U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
ROYAL MEEKER, Commissioner

BULLETIN OF THE UNITED STATES BUREAU OF LABOR STATISTICS ..... No. 243
WORKMEN'S INSURANCE AND COMPENSATION SERIES

WORKMEN'S COMPENSATION LEGISLATION OF THE UNITED STATES AND FOREIGN COUNTRIES, 1917 AND 1918

SEPTEMBER, 1918

WASHINGTON
GOVERNMENT PRINTING OFFICE
1918

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WHOLE NO. 243. WASHINGTON. SEPTEMBER, 1918

WORKMEN'S COMPENSATION LEGISLATION OF THE UNITED STATES AND FOREIGN COUNTRIES, 1917 AND 1918.

BY LINDLEY D. CLARK.

INTRODUCTION.

The present bulletin is prepared as a supplement to Bulletin No. 203, its main purpose being to present the enactments, new and amendatory, made by the State legislatures during the year 1917 and up to July, 1918, on the subject of compensation of workmen for injuries. Some changes in foreign legislation are also noted.

In 1917 action was taken in this country in 32 jurisdictions, 5 States enacting their first laws on the subject, and amendatory acts being passed in 25 States and Territories, while 2 States passed supplementary laws. On State passed an original act in 1918 and in 6 States amendatory or supplementary acts were passed. A list of the States, etc., in which commissions of investigation have been appointed, and in which laws have been enacted, follows:

TATES, ETC., IN WHICH COMMISSIONS WERE APPOINTED AND IN WHICH COMPENSATION LAWS WERE ENACTED AND AMENDED, BY YEARS, TO JULY, 1918.

State, etc.	Year commission was appointed.	Year compensation law was enacted.	
		Original.	Amendment or substitute.
Alabama	1915	.....	.....
Alaska	.....	1915	1917
Arizona	.....	1912	1913
California	.....	1911	1913, 1915 1917
Colorado	1911	1915	1917
Connecticut	1907	1913	1915, 1917
Delaware	1911	1917	.....
Hawaii	.....	1915	1917
Idaho	.....	1917	.....
Illinois	1905	1911	1913, 1915 1917
Indiana	1913	1915	1917
Iowa	1911	1913	1817
Kansas	.....	1911	1913, 1917
Kentucky	[1] 1915	[2] 1914	1916, 1918
Louisiana	1912	1914	1916, 1918
Maine	.....	1915	1917
Maryland	[3] 1913	1912	1914, 1916
Massachusetts	1903	1911	1912, 1913 1914, 1915 1916, 1917 1918
Michigan	1911	1912	1913, 1915 1917
Minnesota	1909	1913	1515, 1917
Missouri	[3] 1910	.....	.....
Montana	[3] 1910	[2] 1909	1915

[1] Voluntary. [2] Law declared unconstitutional. [3] Appointed by the governor.

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STATES, ETC., IN WHICH COMMISSIONS WERE APPOINTED AND IN WHICH COMPENSATION LAWS WERE ENACTED AND AMENDED, BY YEARS, TO JULY, 1918—Concluded.

State, etc.	Year commission was appointed.	Year compensation law was enacted.		State, etc.	Year commission was appointed.	Year compensation law was enacted	
		Original.	Amendment or substitute.			Original.	Amendment or substitute.
Nebraska	1911	1913	1917	Philippine Islands	.....	1905	1907, 1912
Nevada	.....	1911	1913, 1915 1917	Porto Rico	1913	1916	1917, 1918
New Hampshire	.....	1911	.....	Rhode Island	.....	1912	1913, 1915 1917
New Jersey	1910	1911	1911, 1912 1913, 1914 1917 [1] 1918 [1]	South Dakota	.....	1917	.....
				Tennessee	1913	.....	.....
				Texas	1911	1913	1917
				Utah	1915	1917	.....
New Mexico	.....	1917	.....	Vermont	1913	1915	1917
New York	1909	[2] 1910	1913, 1914 1915, 1916 1917, 1918	Virginia	1916	1918	.....
				Washington	[3] 1910	1911	1913, 1915 1917
North Dakota	1911	.....	.....	West Virginia	[3] 1911	1913	1915
Ohio	1910	1911	1913, 1914 1915, 1917	Wisconsin	1909	1911	1913, 1915 1917
Oklahoma	.....	1915	.....	Wyoming	.....	1915	1917
Oregon	[3] 1911	1913	1915, 1917	United States	1910	1908	1909, 1911 1912, 1916
Pennsylvania	1911	1915	1917 [1]				

[1] Supplemental law.
[2] Two laws, one (compulsory) declared unconstitutional.
[3] Appointed by the governor.

The appointment of commissions for investigative purposes and for drafting laws has practically ceased, no commission of this kind having been provided for by the legislatures in session during the years under consideration. Such cessation is natural in view of the fact that 38 States, besides the Territories of Alaska and Hawaii and the island possessions of Porto Rico and the Philippine Islands, now have laws of this kind; also because the necessity for such investigations that formerly existed has been practically met by the scope of past achievements. It is to be noted, however, that in Michigan, after five years of experience under a compensation law, the governor was authorized to appoint a commission of three members whenever in his opinion the compensation law should be found unfair to either employees or employers, this commission to be charged with the duty of investigating the workings of the act and reporting thereon with recommendations as to needed changes or amendments; and the Legislature of Oregon provided for a committee of its members to study the questions of carrying on the work of the State accident commission without State aid and of making the law compulsory; while in Louisiana the matter of compensation insurance through a State commission was referred to a committee of the legislature.

A statutory commission is still in existence in Alabama, and voluntary commissions will presumably report to the approaching sessions of the legislatures in Missouri and Tennessee. The following table shows the action taken by way of appointment of commissions and

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enactment of laws during each year since the beginning of the present movement:

NUMBER OF WORKMEN'S COMPENSATION COMMISSIONS AND LAWS, BY YEARS, TO JULY 1, 1918.

Year.	Commissions formed or provided for.	States, etc., enacting original law.	States, etc., enacting amending or substitute laws.
1903	1	.....	.....
1905	1	.....	.....
1907	2	.....	.....
1908	.....	[1] 1	.....
1909	3	1	1
1910	8	1	.....
1911	12	10	1
1912	1	4	2
1913	7	7	13
1914	.....	2	4
1915	3	9	11
1916	1	1	6
1917	.....	5	25
1918	.....	1	5
Total..	39	42	.....

[1] United States.

Since the compilation of Bulletin No. 203 the United States Employees' Compensation Act of September 7, 1916, has been made effective by the organization of the commission administering it, actual work of the commission beginning April 1, 1917. This act is restricted in its operation to the civil employees of the United States. In this connection mention should be made of an act of October 6, 1917, which provides compensation for death or disability resulting from personal injury suffered or disease contracted in the line of duty by any commissioned officer or enlisted man, or by any member of the Army or Navy Nurse Corps (female) of the United States, when employed in active service. This is especially significant inasmuch as it is an expression of a purpose of Congress to substitute the compensation idea for the long-standing pension system in use in this particular field.

Of the five States which enacted original laws in 1917, Delaware and Idaho provided for the laws to take effect January 1, 1918; New Mexico, June 8, 1917; South Dakota, June 1, 1917; and Utah, July 1, 1917. The law of Virginia, enacted in 1918, comes into operation on January 1, 1919. A circuit court of the Territory of Hawaii declared the compensation law of that Territory unconstitutional on June 28, but a decision of the supreme court of the Territory, handed down December 11, 1917, reversed the decision of the circuit court and declared the act constitutional and valid.

REPORTS OF COMMISSIONS.

Three legislative commissions were in existence at the beginning of 1917, each charged with the duty of preparing compensation laws

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in States which had enacted no laws on the subject. The session of the Legislature of Alabama being quadrennial, no report is to be expected in that State until near the time of the meeting of that body in 1919.

UTAH.

The Utah commission reported to the legislature of 1917, its seven members having been appointed by the governor on March 1, 1916, under a legislative authorization "to inquire into the question of employers' liability and other matters, and provide for an appropriation therefor."[1] The commission was without funds other than an amount to reimburse it for expenses not in excess of $500. The investigation was therefore necessarily conducted in the main by correspondence and through the examination of such material as could be secured by request. As a result of its labors the commission settled upon the Indiana statute of 1915 as a practical basis for its recommendations. Suggestions were drawn from the laws of other States, however. The commission believed that the limitations of the State constitution restricted it to the recommendation of an elective law, though acceptance of the act was to be presumed, and employers were to be required to maintain insurance or furnish satisfactory proof of financial ability to make direct payments. Rejecting employers were to lose the common-law defenses. Free medical and hospital services were to be provided for the first 30 days after the injury in an amount not to exceed $100, such aid to be accepted by the employee under penalty of loss of compensation during the time of refusal. Fifty per cent of the workman's wages was made the basis of compensation, the compensation period not to exceed 333⅓ weeks, and benefits being limited to $4,000 as a maximum. Nonresident alien beneficiaries were restricted to half benefits, with a maximum of $1,000. An industrial board was to administer the law; the proposition to create a State fund was not favored.

The law enacted differed from that proposed by the commission in being compulsory for all employments in which four or more persons are employed, except in agricultural and domestic service. A 55 per cent basis was assumed for compensation, with $4,500 maximum benefits. The value of medical service to be furnished was fixed at a maximum of $200, and a State fund was provided for. The waiting period was fixed at 10 days.

Changes from the bill were generally in the direction of liberality. It is of interest to note in this connection that the report as printed included a minority report by one member of the commission, who

[1] Utah. Report of the Employers' Liability and Workmen's Compensation Commission to the Twelfth Session of the Legislature of Utah, together with draft of the bill submitted. [Salt Lake City, 1916.] 62 pp.

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was unwilling to sign the report of the majority on the ground that the provisions of the bill as drafted by them were lacking in fairness and liberality.

VIRGINIA.

The commission provided for by a joint resolution of February 5, 1916, of the General Assembly of Virginia, submitted to the governor a report with a tentative draft of a bill for consideration in anticipation of the meeting of the legislature in January, 1918.[1] The report itself is brief, dwelling first upon the wide acceptance of the compensation principle in the United States. A summary comparison of the principal features of the laws is then reproduced, after which the subject of insurance is discussed, the conclusion being adverse to the adoption of a State monopoly, though a State fund is recommended, to operate in competition with other methods of insurance. In the draft of the bill an elective system was proposed, but election was presumed by both employer and employee in the absence of contrary notice. Employers rejecting the act forfeit the common-law defenses, while employees electing to reject the act are subject to those defenses in cases in which the employer has not rejected it. A waiting period of 14 days is proposed, with a 50 per cent compensation basis. Benefits may not continue beyond 500 weeks, nor exceed a total of $4,000. The act is to be general in its scope, excluding casual laborers and farm and domestic employments; employers of less than three persons are not covered, though voluntary election may bring in all excluded employments and classes of persons, excepting, of course, those engaged in interstate commerce. State and municipal employees are compulsorily included. Provision is made for medical benefits for not more than 30 days. Payments to children normally cease on their reaching the age of 18. The act is to be administered by a commission appointed by the governor for terms of 6 years, appeals from its decisions being allowed to the court of appeals. The bill was amended by eliminating all steam railroads from its scope, and by providing for an administrative fund by a tax on insurance companies and self-insurers, and, with other changes of less importance, was passed.

With the exception of North Dakota, the States now without compensation laws are confined to the southeastern section of the United States, bounded on the west by Missouri, Arkansas, and Mississippi, and on the north by Tennessee and North Carolina.

[1] Communication from the governor transmitting the report of the Virginia Commission on Workmen's Compensation. Senate Doc. No. 3, 1918. 32 pp.

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NEW LEGISLATION.

Five States in 1917 and one State in 1918 adopted a compensation system. In Idaho and Utah the laws are compulsory where applicable, while in Delaware, New Mexico, South Dakota, and Virginia they are elective, but election is presumed in the absence of action to the contrary. Compensation benefits for total disability continue through life in Delaware, Idaho, and Utah, while a limitation of 10 years appears in the law of New Mexico, of 500 weeks in that of Virginia, and until four years' earnings are paid in that of South Dakota.

The basis of compensation in Delaware is 50 per cent of the employee's wages in cases of disability, and may reach 60 per cent in cases of death. The same provision is found in the law of New Mexico. In Virginia a 50 per cent basis, and in Idaho and Utah a 55 per cent basis, is used in both death and disability; in South Dakota disability is compensated on a 50 per cent basis, death benefits being fixed at amounts equal to four times the average annual earnings of the deceased person, payable in installments equal to one-half the wages.

Insurance of the employer's obligation is required in each of these States, unless adequate proof of financial ability is furnished; State funds are provided for in Idaho, Utah, and Virginia. Administration of the act is in the hands of special officials in all the States except New Mexico, where the district court is charged with special duties in connection with the act.

Special interest attaches to the mode of administration and the fact that the employer's obligation must be insured. Each of the laws also contains a schedule of partial disability awards for specified injuries.

The amending acts vary widely in their importance, the laws of California, Porto Rico, and Texas being practically rewritten throughout, while in some States the changes are of slight significance. The law of Illinois is made compulsory in its application instead of election being presumed, while on the other hand the method of a presumed election is abolished in Nevada, and active election is required. Occupational diseases are definitely included in the laws of California and Hawaii. A general tendency is apparent as regards the reduction of the waiting time which must intervene between the receipt of the injury and the beginning of compensation payments. Thus in Hawaii, Indiana, Kansas, Kentucky, Minnesota, and Nebraska, and in Vermont after July 1, 1918, a waiting time of two weeks or 14 days is reduced one-half; while in California the period is reduced from 2 weeks to 10 days, and in Connecticut from 10 days to 7 days. On the other hand, Washington increased the

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waiting period of 1½ days to 7 days, not counting the day of the injury. Colorado stood alone in requiring a 3-weeks waiting time, which was reduced to 2 weeks in 1917; while the new law of New Mexico took up the position of the Colorado statute in establishing a 3-weeks waiting time. There is also some inclination shown to make payment for this period of waiting in cases where disability continues beyond a definite time, the periods specified by the several States varying from 4 to 7 weeks.

The New York law was in its original form limited in application to employments termed hazardous, the employments so considered being named and classified. An amendment of 1918 adds a new group that includes "all other employments not hereinbefore enumerated" in which four or more workmen or operatives are regularly employed, thus practically eliminating all distinctions based on hazard. Question was immediately raised as to the meaning of the terms used, and the attorney general of the State gave it as his opinion that the phrase "workmen or operatives" is less broad than if the word "employees" had been used and applies only to persons engaged in manual labor as mechanics, laborers, or artisans, and not to clerks or those engaged in professional work. In this view, the act would not apply to an establishment employing, say, two laborers and two bookkeepers, but it is admitted that this construction is not authoritative, and until the courts pass upon it the safest course would be to elect to bring all employees under the act. As emphasizing this, it may be noted that the industrial commission of the State, charged with the administration of the law, is said to regard the amendment as bringing all employees under the act, excluding only farm laborers and domestic servants; while the counsel to the commission regards the distinction made by the attorney general as correct, except that if the law is applicable at all, as where there are four or more mechanics, etc., the law would then apply to all employees in the establishment, regardless of the nature of their employment; but it would not apply where there is strictly a clerical force and no manual labor is done.

Other amendments relate to medical service, providing that it shall be such as the nature of the injury requires, and not such as is required or requested by the employee; also that it may be extended beyond 60 days in cases approved by the commission. The matter of notice is acted upon, notice of injury being required within 30 days of the accident causing the injury, instead of 10 days after disability, as formerly; the effect of failure to give notice within the time set is also regulated. The bar of limitation of one year against claims must be pleaded by the employer or insurance carrier at the hearing, or it will be deemed to have been waived.

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The law of Kentucky is made applicable to employers of three or more employees, instead of only to those employing five or more.

Many changes were made with regard to the benefits to be paid, generally in the direction of enlargement, though the Colorado law reduced its allowance for burial expenses from $100 to $75; while in several States the funeral benefit was made general instead of being payable only where there were no dependents. The Idaho law incorporates a provision requiring the employer to pay into the State insurance fund the sum of $1,000 in cases in which there are no dependents of an employee dying as a result of an industrial accident—a provision that was held by the Kentucky courts to be unconstitutional. In Massachusetts the minimum weekly payment in cases of total disability is fixed at $5 instead of $4. In Louisiana, 55 per cent of the wages is made the basis of awards, instead of 50 per cent; and the weekly maximum benefit becomes $16 instead of $10.

Each of the new laws enacted in 1917 and 1918 contains provisions requiring medical and surgical treatment, although, with the exception of Idaho, not with the liberality that experience has shown to be most profitable. The laws of Kansas and Washington for the first time make provision for such treatment, while in other States some enlargements in this field are made. Thus such aid is to be furnished under the California and Porto Rico statutes in any amount necessary, while in Wisconsin it is to be continued as long as in the judgment of the commission the treatment will shorten the compensation period. The Washington statute, in providing for medical treatment, adopts a novel system so far as this country is concerned. A medical and hospital fund is to be maintained by equal contributions of employers and employees, from which necessary aid is to be furnished during temporary disability, and in cases of permanent disability until the compensation award is made. This fund is to be administered by local boards representing employers and employees, such boards to be distributed throughout the State with reference to the localities and industries in accordance with determinations of the State medical aid board. The selection of these boards by the persons interested locally, and their supervision of the injury cases in their localities, administering a fund maintained by the joint contribution of employers and employees, is clearly an effort to enlist the interest and the services of the two principal parties affected in a manner not hitherto attempted.

Interstate commerce by railroad affords one of the difficult problems in the compensation field. A solution has been attempted in Indiana by excluding all railroad train service from the provisions of the law—a method already adopted in a few States, and found in the new law of Virginia, the object apparently being to avoid the wide difference of treatment that results from the application of both com-

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pensation and liability laws to an identical form of employment. The same action was taken in Washington, railroad labor being made subject to liability or other provisions of law, such as exist or may be enacted by reason of congressional legislation. While many of the States have adopted with more or less exactness the provisions of the Federal liability law relating to railroads, this is the first instance in which a blanket provision, anticipatory of future legislation, has been made use of. This makes identical the status of interstate and intrastate employees, but removes the nature of the remedy from State determination. On the other hand may be noted an act of Congress amending the law relating to maritime and admiralty rights so as to save to employees engaged in maritime pursuits their rights under the compensation law of any State in which they may reside or in which by the terms of their contract they have rights of recovery.

The taking over of the railroads by the Federal Government raised the question of the status of the railroad employees and the application to them of the act providing compensation for injured employees of the Government. Such application was seriously considered, but in the enactment of the law the employees were left to the rights and remedies available under private ownership. Practically the same solution was made of a similar problem in the case of the taking over of Canadian railways by the Dominion Government, provincial laws being declared applicable in cases of accidental injury or death.

An analysis of the principal features of the laws of all the States, including the laws newly enacted and the amendments made to existing laws, is presented on the following pages. A detailed comparison of the laws as they existed at the end of the year 1917 has been published in textual and tabular form as Bulletin No. 240.

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ANALYSIS OF THE PRINCIPAL FEATURES OF THE LAWS.

ALASKA.

Date of enactment.—April 29, 1915; in effect July 28, 1915; amended, chapter 44, acts of 1917.

Injuries compensated.—Personal injury causing disability for more than two weeks, or death, arising out of and in course of employment, not due to the employee's willful intention to injure himself or another, or to his intoxication.

Industries covered.—Mining operations in which five or more persons are employed, unless election to the contrary is made (includes development and construction work, stamp and roller mills, reduction work and processes, coke ovens, etc.).

Persons compensated.—Private employment: All employees in industries covered, contractors and subcontractors excluded. Public employment not included.

Burden of payment.—All on employer.

Compensation for death:

(*a*) If married, $3,000 to widow, $600 additional to each child under 16 years of age, and to dependent parent or parents if any; if no widow, $3,000 to any minor orphan, and $600 additional for each child under 16; no total to exceed $6,000.

(*b*) If unmarried, and dependent parent or parents, $1,200 to each.

(*c*) If no dependents, funeral expenses not to exceed $150, and other expenses, if any, to same amount.

Compensation for disability:

(*a*) Permanent total: $3,600 to workman alone; $1,200 additional if wife is living; $600 additional for each child under 16, posthumous child, or child over 16, dependent by reason of physical or mental incompetency; total not to exceed $6,000. If no wife or children, $600 to each dependent parent.

(*b*) Temporary total disability: 50 per cent of weekly wages for not over six months.

(*c*) Permanent partial disability: Fixed sums for specified injuries in lieu of other payments, varying with conjugal condition and number of children.

Revision of benefits.—Readjustment must be made if within two years an injury develops or proves to be such as to warrant a different award from any previously made.

Insurance.—No provision.

Security of payments.—Attachment may be had pending result of action, or employer may deposit cash or bond with court. Payments are exempt from execution.

Settlement of disputes.—By courts, either with or without jury trial.

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ARIZONA.

Date of enactment.—June 8, 1912; in effect September 1, 1912; amended, chapter 7, acts of 1913.

Injuries compensated.—All accidental injuries causing disability of at least two weeks, or death, arising out of and in the course of the employment, caused in whole or in part, or contributed to, by a necessary risk or danger of, or inherent in the nature of the employment, or by failure of the employer or his agents to exercise due care or to comply with any law affecting the employment.

Industries covered.—All especially dangerous employments, including the construction, operation, and maintenance of steam and street railroads; work with or near explosives; building work using iron or steel frames or hoists, derricks, or ladders or scaffolds 20 or more feet above ground; telegraph, telephone, or other electrical work; work in mines, quarries, tunnels, subways etc.; work in mills, shops, and factories using power machinery. Industries declared especially dangerous are specified in law. Elective as to other industries.

Persons compensated.—Private employment: All employees in industries covered. Public employment: No provision.

Burden of payment.—Entire cost rests upon the employer.

Compensation for death:

(*a*) To persons wholly dependent, a lump sum equal to 2,400 times one-half the daily wages or earnings of the deceased employee, but not to exceed $4,000. Payments to children cease on reaching the age of 18 years.

(*b*) If no dependents, the reasonable expenses of medical attendance and burial of deceased employee.

Compensation for disability:

(*a*) For total disability, 50 per cent of the employee's semimonthly earnings during the time he is unable to work at any gainful occupation.

(*b*) For partial disability, a semimonthly payment equal to one-half the wage decrease.

(*c*) The total amount of payments for total or partial disability caused by a single injury not to exceed $4,000.

Revision of benefits.—Examinations as to the nature of injury and degree of incapacity, etc., may be required by either party at intervals of not less than three months.

Insurance.—The employer may insure provided the liability for compensation is not less than the compensation fixed by law.

Security of payments.—A judgment for compensation issued by a court is collectible without relief from valuation or appraisement laws and has the same preferential claim as is allowed by law for unpaid wages or personal services.

Settlement of disputes.—Disputes may be settled by (*a*) written agreement between the parties, (*b*) arbitration, or (*c*) reference to the attorney general of the State. In case of failure or refusal to agree by any of the modes above provided, then by a civil action at law.

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CALIFORNIA.

Date of enactment.—April 8, 1911; in effect September 1, 1911; new act, chapter 176, acts of 1913, in effect January 1, 1914; amended, chapters 541, 607, 662, acts of 1915; new act, chapter 586, acts of 1917, in effect January 1, 1918.

Injuries compensated.—Injuries or disease arising out of and in the course of employment, causing disability for more than 10 days, or death, not intentionally self-inflicted and not the result of the intoxication of the injured employee.

Industries covered.—All except agriculture and domestic service, which may come under the act by joint election.

Persons compensated.—Private employment: Every person in the service of an employer for hire, including apprentices and aliens, excepting casual employees not in the course of the employer's trade or business. Public employment: Persons employed by the State and its political subdivisions and all public corporations.

Burden of payment.—Entire cost rests upon the employer.

Compensation for death:

(*a*) The reasonable expense of burial, not exceeding $100.

(*b*) To persons wholly dependent, three times the annual earnings of the deceased employee; not less than $1,000 nor more than $5,000, payable at least monthly in installments equal to 65 per cent of the wages. Payments to children cease on their reaching the age of 18 years, unless mentally or physically incapacitated for earning a living.

(*c*) If only partial dependents survive, three times the annual contribution of the deceased to their support, subject to the same limitations as above.

Any disability payments made and burial expenses paid are to be considered as parts of the foregoing totals.

Compensation for disability:

(*a*) Such medical, surgical, and hospital treatment as may reasonably be required to cure and relieve from effects of injury.

(*b*) For temporary total disability, 65 per cent of average weekly earnings during such disability.

(*c*) For temporary partial disability, 65 per cent of weekly loss of wages during such disability.

(*d*) For permanent disability, 65 per cent of average weekly earnings for periods varying from 4 to 240 weeks, according to the degree of disability. After the expiration of 240 weeks a further benefit varying from 10 to 40 per cent of the weekly earnings is payable during the remainder of life, when the degree of disability reaches or exceeds 70 per cent.

The aggregate amount of benefits for a single injury causing temporary disability is limited to three times the annual earnings of the injured person, with a maximum benefit period of 240 weeks.

In case of permanent incapacity or death, a lump sum may be substituted for benefits, such lump sum to equal the present value of the benefits computed at 6 per cent.

Average weekly earnings shall be considered as not less than $6.41 nor more than $32.05.

Revision of benefits.—Decisions and awards may be reviewed at any time during the first 245 weeks, after legal notice received.

Insurance.—Insurance is required either in the State insurance fund or in an authorized insurance company, unless the employer furnishes proof of ability to carry his own insurance. Municipalities are required to insure in the State fund unless the risk is refused.

Security of payments.—A claim for injury or death of an employee or any award shall have the same preference over other unsecured debts as is given by law to claims for wages, but not so as to impair a lien of a previous award. Policies inure directly to the benefit of employees, who also have a first lien on any amount due the employer from the insurance company. Self-insurers may be required to give bond or deposit securities.

Settlement of disputes.—Disputes are settled by the State industrial accident commission, subject to a limited review by the courts.

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COLORADO.

Date of enactment.—April 10, 1915; in effect August 1, 1915; amended, chapter 155, acts of 1917.

Injuries compensated.—Injuries caused by accident arising out of and in course of employment, not intentionally self-inflicted or intentionally inflicted by another, and causing death within two years or disability for more than two weeks.

Industries covered.—All, except interstate commerce and domestic and agricultural labor, in which four or more persons are employed in which employers elect to come under the act; others may elect, but lose no defenses if they do not.

Persons compensated.—Private employment: Every person in the service of another under any contract of hire, express or implied, casual employees excepted. Public employees: All under any appointment or contract of hire; elective officials and officers and enlisted men of the National Guard excluded.

Burden of payment.—All on employer.

Compensation for death:

(*a*) To persons wholly dependent, 50 per cent of the weekly wages for six years, $8 maximum, total not to exceed $2,500 nor to be less than $1,000. If death occurs from any cause during receipt of disability benefits, any unaccrued and unpaid remainder goes to dependents.

(*b*) If only partial dependents survive, 50 per cent of the weekly wages, $8 maximum, for such part of six years as the commission may determine, total not to exceed $2,500. If death occurs from any cause during the receipt of disability benefits, partial dependents shall receive not more than four times the amount contributed by the deceased during his last year of employment, the aggregate of disability and death benefits not to exceed $2,500.

(*c*) If no dependents, $75 funeral expenses.

(*d*) Payments to any beneficiary cease on death; to widow or dependent widower on remarriage, but a lump sum equal to one-half the unpaid balance shall be paid to the spouse if there are no children; if there are dependent children, the unpaid balance is payable to them; to children, on reaching the age of 18, unless physically or mentally incapacitated from earning.

