

CHAPTER 191

Original House Bill No. 294

WORKMEN'S COMPENSATION LAW—AMENDMENT NO. 2

AN ACT to amend and re-enact Section 27-54, Wyoming Statutes 1957, Compiled 1967, to clarify the formula to be applied to fund reimbursement where a party other than the employer is liable; to amend and re-enact Section 27-56, Wyoming Statutes 1957, Compiled 1967, to provide workmen's compensation coverage for pilots and flight personnel employed by all firms; to amend and re-enact Section 27-57, Wyoming Statutes 1957, Compiled 1967, to provide workmen's compensation coverage for Workmen's Compensation field inspectors, state fire marshal and his deputies, and the state electrical inspector and his deputies, and provide uniform funding arrangements for certain other state agencies; to amend and re-enact Section 27-61, Wyoming Statutes 1957, Compiled 1967, to delete volunteer firemen from the exceptions of coverage; to amend and re-enact Section 27-69, Wyoming Statutes 1957, Compiled 1967, to provide for an immediate restraining order upon non-complying employers; to amend and re-enact Section 27-81, Wyoming Statutes 1957, Compiled 1967, to provide for the disposition of unpaid balance of an award should surviving wife re-marry or die; to amend and re-enact Section 27-90, Wyoming Statutes 1957, Compiled 1967, to provide for the disposition of unpaid balance of an award should one or both parents die; to amend and re-enact Section 27-98, Wyoming Statutes 1957, Compiled 1967, to provide for an increase and the time for filing claims; to amend and re-enact Section 27-117, Wyoming Statutes 1957, Compiled 1967, to provide a five (5) year limitation; to amend and re-enact Section 27-118, Wyoming Statutes 1957, Compiled 1967, to provide the Courts more authority to order payment of claims; to provide for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Procedure Where Persons Other than Employer Legally Liable for Damages; Reimbursement of Industrial Accident Fund

Section 1. That Section 27-54, Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

Where an employee coming under the provisions of this Act receives an injury under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the employee if engaged in extra-hazardous work for his employer at the time of the injury, shall not be deprived of any compensation which he would otherwise receive under this Act. He may also pursue his remedy at law against such third person, except he shall not be entitled to a double recovery for the injury or

injuries for which he has been paid compensation under this Act or under orders of the District Court. In the event that such employee recovers from such third person, in any manner, including judgment, compromise, settlement or release, the total proceeds, without regard to the types of damages alleged in such third-party action to be resulted from such injury or injuries, of said recovery shall be divided as follows:

After deducting the reasonable cost of recovery or collection, which cost shall not exceed thirty-three and one-third per cent ($33\frac{1}{3}\%$), one-third ($\frac{1}{3}$) of the remainder shall in any event be paid to the injured employee or his personal representative or other person entitled to bring action. Out of the balance remaining, the industrial accident fund shall be reimbursed, up to $\frac{2}{3}$ of the amount of such balance if said $\frac{2}{3}$ of the balance be sufficient or to the extent of said $\frac{2}{3}$ of the balance if insufficient, for the total amount of all awards received or reasonably anticipated to be received by the injured employee under this Act, including all monies paid to him or in his behalf for doctor and hospital bills, and for any other purpose in his behalf. Any balance remaining shall be paid to the employee or his personal representative or other person entitled to bring action; and the total amount of such reimbursement shall be credited and apportioned to the respective fund or funds from which the said awards of compensation were withdrawn.

In cases where an injured employee has received compensation under the provisions of this Act, the State of Wyoming, through the Workmen's Compensation Department ex rel the Wyoming State Treasurer, shall have a right and interest in all actions for damages brought by any injured workman against a person other than his employer and shall be served by registered or certified mail with a copy of the complaint filed in said suit.

In the event of any settlement, compromise or release entered into by the parties in such claims against a person other than the employer, the attorney general, representing the Wyoming State Treasurer shall be made a party in all such negotiations for settlement, compromise or release, aforesaid. The proceeds of any such judgment, settlement, compromise or release shall be encumbered by a lien in favor of the Workmen's Compensation Department ex rel the Wyoming State Treasurer to the extent of the total amount of the State Treasurer's claim for reimbursement to the Industrial Accident Fund and the said lien shall remain in full force and effect until the proceeds aforesaid shall have been distributed to the parties entitled thereto in accordance with the provisions herein.

