

WORKMEN'S COMPENSATION

CHAPTER 652

SENATE BILL NO. 2219

(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

DEATH BENEFITS AND CLAIMS

AN ACT to amend and reenact section 65-05-01, subsection 4 of section 65-05-16, and section 65-05-17 of the North Dakota Century Code, relating to filing of claims for compensation and an increase in death benefits; and to declare an emergency.

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

SECTION 1. AMENDMENT.) Section 65-05-01 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-01. CLAIMS FOR COMPENSATION - WHEN AND WHERE FILED.) All original claims for compensation shall be filed within one year after the injury or within two years after the death. The date of injury for purposes of this section shall be the actual date of injury when such can be determined with certainty by the claimant and bureau. When the actual date of injury cannot be determined with certainty the date of injury shall be the first date that a reasonable person knew or should have known that the injury was related to employment. No compensation or benefits shall be allowed under the provisions of this title to any person, except as provided in section 65-05-04, unless he or she, or someone on his or her behalf, shall file a written claim therefor within the time specified in this section. Such claim shall be filed by:

1. Delivering it at the office of the bureau or to any person whom the bureau by regulation may designate; or
2. Depositing it in the mail properly stamped and addressed to the bureau or to any person whom the bureau by regulation may designate.

SECTION 2. AMENDMENT.) Subsection 4 of section 65-05-16 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. In all events no death benefits shall be payable unless a claim is submitted within ~~one-year~~ two years of the death and:
 - a. The death is a direct result of an accepted compensable injury; or
 - b. If no claim was submitted by the deceased, the claim for death benefits is submitted within ~~one--year~~ two years of the injury.

SECTION 3. AMENDMENT.) Section 65-05-17 of the 1977 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 spouse or guardian of the orphaned child or children of the decedent, an amount ~~equal to two-thirds of the weekly wage of the deceased, not to exceed the sum of seventy-five dollars per week,~~ of ninety dollars until the death or remarriage of the spouse; or, in the case of a guardian, until the orphaned child or children of the decedent reach the age of eighteen; or, if such child or children are incapable of self-support, until they are capable of self-support. Where there is more than one orphaned child of a decedent, death benefits shall be divided equally among guardians. In no case shall total death benefits be less than ten dollars per week.
2. To each surviving dependent 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 spouse or guardian of the orphaned child or children of the deceased and one hundred dollars for each dependent child. Where there is more than one guardian of orphaned children, the three hundred dollars shall be divided equally among such guardians.

SECTION 4. EMERGENCY.) Sections 1 and 2 of this Act are hereby declared to be an emergency and shall be in effect from and after this Act's passage and approval.

Approved March 22, 1979

CHAPTER 653

SENATE BILL NO. 2488
(Committee on Delayed Bills)
(At the request of Senator Reiten)

SURVIVOR'S DEATH BENEFIT

AN ACT to amend and reenact section 65-05-17 of the North Dakota Century Code, as amended by Senate Bill No. 2219 as approved by the forty-sixth legislative assembly, relating to widows' death benefits under workmen's compensation.

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

SECTION 1. AMENDMENT.) Section 65-05-17 of the North Dakota Century Code, as amended by section 3 of Senate Bill No. 2219 as approved by the forty-sixth legislative assembly, 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 spouse or guardian of the orphaned child or children of the decedent, an amount ~~of~~ equal to two-thirds of the weekly wage of the deceased, not to exceed ninety dollars per week, until the death or remarriage of the spouse; or, in the case of a guardian, until the orphaned child or children of the decedent reach the age of eighteen; or, if such child or children are incapable of self-support, until they are capable of self-support. Where there is more than one orphaned child of a decedent, death benefits shall be divided equally among guardians. In no case shall total death benefits be less than ten dollars per week.
2. To each surviving dependent 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 spouse or guardian of the orphaned child or children of the deceased and one hundred dollars for each dependent child. Where there is more than one guardian of orphaned children, the three hundred dollars shall be divided equally among such guardians.

Approved April 7, 1979

CHAPTER 654

SENATE BILL NO. 2217
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

SOCIAL SECURITY OFFSET

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to an offset of social security benefits.

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

SECTION 1.) A new section to chapter 65-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

SOCIAL SECURITY OFFSET.) When an injured employee, spouse or dependent of an injured employee, is eligible for and is receiving permanent total or temporary total disability benefits under section 65-05-09, and is also eligible for, is receiving, or will receive, benefits under Title II of the Social Security Act [42 U.S.C. 423], the aggregate benefits payable under section 65-05-09 shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half of such federal benefit. The amount of the offset computed by the bureau initially will remain the same throughout the period of eligibility and will not be affected by any increase or decrease in federal benefits.