Payments lapsing for any reason go to surviving dependents, if any.

Benefits to aliens are one-third the amounts payable to citizens, and may not exceed $1,000 in all.

Compensation for disability:

(*a*) Medical and surgical assistance for first 30 days, not more than $100 in value.

(*b*) For total disability, 50 per cent of weekly wages during continuance, $5 minimum, $8 maximum; full wages if less than $5.

(*c*) For partial disability, 50 per cent of the weekly wage decrease, $8 maximum; total not to exceed $2,080. Special schedule for specified injuries, 50 per cent of weekly wages for periods ranging from 4 to 208 weeks, in lieu of other payments. Facial disfigurements may also be compensated for in an amount not exceeding $500.

Payments may be commuted to a lump sum after six months.

Revision of benefits.—Awards may be changed within 15 months after making, on discovery of mistake, and may be appealed from within 60 days.

Insurance.—Insurance in State fund, stock, or mutual company, or proof of financial ability to make payments, is required. Public employees must be insured in the State fund.

Security of payments.—Insurers are primarily liable to a workman or his beneficiaries entitled to benefits; notice to employer is notice to insurer; insolvency of employer does not release insurer. Claims are not assignable, and payments are exempt from attachment or execution.

Settlement of disputes.—Disputes are determined by the industrial commission, with limited appeal to courts.

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CONNECTICUT.

Date of enactment.—May 29, 1913; in effect January 1, 1914; amended, chapter 228, acts of 1915; chapter 368, acts of 1917.

Injuries compensated.—All injuries arising out of and in the course of employment, disability of more than 7 days, or death, except when injury is caused by willful and serious misconduct of the injured employee, or by his intoxication.

Industries covered.—All industries in which five or more persons are employed, in absence of contrary election by employer.

Persons compensated.—Private employment: All employees of employers accepting the act, in absence of contrary election, outworkers and casual employees excepted. Public employment: Employees of the State and any public corporation within the State using the services of another for pay.

Burden of payment.—Entire cost rests upon the employer.

Compensation for death:

(*a*) $100 for burial expenses.

(*b*) To persons wholly dependent, a weekly compensation equal to one-half the earnings of the deceased employee.

(*c*) If only partial dependents survive, a weekly compensation, determined according to the measure of dependence, not exceeding one-half the earnings of the deceased employee.

(*d*) Compensation shall in no case be more than $14 or less than $5 weekly, and shall not continue longer than 312 weeks.

A widow's or widower's dependence ceases with remarriage, and a child's upon reaching 18 years of age, unless physically or mentally incapacitated.

If a widow or dependent widower remarries or dies during the term of benefit payments, subsequent payments go to other dependents, if any.

Compensation for disability:

(*a*) Reasonable medical and surgical aid and hospital service.

(*b*) For total disability, a weekly compensation equal to one-half the employee's earnings, not more than $14 or less than $5 weekly, or for longer than 520 weeks.

(*c*) For partial disability, a weekly compensation equal to one-half the wage loss, but not more than $14 per week, or for longer than 312 weeks. For specified injuries causing permanent partial disability, one-half the average weekly earnings for fixed periods in lieu of all other payments.

Lump-sum payments may be approved by the commissioner, provided they equal the value of the compensations.

Revision of benefits.—Review may be had upon request of either party, whenever it shall appear to the compensation commissioner that the incapacity or the measure of dependence has changed. The commissioner retains control over awards during their whole period, with power to take proper action thereon at any time.

Insurance.—Approved schemes may be substituted provided the benefits are equivalent to those provided by law. Insurance may be taken in approved stock or mutual companies or associations.

Security of payments.—Employer must furnish the insurance commissioner satisfactory proof of his solvency and financial ability to pay awards, file satisfactory security with the insurance commissioner, or insure in approved stock or mutual companies or associations. Payments are not assignable, are exempt from execution, and are entitled to the same preference as wage debts.

Settlement of disputes.—Disputes are to be settled by the compensation commissioners. Appeals from findings and awards of any commissioner may be made to the superior court of the county without cost to either party.

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DELAWARE.

Date of enactment.—April 2, 1917; in effect January 1, 1918.

Injuries compensated.—Injuries by accident arising out of and in course of employment, causing disability for more than 14 days, or death, and not due to the employee's intoxication or willful negligence or intent to injure himself or another.

Industries covered.—All, except agriculture and domestic service, in which five or more persons are employed, unless contrary election is made.

Persons compensated.—Private employment: All persons under contract for hire for a valuable consideration except casual employees not in the regular course of the trade or business of the employer, and outworkers. Public employment: Not included.

Burden of payment.—All on the employer.

Compensation in case of death:

(*a*) Funeral expenses, not exceeding $100.

(*b*) To the widow or widower alone, 25 per cent of the wages of the deceased employee; if one child, 40 per cent, and 5 per cent for each additional child; not over 60 per cent in all. If one or two orphan children, 25 per cent, and 10 per cent for each additional child, the total not to exceed 60 per cent. If none of the foregoing, and a dependent parent or parents survive, 20 per cent; if no parents, and dependent brothers or sisters, 15 per cent for one, with 5 per cent for each additional, the total not to exceed 25 per cent.

Payments are for a period of 270 weeks, minus any disability benefits paid the injured person prior to his death, but cease on the death of a beneficiary, the remarriage of a widow or widower, or on a child attaining the age of 16 years; but orphan children or those abandoned by the surviving parent continue to receive benefits until the age of 16, regardless of the limitation of 270 weeks.

Wages used in computing death benefits shall be reckoned as not less than $8 nor more than $20 per week.

Compensation for disability:

(*a*) Medical and surgical aid as may be reasonably required during the first 14 days, if so requested by the employee or ordered by the board, but not to exceed $25.

(*b*) For total disability, for the first 270 weeks, 50 per cent of the injured person's wages, not more than $10 nor less than $4 per week, unless the wages were less than $4, when full wages shall be paid. After 270 weeks, 20 per cent of the wages during life, not more than $6 nor less than $2 per week, unless the wages were less than $2, when the full amount of the wages shall be paid, the total not to exceed $4,000.

(*c*) For partial disability, 50 per cent of the wage loss, not more than $10 per week, for not more than 270 weeks; for specified injuries, 50 per cent of the wages for fixed periods, in lieu of all other payments, the amount to be not more than $10 nor less than $4 per week, unless the wages were less than $4, when the full wages shall be paid.

Periodical payments may be commuted to lump sums on the application of either party, with due notice to the other.

Revision of benefits.—On application of any party in interest, but not oftener than once in six months, a review of awards may be had and changes made as the condition of the injured person or the status of beneficiaries may warrant.

Insurance.—Insurance is required in an approved organization, unless adequate proof of the employer's financial ability to meet obligations is furnished.

Self-insurers may be required to give bond or make a deposit to secure the payment of liabilities.

Security of payments.—Policies must inure directly to the benefit of the person entitled to compensation. Payments have the same priority as wage debts, and are not subject to assignment or execution.

Settlement of disputes.—Disputes are settled by the State industrial accident board, subject to appeal to the courts, to be tried without the aid of a jury.

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HAWAII.

Date of enactment.—April 28, 1915; in effect July 1, 1915; amended, act No. 227, acts of 1917.

Injuries compensated.—Personal injury by accident arising out of and in course of employment, including occupational diseases, causing disability for more than seven days or death within six months, and not due to the employee's intention to injure himself or another or to his intoxication.

Industries covered.—All public and all industrial employment for pecuniary gain.

Persons compensated.—Private employment: All persons under contract of employment or apprenticeship, other than casual employees, whose pay does not exceed $36 per week. Public employment: All except elective officials and employees who receive salaries in excess of $1,800 per year.

Burden of payment.—All on employer.

Compensation for death:

(*a*) $100 funeral expenses.

(*b*) 40 per cent of the average weekly wages to widow or dependent widower alone, 50 per cent if one or two dependent children, 60 per cent if three or more; 30 per cent to one or two orphans, 10 per cent additional for each child in excess of two, total not to exceed 50 per cent. If no consort or child, but other dependents, 25 to 40 per cent.

(*c*) Payments to widow cease on death or remarriage, and to widower on termination of disability or remarriage; to child on reaching age of 16, unless incapable of self-support, when they may continue to 18; to other beneficiaries, on termination of disability; no payments except to children to continue longer than 312 weeks. Basic wages not less than $5 nor more than $36 weekly.

Compensation for disability:

(*a*) Reasonable surgical, medical, and hospital services during disability, not exceeding $150 in amount.

(*b*) For total disability, 60 per cent of weekly wages, $3 minimum, $18 maximum, for not longer than 312 weeks; total not to exceed $5,000. If wages are less than $3, full wages will be paid unless disability is permanent, when $3 will be paid.

(*c*) For partial disability, 50 per cent of wage decrease, $12 maximum, not over 312 weeks, total not to exceed $5,000. Fixed awards are made in lieu of all other payments for specified injuries.

Payments may be commuted to one or more lump sums in any case.

Revision of benefits.—Agreements or awards may be reviewed at any time, but not oftener than once in six months.

Insurance.—Private employers must carry insurance, secure guaranty insurance, deposit security, or furnish proof of financial ability to make payments.

Security of payments.—Payments are preferred claims, the same as wage debts. Employees have direct recourse to insuring company; insolvency of employer does not release insurer.

Settlement of disputes.—Industrial accident boards for each county; appeals to courts.

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IDAHO.

Date of enactment.—March 16, 1917; in effect January 1, 1918.

Injuries compensated.—Injury by accident arising out of and in course of employment, not due to the employee's willful intention to injure himself or another or to his intoxication, causing death, or disability for more than seven days.

Industries covered.—Compulsorily, all public employment and all private employments carried on by the employer for pecuniary gain, except agricultural and domestic service and employment by charitable organizations. Exempted industries may come under the act by written agreement of both parties.

Persons compensated.—Private employment: All employees except casual, outworkers, persons earning more than $2,400 per annum, and members of the employer's family dwelling in his house. Public employment: All except those receiving salaries in excess of $2,400 per annum and elected officials.

Burden of payment.—All on employer; but provision may be made for employees to contribute to a hospital fund.

Compensation for death:

(*a*) Burial expenses not to exceed $100.

(*b*) To a dependent widow or widower alone, 45 per cent of the employee's average weekly wages; if a child or children, 55 per cent. Orphan children receive 25 per cent if one, and 10 per cent additional for each child more than one, the total not to exceed 55 per cent. To a dependent parent or parents, any sum not paid to the foregoing, the total not to exceed 55 per cent of the weekly wages; or if none of the foregoing dependents, 25 per cent to one dependent parent or 20 per cent to each if both are dependent. Also, other dependents may receive benefits within the 55 per cent limits, if any sum remains.

(*c*) If there are no dependents, the employer shall pay $1,000 into the industrial administration fund.

(*d*) No payment shall extend beyond 400 weeks, and shall terminate on the death or remarriage of a widow or widower, on a child reaching the age of 18 unless incapable of self support, or on a parent or grandparent ceasing to be dependent. Benefits terminating before the end of 400 weeks may be reapportioned.

Death benefits may not exceed $12 per week nor be less than $6, or the actual weekly earnings if less than $6.

Compensation for disability:

(*a*) Reasonable medical, surgical, and hospital service, and crutches and apparatus as may be required or requested at the time of the injury and for a reasonable period thereafter.

(*b*) For total disability, 55 per cent of the injured person's wages, not less than $6 nor more than $12 for 400 weeks, and $6 per week thereafter. For temporary disability the benefits shall not exceed wages, but for permanent disability they shall not be less than $6.

(*c*) For partial disability, 55 per cent of the wage loss for not more than 150 weeks; schedule for designated permanent partial disabilities, ranging from 3 to 200 weeks, in lieu of other payments.

Lump-sum settlements may be approved for part or all the benefits, for either disability or death.

Revision of benefits.—Agreements or awards may be reviewed on the application of either party, but not oftener than once in six months.

Insurance.—Employers must insure in the State insurance fund or deposit satisfactory security or surety bond to guarantee payments.

Security of payments.—Policies of insurance in the State fund and all guarantee contracts must provide that the employee may have direct recourse thereto, and the insolvency of the employer is no release of his surety. Benefits have the same priority as wage payments, and are exempt from assignment, attachment, etc.

Settlement of disputes.—The act is administered by an industrial accident board. Agreements between employers and employees must be approved by this board. On failure to agree, a committee of arbitration must be formed, whose award is valid unless a review by the board is requested within 30 days. A limited appeal from the findings of the board may be taken to the courts.

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ILLINOIS.

Date of enactment.—June 10, 1911; in effect May 1, 1912. New act, June 28, 1913; in effect July 1, 1913; amended June 28, 1915, May 31, and June 25, 1917.

Injuries compensated.—Accidental injuries arising out of and in the course of employment causing permanent disfigurement, disability of over six working days, or death.

Industries covered.—Public employment; the building trades; construction, excavating and electrical work; transportation; mining and quarrying; work with or about explosives, molten metals, injurious gases or vapors, or corrosive acids, and all enterprises in which the law requires safety devices. Other employers may elect, but forfeit no defenses if they do not.

Persons compensated.—Private employment: All employees except those not engaged in the usual trade, etc., of the employer. Public employment: All persons employed by the State, county, municipality, etc., except officials.

Burden of payment.—Entire cost rests on the employer.

Compensation for death:

(*a*) To persons wholly dependent, a sum equal to four years' earnings, not less than $1,650 (to a widow with one child under 16, $1,750, and if two or more children, $1,850), nor more than $3,500 (to a widow with one child under 16, $3,750, and if two or more children, $4,000).

(*b*) If only dependent collateral heirs survive, such a percentage of the above sum as the support rendered during the last two years was of the earnings of the deceased.

(*c*) If no dependents, a burial benefit not exceeding $150.

Compensation for disability:

(*a*) Medical and surgical aid for not over eight weeks, and not over $200 in value.

(*b*) For total disability, beginning with eighth day (second day if permanent), a weekly sum equal to 50 per cent of the employee's earnings, $6 minimum, $12 maximum, during disability or until payments equal a death benefit; thereafter, if the disability is permanent, a sum annually equal to 8 per cent of a death benefit, but not less than $10 per month.

(*c*) For permanent partial disability, 50 per cent of the loss of earning capacity, but not more than $12 per week.

(*d*) For certain specified injuries (mutilations, etc.), a benefit of 50 per cent of weekly wages for fixed periods, in addition to temporary total disability payments.

(*e*) The basis of 50 per cent shall be increased 5 per cent for each child under 16 years of age, the maximum to be 65 per cent. The minimum sum of $6 per week is to be increased 50 cents for each such child, the total not to exceed $7.50. The maximum weekly payment of $12 is to be increased $1 per week for each such child, the total not to exceed $15.

(*f*) For serious and permanent disfigurement, not causing incapacity and not otherwise compensated, a sum not exceeding one-fourth the death benefits.

No payments are to extend beyond eight years, except in case of permanent total incapacity.

Lump-sum payments for either death or disability may be substituted by the industrial board for periodic payments.

Revision of benefits.—Medical examination may be had not oftener than every four weeks. The industrial board may, on request, review installment payments within 18 months after the award or agreement thereon.

Insurance.—The employer must insure, furnish proof of ability to pay, or make other provision for security of payment; or he may maintain a benefit system, but may not reduce his liability under the act.

Security of payments.—In case of insolvency, awards constitute liens upon all property of the employer within the county, paramount to all other claims, except wages, taxes, mortgages, or trust deeds.

The rights of an insolvent employer to insurance indemnities are subrogated to injured employees.

Settlement of disputes.—Disputes are determined by the industrial commission through an arbitrator or arbitration committee, subject to review by the board. Questions of law may be reviewed by the courts.

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INDIANA.

Date of enactment.—March 8, 1915; in effect September 1, 1915; amended, chapters 63, 81, 165, acts of 1917.

Injuries compensated.—Personal injury causing disability for more than seven days, or death by accident arising out of and in course of employment, not due to willful misconduct, intention to injure self, intoxication, or willful failure or refusal to use safety appliance or perform duty required by statute.

Industries covered.—All except interstate and foreign commerce, for which Federal laws make provision, railroad employees engaged in train service, and domestic and agricultural labor, unless employer makes contrary election; compulsory as to State and its municipalities.

Persons compensated.—Private employment: All employees and contractors' employees engaged upon the subject matter of the contract; casual employees are excepted. Public employment: All employees.

Burden of payment.—All on employer.

Compensation for death:

(*a*) $100 for funeral expenses, if death from the injury occurs within 300 weeks.

(*b*) 50 per cent of weekly wages to persons wholly dependent; to those partially dependent, amounts proportionate to decedent's contributions to their support. The term of payment is limited to 300 weeks from the receipt of the injury.

(*c*) Payments cease on remarriage of widow or dependent widower, or on children attaining the age of 18 years, unless mentally or physically disabled for earning. Wages are to be considered as not above $24 nor less than $10 weekly, no total to exceed $5,000.

Compensation for disability:

(*a*) Medical and hospital services for first 30 days, and longer at option of employer; employees must accept unless otherwise ordered by industrial board.

(*b*) For total disability, 55 per cent of wages for not more than 500 weeks.

(*c*) For partial disability, 50 per cent of wage loss for not more than 300 weeks.

(*d*) For certain specified injuries, 55 per cent of wages for designated periods ranging from 15 to 200 weeks in lieu of all other payments. Wage basis and total amounts are limited as for death benefits. Any payments may be commuted to a lump sum after 26 weeks.

Revision of benefits.—Awards may be reviewed at any time by industrial board on its own motion or the request of either party, but without retroactive effect.

Insurance.—Required unless satisfactory proof of financial ability to meet payments is furnished.

Security of payments.—Contracts of insurance must inure directly to the benefit of the person entitled to payments under an award. Payments have same preference and priority as unpaid wages, and are exempt from claims of creditors.

Settlement of disputes.—Disputes are determined by the industrial board, with appeal to courts on questions of law.

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IOWA.

Date of enactment.—April 18, 1913; in effect July 1, 1914. Amended, chapters 188, 270, 336, 409, 418, acts of 1917.

Injuries compensated.—All personal injuries arising out of and in the course of the employment causing disability for more than two weeks, or death, except when caused by the injured employee's willful intention to injure himself or another, or by the intoxication of the employee.

Industries covered.—All industries, except agriculture and domestic service, in absence of contrary election by employer. Compulsory as to the State and its municipalities.

Persons compensated.—Private employment: All employees in industries covered in absence of contrary election, except clerks not subjected to the hazards of the industry and casual employees, or those not employed for the purpose of the employer's trade or business. Public employment: All except policemen and firemen entitled to benefits from pension funds.

Burden of payment.—Entire burden is on employer.

Compensation for death:

(*a*) Reasonable expenses of the employee's last sickness and burial, not to exceed $100.

(*b*) To persons wholly dependent, a weekly payment equal to 50 per cent of the wages of the deceased employee, but not more than $10 nor less than $5 per week, for 300 weeks.

(*c*) If only partial dependents survive, such a proportion of the above as the amounts contributed by the employee to such partial dependents bear to his annual earnings.

(*d*) If the employee was a minor whose earnings were received by the parent, a sum to the parent equal to two-thirds of the amount provided for persons wholly dependent.

If the spouse dies during the compensation period, the unpaid balance goes to other dependents, if any; if she remarries, and there are no dependent children, payments cease.

Compensation for disability:

(*a*) Reasonable surgical, medical, and hospital services and supplies for first four weeks, not exceeding $100.

(*b*) For temporary total disability, 50 per cent of wages, not more than $15 nor less than $6 (unless wages are less than $6, then full wages), for not more than 300 weeks.

(*c*) For permanent total disability, the same compensation as for temporary disability, to be paid for a period of not more than 400 weeks.

(*d*) For permanent partial disability (specified maimings), 50 per cent of average weekly wages for fixed periods, beginning with the date of injury, in lieu of other payments.

Payments under (*b*) and (*c*) for the fifth, sixth, and seventh weeks are 83⅓ per cent of the weekly earnings, if disability continues during these periods, respectively.

Lump-sum payments may be substituted in any case where the term can be determined, on approval of the industrial commissioner and an order by the court.

Revision of benefits.—Payments may be reviewed by the industrial commissioner at the request of either party.

Insurance.—Employers must insure in approved companies or mutual associations, or furnish satisfactory proof of financial ability to make payments, or deposit security with the State insurance department; or they may maintain approved substitute schemes, provided there is no diminution of benefits.

Security of payments.—In case of insolvency of the insurer a claim for compensation becomes a first lien, and in case of legal incapacity of insured to receive the amount due, the insured must settle directly with the beneficiary.

Settlement of disputes.—Disputes may be settled by committees of arbitration, with the industrial commissioner as chairman; limited appeal to courts.

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KANSAS.

Date of enactment.—March 14, 1911; in effect January 1, 1912; amended, chapter 216, acts of 1913; chapter 226, acts of 1917.

Injuries compensated.—Injuries by accident arising out of and in the course of employment not due to intoxication or deliberate intention of injured employee, or caused by his willful failure to use safeguards provided by statute or furnished by employer, causing incapacity to earn full wages for at least one week, or death.

Industries covered.—Railways, factories, quarries, electrical, building or engineering work, laundries, natural-gas plants, county and municipal work, employments requiring the use of dangerous, explosive, or inflammable materials, if employing five or more persons; and mines, without reference to the number of employees, all in absence of contrary election; employers in other industries and those employing less than five persons may also elect.

Persons compensated.—Private employment: All employees, including apprentices, but excluding casual employees. Public employment: Workmen on county and municipal work.

Burden of payment.—Entire cost rests upon the employer.

Compensation for death:

(*a*) To persons wholly dependent, a sum equal to three years' earnings of the deceased employee, not less than $1,400 nor more than $3,800. For nonresident alien beneficiaries (except in Canada) the maximum is $750.

(*b*) If only partial dependents survive, a sum proportionate to the injury to such dependents.

(*c*) If no dependents are left, a reasonable expense for burial, not exceeding $150.

Compensation ceases upon the marriage of any dependent, or when a minor, not physically or mentally incapable of wage earning, shall become 18 years of age.

Compensation for disability:

(*a*) On demand, medical, surgical, and hospital treatment, not over $150 in value, for not more than 50 days.

(*b*) For total incapacity, payments during incapacity after the first week, equal to 60 per cent of earnings, but not less than $6 nor more than $15 per week.

(*c*) For partial incapacity, 60 per cent of wage loss during incapacity, after the first week. Lump sums equal to 50 per cent of the wages for specified periods are to be paid for designated injuries, in lieu of all other compensation.

No payments for total or partial disability shall extend over more than eight years.

After six months, lump-sum payments may be substituted at the employer's option, the sum to be agreed upon or determined by the court; or the workman may apply for a lump-sum settlement at any time.

Revision of benefits.—Any award may be modified at any time by agreement, or either party may demand a revision. Employees must submit to medical examination at reasonable periods to determine their physical condition.

Insurance.—The employer may insure in any approved insurance scheme which provides compensation not less favorable than is provided in this act.

Security of payments.—Lump sums awarded by the court may be secured by order of the court by a good and sufficient bond when there is doubt of security of payment. If the employer was insured, the insurer shall be subrogated to the rights and duties of the employer. Claims and awards are not assignable or subject to execution, etc.

Settlement of disputes.—Disputes not settled by agreement may be referred to arbitrators, subject to an appeal to courts.

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KENTUCKY.

Dae of enactment.—March 23, 1916; in effect August 1, 1916; amended, ch. 176, 1918.

Injuries compensated.—Personal injuries by accident arising out of and in course of employment, causing incapacity for more than seven days, or death, not self-inflicted, or due to intoxication or willful misconduct. Results of pre-existing diseases are not included.

Industries covered.—All except domestic service and farm labor where three or more persons are employed; excepted industries may become subject to the act by joint application by employers and employees.

Persons compensated.—Private employment: All employees in establishments coming under the act, if the employees elect. Public employment: All employees of municipalities coming under the act, if the employees elect.

Burden of payment.—All on the employer.

Compensation for death:

(*a*) Reasonable burial expenses, not to exceed $75.

(*b*) To persons wholly dependent, 65 per cent of the average weekly earnings, not more than $12 nor less than $5 per week, for 335 weeks, the total not to exceed $4,000.

(*c*) If only partial dependents survive, a proportion of the amount for total dependency, determined by the degree of dependence.

(*d*) If no dependents, $100, payable to the personal representative.

Payments to a widow or widower cease on remarriage and to a child on reaching the age of 16, unless incapacitated for wage earning.

Payments thus terminated go to other beneficiaries, if any.

Compensation for disability:

(*a*) Medical, surgical, and hospital aid for 90 days, unless another period is fixed by the board, the cost not to exceed $100.

(*b*) For total disability, 65 per cent of average weekly wages, not more than $12 nor less than $5, for eight years, total not to exceed $5,000.

(c) For partial disability, 65 per cent of the weekly wage loss, not to exceed $12, for not more than 335 weeks, total not to exceed $4,000.

Compensation periods are fixed for special injuries, in lieu of other payments.

Lump-sum awards may be made after six months if approved by the board.

Revision of benefits.—Review may be had on the request of either party or on the motion of the board, changing or revoking any previous order.

Insurance.—Employers accepting the act must insure in a stock or mutual company or the State Employees' Insurance Association, or give proof of financial ability to pay compensation direct.

Security of payments.—Insurance policies must provide for direct liability to the beneficiaries. Self-insurers must furnish bond or other security. Benefits have the same priority as wage debts and are not subject to assignment or attachment.

Settlement of disputes.—Disputes are settled by the workmen's compensation board, or a member thereof, or a referee appointed by it; limited appeal to courts.

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LOUISIANA.

Date of enactment.—June 18, 1914; in effect January 1, 1915; amended, Nos. 38, 39, 1918.

Injuries compensated.—Personal injury by accident arising out of and in course of employment causing disability for more than 2 weeks, or death within 1 year, and not due to willful intention to injure, to intoxication, to deliberate failure to use safeguards, or to deliberate breach of safety laws.

Industries covered.—Hazardous trades, businesses, or occupations in absence of contrary election; extensive list, and others may be so adjudged or brought within the act by voluntary agreement. Compulsory as to employees of the State and its municipalities and public boards.

Persons compensated.—Private employment: Every person performing services arising out of and incidental to his employer's trade, business, or occupation, if the same is within the act. Public employment: Every person in the service of the State, etc., except officials.

Burden of payment.—All on employer.

Compensation for death:

(*a*) $100 expenses of burial.

(*b*) To widow or dependent widower alone, 25 per cent of weekly wages, 40 per cent if 1 child, and 55 per cent if 2 or more. If 1 child alone, 25 per cent, 40 per cent for 2, and 55 per cent for 3 or more. For 1 dependent parent, 25 per cent; for 2, 55 per cent; if 1 brother or sister, 25 per cent and 10 per cent additional for each other. The total in no case may exceed 55 per cent of the weekly wages, $3 minimum payment, $16 maximum, for not over 300 weeks. Payment to any beneficiary ceases on death or marriage, to children on reaching the age of 18, unless mentally or physically incapacitated.

Compensation for disability:

(*a*) Reasonable medical, surgical, and hospital services, not to exceed $150 in value.

(*b*) For total disability, 55 per cent of the weekly wages, $16 maximum, $3 minimum, unless the wages are less than $3, then full wages, for not more than 400 weeks.

(*c*) For partial disability, 55 per cent of the wage loss, for not more than 300 weeks.

(*d*) Fixed schedule for specified injuries, for periods from 10 to 200 weeks, in lieu of other payments. Payments in any case may be commuted to a lump sum on agreement of the parties and approval by the courts.

