

WORKMEN'S COMPENSATION

CHAPTER 579

SENATE BILL NO. 2036

(Kautzmann)

(From Legislative Council Study)

COMPENSATION BENEFITS

AN ACT to create and enact subsection 22 of section 65-01-02 of the North Dakota Century Code, relating to the definition of weekly wage of the claimant; to amend and reenact subsection 21 of section 65-01-02 of the North Dakota Century Code, relating to the definition of average weekly wage in the state; to amend and reenact section 65-05-09 of the North Dakota Century Code, relating to the weekly and aggregate workmen's compensation paid for temporary or permanent disability; to amend and reenact section 65-06-03 of the North Dakota Century Code, relating to compensation benefits for volunteer firemen and civil defense trainees; to amend and reenact section 65-07-03 of the North Dakota Century Code, relating to the determination of weekly wage for an employer, self-employed, and volunteer workers; and to amend and reenact section 65-07-04 of the North Dakota Century Code, relating to benefits for employer, self-employed, and volunteer workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 21 of section 65-01-02 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21. "Average weekly wage in the state" shall mean the determination made of the average weekly wage in the state by the unemployment compensation division of the North Dakota employment security bureau on or before June first of each year.

SECTION 2.) Subsection 22 of section 65-01-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

22. "Weekly wage of the claimant" shall mean the computation best calculated to give the weekly earnings of the employee. Such computation shall be the higher of either:

- a. The wage earned by the claimant at the time of injury; or
- b. The average weekly wage of the claimant as determined from the claimant's work history for a period of time not to exceed the preceding fifty-two weeks.

SECTION 3. AMENDMENT.) Section 65-05-09 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-09. TEMPORARY OR PERMANENT DISABILITY - WEEKLY AND AGGREGATE COMPENSATION.) If an 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 the weekly wage of the claimant, computed to the next highest dollar, subject to a minimum of sixty percent and a maximum of one hundred percent of the average weekly wage in this state, computed to the next highest dollar. 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 each dependent child under the age of eighteen years living or unborn at the date of the injury, or born during the period of disability, 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 children may be made direct to either parent at the discretion of the bureau. In no case shall the compensation or combined compensation and dependency award exceed the weekly wage of the claimant after deductions for taxes, except in the case of volunteer firemen and volunteer civil defense trainees. When a claimant who is permanently and totally disabled and must be maintained in a nursing home or similar facility has no dependent parent, spouse, or children, part or all of his weekly compensation may be used by the bureau to help defray the cost of such care.

SECTION 4. AMENDMENT.) Section 65-06-03 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-06-03. COMPENSATION BENEFITS - HOW DETERMINED.) The basis of compensation and benefits to be paid to volunteer firemen and volunteer civil defense trainees under the terms of this chapter shall be determined in accordance with the provisions of section 65-05-09; provided, however, that the weekly wage of the claimant shall be determined from a computation of income derived from the claimant's business or employment.

SECTION 5. AMENDMENT.) Section 65-07-03 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-07-03. DETERMINATION OF "WEEKLY WAGE" FOR PREMIUM PURPOSES.) If the bureau enters into a contract for insurance under this chapter, the premium for such protection shall be based on:

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as determined by said person.
2. A reasonable wage as determined by the bureau for said employees in the same class of industry that the volunteer organization is engaged.

SECTION 6. AMENDMENT.) Section 65-07-04 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-07-04. BENEFITS.) Any person or member of an organization which has contracted for insurance protection under the provisions of this chapter shall be entitled to compensation in accordance with the provisions of section 65-05-09; provided, however, that:

1. In the case of an employer or self-employed person, the weekly wage of the claimant shall be determined by dividing the amount of money reported to the bureau in accordance with section 65-07-03, subsection 1, by fifty-two.
2. In the case of a member of a volunteer organization, the weekly wage of the claimant shall be determined from a computation of income derived from the claimant's business or employment.

Approved March 25, 1975

CHAPTER 580

HOUSE BILL NO. 1038
(Orange, Bunker, E. Metzger, Powers)
(From Legislative Council Study)

LISTS OF EMPLOYERS FURNISHED STATE AGENCIES

AN ACT to amend and reenact section 65-04-15 of the North Dakota Century Code, relating to the workmen's compensation bureau's furnishing lists of employers' names and addresses to certain state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 65-04-15 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-15. INFORMATION IN EMPLOYER'S REPORTS CONFIDENTIAL - PENALTY IF EMPLOYEE OF BUREAU DIVULGES INFORMATION.) The information contained in an employer's report to the bureau shall be for the exclusive use and information of the bureau in the discharge of its official duties and shall not be open to the public nor used in any court in any action or proceeding pending therein unless the bureau is a party thereto. The information contained in such report, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Anyone who is convicted under section 12.1-13-01 shall be disqualified from holding any office or employment with the bureau.

The workmen's compensation bureau may upon request of the state tax commissioner, the commissioner of labor, the secretary of state, or the unemployment compensation division of the employment security bureau furnish to them a list or lists of employers showing only the names, addresses, and workmen's compensation bureau file identification numbers of such employers, provided that any such list so furnished shall be used by the tax commissioner, the commissioner of labor, the secretary of state, or the employment security bureau only for the purpose of administering their duties.