In case the injury causes the death of the employee, the rights and remedies set forth in this section shall inure to and obligations shall be binding upon the personal representative of such deceased employee for the benefit of his or her dependents.

Extra-Hazardous Occupations—General Enumeration

Section. 2. That Section 27-56, Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

The extra-hazardous occupations to which this Act is applicable are as follows: factories; garages; mills; printing plant and workshops where machinery is used; foundaries, blast furnaces; mines;

oil, gas, water and other types of wells; shafts or holes; oil refineries; butane, propane, gasoline and other commercial gas or oil filling stations and bulk stations; gas works; natural gas plants; water works; reduction works; breweries; distillers; elevators; dredges; excavations, transfer companies; teaming and truck driving, except in connection with ranching, agriculture and livestock; motor delivery, including drivers and helpers in connection with any occupation except agriculture or ranching, warehousing and transfer; wholesale grocery and vegetable warehouses; fruit warehouses and packing houses; stock yards; ditch rider, watermaster and superintendent of irrigation districts; smelters; powder works; laundries operated by power; kitchen employees and waiters; bakeries; bartender; quarries; engineering works; logging yards; lumbering and sawmill operations, dude ranching; power farming, building service; hospital personnel, being all persons employed for compensation by hospitals, except those persons employed solely in a clerical or managerial capacity; professional nurse employees, excepting private duty nurses; street and inter-urban railroads not engaged in interstate commerce; aircraft pilots and flight personnel employed by firms in the performance of said firms' usual trade or business, not engaged in scheduled interstate traffic, and where such pilots and flight personnel are residents of and domiciled in this State; buildings being constructed, repaired, moved or demolished; painting operations; telephone; telegraph; electric light or power plants or lines; steam heating or power plants; railroads not engaged in interstate commerce; licensed operators or their apprentices, of any government licensed commercial broadcasting or television station; butcher shops, meat markets; bowling alleys; driver of bus lines or stage line, which bus or stage lines are wholly intra-state in their operations, including however, all drivers, mechanics and maintenance workers on buss or stage lines engaged in part in intra-state and part in interstate operations where such workers are residents of and domiciled in this state; bridge building; workers at missile bases or other defense facilities not in the employ of the Federal Government; and all employments wherein a process requiring the use of any dangerous explosives or inflammable materials is carried on, which is conducted for the purpose of business, trade, or gain.

Enumeration Relative to School Districts, Counties, Towns, Cities and State Departments

Section. 3. That Section 27-57, paragraph (A), Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

(A) The extra-hazardous occupations to which this act is also applicable are as follows: applicants or recipients of general welfare who are being employed by a school district, county, town or city, prisoners and parolees when working for a county, town or city if no other salary provisions are in force, salary of whom shall presume to be Fifty (\$50.00) Dollars per month for purposes of computing premiums for coverage hereunder, the assessment therefor to be paid by the employer; city, town, county or fire district paid and volunteer firemen, policemen, and other clerical and office employees who, by the nature and duties of their work, may be exposed to risks of extra-hazardous activities and who are so reported on the payroll of such city or town, members of the state highway patrol

