

# WORKMEN'S COMPENSATION

## CHAPTER 337

S. B. No. 38

Introduced by Senator Stucke and Senator Rue

### AMENDMENT WORKMEN'S COMPENSATION ACT

An Act Amending and re-enacting the Workmen's Compensation Act by amending and re-enacting subsections 4 and 13 of 65-0102, of the North Dakota Revised Code of 1943, relating to the definitions of hazardous employment and child; Section 65-0509, of the North Dakota Revised Code of 1943, relating to permanent total disability and making said provision thereof retroactive; Section 65-0510, of the North Dakota Revised Code of 1943, relating to weekly compensation; Section 65-0511, of the North Dakota Revised Code of 1943, relating to weekly compensation for total disability; Section 65-0513 of the North Dakota Revised Code of 1943, relating to schedule of specific benefits; subsection 6 of 65-0517, of the North Dakota Revised Code of 1943, relating to weekly wages of deceased employee; Section 65-0525, of the North Dakota Revised Code of 1943, relating to lump sum settlements; Section 65-0526, of the North Dakota Revised Code of 1943, relating to burial expenses; Section 65-1001, of the North Dakota Revised Code of 1943, relating to participation in the fund by claimant and making the same retroactive.

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

§ 1. AMENDMENT.] That subsections 4 and 13 of 65-0102. of the North Dakota Revised Code of 1943, are hereby amended and re-enacted to read as follows:

65-0102, subsection 4. "Hazardous employment" shall mean any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:

- a. Agriculture or domestic service; or
- b. Any employment on a common carrier by steam railroad; or
- c. Any employment for the transportation of property or persons by non-residents, where, in such transportation, the highways are not traveled more than seven miles and return over the same route within the State of North Dakota.

Subsection 13. "Child" shall include a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but shall not include a married child unless he actually is dependent;

§ 2. AMENDMENT.] That Section 65-0509 of the North Dakota Revised Code of 1943, is hereby amended and re-enacted 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. Provided that the provisions herein relating to permanent total disability shall be retroactive. In case of temporary total disability, there shall be paid to such disabled employee an additional sum of two dollars per week for each dependent child under the age of eighteen years, and for each child over eighteen years incapable of self support as elsewhere defined in this title. In no event shall the total weekly payment to said disabled employee exceed the sum of thirty dollars per week.

§ 3. AMENDMENT.] That Section 65-0510, of the North Dakota Revised Code of 1943, is hereby amended and re-enacted to read as follows:

65-0510. TEMPORARY PARTIAL DISABILITY; WEEKLY COMPENSATION.] If the injury causes temporary partial disability the fund shall pay to the disabled employee during such disability a weekly compensation to be fixed by the Bureau.

§ 4. AMENDMENT.] That Section 65-0511, of the North Dakota Revised Code of 1943, is hereby amended and re-enacted to read as follows:

65-0511. MAXIMUM AND MINIMUM COMPENSATION ALLOWANCES; TOTAL AND PARTIAL DISABILITY.] The weekly compensation for total disability shall not be more than twenty dollars, except as provided elsewhere in this Act, nor less than nine dollars. The weekly compensation for partial disability shall not be more than twenty dollars. If the injured person, at the time of the injury, was a minor or was employed in a learner's capacity, and was not physically or mentally defective, the bureau from time to time, shall determine the probable increase in weekly earning capacity of such person if such injury had not occurred, and shall base its award for compensation upon such probable weekly wage-earning capacity.

§ 5. AMENDMENT.] That Section 65-0513, of the North Dakota Revised Code of 1943, is hereby amended and re-enacted 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 sixty-six and two-thirds percent of his weekly wages 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 of 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.

§ 6. AMENDMENT.] That subsection 6 of 65-0517 of the North Dakota Revised Code of 1943 is hereby amended and re-enacted to read as follows:

65-0517, subsection 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 sixty-six and two-thirds 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.

§ 7. AMENDMENT.] That Section 65-0525, of the North Dakota Revised Code of 1943, is hereby amended and re-enacted to read as follows:

65-0525. LUMP SUM SETTLEMENT; GRANTED IN DISCRETION OF BUREAU; HOW COMPUTED.] In case of death or of permanent total or permanent partial disability, the bureau, if it determines that it is for the best interest of the beneficiary, may pay to such beneficiary a lump sum equal to the present value of all future

payments of compensation computed at two and one-half percent discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality. In case of compensation to the widow or widower 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 the period for which lump sum settlement was made hereunder, the beneficiary 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.