Approved March 6, 1975

CHAPTER 581

SENATE BILL NO. 2143
(Committee on Industry, Business, and Labor)
(At the request of the Workmen's Compensation Bureau)

WORKMEN'S COMPENSATION LAW AMENDMENTS

AN ACT to amend and reenact section 65-01-11 of the North Dakota Century Code, relating to burden of proof in compensation matters, and official death certificates; to amend and reenact section 65-02-08 of the North Dakota Century Code, relating to the rule-making power of the workmen's compensation bureau; to amend and reenact section 65-02-11 of the North Dakota Century Code, relating to rules of evidence, investigations, and examination of witnesses, and the cost of expert witnesses; to amend and reenact section 65-02-12 of the North Dakota Century Code, relating to hearings by one member of the workmen's compensation bureau and approval by majority of the bureau; to amend and reenact section 65-04-22 of the North Dakota Century Code, relating to time when premium is in default; to amend and reenact section 65-04-23 of the North Dakota Century Code, relating to penalties for default in premium; to amend and reenact section 65-04-24 of the North Dakota Century Code, relating to collection of premium; to amend and reenact section 65-04-25 of the North Dakota Century Code, relating to collection of premium from a nonresident employer; to amend and reenact section 65-04-31 of the North Dakota Century Code, relating to the investment of the fund; to amend and reenact section 65-05-12 of the North Dakota Century Code, relating to permanent partial disability; to amend and reenact section 65-05-14 of the North Dakota Century Code, relating to compensation paid for the loss of use of a member; to amend and reenact section 65-09-02 of the North Dakota Century Code, relating to application for compensation, hearing, and time for filing; and to amend and reenact section 65-09-03 of the North Dakota Century Code, relating to awards, notice to interested parties, and judgment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 65-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-11. BURDEN OF PROOF IN COMPENSATION MATTERS - DEATH CERTIFICATE.) If the bureau or an employer shall claim that an employee is not entitled to the benefits of the North Dakota workmen's compensation law by reason of the fact that his injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary intoxication of the employee, the burden of proving such exemption or forfeiture shall be upon the bureau or upon the person alleging the same. Any claimant against the fund, however, shall have the burden of proving that he is entitled to participate in the same. In the event of a claim for death benefits the official death certificate shall be considered as evidence of death and may not be used to establish the cause of death.

SECTION 2. AMENDMENT.) Section 65-02-08 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-08. RULE-MAKING POWER OF THE BUREAU - FEES PRESCRIBED BY BUREAU.) The bureau shall make, promulgate, and enforce such rules, not inconsistent with the provisions of this title, as may be necessary to carry out the provisions of this title. All fees on claims for legal, medical, and hospital services rendered under this title to any claimant shall be in accordance with schedules of fees adopted or to be adopted by the bureau. The bureau, by rule, shall specify the amount allowable for court reporter and attorney's fees in proceedings before the bureau and shall pay the same from the bureau general fund. Such attorney's fees shall constitute the entire remuneration for the claimant's attorney for all services before the bureau. Nothing provided herein shall be construed to prevent a claimant or employer from hiring or paying his or her own attorney.

SECTION 3. AMENDMENT.) Section 65-02-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-11. PROCESS AND PROCEDURE - INVESTIGATIONS - EXAMINATION OF WITNESSES - COSTS.) Process and procedure under this title shall be governed by the provisions of chapter 28-32. The bureau may make investigation in such manner and at such places as in its judgment shall be best calculated to ascertain the substantial rights of all the parties. Any member of the bureau, and any person specifically designated by the bureau shall have the power to examine witnesses and records, with or without subpoena, to examine, investigate, copy, photograph, and take samples at any pertinent location or facility, to administer oaths to witnesses, to require the attendance of witnesses without fee whenever the testimony is taken at the home, office, or place of work of such witnesses, and generally to do anything requisite or necessary to facilitate or promote the efficient administration of this title. The costs of any medical examination, scientific investigation, medical or expert witness appear-

ance or report, requested or approved by the bureau, relating to a claim for benefits, shall be paid from the bureau general fund.

SECTION 4. AMENDMENT.) Section 65-02-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-12. HEARINGS BY ONE MEMBER OF BUREAU - ORDER OR DECISION APPROVED BY MAJORITY BECOMES THAT OF BUREAU.) Any investigation, inquiry, hearing, or decision, and every order by any member of the bureau, when approved and confirmed by a majority of the members thereof, shall be deemed to be the order or decision of the bureau.

SECTION 5. AMENDMENT.) Section 65-04-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-22. BUREAU MAY MAKE PREMIUM DUE IMMEDIATELY - WHEN PREMIUM NOT COVERED BY SPECIAL ORDER IS IN DEFAULT.) The bureau, by its proper order, and by an endorsement and notification to that effect upon the pay-in-order sent to an employer, may require payment of a premium within any time less than one month which, in the judgment of the bureau, is reasonable and necessary to secure the payment of the premium by any employer whose employment within this state is likely to continue for less than one month, and in such case, default shall begin at the end of the time allowed by the bureau for the payment of the premium. In the absence of such order, endorsement, and notification, the premium, whether the same is to be paid in full or in installments, shall be in default as follows:

1. The entire premium, or if the employer exercises his option to pay the premium in installments, the first installment, shall be in default one month from the date of the pay-in-order.
2. If the employer has elected to pay his premium in semiannual installments, the final payment shall be in default six months from the date of the pay-in-order.
3. If the employer has elected to pay his premium in quarterly installments, the second installment shall be in default three months from the date of the pay-in-order, and the third and fourth installments shall be in default six months and nine months respectively from the date of the pay-in-order.