Any injured employee, or dependent of an injured employee, receiving permanent total or temporary total disability benefits under section 65-05-09 and whose benefits are offset as provided herein, shall not be eligible for any escalation of benefits, provided for in this chapter. This offset will become effective on January 1, 1980, provided that it meets the criteria necessary to allow states to offset federal benefits under Title II of the Social Security Act [42 U.S.C. 424a].

Approved March 15, 1979

CHAPTER 655

HOUSE BILL NO. 1322
(Rued)

SUPPLEMENTARY BENEFITS

AN ACT to provide for supplementary benefits to persons receiving workmen's compensation benefits under previous benefit allowances, and establishment of a supplementary benefit fund within the workmen's compensation fund.

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

SECTION 1. ELIGIBILITY FOR SUPPLEMENTARY BENEFITS.) Any workmen's compensation claimant who was receiving permanent total disability or death benefits as of July 1, 1975, and is receiving such benefits as of July 1, 1979, is eligible for supplementary benefits. Eligibility for supplementary benefits starts on July 1, 1979, and lasts for as long as the claimant is entitled to workmen's compensation benefits.

SECTION 2. SUPPLEMENTARY BENEFITS - AMOUNT.) If a claimant was eligible for the maximum permanent total disability or death benefits in effect at the time of injury, supplementary benefits are twenty percent of the difference between the amount of benefits which the claimant is receiving and the maximum amount of benefits in effect on July 1, 1975. Supplementary benefits for a claimant who was eligible for less than the maximum permanent total disability or death benefits in effect at the time of the injury shall be twenty percent of the difference between the amount of benefits the claimant is receiving and the benefits in effect on July 1, 1975, in the same proportion as the claimant's present benefits bear to the maximum benefits in effect at the time of injury.

SECTION 3. PAYMENT OF SUPPLEMENTARY BENEFITS FROM THE SUPPLEMENTARY BENEFIT FUND.) The payment of supplementary benefits to eligible recipients shall be made by the workmen's compensation bureau from the supplementary benefit fund. If the supplementary benefit fund is inadequate to pay the full amount of supplementary benefits to an eligible recipient, the levels of supplementary benefits shall be prorated for all eligible recipients.

SECTION 4. SUPPLEMENTARY BENEFIT FUND.) The workmen's compensation bureau shall periodically determine the amount of money earned on reserves in the workmen's compensation fund necessary to provide for the payment of supplementary benefits under this Act and shall periodically transfer an adequate amount from the earnings on the reserves of the workmen's compensation fund to the supplementary benefit fund.

SECTION 5. PREMIUM RATE NOT TO BE INCREASED.) During the period of July 1, 1979 through June 30, 1981 the bureau shall not effectuate any increase to base premium to any employer as the result of this amendment. Rate adjustment required as the result of other benefit increases provided by law or due to other increased costs or based on actuarial studies or merit rating shall not be limited by this section.

Approved March 15, 1979

CHAPTER 656

HOUSE BILL NO. 1502
(Stenehjem, Kuchera)

COST OF APPEAL FROM DECISION OF BUREAU

AN ACT to amend and reenact section 65-10-03 of the North Dakota Century Code, relating to costs of appeal, attorney's fees; and providing a statement of legislative intent.

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

SECTION 1. AMENDMENT.) Section 65-10-03 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-10-03. COSTS OF APPEAL ~~INCLUDING AND ATTORNEYS' FEES FIXED BY THE COURT.~~) The cost of the appeal, ~~including~~ and an attorney's fee for the appellant's attorney, shall be set by the ~~trial-judge~~ appellate court and taxed against the bureau unless the appeal is determined to be frivolous. The bureau shall pay such attorney's fee from the bureau general fund. The amount of such attorney's fee shall be determined in the same manner as prescribed by ~~rule of~~ the bureau for attorney fees, ~~adopted pursuant to this title,~~ and the amount of attorney's fee already allowed in proceedings before the bureau shall be taken into consideration.

Such attorney's fee shall constitute the entire remuneration for the appellant's attorney for all services in connection with the appeal. Nothing provided herein shall be construed to prevent a claimant or employer from hiring or paying his or her own attorney.

SECTION 2. INTENT.) It is the intent of the legislative assembly that the workmen's compensation bureau be allowed to pay the fees of all attorneys who performed work on behalf of claimants at the appellate level pursuant to the bureau's practice prior to these amendments.

Approved March 19, 1979