Revision of benefits.—Judgments may be modified at any time by agreement of the parties and approval by the courts; or after 1 year, they may be reviewed by the court on application of either party.

Insurance.—Not required.

Security of payments.—Policy of insurance must give claimants right to direct payment regardless of the default or bankruptcy of the employer. Compensation payments have the same preference as wage debts.

Settlement of disputes.—Disputes are settled by judges of the courts in simple, summary procedure.

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MAINE.

Date of enactment.—April 1, 1915; in effect January 1, 1916; amended, chapters 230, 241, acts of 1917.

Injuries compensated.—Injury sustained in course of employment, causing disability for more than two weeks, or death, not due to willful intention to injure himself or another, and not due to intoxication unless fact or habit of intoxication was known or cognizable to employer.

Industries covered.—All except agricultural and domestic labor, and seamen in interstate or foreign commerce, in which more than five persons are employed, if employer elects. Abrogation of defenses does not affect cutting, hauling, driving, or rafting of logs.

Persons compensated.—Private employment: All persons in industries covered, casual employees excepted. Public employment: Employees of State, cities, and counties, and of towns accepting the provisions of the act, other than officials; but cities and towns may continue injured firemen on the pay roll at full pay, in lieu of compensation.

Burden of payment.—All on employer. If employees contribute to substitute scheme, additional proportionate benefits must be paid.

Compensation for death:

(*a*) To persons wholly dependent, 50 per cent of weekly wages for 300 weeks, $4 minimum, $10 maximum.

(*b*) If only partial dependents survive, amounts proportionate to their degree of dependency, for 300 weeks.

(*c*) If only one wholly dependent and more than one partly dependent person survives, payments are to be divided according to the relative extent of dependency.

(*d*) If no dependents, not above $200 expenses of last sickness and burial. Payments to children cease at age of 18 unless mentally or physically incapacitated for earning a living.

Compensation for disability:

(*a*) Reasonable medical and hospital services during first two weeks, not over $30 in value, unless by agreement or order of commission a larger amount is provided for.

(*b*) For total disability, 50 per cent of the wages for not more than 500 weeks, $4 minimum, $10 maximum, total not to exceed $3,000.

(*c*) For partial disability, 50 per cent of the weekly wage loss, not over $10, for not more than 300 weeks. For specified injuries causing permanent partial disability, 50 per cent of the wages for various fixed periods, then compensation on basis of wage loss, if any, for not more than 300 weeks in all.

Lump-sum payments may be approved by the commission after weekly payments for not less than six months.

Revision of benefits.—Agreements or awards may be reviewed at the instance of either party at any time within two years.

Insurance.—Insurance in approved companies is required unless the employer gives satisfactory proof of solvency and makes deposit or bond to secure payments.

Security of payments.—Claims have same preference over unsecured debts as do wages for labor.

Settlement of disputes.—Disputes are to be settled by the industrial accident commission, with appeal to courts on questions of law.

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MARYLAND.

Date of enactment.—April 16, 1914; in effect November 1, 1914.

Injuries compensated.—Accidental personal injury arising out of and in course of employment, not due to willful intention or intoxication, and causing disability for more than two weeks or death within two years.

Industries covered.—Extrahazardous (enumerated list); others by joint election of employers and employees. Farm and domestic labor, country blacksmiths and wheelwrights are excluded.

Persons compensated.—Private employment: All in industries covered, except casual employees and those receiving more than $2,000 annually. Public employment: Workmen employed for wages in extrahazardous work, unless the municipality makes other equal or better provision.

Burden of payment.—All on employer.

Compensation for death:

(*a*) Funeral expenses, not over $75.

(*b*) To persons wholly dependent, 50 per cent of the weekly wages for eight years; not more than $4,250 nor less than $1,000.

(*c*) To persons partly dependent, 50 per cent of the weekly wages for such portion of eight years as the commission may fix, the amount not to exceed $3,000.

(*d*) If no dependents, funeral expenses only.

(*e*) Payments to widow cease on remarriage, and to children on reaching the age of 16 years, unless mentally or physically incapacitated.

Compensation for disability:

(*a*) Medical, surgical, etc., expenses, not above $150 in value.

(*b*) For total disability, 50 per cent of weekly wages, $5 minimum, $12 maximum, during its continuance, total not to exceed $5,000. If wages are less than $5, full wages will be paid.

(*c*) For partial disability, 50 per cent of weekly wage loss, $12 maximum, total not over $3,000; specific periods for specified maimings, in lieu of other payments.

Where the injured employee is a learner, with prospect of increase of wages, this fact may be considered in fixing awards.

Payments may, in the discretion of the commission, be made in part or in whole in lump sums.

Revision of benefits.—The commission may modify its findings and orders at any time for justifiable cause.

Insurance.—Insurance in State fund, stock or mutual company, or proof of financial ability, is required.

Security of payments.—Policies must permit action by commission to secure payments to any person entitled. Payments may not be assigned, nor are they subject to execution or attachment.

Settlement of disputes.—Disputes are to be settled by the industrial accident commission, with appeal to courts.

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MASSACHUSETTS.

Date of enactment.—July 28, 1911; in effect, July 1, 1912; amended, chapters 571, acts of 1912; 48, 448, 568, 696, 746, acts of 1913; 338, 708, acts of 1914; 123, 275, 314, acts of 1915; 72, 90, acts of 1916; 198, 249, 269, acts of 1917; 113, 119, acts of 1918.

Injuries compensated.—Injuries arising out of and in the course of employment causing incapacity for 10 days, or death, unless the injury is due to the serious and willful misconduct of the injured employee.

Industries covered.—All industries except farm labor and domestic service. Exempted employments may come under the act if the employer so elects.

Persons compensated.—Private employment: All employees, except masters of vessels and seamen engaged in interstate or foreign commerce and casual employees, where the employer is an insurer under this act. Public employment: The State shall, and any county, city, town, or district having power of taxation and accepting the act may, compensate its laborers, workmen, and mechanics.

Burden of payment.—Entire cost rests upon the employer.

Compensation for death:

(*a*) The reasonable expense of burial, not exceeding $100. If dependents survive, this sum shall be deducted from the compensation payable.

(*b*) To persons wholly dependent, a weekly payment equal to two-thirds the average weekly wages of the deceased employee, but not less than $4 nor more than $10, for a period of 500 weeks, the total not to exceed $4,000.

(*c*) If only partial dependents survive, a sum proportionate to the portion of earnings contributed to their support by the deceased employee. Children cease to be dependents at 18, unless mentally or physically incapacitated from earning a living.

Compensation for disability:

(*a*) Reasonable medical and hospital services, and medicines as needed, for the first two weeks after injury, and in unusual cases for a longer period, in the discretion of the board.

(*b*) For total disability, a sum equal to two-thirds the average weekly wages, but not less than $5 nor more than $14 per week, not exceeding 500 weeks, nor $4,000 in amount.

(*c*) For partial disability, two-thirds the wage loss, but not to exceed $10 per week, and for not longer than 500 weeks.

(*d*) In specified injuries (mutilations, etc.), two-thirds the weekly wages, not exceeding $10 nor less than $4 per week, for fixed periods, in addition to other compensation.

Lump-sum payments may be substituted in whole or part, after payments for injury or death have been made for not less than six months.

Revision of benefits.—Either party may demand a revision of payment at any time. Employees must submit to medical examination to determine their physical condition when requested by the employer.

Insurance.—Employers under the act must subscribe to the State employees' insurance association or insure in some authorized company.

Security of payments.—Payments are not subject to assignment, attachment, or execution.

Settlement of disputes.—Disputes are decided primarily by a member of the industrial accident board, whose decision is subject to review by the board, with limited appeal to the courts.

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MICHIGAN.

Date of enactment.—March 20, 1912; in effect September 1, 1912; amended, Nos. 50, 79, 156, 259, acts of 1913; Nos. 104, 153, 170, 171, acts of 1915; Nos. 41, 206, 235, 249, acts of 1917.

Injuries compensated.—Injuries causing incapacity to earn full wages for a period of two weeks, or death, arising out of and in the course of employment, unless such injuries resulted from intentional and willful misconduct of the injured person.

Industries covered.—Compulsory as to the State and its municipalities, and each incorporated public board and commission authorized to hold property and to sue and be sued. All industries having one or more persons in service under contract of hire if the employer elects.

Persons compensated.—Private employment: All employees, including aliens and minors, except casual employees. Public employment: All employees except officials of the State or of a municipality.

Burden of payment.—Entire cost rests upon the employer.

Compensation for death:

(*a*) To persons wholly dependent, a weekly payment equal to one-half the deceased workman's earnings, but not less than $4 nor more than $10 per week for a period of 300 weeks.

(*b*) If only partial dependents survive, such proportion of the above as the amount of previous contributions bears to such earnings.

(*c*) If no dependents, the reasonable expense of the last sickness and burial, not exceeding $200.

Compensation for disability:

(*a*) Reasonable medical and hospital services for the first three weeks.

(*b*) For total incapacity, a weekly payment equal to one-half the earnings, but not less than $4 nor more than $10 per week, nor for a period longer than 500 weeks from the date of the injury, and not exceeding $4,000.

(*c*) For partial incapacity, a weekly payment equal to one-half the wage loss, but not more than $10 per week, and for not longer than 300 weeks.

(*d*) For certain specified injuries (mutilations, etc.), 50 per cent of average weekly earnings for fixed periods, in lieu of other payments.

(*e*) Payments begin with the fifteenth day after the injury, but if the disability continues for eight weeks or longer compensation is computed from the date of injury.

After six months lump sums may be substituted for weekly payments.

Revision of benefits.—Weekly payments may be reviewed by the industrial accident board at the request of either party. An injured employee must submit to medical examination when requested.

Insurance.—Employer must furnish proof of financial ability to pay the required compensation, or insure in an authorized employers' liability company, or in an employers' insurance association organized under State laws, or become a member of a State insurance fund administered by the State commissioner of insurance.

Security of payments.—In case of insolvency, claims constitute a first lien upon all property of the employer. Employers must furnish proof of financial ability to pay compensation, or insure in approved companies or with the State.

Settlement of disputes.—Either party may request the industrial accident board to appoint a committee of arbitration, whose decisions are subject to review by the board. The supreme court may review questions of law.

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MINNESOTA.

Date of enactment.—April 24, 1913; in effect October 1, 1913; amended, chapters 193, 209, 1915; chapters 302, 351, acts of 1917.

Industries compensated.—Injury by accident arising out of and in the course of employment causing disability for more than 1 week, or death, unless intentionally caused, or due to the intoxication of the injured person.

Industries covered.—All excepting common carriers by steam railroad and farm and domestic service, in the absence of contrary election by employers.

Persons compensated.—Private employment: All employees, including aliens and minors, in the absence of contrary election, casual employees excepted. Public employment: All persons in the service of a county, city, town, village, or school district, excluding public officials elected or appointed for regular terms.

Burden of payment.—Cost rests upon the employer.

Compensation for death:

(*a*) $100 funeral expenses.

(*b*) To a widow alone, 35 per cent of monthly wages of deceased, increasing to 60 per cent if four or more children; to a dependent husband alone, 25 per cent; to a dependent orphan, 40 per cent, with 10 per cent additional for each additional orphan, with a maximum of 60 per cent; to the dependent parent or parents, if no dependent widow, widower, or children, 30 per cent if one parent and 40 per cent if both survive; if none of the foregoing, but a brother, sister, grandparent, mother-in-law, or father-in-law is wholly dependent, if but one such relative, 25 per cent, or if more than one, 30 per cent, divided equally.

(*c*) If only partial dependents survive, that proportion of benefits provided for actual dependents which contributions bore to wages earned.

(*d*) When no dependents are left, expense of last sickness and burial, not exceeding $100, in addition to medical and hospital services provided in case of disability.

Payments continue for not more than 300 weeks, and cease when a minor child reaches the age of 18, unless physically or mentally incapacitated from earning, and upon the death or marriage of other dependents unless otherwise specified.

Compensation for disability:

(*a*) Reasonable medical and surgical treatment, not exceeding 90 days nor $100 in value, unless ordered in exceptional cases, when $200 is the limit.

(*b*) For total disability, 60 per cent of wages.

(*c*) For temporary partial disability, 60 per cent of the wage loss.

(*d*) For specified permanent partial disability (mutiliations, etc.), 60 per cent of the earnings for fixed periods, in lieu of other payments.

Payments for death may not be more than $11 per week, and for disability not more than $12; nor may they be less than $6.50, unless the wages were less than $6.50, when the amount of wages is paid.

Payments may not extend beyond 300 weeks except for permanent total disability, when the period is 400 weeks, with payments of not more than $6.50 per week thereafter for 150 weeks, the total not to exceed $5,000.

Lump sums may be substituted for periodical payments, but in case of compensation for death, permanent total disability, or certain maimings the consent of the court must be obtained.

Revision of benefits.—After six months from the date of an award either party may apply to the court for revision. The employee must submit to medical examination when requested.

Insurance.—Employers may insure in any authorized company, stock or mutual, or maintain cooperative schemes, assuming other and greater risks, and other classes of industrial insurance.

Security of payments.—Insured workmen have an equitable lien upon any policy becoming due, and in case of the employer's incapacity the insurer shall make payment directly to them. Claims to compensation have the same preference against the assets of the employer as unpaid wages.

Settlement of disputes.—Either party may submit a claim to the judge of the district court, who shall determine such dispute in a summary manner, subject to review by the supreme court as to questions of law.

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MONTANA.

Date of enactment.—March 8, 1915; in effect July 1, 1915.

Injuries compensated.—Injuries arising out of and in course of employment, resulting from some fortuitous event, causing death, or disability for more than two weeks' duration.

Industries covered.—"All inherently hazardous works and occupations," including manufactures, construction work, transportation, and repair of the means thereof, and any hazardous occupation or work not enumerated, in which employers elect, but not including agricultural, domestic, or casual labor.

Persons compensated.—Private employment: All persons other than independent contractors, employed in the industries covered, whether as manual laborers or otherwise, except casual employees. Public employment: All employees in the industries covered.

Burden of payment.—All on employer except that contributions may be arranged for hospital fund.

Compensation for death:

(*a*) $75 for funeral expenses if death occurs within six months of injury.

(*b*) To beneficiaries (widow, widower, child or children under 16, or invalid child above 16), 50 per cent of wages of the deceased if residents of the United States; if not, 25 per cent, unless otherwise required by treaty. To major dependents (father or mother), in case there are no beneficiaries, 40 per cent. To minor dependents (brothers or sisters actually dependent), if no beneficiary or major dependent, 30 per cent. Nonresident alien dependents receive nothing unless required by treaty, nor do beneficiaries if citizens of a Government excluding citizens of the United States from equal benefits under compensation laws. Term of payments may not exceed 400 weeks, $10 maximum, $6 minimum; if wages less than $6, then full wages. Payments cease on remarriage of widow or widower, or when child, brother, or sister reaches the age of 16, unless an invalid.

Compensation for disability:

(*a*) Medical and hospital services during first two weeks after happening of injury, not over $50 in value, unless there is a hospital contract.

(*b*) For temporary total disability, 50 per cent of wages during disability, $10 maximum, $6 minimum, unless wages are less than $6, when full wages will be paid, for not more than 300 weeks.

(*c*) For permanent total disability, same scale as above for 400 weeks, then $5 per week while disability continues.

(*d*) For partial disability, 50 per cent of the wage loss, wages and benefits not to exceed $10 nor fall below $6 in amount, unless wages at time of injury were less than $6; payments to continue not more than 150 weeks for permanent cases, and 50 weeks where disability is temporary.

(*e*) For maimings, compensation on same scale and limits as in (*b*) for terms ranging from 3 to 200 weeks, in lieu of other payments.

Periodical payments may in any case be converted in whole or in part to lump sums.

Revision of benefits.—Decisions and awards may be rescinded or amended at any time by the industrial accident board for good cause.

Insurance.—The employer may carry his own risk on a showing of financial ability; security may be required for probable liabilities and must be given when a continuing payment is ascertained. Insurance may be carried in any company authorized to do business in the State, or the employer may contribute to a State fund.

Security of payments.—In case of bankruptcy, etc., liabilities under this act are a first lien upon any deposit made by an employer, and if this is not sufficient, then on any property of the employer or insurer within the State, and shall be prorated with other lienable claims.

Settlement of disputes.—Proceedings to determine disputes under the act must be instituted before the board and not elsewhere; limited appeal to courts.

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NEBRASKA.

Date of enactment.—April 21, 1913; in effect December 1, 1914. (Deferred by referendum.) Amended, chapter 85, acts of 1917.

Injuries compensated.—Injury causing disability for more than seven days, or death, caused by accident arising out of and in the course of employment, except accident caused by or resulting in any degree from willful negligence or intoxication.

Industries covered.—All industries where one or more persons are employed by the employer in the regular trade, business, or occupation of the employer, except domestic service, agriculture, and interstate or foreign commerce, in the absence of contrary election. Exempt employers may make an affirmative election.

Persons compensated.—Private employment: All employees, including aliens and minors, but excluding casual employees, and home workers. Public employment: All persons employed by the State, or any Government agency created by the State, not having been elected or appointed for a regular term.

Burden of payment.—The entire cost rests upon the employer.

Compensation for death:

(*a*) In addition to any other benefits, a reasonable amount not exceeding $100 to cover expenses of last sickness and burial.

(*b*) To persons wholly dependent, 66⅔ per cent of the employee's wages, but not less than $6 nor more than $12 per week, during dependency, but not exceeding 350 weeks; if the wages of the deceased were less than $6 per week, then full wages are to be paid as compensation.

(*c*) If only partial dependents survive, a proportion of the above corresponding to the relation the contribution of the deceased to their support bore to his wages.

Compensation to children ceases when they reach the age of 16 years, unless they are physically or mentally incapacitated from earning.

Compensation for disability:

(*a*) Medical and hospital services during the first 21 days, not exceeding $200 in value; time may be extended in case of dismemberment or major operation.

(*b*) For total disability, 66⅔ per cent of the weekly wages, but not less than $6 nor more than $12 per week for 300 weeks; thereafter while disability lasts 45 per cent of such wages, but not less than $4.50 nor more than $9 per week: *Provided, however,* If weekly wages are less than the minimum, compensation to amount of full wages is to be paid.

(*c*) For partial disability, 66⅔ per cent of loss of earning capacity, but not exceeding $12 per week nor exceeding 300 weeks.

(*d*) For certain specified injuries (mutilations, etc.), 66⅔ per cent of wages for fixed periods in lieu of other benefits, $12 maximum, $6 minimum, unless wages are less, then wages.

Payments begin with the eighth day, but if disability continues six weeks or longer, compensation is computed from the date of injury.

Lump sums may be substituted for periodic payments, but if for death or permanent disability, the approval of the court must be obtained.

Revision of benefits.—Benefits running for a period of six months or longer may be revised at any time by agreement of the parties, with the approval of the compensation commissioner, or after six months by application of either party to a court.

Insurance.—An employer under the act must insure his liability for compensation in an authorized stock or mutual insurance company, or furnish proof of financial ability to make payments.

Security of payments.—Insurance policies must inure directly to the benefit of beneficiaries and be enforceable in an action by them.

Compensation rights and awards have the same preference against the assets of the employer as unpaid wages for labor.

Settlement of disputes.—All disputed claims must be submitted to the compensation commissioner, from whose award either party may appeal to the district court of the county, the case to be heard and determined as a cause in equity, with the right of further appeal to the supreme court.

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NEVADA.

Date of enactment.—March 15, 1913; in effect July 1, 1913; amended, chapter 190, acts of 1915; chapter 233, acts of 1917.

Injuries compensated.—Injuries arising out of and in the course of employment, causing incapacity to earn full wages for more than seven days or death, except when caused by the employee's willful intention to injure himself or another or the injury is sustained while intoxicated.

Industries covered.—All except domestic and farm labor, provided the employer elects; compulsory as to the State and its municipalities.

Persons compensated.—Private employment: All employees in the industries covered. Public employment: All employees.

Burden of payment.—The entire cost rests on the employer, except that he may deduct one-half the cost of an "accident benefit fund," not more than $1 per month, from each employee's wages for medical, etc., expenses.

Compensation for death:

(*a*) Burial expenses not to exceed $125.

(*b*) To widow or dependent widower, 30 per cent of the average wages, with 10 per cent additional for each child under 18 years of age, the total not to exceed 66⅔ per cent. If only children survive, they receive 15 per cent for each child, the total not to exceed 66⅔ per cent. If there are none of the foregoing, dependent parents may receive 25 per cent of the average monthly wage during dependency; if dependent brothers or sisters under 18, 20 per cent for one, and 30 per cent if more than one. Other cases of total or partial dependency are to be dealt with according to the facts.

Payments to a widow or dependent widower cease on remarriage, but the widow is to receive two years' benefits in a lump sum. Payments to children cease on their reaching the age of 18, unless incapable of self-support.

Payments to nonresident alien beneficiaries are 60 per cent of the above amounts.

No excess of wages above $120 per month shall be considered in awarding benefits.

No lump-sum settlements are allowed in case the widow, dependent children, or other persons are wholly dependent.

Compensation for disability:

(*a*) Reasonable medical, surgical, and hospital aid for not more than 90 days, but may be extended to 1 year by the industrial commission.

(*b*) For temporary total disability, an amount equal to one-half the average monthly wages, but not less than $20 nor more than $70 for 12 months, and not over $60 thereafter.

(*c*) For permanent total disability, 50 per cent of the average monthly wage, not less than $20 nor more than $50, payable during life.

(*d*) For partial disability, one-half the loss of earning capacity, but not more than $40 per month for not more than 60 months, wages in excess of $140 per month not to be considered.

(*e*) For certain specific injuries (mutilations, etc.), a monthly payment equal to one-half the monthly wages, not less than $20 nor more than $60, for fixed periods, in addition to the payments for temporary total disability.

No compensation is payable for the first week of disability, but if it continues three weeks or longer compensation is paid from the date of the injury.

The industrial commission may permit the substitution of lump sums for monthly payments in an amount not exceeding $5,000.

Revision of benefits.—Readjustment of compensation may be made by the commission on application therefor.

Insurance.—Employers coming under this act must insure in the State insurance fund.

Security of payments.—State management of the insurance fund and collection of premiums by the State. Payments are not assignable and are exempt from attachment, etc.

Settlement of disputes.—All matters relating to the amount of compensation to be paid are determined by the industrial commission.

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NEW HAMPSHIRE.

Date of enactment.—April 15, 1911; in effect January 1, 1912.

Injuries compensated.—Any injury to an employee arising out of and in the course of employment causing disability of over two weeks, or death, unless due to willful misconduct, intoxication, or violation of law.

Industries covered.—Industries dangerous to life or limb, including the operation and maintenance of steam and electric railroads, work in shops, mills, factories, etc., employing five or more persons; work about lines or cables charged with electricity; operations dangerously near explosives used in the industry, or to a steam boiler owned and operated by the employer; and work in or about any quarry, mine, or foundry; provided the employer elects.

Persons compensated.—Private employment: All workmen engaged in any of the employments covered by this law. Public employment: Government employees are not mentioned.

Burden of payment.—Entire cost rests upon the employer.

Compensation for death:

(*a*) To persons wholly dependent, a sum equal to 150 times the average weekly earnings of the deceased, not to exceed $3,000.

(*b*) If only partial dependents survive, such proportion of the above compensation as corresponds to the portion of wages contributed to their support.

(*c*) If no dependents are left, expenses of medical care and burial to a reasonable amount, not in excess of $100.

Compensation for disability:

(*a*) For total disability, a sum beginning with the fifteenth day, not exceeding 50 per cent of average weekly earnings.

(*b*) For partial disability, a sum not in excess of 50 per cent of the loss of earning capacity.

In no case is compensation to exceed $10 a week nor run for a longer period than 300 weeks.

The court may determine the amount of lump sums payable as a substitute for weekly payments.

Revision of benefits.—The injured person, when requested by the employer, must submit to medical examination not oftener than once a week.

Insurance.—No provision.

Security of payments.—The employer must satisfy the commissioner of labor of his ability to pay the required compensation or file a bond conditioned on the discharge of all liability incurred under the act.

Weekly payments have the same preferential claims against the assets of the employer as is allowed for unpaid wages or personal services.

Settlement of disputes.—All questions not settled by agreement are determined by an action in equity.

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NEW JERSEY.

Date of enactment.—April 4, 1911; in effect July 1, 1911; amended May 2, 1911, April 1, 1912, March 27, 1913, and April 17, 1914.

Injuries compensated.—Injury by accident arising out of and in the course of employment causing disability of over two weeks, or death, unless intentionally self-inflicted or due to intoxication.

Industries covered.—All employments in the absence of contrary election.

Persons compensated.—Private employment: All employees except casual. Nonresident aliens receive no benefits. Public employment: Every employee of the State, county, municipality, board or commission, or other governing body, including boards of education, except persons receiving a salary greater than $1,200 per year, and those holding an elective office.

Burden of payment.—The entire cost rests upon the employer.

Compensation for death:

(*a*) The expense of the last sickness and of burial, not exceeding $100 for burial.

(*b*) To one dependent, 35 per cent of the wages of the deceased person, and for each additional dependent 5 per cent additional, the total not to exceed 60 per cent, payable for not more than 300 weeks. Compensation not to be less than $5 nor more than $10 per week, unless the earnings were less than $5, when full wages are paid.

(*c*) If no dependents, chapter 203, acts of 1918, requires the sum of $400 to be paid to the commissioner of labor.

Payments to widows cease on remarriage, and to orphans on reaching the age of 18, unless physically or mentally deficient.

A lump-sum payment may be substituted at the discretion of the court of common pleas.

Compensation for disability:

(*a*) Reasonable medical and hospital services for the first two weeks of incapacity, not exceeding $50 in value.

(*b*) For temporary total disability 50 per cent of wages, payable during disability, but not beyond 300 weeks.

(*c*) For permanent total disability, 50 per cent of wages during such disability, not beyond 400 weeks.

(*d*) For certain specific injuries (mutilations, etc.) producing partial but permanent disabilities, 50 per cent of wages during fixed periods, in addition to payments for any period of total disability.

All weekly payments are subject to the same rule as to minimum and maximum, as for death benefits.

A lump-sum payment may be substituted at the discretion of the court of common pleas.

Revision of benefits.—At any time after one year from the time an award becomes operative, either party may demand a revision of benefits.

Insurance.—No provision in the principal act. Supplemental acts (ch. 178 and ch. 262, acts of 1917) require every employer, whether accepting the compensation act or not, to furnish proof of ability to carry his own insurance, or to be insured in an authorized company; the insurance provisions do not apply to farm laborers or domestic service.

Security of payments.—Insurance policies must be for the benefit of the employees, and be directly available on suits by them for their enforcement. The right of compensation has the same preference against the assets of the employer as is now or may hereafter be allowed by law for a claim for unpaid wages.

Settlement of disputes.—A workmen's compensation bureau created by chapter 149, acts of 1918, is charged with the duty of hearing and determining disputes, subject to an appeal to the courts.

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NEW MEXICO.

Date of enactment.—March 13, 1917; in effect June 8, 1917.

Injuries compensated.—Injury by accident arising out of and in course of employment, causing disability for more than three weeks or death, not due to the intoxication of the injured man or willfully suffered by him or intentionally inflicted by himself or another.

Industries covered.—Extra hazardous occupations (enumerated list) in which four or more persons are employed, unless contrary election is made. If the injury is received while at work on a derrick, scaffold, etc., 10 or more feet above ground, the act applies without regard to the number of employees. Other occupations may be included by joint written agreement.