SECTION 6. AMENDMENT.) Section 65-04-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-23. PENALTIES FOR DEFAULT IN PAYMENT OF PREMIUMS.) Whenever any employer defaults in the payment of any premium, or any installment thereof, or in the filing of any bond required under the provisions of this chapter, penalties shall attach as

follows:

1. One percent of the premium but not less than eight dollars for the first thirty days of default; and
2. One percent of the premium for each thirty days of default thereafter but not less than two dollars.

When the premium is paid within twelve months of the date of the pay-in-order originally billing such premiums, however, the penalty for such first year shall not exceed the amount of the premium to which the penalty attaches.

SECTION 7. AMENDMENT.) Section 65-04-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-24. BUREAU TO CAUSE SUIT TO BE BROUGHT FOR PREMIUMS IN DEFAULT.) Within twenty days after any such default, the bureau shall certify the account in default to the attorney general for the collection of the premium and accrued penalties, together with the further accruing penalties, and whenever an account has been so certified to the attorney general the bureau shall have authority to adjust or compromise the same upon recommendation of the attorney general. The bureau may, upon the recommendation and approval of the attorney general, retain counsel on a contingent fee basis to represent the bureau in any proceeding relating to the collection of amounts due the bureau under this title. All attorney fees and costs shall be a charge to the general fund.

SECTION 8. AMENDMENT.) Section 65-04-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-25. SERVICE OF NONRESIDENT EMPLOYER IN SUIT FOR PREMIUM OR IN SUIT AGAINST AN UNINSURED EMPLOYER.) If the employer in an action to collect delinquent premiums or for injuries sustained in his employment for which he did not carry the required insurance is a nonresident of this state, or a foreign corporation doing business in this state, service of the summons may be made upon any agent, representative, or foreman of said employer in this state, and where there is no agent, representative, or foreman upon whom service can be made service upon the secretary of state shall constitute personal service upon such nonresident employer who has either failed to secure the necessary coverage or who is delinquent in his premiums, or service may be made in any other manner designated by law. In the event it is not possible or practical to proceed in this state, the bureau may, upon the recommendation and approval of the attorney general, retain counsel who is licensed in another state to represent the bureau on a contingent fee basis in any proceeding relating to the collection of amounts due the bureau under this title. All attorney fees and costs shall be a charge to the general fund.

SECTION 9. AMENDMENT.) Section 65-04-31 of the 1973

Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-31. INVESTMENT OF FUND.) Investment of the fund shall be under the supervision of the state investment board in accordance with chapter 21-10. For purposes of this section, the chairman of the bureau shall be deemed the official signatory for the bureau on any check, document, or other legal instrument relating to or resulting from the investment of workmen's compensation bureau funds. The chairman in the event of his absence from the office, may, in writing, delegate this authority to any other commissioner for the period of his absence. In the event that the office of chairman is vacant, the commissioner with the longest tenure in office shall be deemed this authority during the period of such vacancy.

SECTION 10. AMENDMENT.) Section 65-05-12 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-12. PERMANENT PARTIAL DISABILITY - WEEKLY COMPENSATION - TIME PAID.) If the injury causes permanent partial disability, other than scheduled injuries, as elsewhere provided for in this chapter, the percentage which such disability bears to total disability shall be determined, and the fund shall pay to the disabled employee a weekly compensation in the sum of forty dollars per week for the following periods:

- For a one percent disability----- 5 weeks.
- For a ten percent disability----- 50 weeks.
- For a twenty percent disability----- 100 weeks.
- For a thirty percent disability----- 150 weeks.
- For a forty percent disability----- 200 weeks.
- For a fifty percent disability----- 250 weeks.
- For a sixty percent disability----- 300 weeks.
- For a seventy percent disability----- 350 weeks.
- For an eighty percent disability----- 400 weeks.
- For a ninety percent disability----- 450 weeks.

SECTION 11. AMENDMENT.) Section 65-05-14 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-14. SCHEDULED INJURIES - PERMANENT PARTIAL LOSS OF USE OF MEMBER - WEEKLY COMPENSATION TIME COMPENSATION PAYABLE.) If an injury causes the permanent partial loss of the use of a member, the sight of an eye, or the hearing in an ear, the fund shall pay to the disabled employee a weekly compensation for that

proportion of the number of weeks specified in the schedule in section 65-05-13 for the loss of such member, the sight of an eye, or the hearing in an ear, which the partial loss of the use thereof bears to the total loss of the use of such member, eye, or ear.

Recovery under this section shall bar an additional award of permanent partial disability for the same injury, as elsewhere provided in this chapter.

SECTION 12. AMENDMENT.) Section 65-09-02 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-09-02. APPLICATION FOR COMPENSATION - HEARING - TIME FOR FILING - PAYROLL REPORT.) Any employee whose employer has failed to comply with the provisions of chapter 65-04, who has been injured in the course of his employment, wheresoever such injury has occurred, or his dependents in case death has ensued, in lieu of proceedings against his employer by civil action in court, may file his application with the bureau for an award of compensation in accordance with the terms of this title. All original claims for compensation for disability or death under this chapter 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. The bureau shall notify the claimant and the employer that the matter is being processed under this chapter, and thereafter it shall hear and determine such application for compensation in like manner as in other claims before the bureau. The employer shall be required to furnish to the bureau all of such employer's payroll records for the preceding six years.

