

§ 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 7, 1947.

SOCIAL SECURITY

CHAPTER 320

H. B. No. 182

(Collette, Falconer, Haugland, Haugen, Callahan, Levin, Benno, Graham, and Halcrow).

ESTABLISHING OLD AGE AND SURVIVOR INSURANCE SYSTEM

AN ACT

To provide for the general welfare of public employees by establishing an Old Age and Survivor Insurance System; to provide for the administration of such system; to provide for deductions from pay of public employees and contributions from the State, political subdivisions and other instrumentalities of the State, to raise funds for such retirement system and to repeal conflicting laws, and making an appropriation.

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

§ 1.] A retirement system is hereby created and established to become effective July 1, 1947, and to be known as the "Old Age and Survivor Insurance System," hereinafter called "System."

§2.] The purpose of this act is to promote economy and efficiency in the public service by providing an orderly means whereby employees who become superannuated may, without hardship or prejudice be replaced by more capable employees, and to that end providing a retirement system which will provide for the payment of annuities to public employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents, in old age or death, and which by its provisions will improve public employment within the state, reduce excessive personnel turnover and offer suitable attraction to high grade men and women to enter public service in the state.

§ 3.] The North Dakota Unemployment Compensation Division of the North Dakota Workmen's Compensation Bureau hereinafter called the "Bureau" shall be vested with authority to administer the Old Age and Survivor Insurance System.

§ 4.] The duties and powers of the Bureau in respect to the carrying out of the provisions of this Act shall be the same as are set forth in Chapter 52-02 of the North Dakota Revised Code of 1943 as amended, insofar as the provisions of such chapter are consistent with the provisions of this Act.

§ 5.] There is hereby created as a special fund, separate and apart from all other public moneys or funds of this State, the "Old Age and Survivors' Insurance Trust Fund," hereafter called the "Old Age Survivors' Fund". This fund shall consist of all moneys collected under this act, together with all interest thereon, and shall also include all securities and other assets acquired by and through the use of the moneys belonging to this fund and any other moneys that have been paid into this fund.

§ 6.] The Treasurer of the State of North Dakota is hereby made the custodian and trustee of this fund and shall administer the same in accordance with the directions of the Bureau. It shall be the duty of the trustee,

A. To hold said trust funds.

B. Invest such portion of said trust funds as are not needed for current payment of benefits under this Act in interest bearing bonds issued by the United States, or by the State of North Dakota, or those issued by counties, school districts and/or general obligations or limited levy bonds issued by municipal corporations in this state as authorized by law. Also to sell and dispose of same when needed for the payment of benefits under this Act.

C. Disburse such trust funds upon warrants drawn by the State Treasurer pursuant to the order of the Bureau.

§ 7.] All moneys which are paid or deposited into this fund are hereby appropriated and made available to the Bureau to be used only for the purposes herein provided.

A. To be used by the Bureau for the payment of claims for benefits under this Act.

B. To be used by the Bureau to pay refunds provided for in Section Nine (9) of this Act.

§ 8.] Taxes unpaid on the date on which they are due and payable as prescribed by the Bureau, shall bear interest

at the rate of one-half of one per centum per month from and after such date until payment plus accrued interest is received by the Bureau, provided that the Bureau may prescribe fair and reasonable regulations pursuant to which such interest shall not accrue with respect to taxes required. Interest collected pursuant to this section shall be paid into the Old Age and Survivors' Fund.

A. If within thirty days after due notice, the employer defaults in payment of taxes or interest thereon, the amount due shall be collected by civil action in the name of the Bureau and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect taxes or interest thereon shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions.

B. The employer shall pay its tax or contribution from funds available and is directed to pay same from tax money or from any other income of the political subdivision.

C. The political subdivision is hereby authorized and directed to levy a tax sufficient to meet its obligations under the provisions of this Act, over and above any levy limitations now prescribed by law for such political subdivisions.