Persons compensated.—Private employment: All employees in the industries covered, except those purely casual and not for the purpose of the employer's trade or business. Public employment: Not mentioned.

Burden of payment.—All on employer.

Compensation for death:

(*a*) $50 for funeral expenses if death occurs within one year from the date of the injury, and as a proximate result.

(*b*) 40 per cent of earnings, not to exceed $10 per week, to dependent widow or widower alone, with 5 per cent additional for each child; 25 per cent to one or two orphans, 10 per cent additional for each additional child, totals in the foregoing cases not to exceed 60 per cent. If no spouse or child survives, a parent or parents in any degree dependent receives 20 per cent; if none of the foregoing survive and there are brothers or sisters in any degree dependent, 15 per cent shall be paid for one, and 5 per cent for each additional one, the total not to exceed 25 per cent.

(*c*) No payment shall extend beyond 300 weeks, nor shall amounts paid partial dependents exceed the actual contributions made by the deceased to their support. Payments cease on the remarriage of a widow or widower, on a child, brother, or sister attaining the age of 18, unless mentally or physically incapacitated for earning, on the death of any dependent, the adoption of an infant, or his becoming self-supporting before reaching 18 years of age.

The earnings upon which death benefits are computed shall be taken as not above $30 per week.

Compensation for disability:

(*a*) Medical, surgical, and hospital services for the first three weeks, not over $50 in value, unless an adequate scheme of hospital service has been provided for, in which case such scheme shall be followed out.

(*b*) For total disability, 50 per cent of the workman's earnings, not over $10 nor less than $5 per week, unless the earnings are less than $5, when the full amount shall be paid, the term not to exceed 520 weeks.

(*c*) For permanent partial disability, 50 per cent of earnings for specified injuries, for various periods ranging from 3 to 150 weeks, in addition to payments for any period of total disability; other cases to be compensated proportionately.

Lump-sum settlements may be approved for part or all the benefits, for either disability or death.

Revision of benefits.—The employer may at any time require a medical examination to determine whether or not the employee has recovered, and the court may hear evidence and adjust awards accordingly.

Insurance.—Employers under the act must file with the district court of the county insurance or security for the payment of benefits provided by this act, unless a certificate of financial ability is obtained.

Security of payments.—Policies of insurance must inure directly to the benefit of claimants. Benefits are exempt from attachment or execution, and can not be assigned.

Settlement of disputes.—Act is administered by district courts of the counties, by which all disputes are settled. Proceedings are to be summary as far as possible. Appeals lie to the supreme court.

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NEW YORK.

[Compulsory law.]

Date of enactment.—December 13, 1913; in effect July 1, 1914; amended, chapters 41, 316, acts of 1914; 167, 168, 615, 674, acts of 1915; 622, acts of 1916; 705, acts of 1917; chapters 249, 633, 634, 635, acts of 1918.

Injuries compensated.—Accidental injuries arising out of and in course of employment, and disease or infection naturally and unavoidably resulting therefrom, causing disability for more than two weeks, or death, unless caused by the willful intention of the injured employee to bring about the injury or death of himself or another, or by his intoxication while on duty.

Industries covered.—"Hazardous employments," including extensive classified list; also all other employments not so enumerated, in which four or more workmen or operatives are regularly employed, domestic and farm labor excepted.

Persons compensated.—Private employment: All employees in industries covered, farm laborers and domestic servants not included. Public employment: Included.

Burden of payment.—Entire cost rests on employer.

Compensation for death:

(*a*) $100 for funeral expenses.

(*b*) To a widow or dependent widower alone, 30 per cent of wages of deceased, 10 per cent additional for each child under 18; dependent orphans under 18 receive 15 per cent each, and dependent parents, brothers, or sisters receive 15 per cent each; aggregate payments in no case to exceed 66⅔ per cent.

(*c*) Payments to widow or widower cease on death or remarriage or when dependence of widower ceases, with two years' compensation on remarriage; payments to children, brothers, and sisters cease at 18, and to parents when dependence ceases.

In computing the above benefits no wages in excess of $100 monthly are considered.

Compensation for disability:

(*a*) Medical and surgical treatment and hospital services for 60 days, or longer where the conditions require, costs to be approved by the commission.

(*b*) For total disability, 66⅔ per cent of wages during continuance.

(*c*) For partial disability, 66⅔ per cent of wage loss; for specified permanent partial disabilities (mutilations, etc.), 66⅔ per cent of wages for fixed periods, in lieu of other payments; separate provision for disfigurements.

The foregoing payments may not be less than $5 nor more than $15 per week, except for certain maimings the maximum may be $20.

Payments begin on the fifteenth day, but if the disability continues for more than 49 days, compensation is allowed from the beginning.

Revision of benefits.—Awards may be reviewed at any time, and ended or increased or decreased within the limits fixed.

Insurance.—Employer must give proof of financial ability to make payments (deposit of securities may be required), or must insure in State fund or mutual or stock company.

Security of payments.—Insurance may be made to inure directly to the benefit of claimants; insolvency of employer does not release insurance company. Payments have same preference as unpaid wages for labor.

Settlement of disputes.—Disputes are settled by the State industrial commission, with limited appeal to courts.

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OHIO.

Date of enactment.—June 15, 1911; in effect January 1, 1912; amended pages 72, 396, acts of 1913; 193, acts of 1914; 508, acts of 1915; 6, 157, 450, 528, acts of 1917.

Injuries compensated.—All injuries, not self-inflicted, received in the course of employment, causing disability beyond one week, or death.

Industries covered.—All industries employing five or more persons regularly in the same business; also establishments with less than five workmen, if the employer elects to pay the premiums provided by this act.

Persons compensated.—Private employment: All employees excluding persons whose employment is but casual and not in usual course of trade or business of employer, but including aliens and minors lawfully employed. Public employment: Persons in the service of the State, or its political subdivisions, excepting the officials of the State or municipal governments, and policemen and firemen in cities where pension funds are established and maintained by municipal authority.

Burden of payment.—Entire cost rests upon the employer

Compensation for death:

(*a*) Burial expenses not to exceed $150.

(*b*) To persons wholly dependent, 66⅔ per cent of the average weekly earnings of the deceased workman, for eight years after the date of the injury, not less than $2,000 nor more than $5,000.

(*c*) If only partial dependents survive, a proportionate sum to continue for all or such portion of the period of eight years as the industrial commission may determine in each case, not exceeding a maximum of $5,000.

(*d*) If no dependents, medical and hospital services not exceeding $200 in value and burial expenses as above.

Compensation for disability:

(*a*) Medical, hospital, etc., services, not to exceed $200, but more may be allowed in cases of actual necessity.

(*b*) For temporary total disability, a weekly payment of 66⅔ per cent of average weekly wages, during disability, not less than $5 nor more than $12 per week, but not for longer than six years, nor exceeding $3,750.

(*c*) For permanent total disability, a weekly payment as above, continuing until death.

(*d*) For partial disability, 66⅔ per cent of loss of earning capacity, during the continuance thereof, but not exceeding $12 per week, or a total of $3,750.

(*e*) In certain specified injuries (mutilations, etc.), compensation of 66⅔ per cent of wages, for fixed periods, with the same maximum and minimum limitations as noted above, in addition to payments during temporary total disability.

In all cases, if wages are less than prescribed minimum, then total wages are paid as compensation; an expected increase in wages may be given consideration.

Revision of benefits.—The industrial commission may from time to time make such modification or change in its former findings of fact as it deems necessary.

Insurance.—The law creates a State insurance fund, under control of an industrial commission, in which employers under the act must insure, or give proof of ability to provide benefits equal to those provided by the State insurance fund. Noninsuring employers may be required to give security or bond to guarantee the payment of benefits falling due.

Security of payments.—Insurance is under State control. Claims for compensation under this law have the same preference against the assets of the employer as is or may be allowed by law on judgments rendered for claims for taxes.

Settlement of disputes.—The commission hears and determines all cases within its jurisdiction, limited right of appeal to the civil courts being reserved to the claimant.

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OKLAHOMA.

Date of enactment.—March 22, 1915; in effect September 1, 1915.

Injuries compensated.—Personal injuries causing disability for more than two weeks arising out of and in course of employment, not due to the willful intention of the injured employee to injure himself or another, intoxication, or willful failure to use statutory safeguard. Fatal injuries not covered.

Industries covered.—"Hazardous" (enumerated list and general clause), in which more than two persons are employed, including work by State or municipalities; agriculture, stock raising, retail stores, and interstate railways not included.

Persons compensated.—Private employment: Persons engaged in manual or mechanical work or labor in industries covered. Public employment: Workmen employed for wages in any hazardous work within meaning of this act.

Burden of payment.—All on employer.

Compensation for death.—Fatal injuries not covered.

Compensation for disability:

(*a*) Necessary medical, surgical, or other treatment for first 15 days.

(*b*) For temporary total disability, 50 per cent of average weekly wages for not more than 300 weeks.

(*c*) For permanent total disability, 50 per cent of average weekly wages for not more than 500 weeks.

(*d*) For permanent partial disability, 50 per cent of wage loss for not more than 300 weeks; for specified injuries, 50 per cent of weekly wages for fixed periods in lieu of other compensation.

Payments may not exceed $10 per week nor be less than $6 unless wages were less than $6, when full wages will be paid. Periodical payments may be commuted to lump sums, and aliens who are nonresidents may have payments commuted to lump sums equal to one-half the value of the present worth.

Revision of benefits.—Awards may be reviewed at any time on application of any party in interest.

Insurance.—Insurance, the maintenance of a benefit fund, or proof of ability to make compensation payments is required.

Security of payments.—Insurance companies or fund systems must be approved by the commission. Claims can not be assigned, and payments are exempt from levy, execution, etc. Deposits with the commission to secure payments may be required of employers or insurers.

Settlement of disputes.—Disputes may be settled by the industrial commission, subject to appeal to the supreme court.

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OREGON.

Date of enactment.—February 25, 1913; in effect June 30, 1914. (Deferred by referendum.) Amended, chapter 271, acts of 1915; 288, acts of 1917.

Injuries compensated.—Injuries by accident arising out of and in the course of employment, except those brought about intentionally.

Industries covered.—All hazardous occupations, including factories, mills, and workshops employing machinery; mines, quarries, wharves and docks, dredges, engineering works; building trades; telegraph, telephone, electric light and power plants or lines, steamboats, tugs and ferries; all in absence of contrary election. Other employers may accept the law by affirmative election.

Persons compensated.—Private employment: Any workman employed as above in absence of contrary election. Nonresident alien beneficiaries other than parent, spouse, or child are not included unless otherwise provided by treaty. Public employment: State and municipalities, irrigation districts, etc., may elect to come under the act.

Burden of payment.—The employer deducts 1 cent from employee's daily earnings, and himself contributes this sum and a percentage of his monthly pay roll, fixed according to industry. The State gives a subsidy.

Compensation for death:

(*a*) Burial expenses not to exceed $100.

(*b*) To widow or invalid widower, a monthly payment of $30, and to each child under 16 (daughters 18), $6 a month, the total monthly payments not to exceed $50.

(*c*) To orphans under 16 years of age (daughters 18), a monthly payment of $15 each; the total monthly payments not to exceed $50.

(*d*) To other dependents, there being none of the foregoing, a monthly payment to each of 50 per cent of the average support received during the preceding year, but not to exceed $30 a month in all.

(*e*) To parents of an unmarried minor, a monthly payment of $25, until such time as he would have been 21, after which time compensation shall be paid according to (*d*) above.

Payments to widow or widower continue until death or remarriage. On remarriage of widow she receives a lump sum of $300. Payments to a male child cease at 16 and to a female at 18, unless the child is an invalid.

Compensation for disability:

(*a*) Transportation, medical, surgical, and hospital expenses not exceeding $250 in value.

(*b*) For permanent total disability, monthly payments as follows: (1) If unmarried at the time of the injury, $30; (2) if with wife or invalid husband, but no child under 16 years, $35; if the husband is not an invalid, the sum is $30; (3) if married or a widow or widower with a child or children under 16 years, $6 additional to the provision under (2) above, for each child until 16 years of age; the total monthly payments not to exceed $50.

(*c*) For temporary total disability, the above payments apply during disability, increased 50 per cent for first six months, but in no case to exceed 60 per cent of monthly wages.

(*d*) For temporary partial disability, a proportionate amount, corresponding to loss of earning power for not exceeding two years.

(*e*) For certain specified injuries (mutilations, etc.), monthly payment of $25 per month payable for fixed periods, less the time during which any payments were made on account of total disability. A lump sum at the option of the injured person is provided in some cases.

Partial lump-sum payments to any beneficiary may be substituted at the discretion of the commission.

Revision of benefits.—The rate of compensation may be readjusted either upon the application of the beneficiary or by the State industrial accident commission upon its own initiative.

Insurance.—Insurance is effected through the State industrial accident fund, under supervision of the State industrial accident commission.

Security of payments.—Insurance under State control.

Settlement of disputes.—Any decision of the commission is subject to review by the circuit court, and appeals lie from the circuit court as in other civil cases.

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PENNSYLVANIA.

Date of enactment.—June 2, 1915; in effect January 1, 1916.

Injuries compensated.—Personal injury by accident in the course of employment, causing disability for more than 14 days or death in 300 weeks, not intentionally self-inflicted or due to the intentional act of a third person for reasons not connected with the employment.

Industries covered.—All, unless employer makes election to the contrary. A supplemental act (No. 359, acts of 1917) requires all contracts with the State or any municipality to contain a provision that the contractor shall accept the provisions of the compensation law. (Agricultural and domestic employees are excluded by a separate act.)

Persons compensated.—Private employment: All persons rendering service to another for a valuable consideration, casual employees, and those working on material given out to be made up, repaired, etc., on premises not under the control of the employer excepted. Public employment: All employees.

Burden of payment.—All on employer.

Compensation for death:

(*a*) $100 funeral expenses.

(*b*) 40 per cent of weekly wages to widow or dependent widower, 5 per cent additional for each child, total not to exceed 60 per cent; if no parent, 25 per cent if one or two children, 10 per cent additional for each child in excess of two, total not to exceed 60 per cent; if no consort or child under 16, but dependent parent, brothers, or sisters, 15 to 25 per cent of wages.

(*c*) Payments cease on death, remarriage of widow or widower, cessation of dependence of widower, or when a child, brother, or sister attains the age of 16; not to continue beyond 300 weeks, unless for children under 16, when 15 per cent of wages will be paid for one and 10 per cent additional for each additional child, total not to exceed 50 per cent. Basic wages are not less than $10 nor more than $20 weekly.

Compensation for disability:

(*a*) Reasonable medical, surgical, and hospital expenses for first 14 days after disability begins, cost not to exceed $25, unless major surgical operation is necessary, when $75 is the maximum.

(*b*) For total disability, 50 per cent of weekly wages for 500 weeks, $5 minimum, $10 maximum, total not to exceed $4,000; if wages less than $5, full wages will be paid.

(*c*) For partial disability, 50 per cent of weekly wage loss, $10 maximum, for not over 300 weeks; fixed periods for specified injuries, in lieu of other payments, $5 minimum, $10 maximum, full wages if less than $5.

Payments may be commuted to a lump sum.

Revision of benefits.—Agreements and awards may be reviewed by the board at any time for proper cause.

Insurance.—Employers must insure in the State fund, a stock or mutual company, or give proof of financial ability.

Security of payments.—Agreements or claims may be filed with a prothonotary, who enters them as a judgment, and if approved by the board they become a lien on the property of the employer. A separate act provides for direct payments from insurance companies to the beneficiaries, in case of the employer's failure to make payments of benefits.

Settlement of disputes.—Disputes are settled by a workmen's compensation board, with appeal to courts.

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PORTO RICO.

Date of enactment.—April 13, 1916; in effect July 1, 1916; amended, act No. 9, acts of 1917. New act, February 25, 1918; in effect July 1, 1918.

Injuries compensated.—All personal injuries by accident occurring to a laborer while engaged in his work, causing death or disability, excepting injuries due to an attempt to commit crime or to injure his employer or another person, intoxication, or gross negligence, or the criminal act of a third person.

Industries covered.—All industries employing three or more persons except domestic service and agricultural work without mechanically driven machinery.

Persons compensated.—Private employment: All employees of employers covered by the act, clerical employees in offices and commercial establishments where machinery is not used excepted; also excepting employees whose earnings exceed $1,200 per year. Public employment: Included.

Burden of payment.—All on employer.

Compensation for death.—A compensation of three to four thousand dollars as a maximum to persons wholly dependent, the amount to be graded according to the earning capacity of the deceased, and the number of beneficiaries. Benefits may be apportioned among the dependent legal heirs by the will of the decedent if not in conflict with this act or the code.

Compensation for disability:

(*a*) Medical attendance, medicines, also hospital services when necessary, and sustenance, as the workman's relief commission may prescribe; but the allowance for medicine and food supplies shall be deducted from the compensation granted, and none allowed after the award.

(*b*) For temporary disability an amount equal to one-half the weekly wages, not less than $3 nor more than $7, for not more than 104 weeks.

(*c*) For permanent total disability not less than $2,000 nor more than $4,000, in proportion to the rate of wages earned at the time of injury.

(*d*) For permanent partial disability not less than $1,300 nor more than $2,500, in proportion to the rate of wages earned at the time of injury. The time and manner of payments are to be determined by the workman's relief commission.

Revision of benefits.—No provision.

Insurance.—All payments are made from the workman's relief trust fund established by the act, to which all employers covered by the act contribute.

Security of payment.—Fund is administered by the treasurer of the island. Rights and actions not assignable nor subject to attachment.

Settlement of disputes.—Claims are passed upon by the workman's relief commission, with limited appeal to the courts.

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RHODE ISLAND.

Date of enactment.—April 29, 1912; in effect October 1, 1912; amended, chapters 937, acts of 1913; 1268, acts of 1915; 1534, acts of 1917.

Injuries compensated.—Personal injuries by accidents arising out of and in the course of employment causing incapacity for earning full wages for a period of more than two weeks, or death, except where the injury resulted from the willful intention of the injured person to injure himself or another, or from intoxication.

Industries covered.—All industries except domestic service and agriculture, if the employer elects. Defenses in suits for damages are not abrogated unless more than five persons are employed.

Persons compensated.—Private employment: All employees in establishments covered by this act in absence of contrary election, casual employees and those earning above $1,800 a year excepted. Public employment: Employees of the State, and such classes of employees of cities and towns electing to accept the act as are designated in the act of acceptance, but not including members of regularly organized fire and police departments.

Burden of payment.—Entire cost rests upon the employer.

Compensation for death:

(*a*) To persons wholly dependent, a weekly payment equal to one-half the average weekly earnings of the deceased employee, but not less than $4 nor more than $10 per week, for a period of 300 weeks.

(*b*) If only partial dependents survive, a sum proportionate to the amount which the annual contributions bore to the annual earnings of the deceased, for not exceeding 300 weeks.

(*c*) If no dependents, the expense of the last sickness and burial of the deceased employee, not exceeding $200.

Payments to children cease on their reaching the age of 18 years unless they are physically or mentally incapacitated.

Compensation for disability:

(*a*) The necessary medical and surgical care and hospital services for the first four weeks after the injury.

(*b*) For total incapacity, a weekly payment equal to one-half the wages, but not less than $4 nor more than $10 per week, during such incapacity, but not for a longer period than 500 weeks.

(*c*) For partial incapacity, a weekly payment equal to one-half the loss of earning power, but not exceeding $10 per week, during such incapacity, and not for a longer period than 300 weeks.

(*d*) For certain specified injuries (mutilations, etc.), in addition to the above, one-half the wages, weekly payments to be not less than $4 nor more than $10 per week, for fixed periods.

Payments begin on the fifteenth day, but if the incapacity extends beyond four weeks, they begin with the date of the injury.

Lump-sum payments may be substituted by order of the superior court after compensation has been paid for six months for either death or injury.

Revision of benefits.—Amounts payable may be reviewed and modified by the superior court at any time within two years, if the time for payments has not expired.

Insurance.—Employers must insure, give proof of financial ability to make direct payments, or furnish security or bond. If employees contribute to any approved scheme or insurance plan, proportionate added benefits must be provided.

Security of payments.—Insurers are directly liable to claimants; beneficiaries have a first lien on any sum due from insurers to the employer on any policy.

Settlement of disputes.—Disputes are settled by the superior court on a petition in the nature of a petition in equity, filed by any party in interest. Appeals may be carried to the supreme court by any aggrieved person.

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SOUTH DAKOTA.

Date of enactment.—March 10, 1917; in effect June 1, 1917.

Injuries compensated.—Injuries by accident arising out of and in course of employment, causing disability for more than two weeks, or death, not due to intoxication or willful misconduct.

Industries covered.—All except agriculture and domestic service, in the absence of contrary election.

Persons compensated.—Private employment: All persons in service under a contract of hire or apprenticeship, except those whose employment is casual and not in the usual course of the business or trade of the employer. Public employees: Employees of the State and its municipalities are included.

Burden of payment.—All on the employer, except that one-half of the fees of arbitrators may be charged to the compensation allowed in any case.

Compensation in case of death:

(*a*) To a dependent widow, child, or children, a sum equal to four times the average annual earnings of the deceased person, not less than $1,650 nor more than $3,000; if none of these, similar amounts may be paid to a dependent parent, grandparent, brother, or sister. If there are none of the foregoing, collateral dependent heirs may receive such a percentage of the same amount as the deceased workman's contributions to their support during the preceding two years are of his earnings during such period.

(*b*) If there are no dependents, the employer shall pay burial expenses in an amount not exceeding $150.

Payments are to be made in installments equal to one-half the wages, as the wages were paid, or weekly, if that is not feasible. Payments cease on the death of a beneficiary or the remarriage of a widow.

Compensation for disability:

(*a*) Necessary medical, surgical, and hospital services for not more than four weeks nor in an amount above $100.

(*b*) For total disability, 50 per cent of the weekly earnings, not more than $12 nor less than $6, until four years' earnings are paid.

(*c*) For partial disability, 50 per cent of the wage loss, not over $12 weekly, for not longer than six years; for specified injuries payments are to be made for fixed periods, in addition to the amount paid during any period of total disability.

(*d*) For serious and permanent disfigurement of the hand, head, or foot not giving rise to other awards, an agreed or arbitrated award of not more than one year's earnings.

No payment is made for disability of not more than two weeks' duration, but if it continues for eight weeks or more, compensation is payable from the date of the injury. Commutation to lump sums may be arranged for on a proper showing.

Revision of benefits.—Awards may be reviewed by the industrial commissioner at the request of either party, and modified according to the findings.

Insurance.—Insurance in an approved company or association is required, unless satisfactory proof of financial ability to make payments is furnished, or sufficient security is deposited with the State insurance department to guarantee payments.

Security of payments.—Insurance policies are to be valid regardless of the employer's solvency, and must provide that the workman shall have a first lien upon any amount becoming due him thereunder. Claims are unassignable, and payments are exempt from execution.

Settlement of disputes.—Arbitrators are to be chosen, one by each party, the industrial commissioner acting as chairman. If review is claimed, the commissioner may revise the decision or refer it back to the arbitration board. Appeal lies to the courts only on questions of law.

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TEXAS.

Date of enactment.—April 16, 1913; in effect September 1, 1913; amended, chapter 103, acts of 1917.

Injuries compensated.—Personal injury sustained in the course of employment causing incapacity to earn full wages for at least one week, or death, not due to the act of God, unless the employment is specially exposing, nor to the intentional act of a third person committed for personal reasons not connected with the employment, nor to the injured man's willful intent to injure himself or another, nor received while intoxicated.

Industries covered.—All in which three or more persons are employed, except domestic and farm labor, railways operated as common carriers, and vessels in interstate and foreign commerce, if the employer elects.

Persons compensated.—Private employment: All employees in industries included, except those not in the usual course of the employer's trade or business. Public employment: No provision.

Burden of payment.—The entire cost rests upon the employer.

Compensation for death:

(*a*) To the legal beneficiaries of the deceased employee, a weekly payment equal to 60 per cent of his wages, not less than $5 nor more than $15, for a period of 360 weeks, distributed according to law governing property distribution.

(*b*) If no beneficiaries are left, the expenses of the last sickness and in addition a funeral benefit not to exceed $100.

Compensation for disability:

(*a*) Medical and hospital care for the first two weeks; hospital care for two weeks additional if necessary.

(*b*) For total incapacity, a compensation equal to 60 per cent of the average weekly wages of the injured person, but not less than $5 nor more than $15 per week, during such disability, but not exceeding a period of 401 weeks.

(*c*) For partial incapacity, a compensation equal to 60 per cent of the loss of earning power during such disability, in no case to exceed $15 per week, but not exceeding 300 weeks, or for both partial and total disability, 401 weeks.

(*d*) For certain specified injuries (mutilations, etc.), compensation equal to 60 per cent of the average weekly wages of the injured person, for fixed periods, not less than $5 nor more than $15 per week, in lieu of all other compensation.

A lump-sum payment may be substituted for weekly payments in cases of death or permanent total disability, subject to the approval of the industrial accident board.

Revision of benefits.—On its own motion or on application of an interested party, the industrial accident board may at any time review an award.

Insurance.—Employers come under the law only by taking insurance, which may be effected through the Texas Employers' Insurance Association, or in any company admitted to do business in the State.

Security of payments.—Compensation is payable directly by the insurance association. Policies in other companies are subject to the provisions of the act. All benefits are nonassignable, and are exempt from garnishment, attachment, etc.

Settlement of disputes.—Disputes are referable to the industrial accident board, whose decisions are subject to appeal to any court of competent jurisdiction.

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UTAH.

Date of enactment.—March 15, 1917; in effect July 1, 1917.

Injuries compensated.—Injuries by accident arising out of and in course of employment, causing disability for more than 10 days, or death.

Industries covered.—Compulsorily, all except agriculture and domestic service, in which four or more persons are employed; elective where less than four employees.

Persons compensated.—Private employment: All persons regularly employed under any contract of hire, including aliens, but not including persons whose employment is but casual, or not in the usual course of the employer's business. Public employment: Every person in the service of the State or a municipality, including regular members of the police and fire departments of cities and towns, excepting elective officials and officials receiving more than $2,400 per year salary.

Burden of payment.—All on employer, but employees may contribute to benefit schemes for benefits additional to those provided by the act.

Compensation for death:

(*a*) Funeral expenses, not exceeding $150.

(*b*) To persons wholly dependent, 55 per cent of the average weekly earnings of the deceased employees, not to exceed $15, for not over six years, $2,000 minimum, $4,500 maximum.

(*c*) To persons partly dependent, the same amount, subject to the same limits as to maximum, for all or such part of the period of six years as the commission may in each case determine.

Payments to beneficiaries cease on their death or remarriage; to female children on their attaining the age of 18, and to males on reaching the age of 16, unless mentally or physically incapacitated from earning.

Compensation for disability:

(*a*) Such medical, nurse, and hospital services and medicines as the employer or insurer may deem proper, not over $200 in value.

(*b*) For total disability, 55 per cent of the weekly wages for five years, and 40 per cent thereafter until death, $15 maximum, $5 minimum. If the disability is temporary, $12 maximum, $7 minimum, for not more than six years, not to exceed $4,500.

(*c*) For partial disability, 55 per cent of the weekly wage loss, not over $12 per week, for not more than six years. For specified injuries causing permanent partial disability, 55 per cent, not over $12 weekly, is to be paid for fixed periods, in lieu of other compensation.

Any periodical payment may be commuted to a lump sum.

Revision of benefits.—Revision may be made from time to time as in the opinion of the commission may be justified.

Insurance.—Employers must insure in the State fund, in a stock or mutual insurance company, or give proof of ability to meet their own compensation payments; but approved benefit schemes may be maintained.

