

## LEGISLATIVE BILL 499

Approved by the Governor April 28, 1971

Introduced by Roland A. Luedtke, 28th District; Fred W. Carstens, 30th District

AN ACT to amend section 48-124, Reissue Revised Statutes of Nebraska, 1943, and section 48-122, Revised Statutes Supplement, 1969, relating to workmen's compensation; to provide for termination of death benefits under certain conditions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-122, Revised Statutes Supplement, 1969, be amended to read as follows:

48-122. (1) If death results from injuries and the deceased employee leaves one or more dependents wholly dependent upon his earnings for support at the time of the accident causing the injury, the compensation, subject to the provisions of section 48-123, shall be sixty-six and two-thirds per cent of the wages received at the time of the injury, but the compensation shall not be more than fifty-five dollars per week nor less than thirty-five dollars per week; Provided, that if at the time of injury the employee receives wages of less than thirty-five dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during dependency, not exceeding three hundred twenty-five weeks except when such dependent is the widow of the deceased employee, in which case compensation shall be paid for the remainder of the life of such widow, or until she remarries, and the compensation shall cease upon her remarriage.

(2) When death results from injuries suffered in employment, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee the weekly wages shall be taken to be computed upon the basis of a work week of a minimum of five days, if the wages are paid by the day, or upon the basis of a work week of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a work week of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(3) If at the time of the accident, which resulted in his death, the deceased employee leaves no persons wholly dependent, but leaves persons partially dependent upon his earnings for support, compensation shall be paid on account of the benefits provided in subsection (1) of this section for persons wholly dependent, in the proportion that the average amount regularly contributed by the deceased from his wages for a reasonable time immediately prior to the accident, to such persons who were partially dependent, bears to the total wages of the deceased during the time; Provided, that for the purpose of this subsection, the wages shall not in any case be considered to exceed the maximum compensation rate for total disability.

(4) Upon the death of an employee, resulting through personal injuries as herein defined, whether or not there be dependents entitled to compensation, the reasonable expenses of burial, not exceeding one thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his dependents, or if there be no dependents, then to his personal representative.

(5) Compensation under this act to alien dependents, widows, children, and parents who are not residents of the United States, shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his option commute all future installments of compensation to be paid to such alien dependents by paying to them two-thirds of the total amount of such future installments of compensation. Alien widowers, brothers, and sisters not residents of the United States shall not be entitled to any compensation.

(6) The consul-general, consul, vice-consul-general, or vice-consul of the nation of which the employee, whose injury results in death, is a citizen, or the representative of such consul-general, consul, vice-consul-general, or vice-consul residing within the State of Nebraska shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee. Such consular officer, or his representative, residing in the State of Nebraska, shall have in behalf of such nonresident dependents, the exclusive right to adjust and settle all claims for compensation provided by this act, and to receive the distribution to such nonresident

alien dependents of all compensation arising thereunder.

Sec. 2. That section 48-124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-124. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee: (1) A wife upon a husband with whom she is living at the time of his death; (2) a husband upon a wife with whom he is living at the time of her death; and (3) a child or children under the age of eighteen years, or over said age, if physically or mentally incapacitated for earning, upon the parent with whom he is or they are living at the time of death of such parent, there being no surviving parent entitled to compensation; in case there is more than one child thus dependent, the death benefit shall be divided equally among them.

Compensation shall be payable under sections 48-122 and 48-123 to or on account of any child, brother, or sister only if and while such child, brother, or sister is under the age of eighteen. No compensation shall be payable under this section to a widow, unless she was living with her husband at the time of his death; Provided, a wife or husband living in a state of abandonment for more than two years at the time of the injury, or subsequently, shall not be a beneficiary under this act. The terms child and children shall include stepchildren and adopted children if members of the deceased's household at the time of his death, and shall include posthumous children. If the compensation payable under said sections to any person shall for any cause cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased. If a widow or a widower of a deceased employee shall remarry, then the compensation benefits shall become payable to the child or children of such widow or widower, if there be any such child or children, but if there be no such child or children of such dependent widow or widower, the rights of such widow or widower shall-not-be-affected-by to compensation shall cease upon such remarriage. In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly

dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency. No person shall be considered a dependent, unless he or she be a member of the family of the deceased employee, or bears to him the relation of widow, widower, lineal descendant, ancestor, brother, or sister. Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employee, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or their legal guardians or trustees. No dependent of any injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employee.

Sec. 3. That original section 48-124, Reissue Revised Statutes of Nebraska, 1943, and section 48-122, Revised Statutes Supplement, 1969, are repealed.