§ 9.] In any case in which the Bureau finds the employer has paid taxes thereon, which have been erroneously paid, or have filed an application for an adjustment thereof, the Bureau shall make such adjustment, compromise or settlement and make such refund of such payments as it finds just and equitable in the premises. Refunds so made shall be charged to the fund to which the erroneous collections have been credited and shall be paid to the claimant without interest. Any claim for such refund shall be made within three years of date of payment and not thereafter. For like time and cause, adjustments, compromises or refunds may be made by the Bureau on its own initiative.

A. In addition to all other taxes there is hereby levied upon each employer (as defined in Section Twenty (20) of this Act) and also upon each employee (as defined in Section 20 of this Act) a tax equal to one per centum of the wages to be paid by each employer and each employee.

§ 10.] The tax imposed by this Act shall be collected by the employer from the employee by deducting the amount of the tax from the wages as and when paid. If more or less than the correct amount of tax imposed by this Act is paid with respect to both the tax and the amount to be deducted, adjustments shall be made without interest, in such manner

and at such times as may be prescribed by regulations made under this Act.

§ 11.] For the purposes of the state income tax, the tax imposed by this Act shall be allowed as a deduction to the taxpayer in computing his net income for the year in which such tax is deducted from his wages.

§ 12.] The employer shall furnish to all employees a written statement in a form prescribed by the Bureau suitable for retention by the employee, showing the wages paid to the employee after July 1, 1947. Each statement shall cover a calendar year, or one, two or three quarters, whether or not within the same calendar year, and shall show the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of tax imposed by this Act with respect to such wages. Each statement shall be furnished to the employee not later than thirty days following the period covered by the statement, except that, if the employee leaves the employ of the employer, this final statement shall be furnished within thirty days after the last payment of wages is made to the employee. The employer may at its option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering each quarter, and, in such case, the statement may show the date of payment of wages in lieu of the period covered by the statement.

§ 13.] The taxes deducted from the wages of the employee by the employer shall be matched by the employer making the deduction and shall be forwarded to the Bureau for recording and deposited with the state treasurer to the credit of the Old Age and Survivors' Fund. Such taxes as deducted by the employer shall be paid in such manner, at such times and under such conditions, either by copies of payrolls or other methods necessary or helpful in securing proper identification of the taxpayer, as may be prescribed by the Bureau.

§ 14.] A. Every individual, who (1) is a fully insured individual (as defined in Section 20 (F)) after June 30, 1947, (2) has attained the age of sixty-five (65), and (3) has filed application for primary insurance benefits, shall be entitled to receive a primary insurance benefit (as defined in Section 20 (D)) for each month, beginning with the month in which such individual becomes so entitled to such insurance benefits and ending with the month preceding the month in which he dies.

B. (1) Every wife, (as defined in Section 20 (H)) of an individual entitled to primary insurance benefits, if such wife (a) has attained the age of sixty-five (65), (b) has filed application for wife's insurance benefits, (c) was living with such individual at the time such application was filed, and (d) is not entitled to receive primary insurance benefits, each of which is less than one-half of a primary insurance benefit of her husband, shall be entitled to receive a wife's insurance benefit for each month, beginning with the month in which she becomes so entitled to such insurance benefits, and ending with the month immediately preceding the first month in which any of the following occurs: she dies, her husband dies, they are divorced a vinculo matrimonii, or she becomes entitled to receive a primary insurance benefit equal to or exceeding one-half of a primary insurance benefit of her husband.

(2) Such wife's insurance benefit for each month shall be equal to one-half of a primary insurance benefit of her husband, except that if she is entitled to receive a primary insurance benefit for any month, such wife's insurance benefit for such month shall be reduced by an amount equal to a primary insurance benefit of such wife.

