

WORKMEN'S COMPENSATION

CHAPTER 685

HOUSE BILL NO. 1199
 (Committee on Industry, Business and Labor)
 (At the request of Workmen's Compensation Bureau)

EMPLOYEES' CHILDREN'S WORKMEN'S COMPENSATION BENEFITS

AN ACT to create and enact a new subsection to section 65-01-02 of the North Dakota Century Code, relating to the definition of orphan; and to amend and reenact subsection 6 of section 65-01-02, and sections 65-05-09 and 65-05-17 of the North Dakota Century Code, relating to the definition of child and workmen's compensation benefits payments for children of disabled or deceased employees.

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

SECTION 1. AMENDMENT. Subsection 6 of section 65-01-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Child" ~~shall include~~ means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but shall not include a married child unless he actually is dependent.

SECTION 2. A new subsection to section 65-01-02 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Orphan" means a child who has no lawful parent.

SECTION 3. AMENDMENT. Section 65-05-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-09. Temporary total or permanent total disability - Weekly and aggregate compensation. If an injury causes temporary total 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. If an employee is disabled due to an injury, that employee's benefits will be based upon the wage at the time of the commencement of the first disability. However, if an employee suffers disability but is able to return to employment for a period of twelve months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher; and the benefits shall be those in effect at the time of that recurrence. In case of temporary total 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 of the employee. Dependency awards for the children may be made directly to either parent or guardian 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 employee after deductions for taxes, except in the case of volunteer firemen and volunteer disaster emergency trainees. When a claimant an employee 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 65-05-17 of the 1983 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 two hundred ten 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 no longer meets the definition of child in this title. Where there is more than one orphaned child of a decedent, death benefits shall be divided equally among guardians. In no

* NOTE: Section 65-05-17 was also amended by section 2 of House Bill No. 1565, chapter 688.

case shall total death benefits be less than ten dollars per week. In no case shall total death benefits exceed one hundred seventy-five thousand dollars as a result of any employee's death.

2. To each surviving dependent child or issue of said of the 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 per week. The bureau, in its discretion, may make such this payment directly to such surviving the child or issue of the deceased employee or to the surviving parent or guardian of such the 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 the guardians.

Approved March 29, 1985

CHAPTER 686

SENATE BILL NO. 2073
(Legislative Council)
(Interim Government Reorganization Committee)

PAYROLL INFORMATION FROM EMPLOYERS

AN ACT to amend and reenact section 65-04-15 of the North Dakota Century Code, relating to release of payroll information from employers.

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

SECTION 1. AMENDMENT. Section 65-04-15 of the 1983 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 ~~shall be~~ is for the exclusive use and information of the bureau in the discharge of its official duties and ~~shall is~~ is not ~~be~~ open to the public nor ~~used~~ usable in any court in any action or proceeding pending therein unless the bureau is a party thereto. The information contained in ~~such the~~ the 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~~ is 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,~~ or the secretary of state 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,~~ or the secretary of state only for the purpose of administering their duties. The bureau may provide the commissioner of labor or job service North Dakota bureau with information obtained pursuant to the administration of the North Dakota workmen's compensation law this title. Any information so provided must be used only for the purpose of administering the duties of the commissioner of labor or job service North Dakota bureau.

Approved March 22, 1985

CHAPTER 687

HOUSE BILL NO. 1191
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

WORKMEN'S COMPENSATION LIEN PRIORITY

AN ACT to amend and reenact section 65-04-26 of the North Dakota Century Code, relating to the priority of the lien for bureau claims for premiums in default and penalties.

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

SECTION 1. AMENDMENT. Section 65-04-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-26. Remedies available in action for delinquent premiums - Exemptions restricted. The claim of the bureau in bankruptcy, probate, insolvency, and receivership proceedings for premiums in default and penalties shall be a lien with the same priority as prior income tax liens, except that this lien shall not be enforceable against a purchaser (including a lien creditor) of real estate or personal property for valuable consideration without notice. Notice of this lien shall be filed in the place and manner provided for in section 57-38-49. A certificate of the bureau that premiums and penalties are due for the period stated in the certificate is prima facie evidence of this fact. In any action brought for the recovery of delinquent or defaulted premiums in default and penalties, the remedies of garnishment or attachment, or both, shall be available. No exemptions except absolute exemptions shall be allowed against any levy under execution pursuant to judgment recovered in such action.