Security of payments.—Policies in private insurance companies are binding without regard to the solvency of the employer, and are enforceable by the employee directly. Self-insurers may be required to deposit security or give a bond.

Settlement of disputes.—Disputes are settled by the State industrial commission, with limited appeal to the courts.

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VERMONT.

Date of enactment.—April 1, 1915; in effect July 1, 1915; amended, Nos. 171, 173, 174, 175, acts of 1917.

Injuries compensated.—Personal injury causing disability for more than seven days (14 days until July 1, 1918), or death within two years, arising out of and in course of employment, not due to the employee's willful intention to injure himself or another, his intoxication, or failure to use a safety appliance.

Industries covered.—All industrial establishments in which more than 10 persons are employed, and commerce as far as permissible under Federal laws, domestic and casual labor excepted, unless election to the contrary is made. Public service under municipalities which elect compensation system.

Persons compensated.—Private employment: All under contract with or in service of an employer, domestic and casual employees and those receiving more than $2,000 excepted. Public employees: All except those elected by popular vote or receiving in excess of $2,000 annually.

Burden of payment.—All on employer.

Compensation for death:

(*a*) $100 for funeral expenses if death occurs within two years.

(*b*) 33⅓ per cent of weekly wages to dependent widow or widower, 40 per cent if there be one or two children, and 45 per cent if more than two; if no parent, 25 per cent to one or two children, 10 per cent additional for each child in excess of two, total not to exceed 40 per cent; if no consort or child under 18, and dependent parent, grandparent, or grandchild, 15 to 25 per cent of wages.

(*c*) Payments to widow cease on death or remarriage; to widower on remarriage or cessation of dependency; to children on reaching age of 18 unless incapable of self-support, in no case to exceed 260 weeks or $3,500 in amount; payments to other classes of beneficiaries end in 208 weeks at most. Basic wages are not less than $5 weekly.

Compensation for disability:

(*a*) Medical and hospital services for first 14 days, not to exceed $100.

(*b*) For total disability 50 per cent of weekly wages for not more than 260 weeks, $3 minimum, $12.50 maximum, total not to exceed $4,000. If wages are less than $3, full wages will be paid.

(*c*) For partial disability, 50 per cent of wage decrease, maximum $10, for not more than 260 weeks.

(*d*) For certain specified injuries, 50 per cent of weekly wages, but not more than $10, for designated periods ranging from four to 170 weeks, following the period of total disability.

Payments may be commuted to one or more lump sums in any case.

Revision of benefits.—Awards may be reviewed on application at any time, but not oftener than once in six months.

Insurance.—Required unless deposit of security is made, or satisfactory proof of financial responsibility.

Security of payments.—Employees may have direct recourse to insuring company; insolvency of employer does not release insurer; compensation rights are preferred claims.

Settlement of disputes.—Disputes are determined by a commissioner of industries, with appeal to courts.

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VIRGINIA.

Date of enactment.—March 21, 1918; in effect January 1, 1919.

Injuries compensated.—Injuries caused by accident arising out of and in course of employment, not due to the injured person's willful misconduct, intoxication, or intention to injure himself or another, and causing disability for more than 14 days or death.

Industries covered.—All employing regularly more than 10 persons, in absence of contrary election, domestic and farm labor and interstate commerce and intrastate common carriers using steam excepted.

Persons compensated.—Private employment: All employees of employers under the act who do not themselves make a contrary election, except casual employees. Public employment: All employees.

Burden of payment.—All on employer.

Compensation for death:

(*a*) Burial expenses not exceeding $100.

(*b*) To persons wholly dependent a weekly payment equal to one-half the average weekly wages of the deceased; $10 maximum, $5 minimum.

(*c*) If only partial dependents survive, such proportion of the above as the amount contributed bears to the annual earnings of the deceased employee.

(*d*) Payments may not extend beyond a period of 300 weeks, nor to children after they attain the age of 18 years, unless physically or mentally incapacitated. Payments to a widow or widower are, on remarriage, to be divided among other dependents, if any.

The total compensation may not exceed $4,000.

Compensation for disability:

(*a*) Necessary medical attention for the first 30 days; additional services, including surgical and hospital services and supplies, may be furnished at the employer's option, and must be accepted unless the industrial commission orders otherwise.

(*b*) For total disability, one-half the weekly wages, not more than $10 nor less than $5 per week, for not more than 500 weeks, the total not to exceed $4,000.

(*c*) For partial disability, one-half the wage loss, not more than $10 per week, for not more than 300 weeks; for specified injuries (loss of member or members) 50 per cent of the wages for fixed periods.

Lump sums may be substituted for periodic payments in any case after 26 weeks on agreement of the parties and the approval of the industrial commission.

Revision of benefits.—The industrial commission may review an award on its own motion before a judicial determination, or at any time on the application of a party in interest on the ground of a change in condition. The employee must submit himself to a medical examination at reasonable times and places, so long as he claims compensation.

Insurance.—Every employer coming under the act must insure in a stock or mutual company, or in a State fund, or furnish satisfactory proof of financial ability to make direct payment.

Security of payments.—Claims are not assignable, and are exempt from claims of creditors; payments have the same preference as wage debts. Notice to the employer is notice to the insurer, and policies must inure directly to the benefit of the person entitled to compensation.

Settlement of disputes.—Disputes are settled by the industrial commission, subject to limited appeal to courts.

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WASHINGTON.

Date of enactment.—March 14, 1911; in effect October 1, 1911; amended, chapters 138, acts of 1913; 188, acts of 1915; 28, 120, acts of 1917.

Injuries compensated.—Injuries causing disability for more than eight days, or death, except injuries brought about intentionally.

Industries covered.—All extrahazardous employment, including work in mills, factories, and workshops where machinery is used, blast furnaces, mines, quarries, and wharves; engineering works; logging, lumbering, and shipbuilding; building trades; public utilities; State, county, and municipal undertakings involving extrahazardous work.

Persons compensated.—Private employment: All employees in industries covered by the act; any working employer or salaried employee on the pay roll at a rate not greater than the average named in such pay roll. Public employment: All employees in industries covered by the act.

Burden of payment.—The entire burden rests upon the employer, except as to the medical aid fund, to which the employee contributes one-half; or an approved relief fund may be maintained by joint action.

Compensation for death:

(*a*) Expenses of burial not to exceed $75.

(*b*) To widow or invalid widower, a monthly payment of $20; to each child under 16, $5 per month, the total not to exceed $35 per month.

(*c*) If no parent survives, a monthly payment of $10 to each child under 16 years of age, the total not to exceed $35 per month.

(*d*) To other dependents, if none of the above survive, a monthly payment to each, during dependency, equal to 50 per cent of the average amount previously contributed to the dependent, the total not to exceed $20 per month.

(*e*) To the parent or parents of an unmarried minor a monthly payment of $20 until the time he would have been 21. In case of dependence, payments to parents of minors are governed by (*d*).

Payments to a widow or widower continue until death or remarriage, and to a child until reaching the age of 16 years. If a widow remarries, she receives a lump sum of $240.

Compensation for disability:

(*a*) Proper medical, etc., services and care during the period of disability, if temporary; if permanent, until awards are made.

(*b*) For permanent total disability: (1) If unmarried, $20 per month; (2) if wife or invalid husband, but no child, $25 a month; if husband is not an invalid, $15; (3) if married, or a widow or widower with child or children under 16 years, $5 a month additional for each child, the total not to exceed $35; if constant attendance is required, $20 per month additional.

(*c*) For temporary total disability, payments as for permanent total disability during disability, increased by 50 per cent for first six months, but in no case to exceed 60 per cent of monthly wages.

(*d*) For temporary partial disability, the payment as for total disability continues in proportion to the loss of earning power, provided this shall exceed 5 per cent.

(*e*) For specified permanent partial disabilities, lump sums ranging from $500 to $2,000, in lieu of other payments, other disabilities to be compensated proportionately; parents of an injured minor receive in addition 10 per cent of the award to such minor.

No benefits are to be paid for the first 8 days unless the disability continues for more than 30 days.

Monthly payments may be converted into a lump-sum payment, not over $4,000, in case of death or permanent total disability.

Revision of benefits.—Revision may be had upon application of the beneficiary or upon the motion of the department.

Insurance.—Insurance is required in a State accident fund.

Security of payments.—Accident fund under State control.

Settlement of disputes.—By industrial insurance department, whose decisions are subject to review by the superior court, from which appeal lies as in other civil cases.

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WEST VIRGINIA.

Date of enactment.—February 22, 1913; in effect October 1, 1913; amended, February 20 and May 21, 1915.

Injuries compensated.—All personal injuries not the result of willful misconduct or intoxication of the injured employee, or self-inflicted, causing incapacity for more than one week, or death.

Industries covered.—All except domestic or agricultural labor, if the employer becomes a member of the State insurance fund.

Persons compensated.—Private employment: All employees in industries covered, including aliens, except persons casually employed, and the officers of corporations. Public employment: No provision.

Burden of payment.—Employer, 90 per cent; employees, 10 per cent.

Compensation for death:

(*a*) Reasonable funeral expenses, not to exceed $75.

(*b*) To the widow or invalid widower, $20 per month and $5 per month additional for each child under the age of legal employment, the total not to exceed $35 per month.

(*c*) To orphan child or children, $10 each per month until the age of 15, total not to exceed $30 per month.

(*d*) To other persons wholly dependent, if no widow, invalid widower, or child under the age of legal employment is left, 50 per cent of the average monthly support received from the deceased during the preceding year, not exceeding $20 per month, for six years.

(*e*) If the deceased was a single minor, to a dependent parent, 50 per cent of the earnings, not to exceed $6 per week, until the time when he would have become 21.

(*f*) If only partial dependents survive, a compensation computed as in (*d*), with the same maximum.

Payments to a widow or widower cease on remarriage, and to children on reaching the age of 15 years. If widow or invalid widower remarry within two years of death of employee, he or she is to be paid 20 per cent of balance of 10 years' benefits.

Compensation for disability:

(*a*) Medical, nurse, and hospital services, not exceeding $150 ($300 in special cases).

(*b*) For temporary partial disability, during such disability, 50 per cent of loss of his earning capacity, not more than $10 per week nor exceeding 26 weeks, except that for certain ununited fractures, etc., the period may be 52 weeks.

(*c*) For permanent partial disability, 50 per cent of wages for periods varying with degree of disability (from 10 to 70 per cent), periods ranging from 30 to 210 weeks; from 70 to 85 per cent disability, 40 per cent of wages for life.

(*d*) For permanent total disability (85 per cent or over), 50 per cent of the average weekly wages, during life.

Lump-sum payments may be substituted for periodic payments in case of either injury or death. Payments under (*c*) and (*d*), $4 minimum, $8 maximum.

Revision of benefits.—Awards may be modified at any time.

Insurance.—Insurance is effected through a State fund under the control of the compensation commissioner, or employers of approved ability may carry own risks, giving bond for performance of requirements not less than those of the law, without contributions from their employees.

Security of payments.—Payments may be made only to beneficiaries, and are exempt from claims of creditors or attachment or execution.

Settlement of disputes.—Disputes are settled by the commissioner; limited appeal to the supreme court.

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WISCONSIN.

Date of enactment.—May 3, 1911; in effect same date; amended, chapters 599, 707, 772, acts of 1913; 121, 241, 316, 369, 378, 462, acts of 1915; 624, 637, acts of 1917.

Injuries compensated.—Personal injury by accident causing disability of at least one week, or death, while performing service growing out of and incidental to the employment, not intentionally self-inflicted.

Industries covered.—All, if the employer elects; election presumed where there are three or more employees, except as to agriculture and railroads. Compulsory as to the State and its municipalities.

Persons compensated.—Private employment: All employees except those not employed in the usual trade, business, or occupation of the employer, including aliens, in the absence of contrary election. Public employment: All employees of the State or its political subdivisions, officials excepted.

Burden of payment.—Entire cost rests upon the employer.

Compensation for death:

(*a*) The reasonable expense of burial, not exceeding $100.

(*b*) To persons wholly dependent, a sum equal to four years' earnings, but which when added to any prior compensation for permanent total disability shall not exceed six years' earnings.

(*c*) If only partial dependents survive, a sum not to exceed four times the amount provided for their support during the preceding year.

All payments are to be made in weekly installments equal to 65 per cent of the average weekly earnings.

Dependence of children ceases at 18, unless physically or mentally incapacitated.

Compensation for disability:

(*a*) Medical, surgical, and hospital treatment for 90 days, and for such additional time as will in the judgment of the industrial commission lessen the period of compensation; artificial members are also to be supplied.

(*b*) For total disability, 65 per cent of the average weekly earnings during such disability.

(*c*) For partial disability, 65 per cent of loss of earning power.

(*d*) For certain specified injuries (mutilations, etc.), a sum equal to 65 per cent of average weekly wages for fixed periods, ranging from 6 to 320 weeks, in lieu of other payments.

(*e*) For serious permanent disfigurement, a lump sum may be allowed, not exceeding $750.

Payments begin with the eighth day, but if disability continues for more than 28 days, payment is to be made for the first 7 days.

In case of temporary or partial disability the aggregate compensation for a single injury shall not exceed four years' earnings; for permanent disability payments are limited to periods of from 9 to 15 years, according to the age of the injured person.

Lump-sum payments may be substituted at any time after six months from the date of injury.

Revision of benefits.—The commission may modify or change its order or award within 10 days if a mistake is discovered; or a review by the court may be had on appeal within 20 days. The commission may call for a medical examination at any time it deems necessary.

Insurance.—Insurance in approved companies is required unless the employer gives proof of financial ability; but the liability of the employer may not be reduced by such insurance.

Security of payments.—Claims for compensation are given the same preference as claims for labor, and are nonassignable and exempt from attachment or execution. The industrial commission may require security for payments of awards running six months or more.

Settlement of disputes.—Disputes are settled by the industrial commission, subject to a limited review by the courts.

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WYOMING.

Date of enactment.—February 27, 1915; in effect April 1, 1915; amended, chapter 69, acts of 1917.

Injuries compensated.—Personal injury causing disability for more than 10 days, or death, as a result of employment and not due to the culpable negligence of the injured employee or to the willful act of a third person due to reasons personal to such employee or because of his employment.

Industries covered.—Extrahazardous (enumerated list), in which three or more workmen are employed, interstate railroads excepted; public employments and use of explosives and work 10 or more feet above ground included, without reference to number of employees.

Persons compensated.—Private employment: All employees in industries covered. Public employment: All employees in classes of employment designated.

Burden of payment.—All on employer.

Compensation for death:

(*a*) $50 for funeral expenses, unless other arrangements exist under agreement.

(*b*) Lump-sum payments of $1,200 to widow or invalid widower, and additional sum, equal to $60 per year, until the age of 16 is reached for each child under the age of 16, the total for children not to exceed one and one-half times the payment to the surviving spouse. If there are dependent parents and no spouse and no child under 16, a sum equal to 50 per cent of one year's contribution, not exceeding $500.

Payments to nonresident alien beneficiaries are limited to 33⅓ per cent of the amounts above provided, and only the widow and children under 16 years of age are considered.

Compensation for disability:

(*a*) For permanent total disability, lump sum of $1,400 if single, $1,600 if wife or invalid husband, and a sum equal to $60 per year for each child under 16, until age of 16 is reached, the total for children not to exceed one and one-half times the sum allowed the injured workman.

(*b*) For temporary total disability, $18 per month if single, $24 if married, and $5 monthly for each child under 16, the total monthly payment not to exceed $40, and the aggregate not to exceed the amount payable if the disability were permanent.

(*c*) For permanent partial disability, fixed lump sums for specified injuries in lieu of other payments; others in proportion.

No payments are made for the first 10 days unless disability continues for more than 30 days, when they date from the injury.

No provision is made for medical or surgical aid; all payments are lump sums, except for temporary total disability.

Revision of benefits.—No provision.

Insurance.—Insurance in State fund required.

Security of payments.—Insurance under State control; payments not assignable or subject to execution, attachment, etc.

Settlement of disputes.—Disputes are settled by the district courts of the counties, with appeal to the supreme court of the State.

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UNITED STATES—CIVIL EMPLOYEES.

Date of enactment.—September 7, 1916; in effect same date.

Injuries compensated.—Personal injuries sustained while in the performance of duty, not due to intoxication, willful misconduct, or intention to bring about injury, causing death, or disability for more than three days.

Industries covered.—All civilian employments of the United States Government and the Panama Railroad Co.

Persons compensated.—All civil employees of the United States and of the Panama Railroad Co.

Burden of payment.—All on the employer.

Compensation for death:

(*a*) $100 burial expenses, and transportation of body of resident of the United States dying away from home, if relatives desire it.

(*b*) To widow or dependent widower alone, 35 per cent of the monthly wages of the deceased, with 10 per cent additional for each child, the total not to exceed 66⅔ per cent.

(*c*) If no parent survives, 25 per cent to one child, and 10 per cent additional for each additional child, the total not to exceed 66⅔ per cent.

(*d*) To dependent parents of deceased, 25 per cent if one, 40 per cent if both are dependent; if there is a widow, widower, or child, the parents' rights are subordinate, and the total awards may not exceed 66⅔ per cent.

(*e*) Other dependent relatives receive benefits in smaller amounts subject to the claims of the foregoing relatives.

Payments to a widow or dependent widower terminate on their death or remarriage; to a child on marriage, reaching the age of 18, or if over 18 and incapable of self-support, on becoming capable of self-support; payments to other beneficiaries are subject to the above limitations, but may in no case continue beyond eight years.

All payments are subject to a maximum of $66.67 per month, and to a minimum of $33.33, unless the actual earnings are less than that amount, when the compensation shall equal the earnings.

Compensation for disability:

(*a*) Reasonable medical, surgical, and hospital services and supplies.

(*b*) For total disability, 66⅔ per cent of the monthly pay during the continuance of such disability.

(*c*) For partial disability, 66⅔ per cent of the difference in wage-earning capacity due to such disability.

Payments are subject to the same maximum and minimum amounts as in case of death.

Payments on account of death or permanent disability may be commuted to lump sum.

Revision of benefits.—Awards may be reviewed at any time, either on request or by the commission on its own motion.

Insurance.—No provision.

Security of payments.—Compensation is paid from special compensation fund.

Settlement of disputes.—The United States Employees' Compensation Commission decides all questions arising under the act.

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UNITED STATES—WAR RISK.

Date of enactment.—September 2, 1914; in effect same date; amended, June 12, 1917; October 6, 1917.

Injuries compensated: (1) In the case of masters, officers, and crews of merchant vessels, death or personal injury (including disease) by the risks of war, and detention following capture by the enemy.

(2) In the case of officers and enlisted men in the Army and Navy, and members of the Army Nurse Corps (female) and Navy Nurse Corps (female), death or disability from personal injury or disease contracted in the line of duty, but not for injury or disease due to the willful misconduct of the victim.

Industries covered.—(1) Employment on American merchant vessels. (2) Military and naval service, including nursing by the Army Nurse Corps (female) and Navy Nurse Corps (female).

Persons compensated.—(1) Masters, officers, and crews of merchant vessels. (2) Officers, enlisted men, and members of services named.

Burden of payment.—(1) On owners of vessels. (2) On Government.

Compensation for death:

(1) In merchant marine, one year's earnings, $1,500 minimum, $5,000 maximum.

(2) In Army and Navy:

(*a*) Burial expenses, not exceeding $100.

(*b*) For widow alone, $25 per month; $10 additional for one child, $12.50 for two, and $5 each for third and fourth.

(*c*) For child alone, $20; for 2 children, $30; for 3, $40; and $5 each for fourth and fifth.

(*d*) For a widowed mother, $20, or such part thereof as will not exceed an aggregate of $75 taken with (*b*) or (*c*).

Payments to a widow or widowed mother continue until death or remarriage, and to a child until the age of 18, or, if incapable of self-support, during such incapacity.

Compensation for disability:

(1) In merchant marine, for permanent total disability, same as for death; various percentages of the same in cases of permanent partial disability. Other losses and disabilities may also be provided for by the Bureau of War-Risk Insurance.

(2) In Army and Navy:

(*a*) Reasonable medical and surgical aid, hospital services, and artificial limbs and other appliances as may be needed.

(*b*) For total disability, if single, $30 monthly; if wife alone, $45; $10 additional for each child, the maximum not to exceed $75. If no wife, but one child, $40, with $10 additional for the second child and $10 for the third. If a dependent widowed mother, $10 in addition to the above amounts. If constant attendance is required, an additional sum, not over $20 per month, may be allowed; or if permanently helpless and bedridden, $100 is to be paid in lieu of all other compensation.

(*c*) For partial disability, if not less than 10 per cent, a proportionate percentage of the amounts payable for total disability. A schedule of ratings is to be formulated by the bureau.

Rehabilitation, reeducation, and vocational training are to be provided; refusal to accept causes suspension of benefits.

In the merchant marine, earnings continue during detention following capture by the enemy, to be determined substantially as provided for in case of death.

Revision of benefits.—In Army and Navy, awards receivable at any time.

Insurance.—In the merchant marine, owners are to insure, and in default the Secretary of the Treasury is to act at their expense.

Security of payments.—(1) In the merchant marine, insurance is to be with the Bureau of War-Risk Insurance, or on terms satisfactory to the Secretary of the Treasury. (2) In Army and Navy, payments from special fund.

Settlement of disputes.—Act is administered by the Bureau of War-Risk Insurance, under the Secretary of the Treasury.

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CONSTITUTIONALITY AND CONSTRUCTION OF STATUTES.[1]

DUE PROCESS OF LAW.

The New York statute, passed upon by the Supreme Court, is a compulsory law, embodying the fundamental principles of legislation of its type. In the case considered (New York Central R. Co. *v.* White, 243 U. S. 188; 37 Sup. Ct. 247), the contention was made that by depriving the employer of his common-law defenses, and eliminating the rule as to negligence, there was a violation of the constitutional requirement as to due process of law. This contention was rejected by the court, which held that "negligence is merely the disregard of some duty imposed by law, and the nature and extent of the duty may be modified by legislation, with corresponding change in the test of negligence." The decision in the Washington case (Mountain Timber Co. *v.* Washington, 243 U. S. 219; 37 Sup. Ct. 260) involved another factor, i. e., the imposition of a universal tax on employers for the maintenance of an insurance fund, and the question was raised whether this tax was so excessive as to constitute deprivation of liberty or property without due process of law. The court held that unless there was undue compensation paid there could not be an excessive burden on the industry—this on the assumption that a reasonable compensation for industrial accidents was a proper burden on the industry. Since the industry as a whole is subject to hazards, it was held not unreasonable that the industry as a whole, and not merely such establishments as might furnish the occasion for individual accidents, should bear the burden; and, further, that it lies within the power of the State to declare that every employer engaging in business should make stated and fairly apportioned contributions for the maintenance of a public fund for compensating injuries irrespective of the plant in which the injury might be received. This power was said to go so far as to make it proper for

[1] This material is supplemental to the discussion under this head appearing in Bulletin No. 203, pp. 165–296, and presents the principal court decisions and a number of significant rulings of State boards or commissions, which have come to hand since the date of the earlier publication. Chief among these are Supreme Court decisions upholding the laws of Iowa, New York, and Washington, and excluding interstate commerce from State coverage. The points considered will be presented for the most part under the same heads as the discussion in Bulletin No. 203.

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the State, in the interest of the safety and welfare of its people, to prohibit any industry found to involve so great a human wastage as to leave no fair profit beyond it.

The chief ground on which the subordinate court held the Hawaiian statute unconstitutional was its alleged lack of due process of law, the point arising out of the question of the giving of notice of hearings by the committees of arbitration to be appointed for the settlement of disputes. These committees are to be nominated by the parties to the disputes themselves, the privilege of review being given. The presumption that notice may be given is nowhere controverted. The court held, however, that the act must specifically require the giving of notice, failing which, it must be declared unconstitutional. (Carroll *v.* Marconi Wireless Telegraph Co., 1917.) When the Supreme Court of the Territory had the question before it, it ruled that the finding that there must be a positive provision for notice was erroneous, and the act was upheld in its entirety. (Anderson *v.* Hawaii Dredging Co. (Ltd.), 24 Hawaii Sup. Ct. Rep. 97.)

JURY TRIAL.

The mode of determining disputes by a board of arbitrators, or by reference to the State commission, thus doing away with trial by jury, was offered as an objection to the constitutionality of the law of Maryland (Solvuca *v.* Ryan & Reilly Co., 101 Atl. 710). The court held that the constitution of the State was not violated in allowing awards without jury trial, since the award may be reviewed "by a proceeding in the nature of an appeal," initiated in the court having jurisdiction in the locality, and since, upon the hearing of such an appeal, any question of fact involved may be submitted to a jury.

The Supreme Court, in passing upon this contention in the case of New York Central R. Co. *v.* White, stated that "The denial of a trial by jury is not inconsistent with 'due process;" no question was made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard required by the fourteenth amendment. The Washington law entirely withdraws from private controversy the question of relief for accidental injuries in industrial employments, substituting therefor a remedy by compensation to the exclusion of every other remedy, except as otherwise provided in the act itself. As to this provision the seventh amendment to the Constitution of the United States, preserving the right of trial by jury, was invoked by the plaintiffs. On this point the court said, "It is conceded that this has no reference to proceedings in the State courts (citing Minneapolis & St. Louis R. Co. *v.* Bombolis, 241 U. S. 211, 36 Sup. Ct. 595); but it is urged that the

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question is material for the reason that if the act be constitutional it may be followed in the Federal courts in cases that are within its provisions. So far as private rights of action are preserved, this is no doubt true; but with respect to those we find nothing in the act that excludes a trial by jury. As between employee and employer, the act abolishes all right of recovery in ordinary cases, and therefore leaves nothing to be tried by jury." The Iowa statute is elective, instead of compulsory, and the Supreme Court, in addition to saying that jury trial is not one of the rights secured by the fourteenth amendment, held election to be a waiver of the right, though the State was at liberty either to abolish or limit such right if it saw fit so to do. (Hawkins *v.* Bleakly, 243 U. S. 210, 37 Sup. Ct. 255.)

An objection found by the circuit court that declared the law of Hawaii unconstitutional was that the law deprived one of the right of trial by jury, which was said to be guaranteed to the citizens of Hawaii by a specific provision enacted by the Federal Government, which "can not be ignored or set aside by the Territorial legislature." It was held not to be sufficient that there might be an appeal to the circuit court, with a trial by jury, following the award, since the matters that might be carried up on such an appeal were limited, and the jury would have no authority to determine the amount of damages or the compensation to be awarded. The decisions of the Supreme Court of the United States were noted, but it was held that local constitutional differences made it impossible for these decisions to be followed. The Supreme Court of the Territory ruled, however, that the provision guaranteeing jury trials related only to actions at common law and that there was no necessity for a jury in compensation proceedings, where the benefits are fixed by the statute, and upheld the law.

LIABILITY WITHOUT FAULT.

