

## CHAPTER 302

H. B. No. 175—(Gackle and Haugen)

## WEIGHING OF FUEL

An Act Requiring Fuel to be Weighed and Scale Weight Ticket Delivered Purchaser at Time of Delivery Thereof in any City or Village; Declaring Failure to do so a Misdemeanor and Prescribing Penalty Therefor.

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

§ 1. FUEL REQUIRED TO BE WEIGHED, CORRECT SCALE WEIGHT SLIP DELIVERED, MISDEMEANOR, PENALTY.] Any person, partnership, association or corporation, selling or delivering within any City or Village in this State, where adequate weighing facilities exist, any coal lignite or briquette fuel without the same being first weighed or without a duplicate scale weight slip showing the true weight thereof, being delivered the purchaser, therewith, shall be guilty of a misdemeanor and on conviction punished by a fine of not less than ten or more than one hundred dollars, or by imprisonment in the county jail for not to exceed thirty days.

Approved March 4, 1941.

## WORKMEN'S COMPENSATION

## CHAPTER 303

H. B. No. 115—(Allen and Tuff by Request)

## INCLUDING ELECTIVE OFFICIALS UNDER THE WORKMEN'S COMPENSATION ACT

An Act to include certain elective officials of the State and of the counties thereof Under the Terms of the Workmen's Compensation Act, and to Amend and Re-enact Section 4 of Chapter 286, Session Laws of 1935 (Being Section 10-1 of Chapter 162 of the Session Laws of 1919, as amended) Relating to Disbursements of the Workmen's Compensation Fund; Repealing All acts or Parts of Acts in Conflict Herewith.

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

§ 1. 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, shall be considered as employees of the State of North Dakota and of the counties thereof, as the case may be, within the meaning of the North Dakota Workmen's Compensation Act, as amended.

§ 2. AMENDMENT.] That Section 4 of Chapter 286, Session Laws of 1935, (being Section 10-1 of Chapter 162, Session Laws of 1919, as amended) be amended and re-enacted to read as follows:

§ 4. The Workmen's Compensation Bureau shall disburse the Workmen's Compensation Fund to such employees of the 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 a duly qualified peace officer in 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 pay-roll is used or expended for work performed in the State of North Dakota, and appeals relative to the injuries received under such insurance outside of the State of North Dakota shall be triable in the District Court of Burleigh County, North Dakota.

§ 3. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 17, 1941.

## CHAPTER 304

H. B. No. 153—(Fitch, Beede and Bergesen)

EXEMPTION OF FLYING EMPLOYEES FROM WORKMEN'S  
COMPENSATION ACT

An Act Exempting flying employees engaged in interstate commerce from the Workmen's Compensation Act, and declaring an emergency.

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

§ 1. EXEMPTING CERTAIN FLYING EMPLOYEES.] Pilots, copilots, stewardesses, and other regularly flying employees of a regularly established air line operating under a certificate of convenience and necessity granted by the competent authorities of the United States of America, and operating regularly scheduled flights in interstate or foreign commerce shall be exempt from the compulsory provisions of the Workmen's Compensation Act and amendments thereto while such employees are engaged in work, the duties of which primarily involve interstate or foreign flying operations. Employees not regularly engaged in interstate or foreign flying operations, and the flying employees of any such airline which has its principal operating base in North Dakota, shall not be included in this exemption.

§ 2. 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 4, 1941.

## CHAPTER 305

S. B. No. 118—(Committee on Insurance)

## WORKMEN'S COMPENSATION ACT, AMENDMENT

An Act amending and re-enacting the Workmen's Compensation Act by amending and re-enacting Section 2 of Chapter 162 of the Session Laws of 1919 as amended by Chapter 142 of the Session Laws of 1921, Chapter 222 of the Session Laws of 1925, and Chapter 286 of the Session Laws of 1935; Subsection "C" of Section 3 of Chapter 162 of the Session Laws of 1919 as amended by Chapter 260 of the Session Laws of 1929 and Chapter 286 of the Session Laws of 1935; Paragraph "o" of Subsection "G" of Section 1 of Chapter 251 of the Session Laws of 1939; Section 15 of Chapter 162 of the Session Laws of 1919; Section 16 of Chapter 162 of the Session Laws of 1919; and Chapter 351 of the Session Laws of 1923, being Section 396a29 of the 1925 Supplement.