SECTION 13. AMENDMENT.) Section 65-09-03 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-09-03. AWARD - NOTICE - PREMIUM - JUDGMENT.) If the information submitted to the bureau is sufficient to substantiate the prayer of the claimant, the bureau shall make such awards to the claimant necessary to comply with the provisions of this title. Upon acceptance of the claim, the bureau shall serve an order upon the employer by certified mail which shall state the amount of premium and penalty due the bureau in accordance with section 65-09-04, by the employer. If the employer fails to pay the amount ordered the bureau shall collect the same by civil action. In such action, the court may not review or consider the action of the bureau regarding the acceptance of the claim. No exemptions except absolute exemptions shall be allowed against any levy under executions pursuant to any judgment recovered in such action.

Approved April 9, 1975

CHAPTER 582

HOUSE BILL NO. 1136

(Committee on Industry, Business, and Labor)

(At the request of the Workmen's Compensation Bureau)

WEEKLY COMPENSATION FOR DEATH CLAIMS

AN ACT to amend and reenact section 65-05-17 of the North Dakota Century Code, relating to weekly compensation allowances for death claims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 65-05-17 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-17. WEEKLY COMPENSATION ALLOWANCES FOR DEATH CLAIMS.) If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified, a weekly compensation:

1. To the widow, an amount equal to two-thirds of the weekly wage of the deceased, not to exceed the sum of sixty dollars per week, until her death or remarriage.
2. To the widower, if he was wholly dependent upon the support of the deceased employee at the time of her death, an amount equal to two-thirds of the weekly wage of the deceased, not to exceed the sum of sixty dollars per week, until his death or remarriage.
3. To each surviving child or issue of said deceased employee born within ten months after the employee's date of death, the amount of seven dollars until such child dies, marries, or reaches the age of eighteen years, or if such child is incapable of self-support until it becomes capable of self-support. The bureau, in its discretion, may make such payment directly to such surviving child or issue of the deceased employee or to the surviving parent or guardian of such child or issue.

In addition to the awards herein, the commissioners shall make an award in the sum of three hundred dollars to the widow of the deceased and one hundred dollars for each dependent child.

Approved March 12, 1975

CHAPTER 583

HOUSE BILL NO. 1095
(Committee on Industry, Business, and Labor)
(At the request of the Workmen's Compensation Bureau)

NONDEPENDENCY PAYMENTS

AN ACT to amend and reenact section 65-05-19 of the North Dakota Century Code, relating to nondependency payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 65-05-19 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-19. PROVIDING NONDEPENDENCY PAYMENTS IN CERTAIN CASES.) If the death of an employee with no surviving spouse or children results from an injury within the time limited in section 65-05-16, the bureau shall pay a lump sum of one thousand dollars to the surviving nondependent child, or in equal shares to the surviving nondependent children. In the event that no nondependent child is living, the sum provided herein shall be paid in equal shares to the surviving parents of the deceased, and if there are none, then to the deceased employee's living brothers and sisters. Where there are no living brothers or sisters, the sum herein shall be paid in equal shares to the surviving grandparents, if any, of the deceased employee.

Approved April 8, 1975

CHAPTER 584

SENATE BILL NO. 2145
(Committee on Industry, Business, and Labor)
(At the request of the Workmen's Compensation Bureau)

REHABILITATION SERVICES

AN ACT to provide for the health and welfare by ensuring workmen's compensation claimants services necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services; to amend and reenact sections 65-05-07 and 65-05-28 of the North Dakota Century Code, relating to services and articles furnished for rehabilitation and failure to cooperate; and to repeal section 65-02-14 of the North Dakota Century Code, relating to allowance during rehabilitation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REHABILITATION SERVICES.) The state of North Dakota exercising its police and sovereign powers, declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.

It is the purpose of this Act to provide for the health and welfare by ensuring to workmen's compensation claimants otherwise covered by title 65, services, so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation.

SECTION 2. BUREAU RESPONSIBILITY.) The workmen's compensation bureau shall:

1. Appoint a director of rehabilitation services and such other staff as necessary to fulfill the purposes of this Act.
2. Cooperate with such federal or state agency as shall be charged with vocational education, vocational rehabilitation, and job placement in order that any duplication of effort can be avoided, as far as possible, in any individual claim.

3. Make determinations on individual claims as to the extent and duration of the workmen's compensation bureau involvement under this Act.
4. Enter into such agreements with other agencies and promulgate any rules or regulations as may be necessary or advantageous in order to carry out the purpose of this Act.
5. Provide such rehabilitation services and allowances as may be determined by the bureau to be most beneficial to the claimant within the limits of this Act.

SECTION 3. DIRECTOR OF REHABILITATION SERVICES.) The director shall:

1. Direct the implementation of programs for individual workmen's compensation claimants in accordance with bureau determinations in compliance with the purpose of this Act.
2. Cooperate, contact, and assist any government or private organization or agency or group of individuals or business or individual necessary or advantageous in carrying out the purpose of this Act.
3. Enforce the provisions of all vocational rehabilitation contracts as provided in section 5 of this Act.
4. Keep such records, for statistical purposes, and provide such training necessary for the bureau staff as is necessary to keep pace with future developments in the area of rehabilitation services.

SECTION 4. INJURED WORKER RESPONSIBILITY.) It shall be the responsibility of the injured worker to seek, obtain, and retain reasonable and substantial employment in order to reduce the period of temporary disability to a minimum. In the event that the injured worker is unable to obtain substantial employment as a direct result of his injury he shall promptly notify the bureau and thereafter be available for such examinations and testing as may be prescribed by the bureau to determine whether or not a program of rehabilitation is necessary. If the bureau determines that a program of rehabilitation is necessary and feasible, the injured worker, upon having been so notified, shall be available for such a program.

