

reconditioned or replaced by new equipment, the same must be reinspected and a certificate issued before being put into use and the fee charged for such reinspection and certification shall be the same as for the first inspection and certification. When the inspector or other employee of the department of weights and measures shall find any of the instruments or articles used in weighing or measuring to be wrongly adjusted or out of repair, it shall be his duty to correct such scale or measure and he shall collect for such service one dollar and twenty-five cents per hour for the actual time consumed in making such corrections, and shall receive reasonable compensation for any material used in such corrections.

Approved February 24, 1951.

WORKMEN'S COMPENSATION

CHAPTER 341

H. B. No. 564
(Legislative Research Committee)
at the request of
(The Workmens Compensation Bureau)

COVERAGE OF EMPLOYEES OF SUB-CONTRACTORS OR INDEPENDENT CONTRACTORS, WORKMEN'S COMPENSATION AN ACT

To amend and reenact subdivision c of subsection 5 of section 65-0102 of the 1949 Supplement to the North Dakota Revised Code of 1943, relating to coverage of employees of sub-contractors or independent contractors under workmens compensation.

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

§ 1. AMENDMENT.) Subdivision c of subsection 5 of section 65-0102 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

- c. Persons employed by a sub-contractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter shall be deemed to be employees of the general contractor until such time as the sub-contractor or independent contractor has complied with the provisions of this title;

Approved February 20, 1951.

CHAPTER 342

H. B. No. 565
(Legislative Research Committee)
at the request of
(Workmens Compensation Bureau)

CONTRIBUTING EMPLOYER RELIEVED FROM LIABILITY FOR
INJURY TO EMPLOYEE; BUREAU JURISDICTION;
APPEAL FROM ALLOWANCES

AN ACT

To amend and reenact sections 65-0103 and 65-1003 of the North Dakota Revised Code of 1943 and sections 65-0503 and 65-1001 of the 1949 Supplement to the North Dakota Revised Code of 1943, relating to workmen's compensation, providing that employees of contributing employers shall have no right of action against such employers but shall look solely to the fund, and providing that decisions of the bureau shall be entitled to faith and credit given decisions of courts of record, providing for appeal from allowances of the bureau.

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

§ 1. AMENDMENT.) Section 65-0108 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0108. CONTRIBUTING EMPLOYER RELIEVED FROM LIABILITY FOR INJURY TO EMPLOYEE.) Where a local or out of state employer has secured the payment of compensation to his employees by contributing premiums to the fund, the employee, and the parents of a minor employee, or the representatives or beneficiaries of either, shall have no right of action against such contributing employer or against any agent, servant, or other employee of such employer for damages for personal injuries, but shall look solely to the fund for compensation.

§ 2. AMENDMENT.) Section 65-0503 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0503. JURISDICTION OF BUREAU TO HEAR QUESTIONS WITHIN ITS JURISDICTION; FINALITY OF DETERMINATION.) The bureau shall have full power and authority to hear and determine all questions within its jurisdiction, and its decisions, except as provided in chapter 10, of this title, shall be final and shall be entitled to the same faith and credit as a judgment of a court of record. Before an award for permanent disability can be made to a claimant, the bureau shall give notification in writing, by registered mail, addressed to the employer of said claimant at his last known address, of their intention to make such award, outlining reasons and amount of such evaluation and giving

the employer ten days in which to file a written protest to such award. If such protest is registered by the employer, the bureau shall set a date of hearing to show cause, if any there be, why such award should not be made, and shall notify the employer of the date set, and the bureau shall order an examination of the claimant on or before the date set for the hearing by a duly qualified physician licensed to practice and practicing his profession in the state of North Dakota, designated by the employer.

§ 3. AMENDMENT.) Section 65-1001 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted 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, or if the bureau allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted. An appeal involving injuries received under insurance provided under contracts with extraterritorial 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.