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

§ 1. AMENDMENT.] That Section 2 of Chapter 162 of the Session Laws of North Dakota for the year 1919, as amended by Chapter 142 of the Session Laws of 1921, Chapter 222 of the Session Laws of 1925, and Chapter 286 of the Session Laws of 1935 is hereby amended and re-enacted to read as follows:

§ 2. Whenever used in this Act: "Employment" includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein, and all private employments.

"Hazardous employment" means any employment in which one or more employees are regularly employed in the same business or in or about the same establishment, except agriculture and domestic service, and except also any employment of a common carrier by steam railroad.

"Employee" means every person engaged in a hazardous employment under any appointment, or 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 (\$2400.00) per year. 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.

"Executive officer" means and includes only the president, vice presidents, secretaries and treasurers of a business corporation whose duties are solely those of such executive office. If such executive officer also performs duties of an employee of the concern, such employment is not exempt.

"Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, and every person, partnership, association, and private corporation, including any public service corporations, and the legal representative of any deceased employer, or the receiver or trustee of a person, partnership, association or corporation, carrying on a hazardous employment.

"Injury" means only an injury arising in the course of employment, including an injury caused by the wilful act of a third person directed against an employee because of his employment, but shall not include injuries caused by the employee's wilful intention to injure himself or to injure another, or by his voluntary intoxication. The term "injury" includes in addition to any injury by accident, 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 or for any disability chargeable to such condition. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where said 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. A disease shall be deemed to be fairly traceable to the employment if there is apparent to the rational mind upon consideration of all the circumstances, a direct, causal connection between the conditions under which the work is performed and the disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not to have been foreseen or expected, but after its contraction 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.

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. If the employer claims an exemption or forfeiture under any portion of this section, the burden of proof shall be upon him.

"Partial Disability" includes disfigurement resulting from an injury such as to diminish ability to obtain employment.

"Wages" shall include the market value of board, lodging, fuel

and other advantages which can be estimated in money which the employee receives from the employer as a part of his remuneration.

"Weekly Wages" shall be computed in such a manner as is best calculated to give the average weekly earnings of the workman during the twelve months preceding his injury; provided that where, by reason of the shortness of the time during which the workman has been in the employment or the terms of the employment, it is impracticable to compute the rate of remuneration, regard may be had to the average weekly earnings which, during the twelve months previous to the injury, were being earned by a person in the same grade of employment at the same work by the employer of the injured workman, or if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district. If a workman at the time of the injury is regularly employed in a higher grade of work than formerly during the year and with a larger regular wage, only such larger wages shall be taken in consideration in computing his average weekly wages.

"Child" includes step-children, adopted children, posthumous children, and acknowledged illegitimate children, but does not include married children unless dependent. "Brother" and "Sister" include step-brothers and step-sisters, half-brothers and half-sisters, and brothers and sisters by adoption, but do not include married brothers nor married sisters unless dependent. All of the above terms and the term "Grandchild" include only persons who at the time of the death of the deceased employee are under eighteen years of age or over that age and incapable of self-support. "Parent" includes step-parents and parents by adoption. "Widow" includes only decedent's wife living with or dependent for support upon him at the time of his injury. "Widower" includes only the decedent's husband dependent for support upon her at the time of her injury. "Adopted" and "adoption" includes only legal adoption prior to the time of the injury.

Any term shall include the singular and plural and both sexes where the context so requires.

§ 2. AMENDMENT.] That subsection C of Section 3, Chapter 162 of the Session Laws of 1919 as amended by Chapter 260 of the Session Laws of 1929 and Chapter 286 of the Session Laws of 1935 is hereby amended and re-enacted to read as follows:

§ 3C. 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, however, that if the disability be permanent total disability, the total amount payable to the disabled employee for weekly compensation shall not exceed fifteen thousand dollars (\$15,000.00) for all claims based upon injuries or disabilities received upon and after March 7th, 1929.

§ 3. AMENDMENT.] That Paragraph "o" of subsection "G" of Section 1 of Chapter 251 of the Session Laws of 1939 is hereby amended and re-enacted to read as follows:

§ 3G(o). Provided, however, that if a compensation claimant dies and there is due to his or her estate any sums not exceeding eighty dollars, the Bureau 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 without probate proceedings.

§ 4. AMENDMENT.] That Section 15, of Chapter 162, of the Session Laws of 1919, is hereby amended and re-enacted to read as follows:

§ 15. No compensation under this Act shall be allowed to any person, except as provided in Section eighteen, unless he or some one on his behalf, within the time specified in this Section shall make a written claim therefor. Such claim shall be made by delivering it at the office of the Workmen's Compensation Bureau or to any person whom the Bureau may by regulation designate or by depositing it in the mail properly stamped and addressed to the Bureau or to any person whom the Bureau may by regulation designate.

