Representative of the Public to expire January tenth, 1933; Representative of the Employers to expire January tenth, 1935; Representative of Labor to expire January tenth, 1937. Each Commissioner shall receive a salary of twenty eight hundred dollars (\$2,800.00) per year.

(C) Unless otherwise provided by the Legislature, the Bureau shall provide offices in some suitable building in the City of Bismarck, at the expense of the Workmen's Compensation Fund, and shall also provide, at the expense of said Fund, all necessary equipment, supplies, stationery, furniture, clerical and other assistance and help as may be deemed necessary, subject, however, to the maximum expenditure designated by the Legislature. The Bureau shall be governed by existing laws regulating the selection, grading and compensation of department clerks and other employees. The members of the Bureau and its assistants shall be entitled to receive from the Fund the actual and necessary expenses while traveling on the business of the Bureau. Vouchers for such expenses shall be sworn to and bear the approval of the Chairman before payment is made.

(D) The Bureau may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this act.

(E) Not later than August first of each year next preceding the session of the Legislative Assembly, the State Auditor shall forward to the Workmen's Compensation Bureau, a suitable blank form to be filled out by said Bureau, giving an itemized statement of the amount of money which said Bureau considers necessary for the proper maintenance and operation of said Bureau, during the biennium next ensuing. Such blanks, properly filled out and signed, shall be returned to the State Auditor on or before the 1st day of October following its receipt, together with such data and statements as may be necessary to explain, properly and clearly, the purposes and needs of any such expenditures.

(F) The Bureau may make rules not inconsistent with this act for carrying out the provisions of this act. Process and procedure under the act shall be as summary and simple as reasonably may be; and to that end the Bureau shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, but may make investigation in such man-

ner and at such places as, in the judgment of the Bureau, shall be best calculated to ascertain the substantial rights of all the parties and to carry out, justly and fairly, the spirit of the act. The Bureau, or any member thereof, shall have the power to examine witnesses and records, with or without subpoena; to administer oaths to witnesses; to require the attendance of witnesses without fee whenever the testimony is taken at the home, office or place of work of such witnesses; and generally to do anything requisite or necessary to facilitate or promote the efficient administration of this act.

(G) A majority of the Bureau shall constitute a quorum for the transaction of business, and a vacancy created by the death, resignation or removal of any of the Commissioners shall not impair the right of the remaining members to exercise all of the powers of the full Bureau so long as a majority remains in active charge; provided, however, that neither the employers nor the employees shall remain without a representative upon the Bureau for a period of more than thirty days by reason of the death, resignation or removal of their representative.

(H) Any investigation, inquiry or hearing which the Bureau is authorized to hold or undertake may be held or undertaken by or before any one member of the Bureau; and all investigations, inquiries, hearings and decisions, and every order by any member thereof, when approved and confirmed by a majority of the members, shall be deemed to be the order or decision of the Bureau.

(I) The Bureau is hereby vested with full power and jurisdiction over, and shall have the supervision of, every employment and place of employment subject to this act, and shall, whenever necessary adequately to enforce and administer this act, issue and enforce all necessary and proper rules and safety regulations, and may designate some suitable person to inspect the premises of any employer to determine if such regulations or rules are being followed or complied with.

(J) Any employer as defined by the terms of this Act who shall fail to comply with any reasonable safety regulations made in accordance herewith, within twenty days after notice from the Workmen's Compensation Bureau, or its authorized agents, shall be guilty of a misdemeanor, and, upon conviction thereof in a court of competent jurisdiction, shall be subject to a fine of not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars; and, in addition to such fine as is hereinbefore provided, the Bureau shall be authorized to penalize the premium rating of the employer guilty of such violation, but not to exceed 10 per cent during the year or years such violation continues. Upon application and a proper and sufficient showing that the rules or regulations cannot be complied with within the twenty days herein specified, the Bureau may extend such time for such period as the facts in each case warrant, but not to exceed three months.

(K) It is hereby declared to be the intent of this act to restore to industry those injured in the course of employment; and the Bureau shall aid in carrying out the intent, assisting industrial cripples to obtain appropriate training, education and employment, by cooperating with the Federal Board of Vocational Education.

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

Approved March 11, 1931.

CHAPTER 315

(H. B. No. 208—Cox by Request.)

PREMIUMS WORKMEN'S COMPENSATION BUREAU

An Act to amend Section 396a8 of the Supplement to the Compiled Laws of 1913.

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

§ 1. AMENDMENT.] That Section 396a8 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 396a8. PREMIUMS; ESTIMATING; PAYMENT; INSTALLMENTS; DEFAULT; JUDGMENT FOR; PROSPECTIVE OPERATION; NONRESIDENTS; REMEDIES.] The Bureau shall determine the amount of premium due from every employer subject to the provisions of this act for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the Bureau received information that an employer is subject to the act. The Bureau shall then order such premium to be paid into the Fund, and shall mail a copy of such order to such employer. Such mailing shall constitute notice to the employer of the amount due.