§ 4. AMENDMENT.) Section 65-1003 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-1003. COSTS OF APPEAL INCLUDING ATTORNEY'S FEES FIXED BY COURT.) The cost of the appeal, including a reasonable attorney's fee to the claimant's attorney, shall be fixed by the trial judge and taxed against the bureau provided, however, that in the event the appeal is taken from an award of the bureau, the trial judge shall not allow attorneys' fees in excess of twenty percent of the amount allowed on appeal over and above the award given by the bureau in its final action prior to appeal. Such attorney's fee shall cover and constitute the entire remuneration for the claimant's attorney for all services in connection with the appeal.

Approved March 9, 1951.

CHAPTER 343

S. B. No. 55
(Legislative Research Committee)
at the request of
(Workmens Compensation Bureau)

ACTIONS AGAINST THIRD PERSONS FOR INJURIES COVERED
BY WORKMENS COMPENSATION

AN ACT

To amend and reenact section 65-0109 of the 1949 Supplement to the North Dakota Revised Code of 1943, relating to actions against third persons for injuries covered by workmens compensation.

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

§ 1. AMENDMENT.) Section 65-0109 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0109. INJURY THROUGH NEGLIGENCE OF THIRD PERSON; OPTION OF EMPLOYEE; FUND SUBROGATED WHEN CLAIM FILED.) When an injury or death for which compensation is payable under the provisions of this title shall have been sustained under circumstances creating in some person other than the fund a legal liability to pay damages in respect thereto, the injured employee, or his dependents may claim compensation under this title and proceed at law to recover damages against such other person. The fund shall be subrogated pro tanto to the rights of the injured employee or his dependents to the extent of the amount of compensation paid and the action against such other person may be brought by the injured employee, or his dependents in the event of his death, in his or in his dependents' own right and name and as trustee for the workmen's compensation bureau for what it has paid on such claim, or such action may be brought by the bureau upon ninety days notice to the employee or to the dependents of a deceased employee. Expenses and costs of such litigation shall be prorated between claimant and bureau, should any damages be awarded, over and above claimants award by bureau plus cost of such litigation. If no damages are awarded, the cost of litigation shall be paid by the party instituting the action. The injured employee, or the dependents of a deceased employee, may by instrument in writing waive the notice required by this section, in which case the bureau shall be authorized to proceed at once in the institution of a suit against such third person.

Approved February 28, 1951.

CHAPTER 344

S. B. No. 74
(Legislative Research Committee)
at the request of the
(Workmens Compensation Bureau)

ALLOWANCES; PREMIUMS; PENALTIES, ETC.; WORKMENS
COMPENSATION

AN ACT

To amend and reenact sections 65-0214, 65-0412, 65-0903, and 65-0904 of the North Dakota Revised Code of 1943 and sections 65-0404, 65-0405, 65-0509, 65-0511, 65-0513, and 65-1001 of the 1949 Supplement to the North Dakota Revised Code of 1943 and to repeal section 65-04051 of the 1949 Supplement to the North Dakota Revised Code of 1943, relating to workmen's compensation.

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

§ 1 AMENDMENT.) Section 65-0214 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0214. BUREAU TO AID IN REHABILITATING PERSONS INJURED IN EMPLOYMENT.) The bureau shall cooperate with such federal department or agency as shall be charged with vocational education and vocational rehabilitation to the ends that persons injured in the course of employment may be restored to industry and that industrial cripples may obtain training, education, and employment. An allowance for dependents of not to exceed fifteen dollars per week for a maximum of seventy-two weeks may be paid from the fund during the rehabilitation period.

§ 2. AMENDMENT.) Section 65-0404 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted 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 premiums 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. 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 shall provide that premiums be paid by common school districts fall due at the end of the fiscal year of such common school districts and may make provisions so that premiums of other 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.

§ 3. AMENDMENT.) Section 65-0405 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted 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, and shall comply with all provisions of this title.