§ 8. AMENDMENT.] That Section 65-0526, of the North Dakota Revised Code of 1943, is hereby amended and re-enacted 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 two hundred fifty dollars.

§ 9. AMENDMENT.] That Section 65-1001, of the North Dakota Revised Code of 1943, is hereby amended and re-enacted 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 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 his amendment shall be retroactive. An appeal involving injuries received under insurance provided under contracts with extra-territorial coverage shall be triable in the district court of Burleigh County. Such appeal shall be taken in the manner provided in Chapter 32 of the title Judicial Procedure, Civil. In such a proceeding, the state's attorney of the county wherein 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.

Approved February 27, 1945.

## CHAPTER 338

H. B. No. 44

Introduced by Representative Fitch

## WORKMEN'S COMPENSATION ACT AMENDMENTS

An Act Providing for the payment of premiums by employers, the determination of premiums and providing for premium receipts and certificates to be mailed and providing that employers furnish payroll information to the Workmen's Compensation Bureau, and the determination of status and report of actual and estimated payrolls, and providing that bonuses and increased overtime payments shall not be included in payrolls, amending and re-enacting Sections 65-0404 and 65-0405 of the Revised Code of 1943, providing that this Act shall be retroactive to October 1, 1943, providing for refunds of overpayment of premium since October 1, 1943, and declaring an emergency.

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

§ 1. Sec. 65-0404 of the Revised Code of 1943 is hereby amended and re-enacted to read as follows:

§ 65-0404. EMPLOYERS OBLIGATED TO PAY PREMIUMS: DETERMINATION OF PREMIUMS: PREMIUM RECEIPTS AND CERTIFICATES TO BE MAILED.] Each employer subject to the provisions of this title shall pay into the fund annually the amount of premium determined and fixed by the bureau for the employment or occupation of such employer, which amount shall be determined by the classifications, rules, and rates made and published by the bureau and shall be based on a proportion of the annual expenditure of money by such employer for the service of persons subject to the provisions of this title, but such annual expenditure of money shall not include bonuses or increased payments for overtime. A receipt or certificate specifying that such payment has been made shall be mailed to such employer by the bureau immediately after such payment is made, and such receipt or certificate, attested by the seal of the bureau, shall be prima facie evidence of the payment of the premium. The bureau may make provisions so that premiums of various employers fall due on different dates to the end that the business of the bureau may be distributed as evenly as possible throughout the year.

§ 2. That Section 65-0405 of the Revised Code of 1943 is hereby amended and re-enacted to read as follows:

§ 65-0405. EMPLOYER TO FURNISH PAY ROLL INFORMATION TO BUREAU: DETERMINATION OF STATUS: REPORT OF ACTUAL AND ESTIMATED PAY ROLLS.] Every employer shall furnish the bureau upon request with the information required by it to carry out the purpose of this title. If the bureau finds that any person, firm,

private or public corporation, or any public service corporation, either within or without the State of North Dakota, is an employer within the meaning of this title, it shall determine the date when he or it became such, which finding and determination, for all the purposes of this title, shall be prima facie but not conclusive evidence thereof. The bureau forthwith shall give notice of said action to the employer who immediately thereafter shall furnish the bureau with a pay roll report covering the period included in said finding, not exceeding twelve months immediately preceding the date of such finding, together with an estimated pay roll for twelve months next succeeding from the date of such finding, provided that such pay roll reports shall not include payments made for bonuses or increased payments for overtime, and shall comply with all provisions of this title.

§ 3. This Act, providing that bonuses and increased payments for overtime shall not be included in the pay rolls used for the computation of premiums by the Workmen's Compensation Bureau, shall be and is hereby declared to be retroactive to October 1, 1943, and the Workmen's Compensation Bureau is hereby authorized to refund any portions of premiums paid by any employer since October 1, 1943, based on that part of a pay roll comprised of bonus payments or increased payments for overtime and such refund shall be made upon the application of the employer made within one year from the effective date of this Act, and upon such showing as may be deemed sufficient by the Workmen's Compensation Bureau, and that such funds shall be paid from the same fund and in the same manner as disability claims against the Workmen's Compensation Fund.

§ 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 14, 1945.