If the injured worker shall fail to comply with this section without a reasonable cause, the bureau, by formal order, shall discontinue all lost-time benefits under title 65 during the period of noncompliance. If, upon the bureau's order becoming final, the period of noncompliance shall continue for six months, the bureau shall have no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or rehabili-

tation benefits.

SECTION 5. REHABILITATION CONTRACT.) In the event that the bureau shall determine that it is necessary to provide a rehabilitation program to a claimant to comply with the purpose of this Act, the bureau shall enter into a contract with the claimant. The contract shall provide for, but not be limited to:

1. A description of the rehabilitation program to include the actual time, place, cost, and other significant data involved in the particular program.
2. The equipment and tools necessary for the training and vocational performance and the ownership thereof.
3. The amount of rehabilitation allowance to be paid to the claimant and the manner in which the allowance is to be disbursed.
4. The claimant's faithful performance of the terms of the contract.

The bureau shall provide attorney fees to the claimant's attorney, in an amount as established by rule of the bureau, from the bureau's general fund for the purpose of effecting the contract.

SECTION 6. REHABILITATION ALLOWANCE.) In the event of a contract as provided in section 5 of this Act, the bureau, in lieu of temporary total, temporary partial, permanent total, and compensation for death benefits may award a rehabilitation allowance to any claimant in order to effect the purpose of the contract. The rehabilitation allowance shall be limited to the amount and purpose specified in the rehabilitation contract but shall not exceed an amount equal to the same amount of weekly compensation and dependent benefits that the claimant is entitled to receive plus twenty-five percent. In the event the claimant successfully concludes the terms of the contract, additional awards, not to exceed a total of five thousand dollars for the life of the claimant, regardless of any subsequent claim, can be made for the actual expenses of relocation or remodeling of living and business facilities as the claimant's condition may require.

SECTION 7. PERSON FURNISHING TRAINING EXEMPT FROM CIVIL LIABILITY - CLAIMANT'S REMEDY.) Any person, partnership, corporation, association, or agency that furnishes on-the-job or other similar training to a workmen's compensation claimant as the result of a rehabilitation contract, without establishing an employment relationship with the claimant, shall be exempt from all civil liability.

SECTION 8. AMENDMENT.) Section 65-05-07 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-07. INJURED EMPLOYEE GIVEN MEDICAL AND HOSPITAL SERVICE REQUIRED - FURNISHED ARTIFICIAL LIMBS AND APPLIANCES FOR REHABILITATION.) Immediately after an injury sustained by an

employee and during the resulting period of disability, the fund shall furnish to the employee such medical, surgical, and hospital service and supplies as the nature of the injury may require. If the injury causes permanent partial disability, the fund, in addition to the specific benefits provided, may furnish such artificial limbs, glasses, braces, equipment, or appliances or provide such rehabilitation services as in the judgment of the bureau may be necessary to rehabilitate such injured employee. The bureau may not provide any permanent additions, remodeling, or adaptations to real estate under this section.

SECTION 9. AMENDMENT.) Section 65-05-28 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-28. EXAMINATION OF INJURED EMPLOYEE - PAID EXPENSES - NO COMPENSATION PAID FOR REFUSAL TO REASONABLY PARTICIPATE.) After suffering an injury, an employee, as frequently and at such times and places as reasonably may be required, shall submit himself to examination by a duly qualified physician designated or approved by the bureau. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. In case of any disagreement between physicians making an examination on the part of the bureau and the employee's physician, the bureau shall appoint an impartial physician duly qualified who shall make an examination and shall report thereon to the bureau. The employee, in the discretion of the bureau, may be paid his reasonable traveling and other expenses and loss of wages incurred in submitting to any such examination. If the employee refuses to submit himself for, or in any way obstructs, any examination, or refuses to reasonably participate in medical treatments, his right to claim compensation under this title shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him.

SECTION 10. REPEAL.) Section 65-02-14 of the 1973 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 8, 1975

CHAPTER 585

HOUSE BILL NO. 1521
(E. Metzger)

VOCATIONAL TRAINING AND WORK EVALUATION PROGRAMS

AN ACT to provide for the definition of an employer, employee, and workstation in a vocational training or work evaluation program; to provide for coverage for vocational training or work evaluation programs and the determination of premium; to provide for benefits for participants in a vocational training or work evaluation program; and relating to the liability of the employer; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) For purposes of this chapter:

1. "Employer" shall mean any agency or organization who sponsors a participant in a vocational training or work evaluation program when such designation has been requested by the agency or organization and has been approved by the bureau.
2. "Employee" shall mean a participant in a vocational training or work evaluation program when the request of the sponsoring agency or organization has been approved by the bureau under subsection 1 of section 1 of this Act. The participant shall not be deemed to be employed in hazardous employment.
3. "Workstation" shall mean any person, corporation, or agency who through a formal contract with a sponsoring agency or organization is furnishing facilities, tools, or instruction to any participant in a vocational training or work evaluation program.

SECTION 2. VOCATIONAL TRAINING OR WORK EVALUATION PROGRAMS - BUREAU MAY CONTRACT.) Whenever an agency or organization has been approved as an employer under subsection 1 of section 1 of this Act, the bureau may contract with the agency or organization for the coverage of participants in a program of vocational training or work evaluation. The premium for the coverage shall be computed at the rate in which each participant is engaged and shall be based on a reasonable weekly wage as established in the contract.