C. (1) Every child (as defined in Section 20 (J)) of an individual entitled to primary insurance benefits, or of an individual who died a fully or currently insured individual (as defined in Section 20 (F) and (G)) after June 30, 1947, if such child (a) has filed application for child's insurance benefits, (b) at the time such application was filed was unmarried and had not attained the age of 18, and (c) was dependent upon such individual at the time such application was filed, or, if such individual has died, was dependent upon such individual at the time of such individual's death, shall be entitled to receive a child's insurance benefit for each month, beginning with the month in which such child becomes so entitled to such insurance benefits, and ending with the month immediately preceding the first month in which any of the following occurs: such child dies, marries, is adopted or attains the age of eighteen.

(2) Such child's insurance benefit for each month shall be equal to one-half of a primary insurance benefit of the individual with respect to whose wages the child is entitled to receive such benefit, except that, when there is more than one such individual such benefit shall be equal to one-half of whichever primary insurance benefit is greatest.

(3) A child shall be deemed dependent upon a father or adopting father, or to have been dependent upon such in-

dividual at the time of the death of such individual, unless, at the time of such death, or, if such individual was living, at the time of such child's application for child's insurance benefits was filed, such individual was not living or contributing to the support of such child and—

(a) such child is neither the legitimate nor adopted child of such individual, or

(b) such child had been adopted by some other individual, or

(c) such child, at the time of such individual's death, was living with and supported by such child's stepfather.

(4) A child shall be deemed dependent upon a mother, adopting mother, or stepparent or to have been dependent upon such individual at the time of the death of such individual, only if, at the time of such death, or, if such individual was living, at the time such child's application for child's insurance benefits was filed, no parent other than such individual was contributing to the support of such child and such child was not living with its father or adopting father.

(d) (1) Every widow (as defined in Section 20 (1)) of an individual who died a fully insured individual after June 30, 1947, if such widow (a) has not remarried, (b) has attained the age of sixty-five (65), (c) has filed application for widow's insurance benefits, (d) was living with such individual at the time of his death, and (e) is not entitled to receive primary insurance benefits, or is entitled to receive primary insurance benefits each of which is less than three-fourths of a primary insurance benefit of her husband, shall be entitled to receive a widow's insurance benefit for each month, beginning with the month in which she becomes entitled to such insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: She remarries, dies, or becomes entitled to receive a primary insurance benefit equal to or exceeding three-fourths of a primary insurance benefit of her husband.

(2) Such widow's insurance benefit for each month shall be equal to three-fourths of a primary insurance benefit of her deceased husband, except that if she is entitled to receive a primary insurance benefit for any month, such widow's insurance benefit for such month shall be reduced by an amount equal to a primary insurance benefit of such widow.

(E) (1) Every widow (as defined in Section 20 (1)) of an individual who died a fully or currently insured individual after June 30, 1947, if such widow (a) has not re-

married, (b) is not entitled to receive a widow's insurance benefit, and is not entitled to receive primary insurance benefits, or is entitled to receive primary insurance benefits each of which is less than three-fourths of a primary insurance benefit of her husband, (c) was living with such individual at the time of his death, (d) has filed application for widow's current insurance benefits, and (e) at the time of filing such application has in her care a child of such deceased individual entitled to receive a child's insurance benefit, shall be entitled to receive a widow's current insurance benefit for each month, beginning with the month in which she became so entitled to such current insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to receive a child's insurance benefit, she becomes entitled to receive a primary insurance benefit equal to or exceeding three-fourths of a primary insurance benefit of her deceased husband, she becomes entitled to receive a widow's insurance benefit, she remarries, she dies.

(2) Such widow's current insurance benefit for each month shall be equal to three-fourths of a primary insurance benefit of her deceased husband, except that, if she is entitled to receive a primary insurance benefit for any month, such widow's current insurance benefit for such month shall be reduced by an amount equal to a primary insurance benefit of such widow.