§ 4. AMENDMENT.) Section 65-0412 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0412. PENALTIES FOR FAILURE TO OBTAIN COVERAGE OR TO MAKE PAY ROLL REPORTS; HOW COLLECTED; DISPOSITION.) Any employer knowing himself to be subject to the operation of the provisions of this title who shall fail to report himself to the bureau as such shall be liable to a penalty to be fixed by the bureau in an amount not exceeding one and one-half times the premium which would have been paid on pay roll expenditures during the periods not reported. Any employer who shall fail or refuse to furnish to the bureau the annual pay roll report and estimate, or who shall fail or refuse to furnish such other information as may be required by the bureau under authority of this chapter shall be subject to a penalty to be fixed by order of the bureau in an amount not exceeding five hundred dollars. Such penalties shall be collected in a civil action brought against the defaulting employer in the name of the state. Any such penalty, when collected shall be paid into the fund and shall become a part thereof.

§ 5. AMENDMENT.) Section 65-0509 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted 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, subject to the maximum and minimum limitations contained in section 65-0511. In case of temporary or permanent total disability, there shall be paid to such disabled employee an additional sum of five dollars per week for a dependent spouse plus two dollars per week for each dependent child under the age of eighteen years, and for each child over eighteen years, and incapable of self-support due to physical or mental disability and whose maintenance is the responsibility of the claimant. Dependency awards for the spouse and children may be made direct to the spouse at the discretion of the bureau. In no event shall the total weekly payment to the totally disabled employee exceed the sum of forty-two dollars per week, and in no case shall the compensation award exceed the actual wage of the disabled employee except in those cases on which the minimum compensation award is applied. In all cases where permanent disability awards have been made or where injuries are sustained subsequent to July 1, 1951, the benefits and dependency allowances obtainable under this title shall become effective as of July 1, 1951. Benefits payable for temporary disability resulting from injuries sustained prior to July 1, 1951, shall remain the same as those payable prior to July 1, 1951.

§ 6. AMENDMENT.) Section 65-0511 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted 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-five dollars, except where an allowance for dependents is made in compliance with section 65-0509, nor less than nine dollars. The weekly compensation for partial disability shall not be more than twenty-five 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.

§ 7. AMENDMENT.) Section 65-0513 of the 1949 Supplement

to the North Dakota Revised Code of 1943 is hereby amended and reenacted 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 twenty-two dollars per week for the following periods:

1. For loss of arm at shoulder.....	250 weeks;
2. For loss of arm at or above elbow.....	220 weeks;
3. For loss of hand at or above wrist.....	200 weeks;
4. For loss of thumb.....	65 weeks;
5. For loss of second or distal phalange of thumb.....	28 weeks;
6. For loss of first finger.....	40 weeks;
7. For loss of middle or second phalange of first finger.....	28 weeks;
8. For loss of third or distal phalange of first finger.....	22 weeks;
9. For loss of second finger.....	30 weeks;
10. For loss of middle or second phalange of second finger.....	22 weeks;
11. For loss of third or distal phalange of second finger.....	14 weeks;
12. For loss of third finger.....	20 weeks;
13. For loss of middle or second phalange of third finger.....	16 weeks;
14. For loss of third or distal phalange of third finger.....	10 weeks;
15. For loss of fourth finger.....	16 weeks;
16. For loss of middle or second phalange of fourth finger.....	12 weeks;
17. For loss of third or distal phalange of fourth finger.....	6 weeks;
18. For loss of leg at hip.....	234 weeks;
19. For loss of leg at or above knee.....	195 weeks;
20. For loss of foot at or above ankle.....	150 weeks;
21. For loss of great toe.....	30 weeks;
22. For loss of second or distal phalange of great toe.....	18 weeks;
23. For loss of any other toe.....	12 weeks;
24. For loss of middle or second phalange of any other toe.....	10 weeks;
25. For loss of third or distal phalange of any other toe.....	7 weeks;
26. For loss of an eye.....	150 weeks;
27. For loss of hearing in one ear.....	50 weeks;
28. For loss of hearing in both ears.....	170 weeks;