SECTION 3. EMPLOYER AND WORKSTATION NOT LIABLE FOR CIVIL DAMAGES - EMPLOYEE MAY ELECT.) Any employer or workstation, as defined in this chapter, shall not be liable to respond in damages at common law or by statute for injuries to or the death of any employee, as defined in this chapter, whenever the employer has complied with the provisions of this chapter and during the period for which premiums, as set by the bureau, have been paid. Any employee who elects, before injury or death, not to come under the provisions of this chapter may do so by notifying the bureau, employer, and workstation of such election in writing.

SECTION 4. BENEFITS - FILING PROCEDURES.) In the event that the bureau has contracted with a sponsoring agency or organization to provide such coverage, any participant in a vocational training or work evaluation program who suffers an injury or disease as defined in section 65-01-02, while in the course of such participation shall be entitled to such medical, surgical, and hospital benefits and supplies as the nature of the injury may require. In addition, the bureau shall provide such other benefits, to the extent as provided or limited by this title, as are specifically set out in the contract with the sponsoring agency or organization. All original claims shall be filed within such time and in accordance with such procedures as provided in chapter 65-05.

SECTION 5. 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 27, 1975

CHAPTER 586

SENATE BILL NO. 2144

(Committee on Industry, Business, and Labor)

(At the request of the Workmen's Compensation Bureau)

BOILER INSPECTION

AN ACT to amend and reenact section 65-12-02 of the North Dakota Century Code, relating to qualifications of the chief boiler inspector and deputy inspectors; to amend and reenact section 65-12-06 of the North Dakota Century Code, relating to certificates of inspection; to amend and reenact section 65-12-08 of the North Dakota Century Code, relating to rules and regulations regarding the installation, use, operation, and inspection of boilers and the penalty for violation; to amend and reenact section 65-12-11 of the North Dakota Century Code, relating to inspection fees; and to amend and reenact section 65-12-12 of the North Dakota Century Code, relating to disposition of funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 65-12-02 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-12-02. QUALIFICATIONS OF CHIEF BOILER INSPECTOR - DEPUTY INSPECTORS.) No person shall be eligible to the office of chief boiler inspector unless he:

1. Has had at least ten years experience in the construction, maintenance, or repair of high pressure boilers, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector within five years immediately preceding his appointment.
2. Shall hold a commission issued by the national board of boiler and pressure vessel inspectors or shall obtain such commission within one year after date of appointment by the bureau.
3. Shall not be directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.

4. The workmen's compensation bureau shall establish qualifications for deputy inspectors.

SECTION 2. AMENDMENT.) Section 65-12-06 of the 1973 Supplement to the North Dakota Century Code is hereby amended and re-enacted to read as follows:

65-12-06. CERTIFICATE OF INSPECTION - CERTIFICATE TO BE POSTED.) A certificate of inspection for each boiler inspected shall be issued by the bureau upon receipt of an inspection report certifying that said boilers are in a safe condition to be operated. No certificate of inspection shall be issued for any boiler not in a safe condition to be operated. Such inspection certificate shall be valid for a period of not more than twelve months for power boilers and twenty-four months for low pressure boilers except that a two-month grace period shall be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may, at his discretion, issue a short term certificate.

Each certificate of inspection shall be posted conspicuously under glass in the boiler room or adjacent to such boiler.

SECTION 3. AMENDMENT.) Section 65-12-08 of the 1973 Supplement to the North Dakota Century Code is hereby amended and re-enacted to read as follows:

65-12-08. RULES AND REGULATIONS AND PENALTY FOR VIOLATION - HEARING.) The bureau shall promulgate rules and regulations for the safe and proper installation, use, operation, and inspection of boilers subject to this chapter. The bureau shall not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with such rules and regulations. The bureau shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules and regulations.

Any owner or user of a boiler may request a hearing before the workmen's compensation bureau within fifteen days from service of an order refusing or revoking a certificate of inspection. It shall be the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the period herein stated the order of the bureau shall become final and not subject to further proceedings.

SECTION 4. AMENDMENT.) Section 65-12-11 of the 1973 Supplement to the North Dakota Century Code is hereby amended and re-enacted to read as follows:

65-12-11. INSPECTION FEES.) The owner or user of a boiler required by this chapter to be inspected by the boiler inspector, shall pay to the bureau, upon completion of inspection, fees in accordance with the following schedule:

- 1. Internal inspections of power boilers:
 - a. Not more than one hundred square feet of heating surface eight dollars and fifty cents.
 - b. Over one hundred and not more than two thousand five hundred square feet of heating surface sixteen dollars and fifty cents.
 - c. Over two thousand five hundred square feet of heating surface twenty-six dollars and fifty cents.
- 2. Internal inspections of low pressure heating boilers:
 - a. Boilers without a manhole eight dollars and fifty cents.
 - b. Boilers with a manhole sixteen dollars and fifty cents.
- 3. External inspections of all boilers eight dollars and fifty cents.
- 4. Boilers used exclusively for exhibition purposes eight dollars.

Not more than thirty-five dollars shall be charged or collected for any and all inspections, as above, of any boiler in any one year except for special inspections made upon request as hereafter provided. All other inspections made by the boiler inspector including shop inspections and special inspections when requested by the owner or user of a boiler, shall be charged for on the scale applicable to an internal inspection plus any additional expenses incurred in connection therewith.