(F) (1) Every parent (as defined in this subsection) of an individual who died a fully insured individual after June 30, 1947, leaving no widow and no unmarried surviving child under the age of eighteen, if such parent (a) has attained the age of sixty-five (65), (b) was wholly dependent upon and supported by such individual at the time of such individual's death and filed proof of such dependency and support within two years of such date of death, (c) has not married since such individual's death, (d) is not entitled to receive any other insurance benefits under this section, or is entitled to receive one or more of such benefits for a month, but the total for such month is less than one-half of a primary insurance benefit of such deceased individual, and (e) has filed application for parent's insurance benefits, shall be entitled to receive a parent's insurance benefit for each month, beginning with the month in which such parent becomes so entitled to such parent's insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to receive for any month an insurance benefit or benefits (other than a benefit under this subsection) in a total

amount equal or exceeding one-half of a primary insurance benefit of such deceased individual.

(2) Such parent's insurance benefit for each month shall be equal to one-half of a primary insurance benefit of such deceased individual, except that, if such parent is entitled to receive an insurance benefit or benefits for any month (other than a benefit under this subsection), such parent's insurance benefit for such month shall be reduced by an amount equal to the total of such other benefit or benefits for such month. When there is more than one such individual with respect to whose wages the parent is entitled to receive a parent's insurance benefit for a month, such benefit shall be equal to one-half of whichever primary insurance benefit is greatest.

(3) As used in this subsection, the term "parent" means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

(G) Upon the death, after June 30, 1947, of an individual who died a fully or currently insured individual leaving no surviving widow, child or parent who would, on filing application in the month in which such individual died, be entitled to a benefit for such month under subsection (C), (D), (E) or (F) of this section, an amount equal to six times a primary insurance benefit of such individual shall be paid in a lump sum to the following person (or if more than one, shall be distributed among them) whose relationship to the deceased is determined by the Bureau, and who is living on the date of such determination; to the widow or widower of the deceased; or, if no such widow or widower be then living, to any child or children of the deceased and to any other person or persons who are, under the intestacy law of the state where the deceased was domiciled, entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law; or, if no widow or widower and no such child and no such other person be then living, to the parent or to the parents of the deceased, in equal shares. A person who is entitled to share as distributee with an above-named relative of the deceased shall not be precluded from receiving a payment under this subsection by reason of the fact that no such named relative survived the deceased or of the fact that no such named relative of the deceased was living on the date of such determination. If none of the persons described in this subsection be living on the date of such determination, such amount shall be paid to any person or persons, equitably

thereto, to the extent and in the proportions that he or they shall have paid expenses of burial of the deceased. No payment shall be made to any person under this subsection, unless application therefor shall have been filed, by or on behalf of any such person (whether or not legally competent), prior to the expiration of two years after the death of such individual.

(H) An individual who would have been entitled to a benefit under subsection (B), (C), (D), (E) or (F) for any month had he filed application therefor prior to the end of such month, shall be entitled to such benefit for such month if he files application therefor prior to the end of the third month immediately succeeding such month.

§ 15.] (A) Whenever the total of benefits under Section 14, payable for a month with respect to an individual's wages, is more than \$20 and exceeds (1) \$85, or (2) an amount equal to twice a primary insurance benefit of such individual or (3) an amount equal to 80 per centum of his average monthly wage (as defined in Section 20 (e)), whichever of such three amounts is least, such total of benefits shall, prior to any deductions under subsection (D) be reduced to such least amount or to \$20, whichever is greater.

(B) Whenever the benefit or total of benefits under Section 14, payable for a month with respect to an individual's wages, is less than \$10 such benefit or total of benefits shall, prior to any deductions under subsection (D) be increased to \$10.

(C) Whenever a decrease or increase of the total of benefits for a month is made under subsection (A) or (B) of this section, each benefit, except the primary benefit, shall be proportionately decreased or increased as the case may be.

(D) Deductions, in such amounts and at such time or times as the Bureau shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits for any month in which:

(1) a child under eighteen and over sixteen years of age, failed to attend school regularly and the Bureau finds that attendance was feasible; or

(2) a widow entitled to a widow's current insurance benefit did not have in her care a child of her deceased husband entitled to receive a child's insurance benefit.

(E) If more than one event occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefits shall be deducted.