The amount paid for the loss of more than one finger of one hand shall not exceed the amount provided in this schedule for the loss of a hand. For the loss of the metacarpal bone, of the palm together with the corresponding thumb or finger ten weeks shall be added to the number of weeks of payment. The permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg, or eye shall be considered as equivalent of the loss of such thumb, finger, toe, arm, hand, foot, leg, or eye, and compensation for partial loss of use of said parts shall be allowed on a percentage basis. Twenty-five percent additional shall be allowed as compensation for the loss of use of the master hand or any member or members thereof. The loss of use on a percentage basis of the master hand or any member or members thereof, or the amputation of the master hand or any member or members thereof. The loss of any part of a phalange shall be considered equal to the loss of the entire phalange. If any employee dies, the right of any compensation payable under section 65-0512 or this section, unpaid at the date of his death shall survive and pass to his dependent spouse, minor children, or parents.

§ 8. AMENDMENT.) Section 65-0903 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0903. AWARD; NOTICE.) If the testimony adduced at the hearing on a claim is sufficient to substantiate the prayer of the claimant, the bureau shall make findings and conclusions of law and shall make an order of award and copies of said findings, conclusions, and order shall be served upon the claimant, the employer, and all interested parties by registered mail, except that the service upon the employer shall be made in the manner now provided for the service of a summons in a civil action. The employer, in like manner and at the same time, shall be served with a notice that if he, within thirty days, shall fail to pay such award or perfect an appeal therefrom to the district court in the manner provided by law for such appeal, the bureau will present a petition to the district court having jurisdiction on the matter, containing the original findings of fact, conclusions of law, and order for award in said matter and presenting to such court proof of the award and of the failure of the employer to pay such award to take an appeal therefrom, and the said court will be asked to enter a judgment in favor of the state of North Dakota for the benefit of the bureau and against the employer together with reasonable costs and attorneys fees allowed by the bureau.

§ 9. AMENDMENT.) Section 65-0904 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

65-0904. FAILURE OF EMPLOYER TO PAY AWARD; JUDGMENT.) Upon the court making its order for judgment there will be filed

with the clerk of the district court of the county in which the employer resides, if he is an individual, or in the county where it has its principal place of business, if the employer is a corporation, a certified record of the proceedings had before the bureau and thereupon the judgment will be entered upon the docket of the district court of said county as a judgment in favor of the state of North Dakota for the benefit of the bureau and against the employer and shall have the full force and effect of a judgment of such court. No exemptions except absolute exemptions shall be allowed against any levy under executions pursuant to any judgment recovered in such action. All original claims for compensation for disability or death contemplated by this section shall be made within sixty days after such injury or death. For any reasonable cause shown the bureau may allow original claims for disability or death to be made at any time within one year. A final judgment against the employer, recovered in the manner provided herein, shall entitle such claimant to the compensation provided by this title for such injury or death and such compensation shall be paid from the general fund of the bureau, and any sum then or thereafter recovered on account of such judgment shall be paid to the bureau and credited as the commissioners of the workmen's compensation fund may designate.

§ 10. AMENDMENT.) Section 65-1001 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted 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. The payment of doctor, hospital and medical bills by the bureau shall not be deemed, for the purpose of this action, a participation in the fund by the claimant. An appeal involving injuries received under insurance provided under contracts with extraterritorial coverage shall be triable in the district court of Burleigh county. Such appeal shall be taken in the manner provided in chapter 28-32 of the title Judicial Procedure, Civil, as now or hereafter amended. 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.

§ 11. REPEAL.) Section 65-04051 of the 1949 Supplement to the North Dakota Revised Code of 1943 is hereby repealed.

Approved March 6, 1951.