The bureau shall charge a fee of three dollars for each certificate of inspection issued as the result of inspections authorized under section 65-12-05. Said fees shall be the liability of the insurance company or self-insured company and shall be paid in accordance with rules established by the bureau.

SECTION 5. AMENDMENT.) Section 65-12-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-12-12. DISPOSITION OF FUNDS.) All funds collected and received under this chapter shall be paid to the state treasurer and deposited to the credit of the workmen's compensation bureau fund. Any fee not paid within thirty days from the date of billing shall be in default and may be collected in a civil action against said defaulting party in the name of the state.

Approved March 27, 1975

CHAPTER 587

SENATE BILL NO. 2289
(Thane, Naaden, Erdman, Reiten)

UNIFORM CRIME VICTIMS REPARATIONS ACT

AN ACT to establish a state-financed program of reparations to persons who suffer personal injury and to dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or apprehend criminals; providing a penalty; and providing an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. SHORT TITLE.) This Act shall be known as the Uniform Crime Victims Reparations Act.

SECTION 2. LEGISLATIVE PURPOSE AND INTENT.) It is the intent of the legislative assembly of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death. To this end, it is the legislative assembly's intention to provide compensation in the amount of expenses actually suffered as a direct result of the criminal acts of other persons.

SECTION 3. DEFINITIONS.) As used in this Act, the words and phrases in this section have the meanings indicated:

1. "Board" means the workmen's compensation bureau.
2. "Claimant" means any of the following claiming reparations under this Act: a victim, a dependent of a deceased victim, a third person other than a collateral source, or an authorized person acting on behalf of any of them.
3. "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this Act which the victim or claimant has received, or which is readily available to him, from:
 - a. The offender;
 - b. The government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this Act;

- c. Social security, medicare, and medicaid;
 - d. State-required temporary nonoccupational disability insurance;
 - e. Workmen's compensation;
 - f. Wage continuation programs of any employer;
 - g. Proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminally injurious conduct; or
 - h. A contract providing prepaid hospital and other health care services, or benefits for disability.
4. "Criminally injurious conduct" means conduct that:
- a. Occurs or is attempted in this state;
 - b. Poses a substantial threat of personal injury or death; and
 - c. Is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death.
5. "Dependent" means a natural person wholly or partially dependent upon the victim for care or support and includes a child of the victim born after his death.
6. "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.
- a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of five hundred dollars for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and

related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.

- b. "Work loss" means loss of income from work the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake.
- c. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.
- d. "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to his dependents, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the decedent's death.
- e. "Dependent's replacement services loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.
- f. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other non-pecuniary damage.
- g. "Victim" means a person who suffers personal injury or death as a result of (1) criminally injurious conduct, (2) the good faith effort of any person to prevent criminally injurious conduct, or (3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

SECTION 4. AWARD OF REPARATIONS.) The board shall award reparations for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met.

SECTION 5. POWERS AND DUTIES OF THE BOARD.) In addition to the powers and duties specified elsewhere in this Act, the board has the following powers and duties:

1. The duty to establish and maintain a principal office and other necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation.
2. The duty to adopt by rule a description of the organization of the board stating the general method and course of operation of the board.
3. The duty to adopt rules to implement this Act, including rules for the allowance of attorney's fees for representation of claimants; and to adopt rules providing for discovery proceedings, including medical examination consistent with sections 10 and 11 of this Act. Rules shall be statements of general applicability which implement, interpret, or prescribe policy, or describe the procedure or practice requirements of the board.
4. The duty to prescribe forms for applications for reparations.
5. The duty to hear and determine all matters relating to claims for reparations, and the power to reinvestigate or reopen claims without regard to statutes of limitations or periods of prescription.
6. The power to request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to determine whether, and the extent to which, a claimant qualifies for reparations. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under this Act.
7. The duty, if it would contribute to the function of the board, to subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence.
8. The power to take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge.
9. The duty to make available for public inspection all board decisions and opinions, rules, written statements of policy, and interpretations formulated, adopted, or used by the board in discharging its functions.
10. The duty to publicize widely the availability of reparations and information regarding the filing of claims therefor.

SECTION 6. APPLICATION FOR REPARATIONS - AWARDS - LIMITATIONS ON AWARDS.)

1. An applicant for an award of reparations shall apply in writing in a form that conforms substantially to that prescribed by the board.
2. Reparations may not be awarded unless the claim is filed with the board within one year after the injury or death upon which the claim is based.
3. Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or accomplice. Unless the board determines that the interests of justice otherwise require in a particular case, reparations may not be awarded to the spouse of, or a person living in the same household with, the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.
4. Reparations may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two hours after its occurrence or the board finds there was good cause for the failure to report within that time.
5. The board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of reparations.
6. Reparations otherwise payable to a claimant shall be reduced or denied:
 - a. To the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources; and
 - b. To the extent the board deems reasonable because of the contributory misconduct of the claimant or of a victim through which he claims.
7. Reparations may not be awarded if the economic loss is less than one hundred dollars.
8. Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed two hundred dollars per week.
9. Reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed twenty-five thousand dollars in the aggregate.

SECTION 7. NOTICE TO ATTORNEY GENERAL - FUNCTION OF ATTORNEY GENERAL.) Promptly upon receipt of an application for reparations, the board shall forward a copy of the application and all supporting papers to the attorney general, who in appropriate cases may investigate the claim, appear in hearings on the claim, and present evidence in opposition to or support of an award.