(F) Any individual in receipt of benefits subject to deduction under subsection (D) (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event enumerated therein, shall report such occurrence to the Bureau prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred. Any such individual having knowledge thereof, who fails to report any such occurrence, shall suffer an additional deduction equal to that imposed under subsection (D).

§ 16.] (A) Whenever an error has been made with respect to payments to an individual under this act, proper adjustment shall be made, under regulations prescribed by the Bureau, by increasing or decreasing subsequent payments to which such individual is entitled. If such individual dies before such adjustment has been completed, adjustment shall be made by increasing or decreasing subsequent benefits payable with respect to the wages which were the basis of benefits of such deceased individual.

(B) There shall be no adjustment or recovery by the Bureau in any case where incorrect payment has been made to an individual who is without fault, and where adjustment or recovery would defeat the purpose of this act or would be against equity and good conscience.

(C) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any person where the adjustment or recovery of such amount is waived under subsection (B), or where adjustment under subsection (A) is not completed prior to the death of all persons against whose benefits deductions are authorized.

§ 17.] (A) The Bureau shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(B) The Bureau is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this act. Whenever requested by any such individual or whenever requested by a wife, widow, child or parent, who makes a showing in writing that his or her rights may be prejudiced by any decision the Bureau has rendered, it shall give such applicant and such other individual reason-

able notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse its findings of fact and such decision. The Bureau is further authorized, on its own motion, to hold such hearings and to conduct such investigations and other proceedings as it may deem necessary or proper for the administration of this act. In the course of any hearing, investigation, or other proceedings, it may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Bureau even though inadmissible under rules of evidence applicable to court procedure.

(C) (1) On the basis of information obtained by or submitted to the Bureau, and after such verification thereof as it deems necessary, the Bureau shall establish and maintain records of the amounts of wages paid to each individual and of the periods in which such wages were paid and, upon request, shall inform any individual, or after his death shall inform his wife, child or parent of such individual, of the amounts of wages of such individual and the periods of payments shown by such records at the time of such request. Such records shall be evidence, for the purpose of proceedings before the Bureau or any court, of the amounts of such wages and the periods in which they were paid, and the absence of an entry as to an individual's wages in such records for any period shall be evidence that no wages were paid such individual in such period.

(2) After the expiration of the fourth calendar year following any year in which wages were paid or are alleged to have been paid to an individual, the records of the Bureau as to the wages of such individual for such year and the periods of payment shall be conclusive for the purpose of this act, except as hereafter provided.

(3) If, prior to the expiration of such fourth year, it is brought to the attention of the Bureau that any entry of such wages in such records is erroneous, or that any items of such wages have been omitted from the records, the Bureau may correct such entry or include such omitted item in its records, as the case may be. Written notice of any revision of any such entry which is adverse to the interests of any individual, shall be given to such individual, in any case where such individual has previously been notified by the Bureau of the amount of wages and of the period of payments shown by such entry. Upon request in writing made prior to the expiration of such fourth year, or within sixty days thereafter, the Bureau shall afford any individual, or after his death shall afford the wife, child or parent of such individual, reason-

able notice and opportunity for hearing with respect to any entry or alleged omission of wages of such individual in such records, or any revision of any such entry. If a hearing is held, the Bureau shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall revise its records as may be required by such findings and decision.

(4) After the expiration of such fourth year, the Bureau may revise any entry or include in its records any omitted item of wages to conform its records with tax returns or portions of tax returns. Notice shall be given of such revision under such conditions and to such individual as is provided for revisions under paragraph (3) of this subsection. Upon request notice and opportunity for hearing with respect to any such entry, omission, or revision, shall be afforded under such conditions and to such individuals as is provided in paragraph (3) hereof, but no evidence shall be introduced at any such hearing except with respect to conformity of such records with such tax returns.

(5) Decisions of the Bureau under this subsection shall be reviewable by commencing a civil action in the district court of the State of North Dakota as provided in subsection (G) hereof.