The establishment of the principle of liability without fault was strongly criticized by the appellant railroad company in the New York case before the Supreme Court (New York Central R. Co. *v.* White), due, presumably, to the fact that the earlier New York statute had been declared unconstitutional by the court of appeals of the State largely, and perhaps chiefly, on the ground that it charged the employer with liability without fault. (Ives *v.* South Buffalo R. Co., 201 N. Y. 271, 94 N. E. 431.) It was held that the establishment of a compulsory system relating to hazardous employments was not an unreasonable or arbitrary application of legal principles, since the undertaking is one in which the workman is engaged by mutual consent of employer and employee in an operation intended to be advantageous to both. Considering the probability of physical injury or

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loss of life through industrial accident, entailing the loss of self-support, and in fatal cases depriving widow and orphans of their natural protection, it was held to be but reasonable on grounds of natural justice that there should be a contribution in reasonable amount, according to a reasonable and definite scale, by way of compensation for the loss of earning power—"that which stands to the employee as capital in trade"—incurred in the common enterprise, and that without regard to the question of negligence or fault. As an offset to this responsibility, it is pointed out that the employer is relieved from a liability for damages rated by common-law standards, and payable only in cases where fault is proved. "Nor can it be deemed arbitrary and unreasonable, from the standpoint of the employee's interest, to supplant a system under which he assumed the entire risk of injury in ordinary cases, and in others had a right to recover an amount more or less speculative upon proving facts of negligence that often were difficult to prove, and substitute a system under which, in all ordinary cases of accidental injury, he is sure of a definite and easily ascertained compensation, not being obliged to assume the entire loss in any case, but in all cases assuming any loss beyond a prescribed scale."

While the loss is primarily laid upon the employer, it "is a loss arising out of the business, and, however it may be charged up, is an expense of the operation, as truly as the cost of repairing broken machinery or any other expense that ordinarily is paid by the employer."

It was added "that liability without fault was not a novelty in the law. The common-law liability of the carrier, of the innkeeper, of him who employed fire or other dangerous agency or harbored a mischievous animal, was not dependent altogether upon questions of fault or negligence. Statutes imposing liability without fault have been sustained." (Cases cited.)

While the question was apparently not raised in this specific form in the consideration of the Washington statute, the point was clearly covered in the ruling that the levying of a tax on all employers in an industry, regardless of the occurrence or nonoccurrence of accidents in their particular establishments during any given period, was neither arbitrary nor unreasonable.

ABROGATION OF EMPLOYERS' DEFENSES.

Despite the uniform rejection by the courts of the contention that an abrogation of the common-law defenses is unconstitutional, the point was raised in the cases before the Supreme Court already cited. In discussing the New York case the defenses of fellow service, assumption of risks, and contributory negligence were taken up sepa-

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rately, and briefly discussed, the conclusion being that "It is not necessary to extend the discussion. This court has repeatedly upheld the authority of the States to establish by legislation departures from the fellow-servant rule and other common-law rules affecting the employers' liability for personal injuries to their employees." (Cases cited.) This position is not to be interpreted as warranting a sudden setting aside of all common-law rules respecting the employer's liability without providing a reasonably just substitute. "The statute under consideration sets aside one body of rules only to establish another system in its place. * * * The act evidently is intended as a just settlement of a difficult problem, affecting one of the most important of social relations, and it is to be judged in its entirety."

The Washington law, of course, eliminates the entire subject of defenses by eliminating the right of action for damages; while in the Iowa law a qualified right remains, dependent upon the attitude of employer and employee, respectively, as accepting or rejecting the act. When the employer rejects, under the Iowa statute, he is deprived of these defenses whether the employee has accepted or rejected, whereas if he accepts the law, and the employee alone rejects, all defenses are retained by the employer in any suit brought. "We can not say that there is here an arbitrary classification within the inhibition of the 'equal protection' clause of the fourteenth amendment. All employers are treated alike, and so are all employees; and if there be some difference between employer and employee respecting the inducements that are held out for accepting the compensation features of the act, it goes no further than to say that, if neither party is willing to accept them, the employer's liability shall not be subject to either of the several defenses referred to. As already shown, the abolition of such defenses is within the power of the State, and the legislation can not be condemned when that power has been qualifiedly exercised, without unreasonable discrimination."

CLASSIFICATION.

The New York statute applies to an extensive list of employments classed as hazardous, and some objection was raised, though not pressed, that in excluding farm laborers and domestic servants from the scheme, there was a violation of the "equal protection" clause of the fourteenth amendment. "But, manifestly, this can not be judicially declared to be an arbitrary classification, since it may reasonably be considered that the risks inherent in these occupations are exceptionally patent, simple, and familiar."

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The Washington statute resembles that of New York in the matter of its declared scope, using, however, the term "extrahazardous," but permits joint election of employers and employees in undertakings not so classed. Classifications of the included industries are also provided for on the basis of the hazard of the occupation, for the purpose of distributing the burden of compensation in proportion to relative hazard. The Supreme Court cited its opinion in the New York case as presenting grounds sufficient to support the view that such laws are not to be regarded as arbitrary and unreasonable from the standpoint of natural justice, and that the State of Washington was warranted "in concluding that the matter of compensation for accidental injuries with resulting loss of life or earning capacity of men employed in hazardous occupations is of sufficient public moment to justify making the entire matter of compensation a public concern, to be administered through State agencies." Industrial occupations that frequently and inevitably produce personal injuries may be regulated by the State, and the human losses charged against the industry either directly, as under the New York law, or by publicly administering the compensation through a reasonable system of occupational taxes as in the Washington law; and the act can not be deemed oppressive to any class of occupation so long as the scale of compensation is reasonable.

In the hearing on the constitutionality of the Hawaiian law it was objected that the rulings of the Supreme Court of the United States could not be taken as precedents, inasmuch as the law of the Territory is neither limited to hazardous employments, as in New York, nor are benefits payable from a common fund, as in Washington. The court held, however, that laws making classifications of industries are sustainable, not on account of such classifications, but in spite of them; and that the constitutionality of the statute was not dependent upon the system adopted for the payment of benefits.

Not unlike the foregoing were the principal objections raised to the constitutionality of the law of Alaska (Johnston *v.* Kennecott Copper Corporation (C. C. A., 1918), 248 Fed. 407), in which it was claimed that an improper classification had been attempted in the enactment of a law applicable only to mining and related operations, and, further, only to establishments employing five or more persons. The act was held to apply in a uniform manner to all persons similarly situated, and to be a proper exercise of the legislative discretion. Another objection was that the act provides no system of insurance and no provision for the payment of compensation. The court pointed out that there were certain regulations for the security of payments, amounting to the substitution of one system or set of rules for the one set aside by the act, and quoted from the decision of the Supreme Court in its consideration of the New

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York law; and following this and other decisions of the Supreme Court sustaining compensation legislation, the Alaska statute was upheld throughout.

EXERCISE OF JUDICIAL POWERS.

The status of the administrative bodies provided for by the laws under consideration was not considered, except in a general way, by the Supreme Court in the cases noted above, though their authority was, of course, assumed in so far as the validity of awards made without jury trial was upheld. The court of last resort of Massachusetts, however, defined the industrial accident board of that State as being not a court of general or limited common-law jurisdiction, but solely an administrative tribunal, created to administer the compensation law in aid and with the assistance of the superior courts. The essential prerequisites of the act as prescribed by itself must be observed, and the authority of the board can not be enlarged or diminished by express consent or waived by acts of estoppel. (In re Levangie, 117 N. E. 200.)

FREEDOM OF CONTRACT.

Considerable stress was laid by the appellants in the White case upon the effect of the New York law in depriving the parties to the labor contract of their constitutional rights of freedom in the making of contracts to render service or to employ labor, citing declarations made by the Supreme Court in recent cases (Coppage *v.* Kansas, 236 U. S. 1, 35 Sup. Ct. 240; Truax *v.* Raich, 239 U. S. 233, 36 Sup. Ct. 7) in which certain laws were held unconstitutional as interfering with the right of personal liberty involved in the making of contracts for employment. As to this the court said "it is not our purpose to qualify or weaken either of these declarations in the least, and we recognize that the legislation under review does measurably limit the freedom of employer and employee to agree respecting the terms of employment, and that it can not be supported except on the ground that it is a reasonable exercise of the police power of the State. In our opinion it is fairly supportable on that ground. And for this reason—the subject-matter in respect of which freedom of contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare." The authority of the State to prohibit contracts made in derogation of a lawfully established policy respecting compensation for accidental death or disabling personal injury was said to be clear. It was pointed out that no safety provisions, nor regulations directly tending to protect life and health,

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appear in the New York statute. "But the interest of the public is not confined to these. One of the grounds of its concern with the continued life and earning power of the individual is its interest in the prevention of pauperism, with its concomitants of vice and crime, and, in our opinion, laws regulating the responsibility of employers for the injury or death of employees arising out of the employment bear so close a relation to the protection of the lives and safety of those concerned that they properly may be regarded as coming within the category of police regulations."

Objections were also raised to the Washington statute as coming between the employer and the employee in the matter of the labor contract. The court held, however, that the police power of the State carries with it a wide range of judgment and discretion as to the matters that are of sufficiently general importance to be brought under State control and administration. The public welfare is sufficient warrant for the exercise of such powers as are made use of in the compensation law to regulate the conditions of contract, no less with reference to those who are disabled or who are dependents of those fatally injured in the industrial occupations necessary to the development of the resources of the State than for the support by a system of pensions of disabled soldiers and the widows and dependents of those killed in war. The fact that the compensation system is not confined to those who are left without means of support is not an objection to its validity, since to make such limitations would be to discriminate against the thrifty in favor of the improvident.

The New York statute requires a guarantee of the payment of compensation in one of three ways: By State insurance, by insurance with an authorized insurance corporation or association, or by a deposit of securities. Assuming that the power to require a deposit of securities will be exercised by the commission with due discretion, these provisions were held by the court to lie within the power of the State in aid of the effectual working of the system of compulsory compensation contemplated by the act.

PARTICULAR PROVISIONS OF THE LAWS.

The questions discussed under the foregoing heads are much broader in their implications than those remaining for consideration. The undefinable but often used term "police power" may be said to cover practically all that has been noted under the various heads. Assuming the validity of these different forms of its exercise, various details of the laws may be considered in the light of some of the later decisions and rulings that have come to hand.

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INJURIES COMPENSATED.

Accidents.—While most of the State courts and boards continue to emphasize the idea of accident as a definite occurrence in point of time and of effect, it is noteworthy that the Legislatures of California and Hawaii specifically include occupational diseases, while courts of Massachusetts and the United States Employees Compensation Commission construe the acts administered by them as applicable to injuries of this class.

Recent decisions on the subject of sunstroke or heatstroke are in line with those noted in Bulletin No. 203, the rule being that where these effects arise from labor conditions they are compensable, the Pennsylvania board ruling that such physical changes are produced in the tissues of the body as to be personal violence to its structure. The Supreme Court of Minnesota likewise (State ex rel. Rau *v.* District Court of Ramsey County, 164 N. W. 916) awarded compensation in a case of death due to sunstroke as for "a violent injury produced by an external power," where a workman was employed at street labor, exposed to the direct rays of the sun, in an atmosphere rendered excessively humid on account of the sand in the street being wet. The Supreme Court of Nebraska also allowed compensation where death followed a heatstroke, the employee in question being engaged in cleaning and oiling motors in a building of sheet iron with tarred roofing and insufficient ventilation, while the air was heavy with dust and particles of matter produced in the manufacture of mattresses, etc. "A stronger man might have lived, but it is enough that the industry brought about this man's death." The matter of violence was disregarded, the unexpected quality of the event being held sufficient to classify it as an accident within the meaning of the act. (Young *v.* Western Furniture & Mfv. Co., 164 N. W. 712.) The same principle is applied by the Supreme Court of Minnesota in a case in which a workman's thumb was frozen while he was cutting and handling timber in the snow. It was held on authority that freezing is a personal injury within the meaning of compensation acts, and is an accident in so far as it is an unexpected and unforeseen event, producing at the time injury to the physical structure of the body. Whether it also meets the requirement of happening "suddenly and violently" was said to be a more difficult question, but the court, one justice dissenting, concluded "that a fair construction of the statutory definition does not exclude freezing, and we hold that it is a personal injury caused by accident within the meaning of the act." (State ex rel. Virginia & Rainy Lake Co. *v.* District Court of St. Louis County, 164 N. W. 585). Another case before the same court turned more directly upon the question of whether or not the injury arose out of the employment,

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the circumstances being the employment of a janitor who was working both at keeping up the fires in a building and cleaning off the sidewalk, the weather being very cold. The two duties alternated, and the employee could divide his time as he chose. The court below found that the injury was sustained in the course of his employment, and arose out of it, but decided that the freezing was not an accident. Subsequently the supreme court made the ruling as to accidental injury noted above, and on the appeal in this case held to that ruling, reversing the court below in this respect, but affirming that the injury arose out of the employment on account of the nature of the work in which the employee was engaged, thus clearing the way for an award in the injured man's favor. (State ex rel. Nelson *v.* District Court of Ramsey Co., 164 N. W. 917.) Somewhat analogous to the foregoing was the case of a workman employed for several hours flushing hot pulp from the cellar or basement of a paper mill by the use of hot water, and who, becoming wet with steam and perspiration, suffered from chill when going out to dinner, nephritis and disability resulting; the disease in this case was held by the Appellate Court of Indiana to be an injury by accident within the meaning of the law of that State. (United Paperboard Co. *v.* Lewis, 117 N. E. 276.)

The Supreme Court of Minnesota took a diverse view from that adopted by the Wisconsin courts in Vennen *v.* New Dells Lumber Co. (see Bul. 203, p. 206), in a case involving typhoid fever infection. The cases are identical in that the employer's responsibility was claimed to be due to the quality of the drinking water supplied by him for his employees; but while the Wisconsin court awarded benefits, that of Minnesota decided that under the definition of an accident appearing in the law of that State, i. e., "an unexpected or unforseen event, happening suddenly and violently, with or without human fault, and producing at the time injury to the physical structure of the body," the happening in question could not be construed as an accident. The period required for the development of the infection afforded the chief ground for holding that the definition excluded the case from compensation. (State ex rel. Faribault Woolen Mills Co. *v.* District Court of Rice County, 164 N. W. 810.) Somewhat similar to the foregoing was the position taken by a commissioner of the State of Connecticut, who denied compensation where the cumulative effect of an acid dip used for four days led to pus formation, the amputation of a finger at the second joint, and the partial loss of use of another finger, the refusal being based on the ground that the condition was "not due to an injury which can be located in point of time and place."

On like grounds the Supreme Court of Michigan denied the claim for compensation in a case where there was an infection from an

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untraced source, which might have gained access to the system through cracks in the skin of the hands due to the nature of the employment, the court saying that there was no sufficient evidence of an accident in the course of employment to sustain an award. (Jermer *v.* Imperial Furniture Co., 166 N. W. 943.) But where a tannery employee suffered an infection of the throat, due, as the board held, to inhaling dust from dry hides in a work place where the ventilation was poor, the same court upheld the award on the ground of an accidental contact with a septic germ or germs, taken up by the respiratory organs and thus carried into the system—said to be an unusual occurrence, but one shown by the evidence to be probable in the case at hand. (Dove *v.* Alpena Hide & Leather Co., 164 N. W. 253.) An award was also approved by this court where an undertaker's assistant died from a streptococcus infection after cleaning his employer's instruments after the embalming of the body of a person who had died of such an infection, the employee having apparently cut himself slightly while cleaning the instruments. (Bloess *v.* Dolph, 161 N. W. 885.)

Suffocation by the accidental inhalation of illuminating gas at a gas plant was also held to be a compensable injury under the Michigan law. (Holnagle *v.* Lansing Fuel & Gas Co., 166 N. W. 843.)

Occupational diseases.—The line of reasoning followed by the courts which rejected claims based on disability due to disease of any kind would lead also to the rejection of claims based on the so-called industrial or occupational diseases. Attention has already been called to the fact that there is apparent in legislation something of a tendency in favor of the inclusion of occupational diseases as entitled to consideration in a system undertaking to provide against the untoward consequences of industrial activities. The United States employees' compensation act authorizes compensation "for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty," excluding cases of willful misconduct, etc. The commission administering the law took the view that the term "personal injury" as used in the act covers "not only accidents as ordinarily defined, but also any bodily injury or disease due to the performance of duties and causing incapacity for work," citing as precedents the interpretation of the act of 1908 by the Solicitor of the Department of Labor (Bul. 203, pp. 198, 199), and of the Massachusetts Industrial Accident Board and Supreme Court. Compensation was allowed by this commission, in pursuance of this construction, in 23 cases of lead poisoning, 16 cases of dermatitis from fulminate of mercury, dermatitis from machine oil, rheumatism due to the dampness of the dirt floor on which the employee was compelled to stand, apoplexy due to overexertion in a position involving unusual strain, etc. A number of claims where

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similar diseases were under consideration were rejected on account of the failure to establish a causal connection.

Lead poisoning is so typically a disease of occupation that the attitude of a court or commission on a case of this malady is determinative of the construction of the local law on the entire subject; so that the ruling of the commissioner of industries of Vermont that lead poisoning is not compensable under the law of that State (Bennett case, 1918) must be taken as a guide for the interpretation of the law in that field. It was said that, though the injury arose out of and in the course of employment, it was not accidental, and therefore not within the act. The Superior Court of Rhode Island based its judgment somewhat differently, though with the same practical result, when it denied a claim for compensation for neuritis developed in the hand of a workman engaged in punching holes in rubber balls, subjecting his hand to great strain, and furthermore receiving a wrench by the accidental twisting of a ball in a specific instance, the claim being overruled simply on the ground that it was for an occupational disease, and was for that reason not within the act.

The law of California is not limited to injuries due to external, violent, or accidental means, so that loss of sight due to poisoning by wood alcohol used by a sign writer using an air brush was held to be compensable (Fidelity & Casualty Co. *v.* Industrial Commission, 171 Pac. 429); and the industrial commission of the State awarded benefits in the case of a traffic policeman who developed flat feet or broken arches as the result of constant standing on the hard pavement, as being an injury due to the nature of the employment.

As already intimated, the law of Massachusetts is construed to embrace occupational diseases, but the supreme court of the State reversed an award for neurosis caused by a bad posture of a cigarmaker while at his work, saying that nothing appeared to show a necessary connection between the work and the posture, so that the induced neurosis could not be regarded as an injury arising out of the employment. (In re Maggalet, 116 N. E. 972.)

The Pennsylvania law limits its benefits to injuries due to "violence to the physical structure of the body," and claims rejected under such definition are noted in Bulletin 203, page 201. The State board held, however, that "the involuntary inhalation of gas is an accidental injury," in an instance where the claimant was made sick from inhaling fumes caused by an explosion in the workroom, and compensation was allowed. (Baith case, 1917.)

Disfigurement.—While an accident may produce results falling short of actual physical disability, a resultant disfigurement may de-

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crease the economic opportunity of the injured man, and the laws of a number of States make provision for compensation in such cases. Under the Illinois law an award for disfigurement is permissible in cases in which no claim is made for permanent partial or total disability. In a case in which the injured man made no claim for disability, but did ask an award on account of disfigurement, it was held by the supreme court that no account should be taken, in determining the amount of the benefits to be awarded, of any other effects of the injury than those producing disfigurement. (Stubbs *v.* Industrial Board, 117 N. E. 419.)

An amendment of 1916 to the law of New York authorizes the industrial commission, in its discretion, to allow awards in cases of serious facial or head disfigurement, and fixes a maximum. The court of appeals of the State recently affirmed an award in behalf of a woman whose scalp and face were torn by the catching of her hair on a revolving shaft, saying that the amendment in question had so far modified the original basis of the law, which was to compensate for disability to work. There was no award for loss of earning power, that not being ascertainable at the time, and the question was held open. It was held that concurrent awards might be made, one for loss of earning power and one for the facial or head disfigurement, but that it should be clear that the latter did not include any allowance for the former; and as this appeared to have been safeguarded in the instant case, it was held that the award should stand. (Erickson *v.* Preuss, 119 N. E. 555.)

Accidental injury as proximate cause.—The cases that arise under this head are complicated by the fact that a prior existing condition or a subsequent intervening event appears to modify the normal consequences of the condition involved in the industry and the accidents that may result therefrom. Thus where a scaffold was properly constructed to secure the safety of workmen in normal conditions of health, the Supreme Court of Michigan held that one who fell in an epileptic fit, receiving fatal injuries, was not within the act, since the injury did not arise out of the employment, the illness being the proximate cause of death. (Van Gorder *v.* Packard Motor Car Co., 162 N. W. 107.) Some emphasis is given to the fact in the foregoing case that the employer was not aware of the liability of the employee to such fits, but in a case considered by the Supreme Court of California, involving practically identical circumstances, an award was denied without reference to the fact of ignorance or knowledge, simply on the ground that the injury arose from the fact that the injured man was an epileptic, and did not arise out of the employment. (Brooker *v.* Industrial Accident Commission, 168 Pac. 126.) A distinction is drawn between cases of this nature and cases where the injury

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"though apparently caused by the idiopathic condition of the employee, is due in part also to the overexertion of the employee in performing his work, or to the nature of the work or the appliances furnished to him with which to work, or to the lack of proper safeguards against the ordinary dangers of the place of work, the injury being sometimes greater because of his idiopathic condition."

In this connection may be noted a ruling of the Supreme Court of New York (Santacroce *v.* Sag Harbor Brick Works, 169 N. Y. Supp. 695), affirming an award in behalf of a workman who had previously been in good health, but who suffered at the time from "an attack of vertigo or some similar disorder" and fell from a height of 15 feet; it was here held that the dizziness, fall, and injury were all due to the place and nature of the employment.

Nothing, therefore, appears in the foregoing decisions to indicate any purpose of departing from the position that "the employer takes his employee subject to the physical conditions he is in at the time he enters the employment;" instead, they only draw a line between injuries that are merely aggravated in their consequences by reason of preexisting conditions and those which could in no wise be reasonably anticipated as a consequence of the employment in itself.

Subsequent happenings were involved in a case in which a man fractured his knee in October and was making normal recovery, when he slipped the following March, loosening the bone, and again fell in July while waiting to receive his crutches after getting out of a wagon and received injuries. The contention was raised that no compensation should be allowed for the prolonged disability resulting from these falls, but the Supreme Court of Michigan held that there was nothing to show willful misconduct, that the injured man was apparently doing nothing contrary to his doctor's orders, and that the infirmities from which he suffered were the consequences of his original injury, so that payment should be continued, even though, barring mishaps, recovery should have been complete at an earlier date. (Cook *v.* Hoertz & Son, 164 N. W. 464.)

A somewhat unusual distinction was drawn by the Superior Court of Rhode Island (Gross case, 1917), which held that an injury accelerating an existing disease was compensable only for the period of the disability estimated to be due to the injury, and made an award of six months' benefits where there was actually a fatal termination, when death might have been little if any delayed had there been no accident. (See Pintar case, etc., Bul. No. 203, p. 203.) On the other hand, the Supreme Court of Michigan sustained an award in the full amount for the loss of an eye, where the injured eye was, in fact, so defective before the accident as to be capable only of distinguishing light and seeing approaching objects. It was said that the law did not specify a normal eye as the basis of awards,

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though conceding that a mere sightless organ might be considered no eye at all. (Purchase *v.* Grand Rapids Refrigerator Co., 160 N. W. 391; see ruling of Connecticut commissioner, Bul. 203, p. 205.)

COVERAGE.

The question of coverage, or the exclusion or inclusion of designated groups of employment or occupation, is one that is disposed of quite differently in the different laws, as has been pointed out in the analysis and summary statements of provisions. Experience under the acts has tended to a broader inclusion by amendatory legislation in a number of cases, while on the other hand the difficulty attendant upon establishing different systems of relief in cases of the identical employment of railroad employees engaged in interstate and intrastate commerce operates to eliminate entirely employees engaged in the movement of trains from the scope of compensation acts. The cases under this head turned so largely on the specific wording of the provisions of the acts that they are of less general interest, but a few of them will be noted.

Domestic and farm labor.—The Appellate Court of Indiana rules that an employee engaged as a part of the crew of a thrashing machine which went about from farm to farm thrashing oats and wheat at a fixed price per bushel paid to the owner of the machine was not a farm laborer within the exemptions of the Indiana statute. The fact that the farmer himself rarely undertakes the work of thrashing, and that thrashing and milling are industrially distinguishable from farming operations, was held to sustain the view that such work should not be excluded from the operations of the law, even though the machine is moved about from farm to farm and operates on them. (In re Boyer, 117 N. E. 507.)

Hazardous employments.—The law of Illinois classes as hazardous the work of building, maintaining, repairing, etc., any structure. The supreme court of the State held window cleaning to be a work of maintenance within the meaning of the act, and sustained an award in favor of a claimant for the death of a workman employed by a window-cleaning company. (Chicago Cleaning Co. *v.* Industrial Board, 118 N. E. 989.)

It is of interest to note that the law of New York, the most important one using hazard as a basis, has practically abolished this test by making the law apply to all unenumerated undertakings in which four or more persons are employed, or to state the matter differently, fellow service is declared to be a basis of hazard, and no longer an employer's defense.

Casual employment.—As noted in Bulletin 203 in the case of hazardous employments, so in the matter of casual employments, certain absurdities in the laws as they have developed by experience have

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led to amendments enlarging the scope and clarifying the purpose of the acts. Of principal interest, perhaps, under this head, is the rectification of the conditions which arose under the New York statute as set forth in the case of Bargey v. Macaroni Co. (See Bul. 203, p. 215.) The impropriety of excluding from the benefits of the act a carpenter engaged in making alterations and repairs in a factory building, merely because his employer was not engaged in the business of erection and repair of buildings, was too obvious to remain without remedy. The law of the State was therefore amended in 1916 so as to include persons engaged in any of the hazardous occupations named in the act who are in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment within the act, eliminating the earlier provision that the employee must be himself at the time "engaged in a hazardous employment in the service of an employer carrying on or conducting the same," thus making it possible to compensate an employee in a hazardous occupation differing from that ordinarily engaged in by employees of the employer in his usual course of trade or business. A case practically identical with the Bargey case in its circumstances arose under the amended law, when a bricklayer employed by a lithographing and printing company to repair the walls of its plant, was injured. The fact that an amendment had been recommended by the industrial commission of the State so as to "cover employees called in to do construction and repair work as in the Bargey case," was referred to by the court in its opinion, and it was held that the injured man was entitled to benefits even though the work in which he was engaged was entirely different from the regular business of the establishment. The court below had denied compensation on the ground that the employer did not carry on the employment of bricklaying for pecuniary gain. This view was rejected by the court of appeals as tending to nullify entirely the effect of the amendment, the court saying also that the employer was carrying on a designated hazardous business for pecuniary gain, and that the injury sustained by the workman was in the service of the company, which was obligated to maintain a suitable plant for the proper conduct of its business; and since the employment in which the bricklayer claimant was engaged was "incidental and requisite to the business carried on by the company," under the law as amended he was clearly entitled to compensation. (Dose *v.* Moehle Lithographic Co., 221 N. Y., 401, 117 N. E. 616.) Even before the amendment of 1916 the court had gone so far as to say, in a case where a handy man was putting in a shelf in a manufacturing establishment, that if "an employee is injured while performing an act which is fairly incidental to the prosecution of a business, and appropriate in carrying it forward and providing for its needs, he or his dependents are not to be barred from recovery because such act

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is not a step wholly embraced in the precise and characteristic process or operation which has been made the basis of the group in which employment is claimed." (Larsen *v.* Paine Drug Co., 218 N. Y. 252, 112 N. E. 725.)

The Pennsylvania statute was construed less favorably as to this point by the supreme court of that State than by the State board. (See Bul. 203, pp. 213, 214.) In the case Marsh *v.* Groner (102 Atl. 127), the court denied compensation to a plasterer who was engaged to do several days' work on a residence on which the work of remodeling had been carried on for some months, the rejection being based on the view that the employer was not engaged in the business of building in the sense intended by the law. One justice dissented, saying that the majority had changed the law from "the regular course of the business" to "the course of the regular business" of the employer, thus unduly narrowing it.