Every claim shall be made on forms to be furnished by the Bureau and shall contain all the information required by the Bureau. Each claim shall be sworn to 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.

All original claims for a compensation for disability or death shall be made within sixty days after injury or death. For any reasonable cause shown the Bureau may allow original claims for compensation for disability or death to be made at any time within one year.

The filing of a claim with the Workmen's Compensation Bureau shall constitute a consent to the use by the Bureau in any proceeding by it or in any proceeding to which it is a party in any court of any information which was received by any doctor in the course of any examination or treatment of the claimant for injury or disease concerning which claim has been filed, and the filing of such claim shall authorize a doctor to disclose any such information to the Bureau or its representative.

§ 5. AMENDMENT.] That Section 16 of Chapter 162, of the Session Laws of 1919 is hereby amended and re-enacted to read as follows:

§ 16. After the injury the employee shall, as frequently and at

such times and places as may be reasonably required, submit himself to examination by a duly qualified physician designated or approved by the Workmen's Compensation Bureau. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations the employee shall, in the discretion of the Bureau, be paid his reasonable traveling and other expenses and loss of wages incurred in order to submit to such examination. If the employee refuses to submit himself for or in any way obstructs any examination, his right to claim compensation under this Act 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.

In case of any disagreement between physicians making the 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.

§ 6. AMENDMENT.] That Chapter 351 of the Session Laws of 1923, being Section 396a29, 1925 Supplement, is hereby amended and re-enacted to read as follows:

§ 396a29. Any employer may by special contract with the Workmen's Compensation Bureau 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 insured his employees with the Workmen's Compensation Fund. The Workmen's Compensation Bureau, on receipt of an application for such employer's insurance, shall determine whether the employer applying is a good insurance risk, and may deny such special contract if in its opinion it is to the best interests of the Fund to do so. In case such contract is entered into, premium for such protection and compensation shall be based on a reasonable weekly wage for employees in the same class of industry, such reasonable wage to be determined by the Workmen's Compensation Bureau, and the injured employer, or, in case of death, his dependents shall be entitled to the same compensation as is provided in Chapter 162 of the Session Laws of 1919 and any amendments thereto for injuries or death of employee.

Approved March 18, 1941.

## CHAPTER 306

S. B. No. 87—(Committee on Insurance)

## WORKMEN'S COMPENSATION PAYMENTS

An Act to provide for payments from the North Dakota Workmen's Compensation Fund in certain cases where no actual dependency is shown and providing an option in certain cases.

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

§ 1. PROVIDING NON-DEPENDENCY PAYMENTS IN CERTAIN CASES.] If the death of an employee under thirty years of age results from an injury within six years after the time of sustaining such injury and also not more than one year after the cessation of any compensable disability resulting from the injury, or, if there has been no disability preceding death, if death takes place within one year after the injury, the North Dakota Workmen's Compensation Bureau shall pay:

a. A lump sum of \$1000.00 to the surviving parent, or to the surviving parents jointly if more than one parent survives, if there is no widow, widower, or child, and if there is no dependency of the parent or parents, brothers, sisters, grandparents or grandchildren;

b. A lump sum of \$1000.00 to the surviving grandparent, or to the surviving grand parents jointly if more than one grandparent survives, if there is no widow, widower, child, or parent, and if there is no dependency on the part of the brothers, sisters, grandparents, or grandchildren, and only if the deceased lived with and was cared for by such grandparent or grandparents.

§ 2. OPTION.] If a dependency award has been made on account of the death of an employee under thirty years of age to a dependent parent or to dependent parents under this Act and there is no surviving widow, widower, or child, and no other person is dependent to any degree, or to a dependent grandparent or dependent grandparents under this Act if such deceased employee lived with and was cared for by such grandparent or grandparents, and there is no surviving widow, widower, child, or parent and no other person is dependent to any degree, and the present value of such award in either case when figured under the provisions of paragraph "I", subsection "G", of Section 3 of this Act amounts to less than the sum provided in this Act where no dependency is shown, such parent, parents, grandparent, or grandparents, as the case may be, may elect to accept the lump sum provided in this Act in lieu of such weekly dependency compensation. If dependency awards have been made to two parents or to two or more grandparents, all must concur in the election to take under such option, and a payment made under this section shall be in lieu of all dependency awards made under this Act.

Approved February 24, 1941.