while engaged in the performance of their duties, the assessment therefor to be paid out of the state highway fund; driver license examiners and field supervisors of the motor vehicle department having law enforcement commissions, the assessment therefor to be paid from department of revenue income funds; employees of the State of Wyoming when traveling in a state owned or authorized private vehicle, but only when such travel occurs in the performance of the employees' duties; aircraft pilots of the Wyoming aeronautics commission while in the performance of such duty, Workmen's Compensation field inspectors to be paid from the Workmen's Compensation Administrative Fund; state fire marshal and his deputies; state electrical inspector and his deputies to be paid from the Electrical Administrative Fund; sanitary engineers and sanitarians of the Wyoming public health department; public health nurses and public school nurses; county trappers under the supervision of the United States fish and wildlife service, when paid out of funds of the predatory animal board of the individual counties, the assessment to be taken out of the predatory animal fund in each county; foresters, range appraisers, truck drivers, mechanics and other state land office employees engaged in extra-hazardous work, directors, administrative assistants, casework supervisors, and case workers of county welfare departments, superintendents, supervisors and attendants employed at the Wyoming state training school at Lander, Wyoming, the Wyoming girls' school at Sheridan, Wyoming, the Wyoming state hospital at Evanston, Wyoming, and Wyoming tuberculosis sanitarium at Basin, Wyoming, the Wyoming State children's home at Casper, Wyoming, the Wyoming soldiers' home at Buffalo, Wyoming, the Wyoming pioneer home at Thermopolis, Wyoming, and the Hot Springs state park at Thermopolis, Wyoming, and casual employees engaged in fighting forest or grass fires when employed by a county, city, or town.

Business or Employments Excepted

Section 4. That Section 27-61, Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

This Act shall not be construed to apply to business, employments, or employees which according to law are so engaged in interstate commerce, as not to be subject to the legislative power of the State; nor to any employee engaged in domestic service, ranch, farm, agricultural, or horticultural labor, or stock raising, except as provided in Section 27-49, subsection (i) "power farming"; nor any person holding the office of sheriff, or deputy sheriff, or undersheriff, or constable or deputy constable; the Penitentiary Warden, Deputy Penitentiary Warden and guards, Superintendent, deputies and guards of the Wyoming Industrial Institute at Worland, Wyoming, probation and parole officers and deputies; State Game and Fish Commissioner and his assistants and deputies, including State Game Wardens; State Coal Mine Inspectors and deputies.

Restraining Action Upon Nonpayment

Section 5. That Section 27-69, Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

Any employer who permits or directs the employment of any workers (one or more) in any of the extra-hazardous employments, as enumerated and set out in this Act, before complying with the requirements of this Act, including the payment of application fees or premiums, the filing of a proper application and the filing or posting of bonds in the proper amounts when required, upon affidavit of the Workmen's Compensation Director stating such non-compliance, shall be immediately temporarily restrained and enjoined in an action instituted by the State Treasurer of the State of Wyoming from engaging or continuing in a business defined by this Act as extra-hazardous and by which assessments are required to be paid by the provisions of this Act until such assessments shall have been paid and until such employer shall have complied with the provisions of this Act. In such case it shall not be necessary for the State Treasurer to give a bond. Remedies of the State Treasurer herein provided for shall be cumulative and no action taken by the State Treasurer or Attorney General shall be construed to be an election upon the part of the State Treasurer to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this Act.

Rate of Payment of Benefits for Permanent Partial Disability

Section 6. That Section 27-81, Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

In every case of permanent partial disability the amount allowed for the injury shall be paid in monthly installments at the minimum rate specified for payment of benefits for temporary total disability and according to the number of the workmen's dependents either at the time of injury, or at the time of the payment, which ever is the lesser amount, provided, however, that the court making such award shall retain jurisdiction of the same until said award shall have been fully paid, with power to modify or change the amount of the award to conform to any change in the condition of the injured workman, and shall have the power at any time during said period, upon application and hearing, with notice to the employer, and a showing of any exceptional necessity therefor, to order all or any part of the unpaid balance of the award to be paid to the injured workman as a lump sum; provided that if the workman shall die leaving an unpaid balance of award, and no further award is made on account of his death, then such unpaid balance shall be paid to his surviving wife at the rate provided for payment of death benefits; if the workman leaves no surviving wife or if surviving wife shall re-marry or die before all of said award has been fully paid, then said unpaid balance shall be credited to the account of his surviving dependent children, if any there by; the amount credited to each child shall be based upon the number of months until each child shall reach eighteen (18) years, in relation to the date of death of said workman or the re-marriage or death of the surviving wife; and provided further that the amount credited to the account of each child shall be held by the State Treasurer and disbursed for the use and benefit of such child only under proper order by any district court within the State of Wyoming; if there be no surviving wife and no surviving dependent children, the unpaid balance of such award shall return to the Industrial Accident Fund and the same shall be credited and

apportioned to the respective fund or funds from which the said award of compensation was withdrawn.