(D) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this act, or relative to any other matter within its jurisdiction hereunder, the Bureau shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Bureau. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any political subdivision of the state. Subpoenas of the Bureau shall be served by anyone authorized by it (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail addressed to such individual at his last dwelling place or principal place of business. A certified return by the individual so serving the subpoena setting forth the manner of service, or, in the case of service by registered mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpoenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the State of North Dakota.

(E) In case of contumacy by, or refusal to obey a subpoena duly served upon, any person, any district court of the

State of North Dakota for the district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Bureau, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

(F) No person so subpoenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence on the grounds that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(G) Any individual, after any final decision of the Bureau made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Bureau may allow. Such action shall be brought in the district court of the state of North Dakota for the district in which the plaintiff resides, or has his principal place of business. As part of its answer the Bureau shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Bureau with or without remanding the cause for a rehearing. The findings of the Bureau as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Bureau or a decision is rendered under subsection (B) hereof which is adverse to an individual who was a party to the hearing before the Bureau, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (A) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court shall, on motion of the Bureau made before it files its answer, remand the case to the Bureau for further action by the Bureau, and may, at any time, on good cause shown, order additional evidence to be taken before the Bureau, and

the Bureau shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm its finding of fact or its decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which its action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions.

(H) The findings and decisions of the Bureau after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Bureau shall be reviewed by any person, tribunal, or governmental agency except as herein provided.

(I) Upon final decision of the Bureau, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this Act, the Bureau shall certify to the state Treasurer the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Bureau, through the state Treasurer, shall make payment in accordance with the certification of the Bureau; provided, that where a review of the Bureau's decision is or may be sought under subsection (C) the Bureau may withhold certification of payment pending such review. The state Treasurer shall not be held personally liable for any payment or payments made in accordance with a certification by the Bureau.

(J) When it appears to the Bureau that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

(K) Any payment made after June 30, 1947, under conditions set forth in subsection (J), to, or on behalf of, a legally incompetent individual without knowledge by the Bureau of incompetency prior to certification of payment, if otherwise valid under this act, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(L) The Bureau is authorized to delegate to any member, officer, or employee of the Bureau designated by it any of the powers conferred upon it by this section, and is authorized to be represented by its own attorneys in any court in any case or proceeding arising under the provisions of subsection (E).

(M) No application for any benefit under this act filed prior to three months before the first month for which the applicant becomes entitled to receive such benefits shall be accepted as an application for the purposes of this act.

(N) The Bureau may certify, in its discretion, any two or more individuals of the same family for joint payment of the total benefits payable to such individuals.

§ 18.] The Bureau may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Bureau, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the supreme court of the state, shall be entitled to represent claimants before the Bureau.

The Bureau may, by rule and regulation, prescribe the maximum fees which may be charged for services rendered in connection with any claim before the Bureau under this act, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this act by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Bureau shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both.

§ 19.] Whoever, for the purpose of causing an increase in any payment authorized to be made under this act, or for the purpose of causing any payment to be made where no payment is authorized under this act, shall make or cause to be made any false statement or representation as to the

amount of any wages paid or received or the period during which earned or paid, or whoever makes or causes to be made any false statement of a material fact in any application for any payment under this act, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such an application, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

§ 20.] When used in this act—

(A) The term “wages” means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual with respect to employment during any calendar year after 1945, is paid to such individual with respect to employment during such calendar year.

(B) The term “employment” means any service performed after June 30, 1947, under an employer employee relationship, under the provisions of this Act, except:

(1) Any service performed in the employ of any employer which has as of the effective date of this Act its own retirement plan.

(2) Any service performed in any calendar quarter in which the remuneration for such service does not exceed the sum of fifty dollars (\$50.00), unless there are other calendar year quarters in which remuneration does exceed the sum of fifty dollars (\$50.00).

(C) (1) The term “employer” means the state of North Dakota, the counties, municipalities, and all of the political subdivisions thereof and all of their departments and instrumentalities all hereinafter called political subdivisions excepting only those whose employees are now covered by a retirement plan in which such political subdivision may be election come under the provisions of this Act in accordance with the regulations prescribed by the Bureau.