If the employer is the State of North Dakota, or any department, industrial association or political subdivision thereof, and the amount of the premium is in excess of one hundred dollars (\$100), the same may be paid in two equal semiannual installments, at the option of the State, department, industrial association or political subdivision from which such payment is required, without filing any bond or undertaking, but interest shall be added at the rate of five (5) per cent upon the amount for which payment is so deferred.

In the case of any other employer if the total amount of premium specified in the pay-in-order is more than one hundred dollars (\$100) the employer may have the option of paying the same in two equal semi-annual installments or four equal quarterly installments, at the option of the employer. All deferred payments shall draw interest at the rate of five (5) per cent per annum. In all such cases of installment payment provided for in this paragraph the employer shall file, on or before the due date of the first pay-

ment, a satisfactory bond, guaranteeing the payment of all deferred installments prior to the date of their and each of their default, and guaranteeing, further, the payment of penalties and court costs in the event of default. Such bond may cover a period of one, three or five years, but if for more than one year the bond shall be a surety bond.

Whether the premium is paid in full or in installments the first payment shall be in default one month from the date of the pay-in-order, and subsequent installments shall be in default, respectively, in case of semi-annual payments, six months from the date of the pay-in-order; and in case of quarterly payments, three months, six months, and nine months from the date of the pay-in-order.

Whenever any employer defaults in the payment of any premium, or any installment thereof, or in the filing of any bond herein required, penalties shall attach as follows: Three dollars (\$3.00) for the first fifteen (15) days of default; five dollars (\$5.00) for the next fifteen (15) days of default; and one (1) per cent of the premium but not less than two dollars (\$2.00) for each thirty (30) days of default thereafter.

Within twenty (20) days after any such default the Bureau shall cause suit to be brought for the collection of the premium and accrued penalties, together with further accruing penalties, in the courts of Burleigh County, North Dakota, or in the courts of any county in which such employer is engaged in business; and, in such suits, it shall be unnecessary to comply with the provisions of Chapter 38 of the Session Laws of North Dakota for the year 1921, and acts amendatory thereof, known as the Conciliation Law.

The payment of any judgment rendered in any such action, or the voluntary payment of the amount of premium, penalties and costs prior to judgment, shall entitle the employer, and the employees of such employer, to the benefits of the act from the date of such pay-in-order. If the judgment cannot be paid in full, the Bureau shall determine the date upon which the right of the employees to participate in the Fund shall cease.

Any judgment obtained in any action under this act shall be a prior lien over all other judgments and liens, except those in existence prior to the original enactment of this provision, and cases arising under this section shall have precedence over all other civil cases.

This act shall not operate retrospectively, and all rights and liabilities and causes of action that had accrued to the date on which this law became effective shall be governed by the law in force at the time the rights or obligations in controversy arose.

If the defendant is a non-resident of North Dakota, or a foreign corporation doing business in the State, service of summons may be made upon any agent, representative or foreman

of said defendant within the State, or service may be made in any other manner designated by law.

In any action the remedies of garnishment or attachment, or both, shall be available, and no exemptions except absolute exemptions shall be allowed against any levy under execution pursuant to judgment recovered in such action.

§ 2. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 11, 1931.

RESOLUTIONS

(Concurrent Resolution G—State Affairs Committee.)

APPRECIATION OF SYMPATHY AND CONDOLENCE EXPRESSED BY 22ND LEGISLATIVE ASSEMBLY STATE OF SOUTH DAKOTA

To the Senate and House of Representatives of the State of South Dakota, and to the Honorable O. K. Whitney, President of the Senate, and Honorable B. M. McVeigh, Speaker:

WHEREAS, Resolutions of sympathy and condolence have been received from the Twenty-second Legislative Assembly of the State of South Dakota, relative to the loss of our State Capitol building, which building prior to statehood was also the seat of government for Dakota Territory, comprising the area now making up our two sister states; and

WHEREAS, Many past memories were associated with this old state house, common to the people of both South Dakota and North Dakota; and

WHEREAS, These bonds of friendship evidenced throughout the past years in exceptional uniformity of law and co-operative effort; and

WHEREAS, Your said resolution further links us together in bonds of love and friendship;

NOW, THEREFORE, BE IT RESOLVED, That we express our sincere thanks and appreciation for the kindly sympathy extended, and are most pleased to inform the Twenty-second Legislative Assembly of the State of South Dakota that the loss sustained was reasonably well covered with insurance; and that with a fund heretofore provided, a new Capitol building entirely adequate to our needs can be constructed without additional levies or the issuance of bonds; also that the records, at first believed destroyed, were largely recovered, so that with the kind offer of your State to permit the taking of duplicates of territorial records, we will be enabled to entirely preserve these historic memories for the coming generations, for which offer and kindness we are sincerely grateful; and

BE IT FURTHER RESOLVED, That a certified copy of this Concurrent Resolution be forwarded to the Governor of the State of