Benefits to Dependent Parents

Section 7. That Section 27-90, Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

If the workman leaves no widow, or widower, or children under the age of eighteen (18) years, but leaves a dependent parent or parents surviving who were wholly and actually dependent upon the workman for maintenance and support, at the time of the injury or disability of the injured workman, such surviving parent, if there be only one, shall receive the sum of Three Thousand Dollars (\$3,000.00); such surviving parents, if there be two, shall receive the sum of Four Thousand Dollars (\$4,000.00), but in such cases said awards shall be paid in monthly installments as follows: The sum of Four Hundred Dollars (\$400.00) the first month, and thereafter if there be one parent at the rate of Ninety-two Dollars (\$92.00) per month, and if there be two parents at the rate of One Hundred Twenty Dollars (\$120.00) per month; if the surviving parent shall die before all of the Three Thousand Dollars (\$3,000.00) award has been fully paid, the unpaid balance will revert to the Industrial Accident Fund and be credited to the fund or funds from which said award of compensation was withdrawn; if there be two (2) surviving parents, and one (1) shall die, the surviving parent shall receive the remaining portion of the Four Thousand Dollars (\$4,000.00) award; if both parents shall die, the unexpended balance of the award shall revert to the Industrial Accident Fund and be credited to the fund or funds from which said award of compensation was withdrawn; provided a parent or parents who are dependent and who are non-resident aliens, shall receive a lump sum of one-third ($\frac{1}{3}$) of Seventeen Hundred and Fifty Dollars (\$1,750.00).

Bills for Expenses to be Itemized and Verified; Filing

Section 8. That Section 27-98, Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

All bills for medical attendance, expenses or disbursements, and for hospital services shall be properly dated, itemized, and verified by the claimant, or the same shall be disallowed by the court, and every doctor who shall attend an injured workman and every claimant for hospital services shall within thirty (30) days after the first of the month succeeding that in which services were rendered to the injured workman file with the clerk of the district court of the proper county, an itemized and verified bill for all services rendered and expense incurred in behalf of the injured workman during the previous month, and send concurrently a copy thereof to the State Treasurer, injured workman and employer of said workman; and all claims for medical attendance or medical services or hospital service, copies of which are not so filed and sent within the time specified shall be disallowed by the court.

Application for Modification; Limitation and Grounds

Section 9. That Section 27-117, Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

Where an award of compensation has been made in favor of or on the behalf of an injured employee for any benefits under this Act an application may be made to the court by any party any time within two (2) years from the date of the last award, or at any time during which monthly payments under an award are being made, for additional benefits of any type or nature or for a modification of the amount of the award on the ground of increase or decrease of incapacity due solely to the injury, or upon the grounds of mistake or fraud.

Awards Are Judicial Determinations; Application of Code of Civil Procedure

Section 10. That Section 27-118, Wyoming Statutes 1957, Compiled 1967, is amended and re-enacted to read as follows:

Every award within the meaning of this Act is a judicial determination of the rights of the employer, the employee and the Industrial Accident Fund as to all matters involved. Except as otherwise specifically provided in this Act, the code of civil procedure shall govern in matters before the courts of this State in reference to the Workmen's Compensation Laws. No award of compensation or allowance of any expense or claim chargeable against the account of any employer contributing to the Industrial Accident Fund shall be made without notice to such employer and hearing, unless such employer shall in writing file in the court having jurisdiction consent thereto. If no written objection to the payment of said claim is filed within ten (10) days from the date of receipt of said notice to the employer, and when receipt of such notice upon the employer or his qualified agent or representative can be verified or established; it will be conclusively presumed that the employer has given his consent and said claim shall be submitted to the district court for approval; and provided further, that when after a diligent effort has been made, said notice cannot be served upon an employer, it shall be within the prerogative of the district court to allow or disallow said claims.

Section 11. This Act shall become effective from and after July 1, 1969.

Approved March 6, 1969.