(2) The term “employee” means any individual who is in employment as defined in this Act.

(D) The term “primary insurance benefit” means an amount equal to the sum of the following—

(1) (a) 40 per centum of the amount of an individual's average monthly wage if such average monthly wage does not exceed \$50, or (b) if such average monthly wage exceeds \$50, 40 per centum of \$50, plus 10 per centum of the amount by which such average monthly wage exceeds \$50 and does not exceed \$250, and

(2) an amount equal to 1 per centum of the amount computed under paragraph (1) multiplied by the number of years in which \$200 or more of wages were paid to such individual. Where the primary insurance benefit thus computed is less than \$10, such benefit shall be \$10.

(E) The term "average monthly wage" means the quotient obtained by dividing the total wages paid an individual before the quarter in which he died or became entitled to receive primary insurance benefits, whichever first occurred by three times the number of quarters elapsing after July 1, 1947, in which he was covered under this act, and in which he earned more than fifty dollars (\$50) and before such quarter in which he died or became so entitled.

(F) The term "fully insured individual" means any individual with respect to whom it appears to the satisfaction of the Bureau that

(1) He had not less than one quarter of coverage for each two of the quarters elapsing after July 1, 1947, after he was first covered under this act, or after the quarter in which he attained the age of twenty-one, whichever quarter is later, and up to but excluding the quarter in which he retired after he had attained the age of sixty-five, or died, whichever first occurred and in no case less than six quarters of coverage, excepting that no employee who has passed his sixtieth birthday prior to July 1, 1947, shall be paid any benefits until he would have been covered for ten full quarters immediately preceding his retirement or death; or

(2) He had at least forty quarters of coverage. As used in this subsection, and in subsection (G) of this section, the term quarter and the term "calendar quarter" mean a period of three calendar months ending on March 31, June 30, September 30, or December 31; and the term "quarter of coverage" means a calendar quarter in which the individual has been paid not less than \$50 in wages. When the number of quarters specified in paragraph (1) of this subsection is an odd number, for purposes of such paragraph such number shall be reduced by one. In any case where an individual has been paid in a calendar year \$3,000 or more in wages, each quarter of such year following his first quarter of coverage shall be deemed a quarter of coverage, excepting any quarter

in such year in which such individual dies or becomes entitled to a primary insurance benefit and any quarter succeeding such quarter in which he died or becomes so entitled.

(G) The term "currently insured individual" means any individual with respect to whom it appears to the satisfaction of the Bureau that he has been paid wages of not less than \$50 for each of not less than six of the twelve calendar quarters, immediately preceding the quarter in which he died.

(H) The term "wife" means the wife of an individual who either (1) is the mother of such individual's sons or daughters or (2) was married to him prior to July 1, 1947, or if later, prior to the date upon which he attained the age of sixty.

(I) The term "widow" (except when used in Section 14 (G)) means the surviving wife of an individual who either (1) is the mother of such individual's son or daughter, or (2) was married to him prior to the beginning of the twelfth month before the month in which he died.

(J) The term "child" (except when used in Section 14 (G)) means the child of an individual, and the stepchild of an individual by a marriage contracted prior to the date upon which he attained the age of sixty and prior to the beginning of the twelfth month before the month in which he died, and a child legally adopted by an individual prior to the date upon which he attained the age of sixty and prior to the beginning of the twelfth month before the month in which he died.

(K) In determining whether an applicant is the wife, widow, child, or parent of a fully insured or currently insured individual for purposes of this Act, the Bureau shall apply such law as would be applied in determining the devolution of intestate personal property under the laws of the State of North Dakota. Applicants who according to such law would have the same status relative to taking intestate personal property as a wife, widow, child or parent shall be deemed such.

(L) A wife shall be deemed to be living with her husband if they are both members of the same household, or she is receiving regular contributions from him toward her support, or he has been ordered by any court to contribute to her support; and a widow shall be deemed to have been living with her husband at the time of his death if they were both members of the same household at the date of his death, or she was receiving regular contributions from him toward her support on such date, or he had been ordered by any court to contribute to her support.