Approved March 27, 1985

CHAPTER 688

HOUSE BILL NO. 1565
(Representatives Retzer, Haugland, Graba)
(Senators Redlin, Wenstrom)

WORKMEN'S COMPENSATION SUPPLEMENTAL AND DEATH BENEFITS

AN ACT to amend and reenact section 65-05-09.1, subsection 1 of section 65-05-17, and sections 65-05.2-01 and 65-05.2-02 of the North Dakota Century Code, relating to the social security offset, to workmen's compensation death benefits and to supplementary workmen's compensation benefits.

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

SECTION 1. AMENDMENT. Section 65-05-09.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-09.1. 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, which would adversely affect the bureau's right to offset workmen's compensation benefits against social security benefits, as 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].

* SECTION 2. AMENDMENT. Subsection 1 of section 65-05-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 two hundred ten 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~~ fifty percent of the maximum weekly death benefits. In no case shall total death benefits exceed one hundred seventy-five thousand dollars as a result of any employee's death.

SECTION 3. AMENDMENT. Section 65-05.2-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-01. Eligibility for supplementary benefits. Any workmen's compensation claimant who was receiving temporary total disability benefits, permanent total disability benefits, or death benefits as of July 1, ~~1975~~ 1980, and is receiving such benefits as of July 1, ~~1979~~ 1985, is eligible for supplementary benefits. Eligibility for supplementary benefits starts on July 1, ~~1979~~ 1985, and lasts for as long as the claimant is entitled to workmen's compensation benefits.

SECTION 4. AMENDMENT. Section 65-05.2-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-02. 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 fifty percent of the difference between the amount of benefits which the claimant was originally 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 fifty percent of the difference between the amount of benefits the claimant was originally 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. Claimants who are eligible for supplementary benefits and who are receiving temporary total disability benefits or permanent total disability benefits shall receive a weekly benefit in an amount not less than one hundred forty-three dollars per week. Claimants who are eligible for supplementary benefits and who are receiving death benefits shall receive a weekly benefit in an amount not less than eighty-four dollars per week.

Approved March 31, 1985

* NOTE: Section 65-05-17 was also amended by section 4 of House Bill No. 1199, chapter 685.

CHAPTER 689

HOUSE BILL NO. 1540
(Kloubec)WORKMEN'S COMPENSATION BUREAU
INFORMATION

AN ACT to create and enact a new chapter to title 65 of the North Dakota Century Code to provide for an employee information program concerning the use of hazardous substances in the workplace, inspections and enforcement by the workmen's compensation bureau, and responsibilities of the department of health and the state laboratories department.

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

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

Employee information program. Each employer shall implement an employee information program designed to inform employees about hazardous substances to which they are exposed. This information must include the nature of the hazards, appropriate work practices, protective measures, and emergency procedures. "Hazardous substance" means a chemical or substance or mixture of chemicals or substances which is defined as a hazardous substance under the federal Comprehensive Environmental Responses Compensation, and Liability Act of 1980, as amended [Pub. L. 96-510; 94 Stat. 2767; 42 U.S.C. 9601 et seq.] and meets or exceeds the listed reportable quantity for that substance.

Inspection and duties of the bureau.

1. The bureau may conduct inspections of workplaces where toxic or hazardous substances are used, manufactured, or stored.
2. The bureau may issue citations for any violations of this Act. The bureau may issue a stop order pursuant to chapter 28-32 to anyone not in compliance with this Act.
3. The bureau shall investigate any complaint which alleges that employees have been ordered to work with toxic or

hazardous substances which have not been included in the employee information program under this Act.

4. The bureau shall adopt appropriate practices and procedures to protect information identified as trade secrets from improper use or dissemination beyond the purposes of this Act.
5. The bureau may, upon written application by the employer, authorize variances from the provisions of this Act which are not contrary to the public interest or the intent of this Act.
6. The bureau shall grant a variance from the requirements of this Act to an employer who demonstrates that the employer is regulated under federal or other laws of this state which require employee information programs dealing with hazardous substances and that such programs have been implemented.

Employees' rights. Employees or their designated representatives may request, and the employer or employers shall provide, any information relating to toxic or hazardous substances which the employer is required to provide under this Act.

Role of department of health and state laboratories department. The department of health and the state laboratories department shall:

1. Review and make recommendations to the bureau for modifications in the information required to be provided to employees under this Act.
2. Provide technical assistance to employers and the bureau on establishing safety procedures to minimize the public environmental and occupational health hazards from the use of hazardous chemicals and provide aid and assistance to small employers, vendors, sellers, or dispensers in complying with this Act.
3. Upon request of the bureau, examine information claimed to be a trade secret under this Act.
4. Provide and review on a continuous schedule, but at least annually, for the purposes of this Act, listings of hazardous substances that could likely be found in a workplace in this state.

Approved March 29, 1985