SECTION 8. INFORMAL DISPOSITION - CONTESTED CASE.) Unless precluded by law, informal disposition may be made of a claim by stipulation, agreed settlement, consent order, or default. A claim not so disposed of is a contested case.

SECTION 9. CONTESTED CASES - NOTICE - HEARING - RECORDS.) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

1. The notice of hearing shall include:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved; and
- d. A short and plain statement of the matters asserted.

To the extent that the board is unable to state the matters at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite statement shall be furnished.

2. Every interested person shall be afforded an opportunity to appear and be heard and to offer evidence and argument on any issue relevant to his interest, and examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record relevant to his interest.
3. A record of the proceedings shall be made and shall include:
 - a. The application and supporting documents;
 - b. All pleadings, motions, and intermediate rulings;
 - c. Evidence offered, received, or considered;
 - d. A statement of matters officially noticed;

- e. All staff memoranda or data submitted to the board in connection with its consideration of the case; and
 - f. Offers of proof, objections, and rulings.
4. Oral proceedings or any part thereof shall be transcribed on request of any party, who shall pay transcription costs unless otherwise ordered by the board.
 5. Determinations of the board shall be made in writing, supported by findings of fact and conclusions of law based exclusively on the record, and mailed promptly to all parties.

SECTION 10. EVIDENCE OF PHYSICAL CONDITION.)

1. There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under this Act in which that condition is an element.
2. If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the board may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person to file with the board a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.
3. On request of the person examined, the board shall furnish him a copy of the report. If the victim is deceased, the board, on request, shall furnish the claimant a copy of the report.
4. The board may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which reparations are claimed.

SECTION 11. ENFORCEMENT OF BOARD'S ORDERS.) If a person refuses to comply with an order under this Act or asserts a privilege, except privileges arising from the attorney-client

relationship, to withhold or suppress evidence relevant to a claim, the board may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the board may petition the district court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a medical or physical examination.

SECTION 12. AWARD AND PAYMENT OF REPARATIONS.)

1. An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.
2. The board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under section 16 of this Act.

SECTION 13. ATTORNEY'S FEES.) As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of reparations and may be made whether or not reparations are awarded. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.

SECTION 14. SUBROGATION - ACTIONS - ALLOCATION OF EXPENSES.)

1. If reparations are awarded, the state is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source which is, or, if readily available to the victim or claimant, would be, a collateral source.
2. As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which reparations are claimed or awarded, the claimant shall give the board prior written notice of the proposed action. After receiving the notice, the board shall promptly:
 - a. Join in the action as a party plaintiff to recover reparations awarded;
 - b. Require the claimant to bring the action in his individual name, as a trustee in behalf of the state, to recover reparations awarded; or

- c. Reserve its rights and do neither in the proposed action.

If, as requested by the board, the claimant brings the action as trustee and recovers reparations awarded by the board, he may deduct from the reparations recovered in behalf of the state the reasonable expenses, including attorney's fees, allocable by the court for that recovery.

3. If a judgment or verdict indicates separately economic loss and noneconomic detriment, payments on the judgment shall be allocated between them in proportion to the amounts indicated. In an action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

SECTION 15. MANNER OF PAYMENT - NONASSIGNABILITY AND EXEMPTIONS.)

1. The board may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award shall be paid in a lump sum. An award for allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection 2, the part of an award that may not be paid in a lump sum shall be paid in installments.
2. At the instance of the claimant, the board may commute future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the board that:
 - a. The award in a lump sum will promote the interests of the claimant; or
 - b. The present value of all future economic loss other than allowable expense, does not exceed one thousand dollars.
3. An award for future economic loss payable in installments may be made only for a period as to which the board can reasonably determine future economic loss. The board may reconsider and modify an award for future economic loss payable in installments, upon its finding that a material and substantial change of circumstances has occurred.
4. An award is not subject to execution, attachment, garnishment, or other process, except that an award

for allowable expense is not exempt from a claim of a creditor to the extent that he provided products, services, or accommodations, the costs of which are included in the award.

5. An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable, except:
 - a. An assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support; or
 - b. An assignment of a right to reparations for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

SECTION 16. TENTATIVE AWARDS.) If the board determines that the claimant will suffer financial hardship unless a tentative award is made, and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from, the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

SECTION 17. RECONSIDERATION AND REVIEW OF BOARD DECISIONS.)

1. The board, on its own motion or on request of the claimant, may reconsider a decision making or denying an award or determining its amount. The board shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud.
2. The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.
3. A final decision of the board is subject to judicial review on appeal by the claimant, the attorney general, or the offender in the same manner and to the same extent as a decision of the district court.

SECTION 18. REPORTS.) The board shall prepare and transmit annually to the governor and the legislative assembly a report of its activities, including the name of the claimant, a brief description of the facts, and the amount of reparations awarded in each case, and a statistical summary of claims and awards made and denied.

SECTION 19. UNIFORMITY OF APPLICATION AND CONSTRUCTION.) This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states enacting it.

SECTION 20. SEVERABILITY.) If any provision of this Act or the application thereof to any person is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 21. PENALTY.) Any claimant who knowingly makes a false claim, or a false statement in connection with any claim, is guilty of a class A misdemeanor and upon conviction shall, in addition to serving any punishment as provided by law, forfeit any compensation paid under this Act.

SECTION 22. APPROPRIATION.) There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000.00, or so much thereof as may be necessary, to the workmen's compensation bureau for the purposes of carrying out the provisions of this Act for the biennium beginning July 1, 1975, and ending June 30, 1977.

Approved March 27, 1975