(M) Members of the state legislature, officials of the state, city, village, township, and county, and other governmental instrumentalities elected by the vote of the people; employees who are members of any other retirement system in the state which is maintained in whole or in part by public contributions unless such political subdivisions or its instrumentalities as a whole elect to adopt this system are exempted from the provisions of this Act.

(N) The masculine form of expression shall be deemed to include the feminine.

(O) The term "taxes" as used in this Act shall mean the amount or amounts of money contributed to the fund of the system by the employer and the employee.

(P) Wherever the words "political subdivision" appear in this Act they shall include municipal corporations, counties and townships, and public school districts.

§ 21.] Any employee covered by this Act may, upon termination of his employment with an employer covered by this Act, and provided such employee is a currently insured individual but not a fully insured individual, may upon his request within thirty (30) days from the time of the termination of such employment withdraw from the fund the total of the employee's individual contribution paid to said fund, without interest.

§ 22.] The right of any person to any future payment under this act shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

§ 23.] Any political subdivision or the instrumentalities thereof not covered by this Act may become subject hereto by application to the Bureau for such coverage on all or that part of its employees that are not covered by this Act and by complying with the regulation prescribed by the Bureau.

§ 24.] None of the laws of this state regulating insurance or insurance companies shall apply to the Bureau, or the Old Age and Survivors' Insurance System or any of its funds.

§ 25.] The provisions of this Act shall apply to and be applicable to special charter cities in the State.

§ 26.] There is hereby appropriated out of the funds in the state treasury otherwise not appropriated, the sum of

nineteen thousand and five hundred dollars (\$19,500.00) for the biennium beginning July 1, 1947, and ending June 30, 1949, to pay the costs of the administration.

Approved March 17, 1947.

CHAPTER 321

S. B. No. 166—(Judiciary Committee)

UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND; MAINTENANCE, ETC.

AN ACT

To amend and reenact section 52-0209 of the North Dakota Revised Code of 1943 relating to the unemployment compensation administration fund; maintenance; purpose; what constitutes; additional bond required of treasurer; and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 52-0209 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

52-0209. UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND; MAINTENANCE; PURPOSE; WHAT CONSTITUTES; ADDITIONAL BOND REQUIRED OF TREASURER.] There shall be maintained in the state treasury a special fund to be known as the "unemployment compensation administration fund." All moneys which are deposited or paid into this fund are appropriated and made available to the bureau. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, including the social security administration, the railroad retirement board, the veterans administration, the United States department of labor, or from any other source, for such purpose. Moneys received from the railroad retirement board, the veterans administration, and from the United States department of labor, as compensation for services or facilities supplied to said agencies shall be paid into this fund and the employment service account thereof, on the same basis as expenditures are made for such services or facilities from such fund and account. All moneys in this fund shall be deposited and administered, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury; provided, however, that by reason of the fact that the fund is

subject to audit by the United States treasury department, or its representatives, that no audit by the state board of auditors, or by the office of the state examiner, shall be required. Any balances in this fund shall not lapse at any time but shall be available continuously to the bureau for expenditures consistent with this title. The state treasurer shall give a separate and additional bond conditioned for the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount to be fixed by the bureau and in a form prescribed by law or approved by the attorney general. The premiums for such bond shall be paid from the moneys in the unemployment compensation administration fund.

§ 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 February 27, 1947.

STATE GOVERNMENT

CHAPTER 322

S. B. No. 242—(Shure, Day, Page)

SALARY OF ATTORNEY GENERAL

AN ACT

To amend and reenact Section 54-1211 of the North Dakota revised code of 1943, fixing the annual salary of the Attorney General.

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

§ 1. AMENDMENT.] That Section 54-1211 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

54-1211. SALARY OF ATTORNEY GENERAL. The attorney general shall receive an annual salary of five thousand dollars for all services performed by him.

Approved March 21, 1947.