The Supreme Court of Michigan, also, while recognizing that it is usual for the owner of a hotel to have his rooms painted and decorated occasionally, set aside an award in favor of a painter and decorator, holding that such work was not a part of the business of keeping a hotel within the meaning of the State law. (Holbrook *v.* Olympia Hotel Co., 166 N. W. 876.)

Perhaps even more unsatisfactory than the foregoing is a decision of the Illinois Supreme Court (two justices dissenting) declaring casual the employment of a laborer on a highway who was killed by a dynamite explosion while assisting in the removal of stumps. The work of blasting was to continue but a comparatively short time, and while the general work on the highway at the time was held not to be hazardous within the meaning of the act, the work of blasting was declared to be so; but this work was said to be "a mere casual or incidental employment in connection with the matter of grading and repairing the road, this bringing the workman within the class of casual employees who are not included within the act;" this though the workman was regularly and continuously employed in the general undertaking. (McLaughlin *v.* Industrial Board of Illinois, 117 N. E. 819.)

This is in contrast with the position of the Supreme Court of Minnesota (State ex rel. Nienaber *v.* District Court, 165 N. W. 268), which held that the driver of a street sprinkler, who went to the aid of the driver of a coal wagon at his request, and was injured while so aiding him, was an employee of the coal dealer, since, though the employment was but casual, it was in the course of the employer's business and within the act.

Other exclusions.—Inasmuch as compensation is to be paid by the employer or his insurer to the employee, the question of who are employees is essential. The compensation board of Pennsylvania

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denied benefits to the secretary and treasurer of a mercantile company, who was also a buyer, and sometimes sold goods behind the counter, saying that the law was for the benefit of workmen and laborers serving at modest salaries or for wages, under the direction and control of others, and not for the executive officers of corporations. (Bastheim case, 1917.) A similar conclusion was reached by the Court of Appeals of New York in a case (Bowne *v.* S. W. Bowne Co., 116 N. E. 364) in which the president and principal stockholder of the company lost a leg as the result of an accident occurring while he was handling lumber. His salary was not affected by the accident, nor were his dividends reduced thereby. The industrial commission of the State, however, granted his claim for compensation, awarding the maximum schedule benefits. The company and the insurer carried the case to the court of appeals, where it was held that the intention of the law was to make a distinction between such an officer as the claimant in this case and other employees of the corporation, and the order granting the award was reversed.

Public employees.—A separate statute extends the benefits of the New Jersey compensation law to public employees, but provides that elective officers and persons receiving salaries greater than $1,200 per year shall not be entitled to compensation. This was held (Mayor, etc., of Jersey City *v.* Borst, 101 Atl. 1033) to debar disability benefits only, and where the injury was fatal the claim of dependents was allowed without regard to the excess of salary above $1,200. The law of Illinois brings within its scope all employers engaged in the enumerated hazardous occupations, including under the term "employer" the State and each county, city, town, township, etc., election being presumed in the absence of active rejection of the act. In McLaughlin *v.* Industrial Board of Illinois (117 N. E. 819) the contention was made that the act was invalid, since there was at common law no liability of the township in cases such as that in hand, in which a road workman was killed by an explosion of dynamite used in removing stumps from a highway; and that the legislature could not, and did not intend to, require a township to make an election in order to escape the provisions of the act. As to this the court held that the legislature had the right and power to make a township liable in damages to its employees, and that it was not essential that it should specify the means by which an election not to provide and pay compensation under the act should be made. It was also urged that it would be illegal to compel taxpayers to pay compensation under an elective act when they had no choice in the matter and no opportunity of making an election. To this the court replied that the officials in interest had the power of making the election, and that municipalities speak through their elected officials

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and not through the taxpayers. The law was therefore held constitutional and applicable to employment of the nature under consideration. Compensation was denied, however, as already noted, on the ground that the employment was casual.

A different view was taken by the Supreme Court of Kansas of the law of that State, compensation being denied a teamster injured while hauling sand for a county road, on the ground that the county was not, in the work in hand, engaged in trade or business within the scope of the compensation act. (Gray *v.* Board of County Commissioners, 165 Pac. 867.)

Somewhat resembling the contention raised in the McLaughlin case was the objection made to the law of Nevada that in making it compulsorily applicable to counties there was a violation of the due-process-of-law clauses of the Federal and State constitutions. The supreme court of the State took the position, however, that in requiring counties to pay premiums under the act it was directing money to be spent for a public purpose, which was a legitimate charge upon the people, the State, and its subdivisions, so that the law was constitutional. (Nevada Industrial Commission *v.* Washoe Co., 171 Pac. 511.)

The status of a city policeman was passed upon by the same court in Griswold *v.* City of Wichita (99 Kans. 502; 162 Pac. 276). In this, as in the foregoing case, it was said that the city in employing the policeman was not engaged in trade or business, and further that he was not in any case a workman within the meaning of the law, so that no compensation would be allowed. A sheriff elected to office was held by the California courts not to be an employee under appointment, and an award in his favor made by the compensation commission of the State was annulled; and this even though words of specific exclusion in the act of 1911 were omitted from the act of 1913. (Mono County *v.* Industrial Accident Commission, 167 Pac. 377.)

Extraterritoriality.—The terms of the laws vary as to their applicability to accidents occurring outside the State, being explicit in some instances, while in other cases construction by the courts is necessary. Thus the law of Indiana specifically states that every employer and employee under the act shall be bound by its provisions regardless of the place of the occurrence of the injury; so that a circus employee, himself a resident of Indiana, his employer being a corporation organized under the laws of the State, was entitled to the benefits of an award made by the State board for an injury received in the State of Illinois. (Hagenback *v.* Leppert, 117 N. E. 531.) On the other hand, the Kentucky board ruled that the law of the locality should decide, and dismissed the claim of a workman usually employed in Kentucky, but receiving the injury complained

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of in the State of West Virginia. So also the Supreme Court of Minnesota ruled (Johnson *v.* Nelson, 128 Minn. 158; 150 N. W. 620) that a workman injured outside the State can not recover under the State law, but must look to the law of the locality for redress.

The Industrial Commission of New York made a distinction in the case of an employee of a corporation doing business in New York, the employee himself being a resident of Rhode Island, but at the time of his injury working in the State of Texas. The case of Post *v.* Burger (see Bul. 203, p. 221) was distinguished, Post being said to be a resident of New York and potentially a public charge on the State if injured, while in this case the injured man would in no event assume such a status. It was said that he might recover under the laws of Texas, since in actions of tort the law of place must govern, so that compensation was denied (Carlson case, 1917). It is not clear, however, how this distinction could be made to nullify the argument of the court of appeals to the effect that the premiums paid for insurance under the act are computed on the pay roll, and not on the time worked within or without the State boundaries. The State fund was the insurer, and the workman had been directed by his employer in New York to go to Texas, where the injury occurred. In passing upon the case, the commission stated that the New York statute could not compel employers either in New York, in Rhode Island, or in Texas to cover their employees everywhere with compensation insurance.

Admiralty.—Developments have been particularly interesting in this field by reason of the action of the United States Supreme Court and of the Federal Congress therein. The administrative bodies in New York and California had been, by reason of their geographical location, especially active and interested in the matter of compensation for longshoremen and others engaged in maritime operations. As noted in Bulletin 203, page 222, the Court of Appeals of New York (In re Walker, 109 N. E. 604) had ruled that as an employee was entitled under Federal law to proceed either at common law or in admiralty to recover for injuries, so now he might choose to make a claim under the compensation law as superseding the common law in the State. This case came before the Supreme Court, which held (four judges dissenting) that a State can not impose obligations such as are contained in the New York compensation law, upon maritime commerce, since to do so would be to destroy the uniformity in maritime matters that the Constitution intended to establish in its provisions as to admiralty jurisdiction. (Southern Pacific Co. *v.* Jensen, 244 U. S. 205, 37 Sup. Ct. 524; Clyde Steamship Co. *v.* Walker, 244 U. S. 255, 37 Sup. Ct. 545.) An interesting sequel to this decision was an amendment to the Federal Judicial Code, saving to claimants of the class affected the right to proceed under any com-

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pensation law applicable to the locality in which the injury was received.

Interstate commerce.—The difficulties attendant upon the determination of claims of employees engaged in the operation of trains are so obvious as to be quite generally understood. The rights of recovery are widely different, dependent upon whether the employee is engaged in interstate or intrastate commerce, and the boundaries between these two classes of employment are not only obscure in themselves, but the efforts of the courts in attempting to determine them have been hardly less confusing than clarifying. Thus a preliminary question to be disposed of in the case New York Central R. Co. *v.* White, noted under the discussion of constitutionality of the laws, was as to the status of the employee suffering the injury. It appeared from the facts that he was a night watchman, guarding tools and materials intended to be used in the construction of a new railway station and new tracks not yet brought into use. The company made the contention that, on account of the interstate nature of the business, the rights of recovery against it were defined and limited exclusively by the provisions of the Federal Employers' Liability Act of 1908. The Supreme Court held, however, that since the employee was not at the time of the injury engaged in interstate transportation, nor in work so closely related to it as to be practically a part of it, but had to do solely with construction work, he was within the jurisdiction of the State law. On the other hand, where a workman employed in cutting weeds, etc., along the right of way of a railroad died from congestion of the lungs following poisoning from ivy vine, an award and decision in his favor (see Bul. 203, p. 206) were reversed by the Court of Appeals of New York because consideration had not been given to the contention that the work of removing the weeds, grass, etc., was interstate commerce. The court held that if the work contributed to the safety and integrity of the railroad, which was an interstate carrier, it was a part of interstate commerce, and the industrial commission must pass upon the nature of the employment before making its award. (Plass *v.* Central New England Ry. Co., 117 N. E. 952.)

A serious result of error in choosing the remedy appeared in a Michigan case, where an employee was adjudged to be in intrastate employment after having sued under the Federal law. Since the compensation law requires claims to be filed within six months after the injury, and a greater time had been consumed in the court proceedings, no right of recovery remained. (Schild *v.* R. Co., 166 N. W. 1018.)

The most important decisions in this field, however, are those of the Supreme Court in passing upon the question of the right of the

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States to enact supplemental legislation in the field of interstate commerce. As pointed out in Bulletin 203 (pp. 223–225), the courts of New York and New Jersey adopted the position that inasmuch as the Federal law took cognizance only of cases in which the employer was negligent, it was possible for the States to establish as to accidents not involving negligence the doctrine of liability without fault embodied in the compensation system, so as to make it applicable to railroad operation, whether interstate or intrastate. The exclusive force of the Federal act where applicable was recognized, but where no negligence was charged it was assumed that there was no applicability of the Federal law, and that compensation might be awarded on the contractual obligation imposed by the compensation statute. This the Supreme Court of the United States denied, holding that interstate commerce is not in any way subject to State compensation laws, and saying that the Federal statute is "comprehensive and also exclusive, fixing the entire responsibility of interstate carriers to their employees, so that no power to supplement the laws lies within the purview of State legislatures." (New York Central R. Co. *v.* Winfield, 244 U. S. 147; 37 Sup. Ct. 546.) This case was before the Supreme Court on a writ of error to the Court of Appeals of New York, which affirmed the judgment of the court below, sustaining an award where a section laborer had lost the use of an eye by being struck by a pebble while tamping ties on the main track of the road. A quite similar case was before the Supreme Court from the Court of Errors and Appeals of New Jersey. In this case an employee of an interstate railway, in charge of a switch engine, was killed while leaving the yards after his day's work, which had included employment in both interstate and intrastate commerce. An award of the court of common pleas was made in favor of the claimant on the ground that the employee was not at the time of his injury employed in interstate commerce, so that compensation should be made under the State law. The supreme court of the State reversed this judgment, on the ground that the injury was sustained in interstate commerce, so that the case should be controlled entirely by the Federal statute. The court of errors and appeals in turn reversed this judgment, admitting that the employment was interstate in its character, but regarding the Federal act as without bearing because the case was one in which no negligence was charged, in which event the Federal statute afforded no remedy. The Supreme Court reversed this judgment for the reason noted in the New York case above, i. e., that in interstate commerce the full measure of the carrier's liability is determind by the Federal law. (Erie R. Co. *v.* Winfield, 244 U. S. 170; 37 Sup. Ct. 556.) It may be noted that two justices dissented to the opinions in both the above cases, on the ground

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that the Federal law was intended to cover only the limited field of the carrier's liability for negligence, and not the whole field of the obligation as it might arise from the occurrence of accidents.

Of course, where a claim is brought under the State law, the application of the Federal law to the case must be pleaded by the company if it wishes to make use of the fact as a defense, and this point is emphasized in a case before the Pennsylvania Compensation Commission in the case of a flagman at a crossing who was killed by an interstate train; the commission ruled that the mere facts as stated were not of themselves sufficient to prove an injury in interstate commerce, but that the burden of proof is on the company to take the case out from under the State law, if it wishes to use this defense. (Holmes case, 1917.)

The Industrial Accident Board of Texas had before it the case of a claim for injuries received by the employee of a company engaged in business described as "general towing," the employer being insured in a stock company in conformity with the provisions of the State compensation law. An award was made under a construction of the law that held that such operations as the towing of vessels entering and leaving the harbor of Port Arthur were within the provisions of the State law. On the rendition of the opinions in the Winfield cases and the Jensen case, the insurer declined to make further payments on the ground that the decisions of the Supreme Court showed the case to be one for Federal jurisdiction and not under State law.

Assuming that as between the towboat company and its employees there was a question of admiralty rights and jurisdiction, the board took the position that nevertheless the insurance company could not plead any defenses under the maritime law, since it had come into the case voluntarily, assuming certain contingent liabilities for a valuable consideration. "It has no admiralty rights whatever—it neither owns nor operates a boat—could not do so under its charter powers." It was held also that when the towboat company voluntarily became a subscriber to the act it waived its admiralty rights, and that the employee working for the company with a knowledge of the facts likewise waived his admiralty rights. Under the law the suit in question was one between the insurance company and the employee or his beneficiaries, and as the company was without admiralty rights, and the employee had waived such rights, the doctrines enounced in the decision by the Supreme Court had no application. In so far as the question of interstate commerce was concerned, the purely optional nature of the Texas statute was said to distinguish it from the laws of New Jersey and New York; and since the employee had by voluntary agreement accepted provisions of law

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by which he did not look to the employer, either directly or indirectly, for damages or compensation in case of injury, but to a third contracting party, the Federal statute was not operative. In view of this position, compensation payments by the insurer were directed to be continued.

ARISING OUT OF AND IN COURSE OF EMPLOYMENT

It is of interest to note that the United States Employees' Compensation Law provides relief for injuries to an employee "sustained while in the performance of his duty," thus adopting a phraseology which differs from that found in the majority of compensation statutes. The absence of judicial construction of these words put upon the commission the duty of adopting a rule for its own guidance, the language being obviously somewhat broader than that generally used. The rule is thus stated:

A personal injury sustained by a civil employee of the United States while on the industrial premises of a navy yard, arsenal, or other place of employment, provided such employee is on such premises for the purpose of going to or returning from his work or performing duties connected with or incidental to his work, and is not on such premises merely for purposes of his own, shall be an injury sustained "while in the performance of his duty" within the meaning of that phrase as used in section 1 of the compensation act of September 7, 1916. This ruling is based upon the responsibility of the United States, as the employer, for the safe and sanitary condition of its premises.

The Pennsylvania statute approximates this position in providing compensation for accidents in the course of employment, omitting the words "arising out of." Under this, compensation was allowed an employee who was shot by a fellow employee who had gone insane, the board holding that "it is sufficient that he suffer his experience while in the course of his employment." (Quam case, 1917.) Similarly the Ohio statute does not contain the words "arising out of," but this was held by the supreme court of the State (Fassig *v.* State, 116 N. E. 104) not to warrant the extension of the remedy provided by the act to cases other than those in which the injuries resulted from or were connected with the employment; so that it "would not cover any case which had its cause outside of and disconnected with the employment, although the employee may at the time have been actually engaged in doing the work of his employer in the usual way."

The nature of one's employment may furnish an essential basis for determining the liability of the employer for certain forms of accident, as in the case of a night watchman, who was supposed to exercise the authority of a guard or policeman in protecting his employer's

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property from injury. The Supreme Court of Illinois in Ohio Building Safety Vault Co. *v.* Industrial Board (115 N. E. 149) took the view that the murder of a night watchman might properly be found to be connected with the nature of his employment as the proximate cause, the injury being one to which the employee would not have been equally exposed apart from his employment.

Where the injury is the result of horseplay, it is quite commonly held that while the accident occurred in the course of the workman's employment it did not arise out of it. The Michigan Compensation Board was therefore constrained to deny compensation in a case involving the perennially recurring folly of causing internal injuries to a workman by the application of compressed-air hose, the case as usual being one of a claim for fatal injury. In a similar, though nonfatal, case the supreme court of the State disallowed a claim as not arising out of the employment, though it was in evidence that the employees "all had a habit of fooling around at different times." The injured man in this case was attending to his duties, which were in no way connected with the use of the compressed air. (Tarper *v.* Weston-Mott Co., 166 N. W. 857.) The Appellate Court of Indiana, however, took the view that where the injured man was taking no part in the use of the hose or in the so-called sport therewith, he was within the provisions of the act, so that his dependents might claim compensation. (Bimel Spoke & Auto Co. *v.* Loper, 117 N. E. 527.)

Rulings were noted in Bulletin 203, pages 237, 238, involving injuries to workmen which would not have resulted but for their practice of smoking. The boards of different States have taken opposite positions on the subject, but the Industrial Commission of Iowa took a different stand from that adopted by the attorney general of the State on the subject, and denied the claim of a workman injured while attempting to light his pipe, on the ground that smoking was not part of his employment, and the employer was not liable for the injury. (Rish case, 1917.)

The situation of an employee whose hours of labor are spent under conditions determined by the employer was passed upon by the Industrial Commission of Wisconsin, the case being that of a lumberman who was injured while in his bunk at the camp by a straw dropping from the bunk above him into his mouth and causing an infection. It appeared that no other sleeping quarters were available than those furnished by the employer, so that the injury was held to arise out of the employment, the employment being regarded as continuous from the time the workman entered the camp until the completion of his contract. (Bebeau case, 1917.)

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LIABILITY OF THIRD PARTIES.

The provision found in compensation laws subrogating the employer to the injured workman's rights against a third party causing the injury permits suits for damages in amounts to be determined by a jury, which may, of course, be different from the amounts awarded as compensation under the act. The Nebraska statute permits the employer paying compensation to sue such third party without any limitation upon the amount recoverable in the action; but it was held by a United States Circuit Court of Appeals that where the recovery by the employer was for a larger sum than the statutory obligation under the compensation law, he should turn over to the injured workman any excess remaining after deducting his own payment and the costs of the proceedings, such excess to go as an added benefit to the beneficiaries under the compensation law. (Otis Elevator Co. *v.* Miller & Paine, 240 Fed. 376.) A point incidentally decided in this case was to the effect that the concurrent negligence of the employer does not bar his right to proceed against a negligent third party. A different aspect of the matter developed in a case before the New York Supreme Court, where a workman was injured, while engaged in his duties, by reason of an assault by strikers. In passing sentence upon the assailants the court put them on parole on condition that they pay periodically specified sums to the injured man. The injured man also claimed benefits under the compensation law, and an award was made by the industrial commission, which held that the employer should make these payments without regard to the sums received by the workman under the sentence of the court. The employer and insurance carrier complained of this holding, and as the law provides that the employer shall be subrogated to the remedies of the employee against the third party, and makes the employer liable only for any difference between the recovery by suit and the statutory award under the compensation law, it was held by the court that the commission had erred in not applying the sums paid by the assailants to the statutory award, leaving the employer liable only for such balance as might remain due. (Dietz *v.* Solomonwitz, 166 N. Y. Supp. 849.)

Quite similar was the decision in a Connecticut case (Rosenbaum *v.* Hartford News Co., 103 Atl. 120), in which it was held that where the third party had paid a sum for a release before any suit was brought, the employer was entitled to have this sum deducted from the amount to be paid by him as compensation. Conversely, the Supreme Court of Michigan ruled that the amount recoverable by an employer suing the third party was limited by the amount paid by him as compensation to the injured workman. (Albert A. Albrecht Co. *v.* Whitehead & Kales Iron Works, 166 N. W. 855.)

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PARTIAL DISABILITY.

The enumeration by schedule of certain frequently occurring injuries and the fixing of stated benefits therefor does not render purely automatic the administration of the laws in this field. Where the awards prescribed are to be used as a standard for disabilities of a comparable nature, it is obvious that the administrative board must use its discretion in determining the amount due according to these standards. The Indiana law fixes specific amounts for the loss of separate fingers, and also for the loss of a hand, the latter being less than the aggregate that would result from the four fingers and the thumb computed separately. The appellate court of the State, however, pronounced absurd a view that would allow such an aggregate award, since it must be assumed that the loss of the hand at the wrist would be a greater loss than that of the fingers and the thumb, unless under extraordinary and unusual circumstances. An award was therefore directed to be made in such amount as the board might find proper, "not to exceed 200 weeks," following the language of the statute applying to cases not specifically provided for; though as the award for the loss of a hand is but 150 weeks, it is clear that the intention of the court could not be carried out if an award in excess of that term was made. (In re Maranovitch, 117 N. E. 530.) This court had before it a case in which an award had been made for temporary total disability due to injury to one part of the body, and also for permanent partial disability resulting from the same accident. It was held that the two awards were not to run concurrently, but should be consecutive and within the statutory limitations as to the total term and amount of benefit payments. (In re Denton, 117 N. E. 520.) A number of the laws are specific in their statement that where there is a schedule of awards for permanent partial disabilities the payment prescribed shall be in lieu of all other compensation for the injury; but where there was an amputation of one finger, compensable under the schedule as a permanent partial disability, and a crushing and laceration of another finger, causing temporary total disability, the Industrial Accident Commission of Maryland awarded benefits for the two injuries independently.

Instead of making the schedule awards a standard by which other injuries of a comparable nature should be compensated, the law of Nebraska enumerates but a brief list of maimings, and directs that other partial disabilities shall be compensated on the basis of the wage loss occasioned thereby. Under this law, the loss of a toe, which is specifically provided for in the laws of several States, was held not to entitle the injured workman to compensation for maiming unless it appeared that his earning power was thereby impaired. (Epsten *v.* Hancock-Epsten Co., 163 N. W. 767.)

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TOTAL DISABILITY

From one point of view it would appear to be one of the simplest problems of workmen's compensation to determine when an employee is to be classed as totally disabled. In practice, however, the question is complicated by reason of the terminology of the laws and perhaps by the point of view of the administrative bodies as well. The point is illustrated by the decision of the Supreme Court of Kansas in Souvain *v.* Battelle (164 Pac. 1086), in which it was held that a workman customarily engaged at hard manual labor prior to his injury and totally incapacitated for such labor by reason of an industrial accident was entitled to compensation even though he subsequently obtained employment at better wages than he had earned before. The Kansas law is somewhat peculiar in its provisions as to partial disability, directing that payments shall be made therefor in amounts not less than 25 per cent nor greater than 50 per cent of the weekly earnings, during the continuance of the disability, but without directing that the payments shall correspond to the wage loss. It can hardly be said that the award in the Souvain case is the result of this provision, however, since the Wisconsin Supreme Court was constrained to make an award as for total incapacity in the case of a man who was only partially disabled for employment in many occupations, but would never be able to follow the employment in which he was engaged at the time of his injury. (Mellen Lumber Co. *v.* Industrial Commission, 142 N. W. 187.) The adoption by the legislature of a schedule of maimings eliminated the difficulty in this particular case; and it is clear that to make an award as for permanent total disability in cases where there is room for readjustment and rehabilitation does not accord with the spirit of the compensation law. Still, the rights of the injured man and the fact that he has suffered serious economic and physical loss can not be overlooked in any settlement of this question.

A case of temporary total disability, involving an award for the entire loss of a previously mutilated but usable member, was passed upon by the Pennsylvania board, the workman having lost in boyhood four fingers at the knuckles and the thumb at the first joint. However, he had acquired such skill as to be able to perform many of the duties of a laborer with this hand until a second injury removed the remainder of the thumb and the entitre palm of the hand. It was said that no award could be made for the loss of use of the hand because he had had no hand to lose; but an award was made on the basis of 50 per cent of the wage loss due to the injury for the period of total disability, the award being subject to revision on the basis of the wage loss remaining after the healing and adjust-

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ment period had expired, subject to the statutory limitations. (Wills case, 1918; see Purchase case, pp. 72, 73.)

DEPENDENCE.

Other than as prescribed by the statutes themselves, questions of dependence for purposes of compensation administration involve identical principles with those elsewhere applicable. A somewhat peculiar situation arose in a case passed upon by the Pennsylvania Compensation Board where a woman had lived apart from her husband and was not dependent; but not having been legally separated she was held by the board to be the widow of a deceased workman in such a sense as to bar the claim of his dependent mother, the law allowing awards to dependent parents only "if there be neither widow, widower, or children." (Zimmerman case, 1917.)

The provision of law declaring that the status of dependents is fixed as of the time of the injury giving rise to the claim was held by the Supreme Court of Wisconsin to bar the claim of a widow who had become the wife of an injured man subsequent to his injury; moreover, the child who was legitimated by the marriage was denied benefits as not a potential dependent at the time of the injury, all compensation going to the dependent father of the deceased. (Kuetbach *v.* Industrial Commission, 165 N. W. 302.) On the other hand, the Supreme Court of New York (Crockett *v.* International Ry. Co., 162 N. Y. Supp. 357) held that, though the law of that State makes a similar provision, this does not affect the status of a widow, who is entitled to benefits as the "surviving wife" of the injured workman, without regard to actual dependency or the date of the marriage.

BASIS OF AWARDS.

An item that may be noted under this head is the ruling of the Pennsylvania Compensation Board to the effect that bonuses regularly paid as an inducement to steady work are to be considered as a part of the wages and used as a basis on which percentage awards are to be computed.

SETTLEMENTS.

Provisions are found in some of the laws clarifying the subject of the vesting of compensation rights and the disposal of unpaid remainders in the case of the death of beneficiaries. The New Jersey law as originally enacted authorized payments to an injured workman during disability, but not beyond 400 weeks. An amendment of 1913 provided that in case of the death of a person from any cause other than accident during the payments for permanent injury surviving dependents should receive any unpaid balance of the award

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within the term indicated. It was held (Erie R. Co. *v.* Callaway, 103 Atl. 6) that an award under the unamended law ceased with the death of the injured man, if from some other cause than the injury, even though the death occurred after the enactment of the amendment continuing unaccrued payments to dependents.

The Texas statute names the potential beneficiaries and provides that they shall be entitled to compensation according to the laws of the State governing descent and distribution. This is construed by the industrial accident board of the State to warrant a readjustment of benefits on the lapse of payments to any member of the group, whether by death or otherwise; the survivors taking, however, not as heirs of a deceased beneficiary, but by their original right which was either reduced by a cobeneficiary in being at the time of the earlier award, or was entirely in abeyance on account of a superior claimant. The effect of this construction is to continue the payment of the full amount of 60 per cent of the wages as benefits so long as any person of the designated class or classes, entitled thereto if standing alone, is in being, up to the end of the term contemplated by the act.

Under the law of Washington, an injured man dying without heirs after an award made, but not paid, leaves nothing to his administrator. (Ray *v.* Industrial Insurance Commission, 168 Pac. 1121.)

Another question that may be considered under this head was passed upon by the Workmen's Compensation Board of Pennsylvania in a case in which the employer had continued to pay full wages by voluntary action on his part during the term of the disability of an injured employee, the injured man subsequently claiming compensation. The board ruled that in the absence of proof that the wages had been paid in settlement of the employer's obligation to pay compensation, they would be treated as a gratuity, and an award was allowed the claimant within the terms of the act. (Keyser case, 1917.) The Indiana statute specifically provides that payments made to an injured employee, not due or payable under the act, may be taken into account in making an award; so that an award deducting the amount advanced by the employer was approved. (Underhill *v.* Central Hospital for the Insane, 117 N. E. 870.)

MEDICAL TREATMENT.

The fact that an injured workman, claiming compensation on account of his status as an element in the productive forces of society, owes a reciprocal duty to make the most advantageous use of the provisions afforded him would seem to be increasingly recognized. A number of the laws direct compliance with reasonable medical instructions, and provide for the suspension of compensation payments during any period of refusal or neglect. Thus the refusal of an em-

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ployee to undergo an operation for the removal of a cataract caused by accidental injury was held by the Supreme Court of Illinois to be so unreasonable, in view of medical experience and testimony, as to warrant the withholding of an award while such refusal continued, the court holding that the loss of sight was probably due to such refusal and not to the accident; if the operation should be a failure, the question of compensation for any existing disability would then be open for a decision in the light of the facts. (Joliet Motor Co. *v.* Industrial Board, 117 N. E. 423.) Similarly, the Industrial Accident Board of Massachusetts directed the discontinuance of compensation payments until a woman who had lost a hand should agree to undertake to wear and accustom herself to the use of an artificial hand furnished by the employer, which, it was expected, would enable her to earn wages and so reduce the amount of compensation necessary, physicians having testified that the stump left by the amputation was suitable for the use of such a hand. (Wiaczkis case, 1917.) The Superior Court of Rhode Island also refused to allow a claim for permanent total disability where the sensitiveness of an injured finger could probably be remedied by the simple operation of removing a portion of the bone to secure a better flap to cover the end, and ordered compensation to cease after six weeks unless an operation was submitted to.

While there is an evident movement toward allowing the injured workman a measure of freedom in the selection of his physician, the arrangement for the treatment must be made in conformity with the law, which, while it makes the employer responsible therefor, does not provide for independent action on the part of the employee in this respect. Thus it was held that although the New York law authorizes and requires the employer to furnish medical aid as required or demanded, it does not permit the recovery of medical costs in a separate suit at law, the industrial commission having the duty to make awards in this field and passing upon all fees and charges (Semmen *v.* Butterick Publishing Co., 166 N. Y. Supp. 993); nor can the employee assign a claim for services to his physician, the law giving the physician no recourse in his own right or by assignment that will permit him to sue the employer for his fees. (Bloom *v.* Jaffe, 157 N. Y. Supp. 926.)

The Indiana statute provides for medical, etc., services for 30 days immediately following the injury. The Court of Appeals held that where the disability developed some time after the accident causing it, the date of the beginning of the disability should be taken as the date for the computation of the period of treatment. (In re McCaskey, 117 N. E. 268.) However, the Supreme Court of Michigan held (Cooke *v.* Holland Furnace Co., 166 N. W. 1013) that, though the words "accident" and "injury" are not synonymous,

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they are concurrent in point of time; so that though a disability accruing after the expiration of the period for medical treatment was clearly due to the accident, it was entitled to no such treatment; nor could an award be extended beyond the statutory period, even though it appears that the legal provision as to furnishing treatment was not fully complied with, the board having no power to assess any form of damages, but only to administer the act according to its terms. (McMullen *v.* Gavette Construction Co., 166 N. W. 1019.)

The matter of paying for home nursing was considered by the industrial commission of Utah, the claim for services rendered being allowed the wife of an injured man in a case recognized as a "hospital case" on the testimony of the physician in charge, where it appeared that the wife was competent and actually rendered the services for which payment was claimed. (Fowler case.) It was said that if the employer objected he should see that such cases are cared for at a hospital. (See Bul. No. 203, pp. 277, 278.)

NOTICE AND CLAIM.

The requirement that notice be given by the injured person of his injury and of his intention to claim compensation is phrased differently in the different acts. Thus the law of Michigan directs that notice be given within three months of the happening of the injury, if a claim is to be submitted. This was construed by the court to mean within three months of the happening of the accident causing the injury, and not three months from the time disability commenced or the real seriousness of the injury was understood. (Dane *v.* Michigan United Traction Co., 166 N. W. 1017). The New York law, on the other hand, requires notice of the accident within 10 days after disability, which would obviously imply a different starting point from that fixed by the Michigan statute. In construing its law, the Court of Appeals of New York held that no sufficient notice of an injury had been given in a case where a cloak model claimed that she had spoken of the pricking of her finger with a pin and had asked for peroxide to use on it. Infection resulted, and an employee of the company carried the girl's pay to her and saw that she had a swollen arm, but no connection was made with the alleged pin prick, nor was any claim submitted until some nine months later, when the industrial commission approved the claim on the ground that the employer had not been prejudiced by the lack of notice. This was rejected by the appellate division and by the Court of Appeals, the latter court saying that the requirement of notice should not be regarded as a mere formality, and that the burden rested on the claimant who had been negligent in the matter of notice to supply evidence and secure a finding that no

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prejudice had resulted. As to the claim that notice had been given, the court pointed out a distinction between the happening of a trivial accident, liable to occur in any one of many ways, and a statement that a workman at a machine where he was properly employed had been injured by it, saying that in the latter case the employer might properly be assumed to have been put on notice that an industrial accident had taken place, but that in the present circumstances no such presumption could be indulged. (Bloomfield *v.* November, 119 N. E. 705.)

In New Jersey, notice is required unless there is "actual knowledge" of the occurrence of the injury on the part of the employer. It was held (Allen *v.* Millville, 87 N. J. L. 356, 95 Atl. 130), that the law does not require first-hand knowledge by the use of this term, but that it may be understood in the popular sense; and knowledge of a proper corporate agent was held to be knowledge of a corporation.

APPEALS.

In the more technical matters of procedure, the courts have held that the terms of the law must be strictly complied with, as where a period is fixed within which an appeal must be taken from an award to secure a review by the courts. Delay in this regard was held to be fatal, the provisions of the statute establishing an absolute limitation. (Northern Pacific S. S. Co. *v.* Industrial Accident Commission, 168 Pac. 30; New Dells Lumber Co. *v.* Industrial Commission, 164 N. W. 824.) In an Ohio case (Roma *v.* Industrial Commission, 119 N. E. 461), however, a claimant was allowed the right of appeal where it was in evidence that his attorney had been informed of the rejection of his claim, and more than 30 days had elapsed before the appeal, it appearing that actual notice was not received by the claimant himself. The court said that to deny the rights of the claimant under such circumstances would be to take advantage of a technicality, whereas the spirit of the law required a determination on the merits of the case, and that it would not be a harsh rule to require the board to assure itself, in the event of a rejection, that the claimant was himself informed of the fact.

This case involved the right of appeal by an employee of an employer who was a self-insurer under the statute, the court of appeals of the State having held that such an appeal was not possible. This point had been decided to the contrary by the State supreme court in Reinholz *v.* Industrial Commission (119 N. E. 129), in which it was said that to deprive employees of self-insurers of a right enjoyed by employees of insurers in the State fund would be to create a discrimination that would lead to the invalidation of the provision of the law permitting self-insurance; but having held this section of the law constitutional, it was the duty of the court, unless the language of

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the act made it impossible, to give effect to all the provisions of the law by avoiding any construction that would lead to such an unwarranted classification. It was added that if the State authorized the publication of notices by an employer to the effect that he was permitted by the board to carry his own insurance, it became the duty of the State to safeguard the employees' interests under the act; also that the self-insurer's contribution to the surplus fund provides a source from which payments under jury awards on appeal might be paid, while the State might also recoup the fund by an action against the self-insurer or his bondsman. The court of appeals was therefore reversed.

A further point involved in the appeal in the Roma case was the form of the award. The jury had allowed a recovery of $2,000 in a lump sum, but the court found that this method of payment was not in accordance with the spirit of the compensation law, and asserted its authority to modify the award, reducing it to a series of weekly payments of $8 per week for 250 weeks, this appearing to be a reasonable finding under the verdict of the jury, and in accord with the design of the legislature in the enactment of the law.

INSURANCE.

The primary importance of securing to the workman the awards potentially provided for by the compensation statutes has led to the enactment of various provisions looking toward the insurance of the employer's obligation or the making of guarantees by him that he will meet the contingent liabilities fixed by the laws. Alternative provisions are made in most States, giving an option or choice to the employer as to the mode of carrying his insurance. Where a State fund is provided, and subscription thereto is made the essential condition of conduct of an industry, questions of alternative rights are of course foreclosed. This is the case with the Washington statute, and the Supreme Court of the United States in Mountain Timber Co. *v.* Washington (243 U. S. 219; 37 Sup. Ct. 260) considered the form of a general but graduated tax upon industry as being a proper method of securing the efficient working of the law. The act forbids the employer to deduct any part of the insurance premium payable by him to the State fund from the wages or earnings of his workmen. As to this, the court saw a possible serious question as to the unconstitutional interference with the freedom of contract if the provisions "were to be construed so broadly as to prohibit employers and employees, in agreeing upon wages and other terms of employment, from taking into consideration the fact that the employer was a contributor to the State fund, and the resulting effect of the act upon the rights of the parties." Inasmuch, however, as there was no intimation that the clause had been so construed, the court declined to

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"assume in advance that a construction will be adopted such as to bring the law into conflict with the Federal Constitution."

Options are given under the New York law, the employer being permitted to insure in a State-administered fund, or in an authorized corporation or association, or to maintain self-insurance, so called, by furnishing satisfactory proof to the State commission of his financial ability to make such payments as might be anticipated in the conduct of his business. In the last-named case, the commission may, in its discretion, require the employer to deposit securities of a kind prescribed by the statute, in an amount to be determined by the commission. Assuming that the method of self-insurance would be open to all employers on reasonable terms, it was held that the other modes of insurance might constitutionally be prescribed as optional alternatives, the rights of the employers not being thus interfered with; while, assuming that the State commission would be diligent in requiring the employer either to furnish satisfactory proof of his ability, or to write insurance in suitable companies, the employee could not be regarded as injuriously affected in a constitutional sense by the granting of options to the employer. (New York Central Co. *v.* White, 243 U. S. 188; 37 Sup. Ct. 247.)

While some States offer a variety of options, even specifically stating, as in Michigan, that the purpose is to make a test of the different forms so as to discover which is preferable, there has been a continued effort on the part of the Industrial Commission of Ohio to secure to the State fund a monopoly of compensation insurance. A strong alignment of the interested parties was made, the stock insurance companies offering vigorous opposition to such a movement. The constitutionality of various provisions of the State law was challenged, section 22 (sec. 1465–69) being one of the sections particularly called in question. This section required every employer of five or more workmen, unless a self-insurer approved by the commission, to make premium contributions to the State fund; self-insurers, furthermore, were obliged to contribute to a surplus fund for the purpose of forming a guaranty fund, and might also be required to give security or bond to guarantee the payment of their obligation. Section 54 (sec. 1465–101), among other provisions, declared void all contracts or agreements made by an employer to indemnify him against loss or damage occasioned by the willful act of the employer or of his agents, or their failure to observe any lawful requirement for the safety of employees. The first of these sections was declared constitutional, while the latter was said to permit the writing of compensation insurance for injuries due to negligence other than those inflicted by willful acts or the failure to observe safety laws. (State *v.* Employers' Liability Assurance Corporation, 116 N. E. 513.) This decision clearly left to the insurance companies

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the power to write policies not conflicting with the terms of the law as construed by the court.

A case in which the opinion was rendered a few months later than the foregoing involved the validity of the provisions of the act authorizing self-insurance, inasmuch as it was only self-insurers who were taking insurance in the stock companies, the action being an attempt to procure a judicial ruling which would entirely exclude stock companies from the State. In this case (State *v.* United States Fidelity & Guaranty Co., 117 N. E. 232), it developed that the company was insuring the so-called self-insurers, but only in accordance with the provisions of section 54, conforming to the decision of the court already noted. In the present instance the court declined to consider the wisdom or unwisdom of the policies involved, but held that as the commission which had charge of the State fund must also exercise duties of discretion and judgment as to the competency of employers to become self-insurers, there was no inequality before the law, and no substantial favor gained by either employer or employee. Judicial construction, therefore, was not found to meet the end of preventing the operation of stock companies in the State, and an amendment, approved March 29, 1917, exempted from premium contributions to the State fund only those persons who were regarded as competent self-insurers "and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof." This amendment would appear to terminate absolutely the activities of stock companies in the State, since only those who are self-insurers in the strictest sense are exempted from contributions to the State fund.

INSURANCE BUSINESS TRANSACTED.

The table on page 95 shows the amount of business transacted by casualty companies, stock and mutual, and by the State funds providing compensation insurance. It will be observed that in most of the States having State funds there is also the privilege of writing insurance in approved companies, the exceptions being Nevada (except in 1914), Ohio (since 1917), Oregon, Washington, West Virginia, and Wyoming.

It must be kept in mind that these figures represent only the actual transactions for the year, and do not show the losses incurred nor the premiums earned during the year. They are only suggestive, therefore, and conclusions can be drawn only in a very limited degree as to the actual relationship between the premiums written and the actual liabilities incurred by the insurers; though as the experience accumulates, the correlation between payments and premiums will

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naturally become fixed to a degree not possible this early in the history of the business.

It is also too soon to draw inferences from the experience developed in the two classes of insurance, though in the case of New York there is a marked relative increase in the operations of the State fund; while in Michigan there was a marked decrease in the third year, though a similar decrease appears in the insurance written by stock companies, suggesting an industrial depression rather than a choice of the one type of insurance as against the other. The table follows:

WORKMEN'S COMPENSATION INSURANCE (CASUALTY, SURETY, AND MISCELLANEOUS COMPANIES AND STATE FUNDS), 1913 TO 1916, BY STATES.

State.	1913		1914		1915		1916	
	Premiums written.	Losses paid.	Premiums written.	Losses paid.	Premiums written.	Losses paid.	Premiums written.	Losses paid.
CASUALTY COMPANIES, ETC.								
Ariz.	$10,569	$1,198	$46,631	$14,314	$82,193	$30,540	$177,972	$96,929
Cal.	106,020	34,932	4,098,299	938,506	3,607,545	1,574,181	3,655,429	2,267,031
Colo.					[1] 390,552	[1] 31,647	685,612	157,458
Conn.			1,376,528	299,433	1,268,985	590,685	1,552,301	902,655
Ill.	4,191,967	1,322,368	4,209,684	1,795,969	3,751,883	1,686,434	3,968,278	2,354,151
Ind.					728,970	53,914	1,364,061	644,589
Iowa.			[2] 683,667	[2] 71,325	668,333	115,301	656,792	144,362
Kans.	77,253	16,744	125,312	55,929	277,043	121,511	325,482	212,430
La.			39,660	56	654,629	189,945	807,426	382,796
Me.					226	68	479,463	120,651
Md.			250,547	2,049	724,834	287,868	535,214	185,826
Mass.	4,593,012	1,283,821	4,278,319	1,798,346	3,973,301	2,183,594	4,494,221	2,395,535
Mich.	2,270,603	597,064	2,364,129	801,124	2,026,032	1,054,165	2,268,072	1,500,559
Minn.	481,697	29,805	1,222,353	470,244	1,152,941	570,582	1,179,121	657,254
Mont.					145,550	9,574	285,020	78,267
Nebr.			47,631	474	243,072	78,085	262,910	144,037
Nev.			369					
N. H.	3,577	151	1,286	348	1,400	162	1,432	2,866
N. J.	1,586,301	504,864	1,723,578	625,632	1,655,814	740,409	2,162,267	1,092,948
N. Y.			10,799,342	663,881	11,641,583	4,264,835	14,973,808	7,349,502
Ohio.	3,266		408,397	144,674	505,338	218,203	909,075	398,273
Okla.					195,379	14,206		
Pa.							11,686,190	2,127,100
R. I.	585,427	104,393	412,682	186,894	408,942	196,626	445,605	246,455
Tex.	236,462	18,434	756,074	268,131	829,492	342,602	1,236,178	657,175
Vt.					107,204	15,537	159,662	85,658
Wis.	1,227,791	232,825	1,859,264	818,861	1,740,218	986,166	1,932,249	1,198,790
STATE FUNDS.								
Cal.			548,256	89,675	928,152	162,489	927,465	327,884
Colo.					49,294	4,035	134,371	28,536
Md.					46,829	7,504	71,159	26,032
Mich [3]	38,235	1,968	79,946	18,312	62,523	22,889	75,670	29,591
Mont [3]							29,059	7,210
Nev [3]			223,105	46,571	207,241	119,677	312,706	165,982
N. Y.			689,765	37,776	1,293,560	296,014	1,892,561	762,436
Ohio.	714,434	192,205	2,904,797	1,229,419	2,893,530	2,339,814	5,425,513	3,494,817
Oreg.			570,032	3,702		195,356		
Pa.							1,113,858	194,827
Wash.	1,604,093	1,083,888	1,579,880	1,115,860	1,145,414	1,004,520	1,564,241	1,291,801
W. Va.	192,877	8,128	636,334	132,454	809,061	479,342	1,534,325	666,185
Wyo.							[4] 241,862	65,307

[1] 4 months. [2] 6 months. [3] Fiscal year ending June 30. [4] 18 months ending Sept. 30, 1916.

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WORKMEN'S COMPENSATION LAWS OF FOREIGN COUNTRIES.

Not only has the compensation idea spread rapidly in the United States, but in the provinces to the north and the countries to the south the principle has received added recognition. In addition to the laws analyzed in Bulletin No. 203, pages 306–350, the Republic of Chile has enacted a law for the first time, while Alberta, Manitoba, and New South Wales have enacted new laws. Austria also made important changes in its law. New Brunswick changed its liability law to a compensation law by an amendment of 1916, which established the principle of automatic compensation in lieu of that of suits for damages, and in 1918 enacted an entirely new compensation law. Analyses of these laws are given, and the correction of certain errors which appeared in Bulletin 203, and the results of amendments, so far as known, are also noted.

ALBERTA.

Date of enactment.—April 13, 1918; in effect as to mines, coke ovens, etc., August 1, 1918; as to other industries covered, January 1, 1919. Supersedes act of March 8, 1908.

Injuries compensated.—Injuries due to industrial disease or to accident arising out of and in course of employment, causing death or disability for more than three days, except injuries due to the serious and willful misconduct of the workman, unless resulting in death or serious disablement.

Industries covered.—Transportation by land or water (certain railways excepted), factories, mills, mines, quarries, engineering work, building, telegraph and telephone systems, public utilities, power laundries, etc., also occupations incidental to the enumerated industries.

Persons compensated.—Employees in the industries covered except outworkers, clerks not exposed to the hazards of the industry, and persons whose employment is casual and not for the purpose of the trade or business.

Government employees.—Included if in industries covered.

Burden of payment.—All on employer.

Compensation for death:

(*a*) Necessary burial expenses, not exceeding $75.

(*b*) To widow or invalid widower, $20 per month, and $5 additional for each child under 16; if children only, $10 each per month, no total to exceed $40.

(*c*) To other dependents a reasonable sum, proportional to the pecuniary loss, not over $20 per month to a parent or parents, and not over $30 in all.

(*d*) If no dependents, reasonable expenses of care, nursing, etc. Payments are terminated by death or when a child reaches the age of 16, unless an invalid. Widows remarrying receive two years' benefits in lieu of further compensation. Payments to other dependents continue only so long as support might reasonably have been expected had the injured person lived. No total may exceed $2,500.

Compensation for disability:

(*a*) Special medical or surgical aid where in the opinion of the board it would conserve the accident fund.

(*b*) For total disability, $10 per week, during its term, or if there is a child or children, $12 per week, not to exceed $2,500 in any case. Minors without dependents receive $7.50 per week for temporary disability.

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(*c*) For partial disability causing at least 10 per cent reduction of earning capacity, benefits equal to 55 per cent of the weekly wage loss; schedule for designated maimings. Any periodical payment may be commuted to a lump sum.

Revision of compensation.—Payments to a workman may be reviewed at his request or on the motion of the board. Payments to dependents may be readjusted on the termination of payments to any one of them.

Insurance.—All employers under the act are liable to contribute to a fund managed by a compensation board, from which benefits are to be paid.

Security of payments.—The fund is under State management, and in case of a deficit money may be advanced out of the consolidated revenue fund of the Province. Payments may not be assigned or attached.

Settlement of disputes.—All matters arising under the act are to be disposed of exclusively and finally by the Workmen's Compensation Board.

AUSTRIA.

Date of enactment.—December 28, 1887; in effect November 1, 1889. Amendatory and supplementary acts, March 30, 1888, April 4 and July 28, 1889, January 17, 1890, December 30, 1891, September 17, 1892, July 20, 1894, July 12, 1902, August 9, 1908, February 8, 1909, April 29, 1912, February 11, 1913, and August 21, 1917.

Injuries compensated.—All injuries causing death, or disability for more than three days, received in the course of employment, including going to and returning from work, unless caused intentionally.

Industries covered.—Mining, quarrying, stonecutting, manufacturing, building trades, transportation, storage, theaters, chimney sweeping, street cleaning, dredging, well digging, etc.; agricultural and forestry establishments using machinery; operating motor vehicles; fishing on the high seas; also domestic and other services performed by insured employees, at employer's instance.

Persons compensated.—All workmen and technical officials regularly employed, but in agriculture and forestry only employees exposed to machinery.

Government employees.—Act applies to Government employees unless an equal or more favorable compensation is provided by other laws.

Burden of payment.—Medical and surgical treatment for 20 weeks and compensation for 4 weeks of disability paid by sick funds, to which employers contribute one-third and employees two-thirds. Compensation for disability after fourth week, and for death, paid by associations supported by employers.

Compensation for death:

(*a*) Funeral expenses not to exceed 100 crowns ($20.30).

(*b*) Pensions, not to exceed two-thirds of earnings of deceased, to—

Widow, 20 per cent until death or remarriage; in the latter case a lump sum equal to three annual payments; to dependent widower, 20 per cent during disability.

Each legitimate or legitimated child, 15 years of age or under, 15 per cent when one parent survives and 20 per cent when neither survives; and the same to each illegitimate child whose paternity is acknowledged or legally established; pensions of widow (or widower) and children reduced proportionately if over two-thirds of wages.

(*c*) When pensions as above do not equal two-thirds of the wages, dependent ascendants receive pensions, not to exceed 20 per cent of earnings of deceased. Grandchildren and brothers and sisters substantially supported may receive benefits in a like amount, until the age of 15; or if unable to earn, during disability.

(*d*) In computing pensions, the excess of the annual earnings over 3,600 crowns ($730.80) is not considered.

Compensation for disability:

(*a*) Medical and surgical attendance for 20 weeks, paid by sick benefit fund.

(*b*) For total disability, 66⅔ per cent of average daily wages of insured workmen in the locality, from first to twenty-eighth day; and 66⅔ per cent of average annual earnings of injured persons, after twenty-eighth day. One and one-half benefits after the medical treatment is ended if there is such helplessness as to require the services of an attendant.

(*c*) For partial disability, benefits consist of a portion of above allowance, not to exceed 66⅔ per cent of average annual earnings.

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(*d*) In computing payments, the excess of annual earnings over 3,600 crowns ($730.80) is not considered.

Revision of compensation.—Reconsideration of the case may be undertaken by the insurance association of its own will, or upon petition.

Insurance.—Payments are met by mutual insurance associations of employers for each district in which all employees are required to be insured.

Security of payments.—Operations of insurance associations are conducted under supervision of minister of interior, who may increase assessments.

Settlement of disputes.—Arbitration courts are composed of an officer appointed by the minister of justice, two experts by the minister of interior, and one representative each of the employers and the employees.

BULGARIA.

The note in Bulletin No. 203, relating to the law of Bulgaria, should give the date of enactment as March 7, 1909, as it appears in Bulletin No. 126, instead of 1900.

CHILE.

Date of enactment.—December 22, 1916; in effect July 1, 1917.

Injuries compensated.—Accidents arising out of or directly caused by the work of the establishment, causing death or injury, excepting those due to force majeure, without any connection with the work being executed, or those intentionally brought about by the employee, or through fault or culpability of the injured person or of a third party.

Industries covered.—Those having a permanent character and employing more than 10 persons, including salt works, salt mining, quarries, mines and metallurgical establishments; loading and unloading; manufacture and handling of explosive, inflammable, noxious and toxic materials; construction, repair and maintenance of public works, railroads, docks, roads, bridges, canals, dikes, wharves, aqueducts, sewers, etc.; maritime and land transportation; and in general all enterprises, including agriculture, employing mechanical power.

Persons compensated.—All workmen and employees, including apprentices and persons receiving no wages, engaged in establishments covered.

Burden of payment.—The entire cost rests upon the employer.

Compensation for death:

(*a*) Funeral expenses not exceeding 100 pesos ($36.50).

(*b*) To a widow, or a widower incapacitated for labor, a life annuity equal to 20 per cent of the annual earnings of the deceased.

(*c*) To legitimate and natural children under 16 years of age, an annuity, equally divided, equal to 30 per cent, but if there be no widow having a right to an annuity, 50 per cent of annual earnings.

(*d*) To acknowledged illegitimate children under 16 years of age in receipt of financial assistance from the deceased at the time of his death, a sum equal to the accustomed allowance, not exceeding 20 per cent of annual salary discounted pro rata from each of the other beneficiaries, so as not to exceed the 50 per cent payable to all beneficiaries.

Compensation for disability:

(*a*) Medical, pharmaceutical, and hospital aid.

(*b*) For permanent total disability a life annuity equal to one-half of annual earnings.

(*c*) For permanent partial disability a compensation not exceeding twice the annual earnings.

(*d*) For temporary disability a compensation of 50 per cent of daily wages during disability.

Minimum and maximum annual earnings as a basis for calculating compensation are 1,600 pesos ($584), and 2,400 pesos ($876), respectively.

Revision of compensation.—No provision is made in the law.

Insurance.—The employer may transfer burden of payment to a recognized mutual association or a Chilean insurance company.

Security of payments.—In case the employer ceases the operation of his establishment he must deposit in the savings fund organized by the mortgage bank a capital sum equal to all deferred payments, as determined by the official mortality tables and other prescribed conditions.

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GREAT BRITAIN.

An amendment to the British compensation act, known as the workmen's compensation (war addition) act, 1917, increases by one-fourth the payments normally due for cases of total incapacity. The act came into effect September 1, 1917, the increase being applicable to all such cases whether the incapacity arose before or after the commencement of the act. The act is to continue in force during the continuance of the present war, and for six months thereafter.

ITALY.

Paragraph in Bulletin No. 203, headed "Date of enactment," should read: March 17, 1898; in effect September 30, 1898. Amended June 29, 1903. Promulgated in codified form January 31, 1904. Supplementary acts, July, 1904, and July 14, 1907.

MANITOBA.

Date of enactment.—March 10, 1916; in effect March 1, 1917; amended March 9, 1917. Supersedes act of March 16, 1910.

Injuries compensated.—Injuries arising out of and in course of employment, causing death, or disability for more than six days, and not due solely to the serious and willful misconduct of the employee, unless resulting in death or serious disablement. Industrial diseases are included.

Industries covered.—Schedule covers manufacturing, lumbering, mining, quarrying, transportation, construction work, warehousing, operation of public utilities, fishing, etc. Domestic and agricultural service are excluded.

Persons compensated.—Operators of freight and passenger elevators in all industries; all employees in the industries covered, including apprentices, but excepting outworkers and those engaged in clerical work and not exposed to the hazards of the industry. Persons whose employment is casual and not for the purposes of the employer's trade or business are excluded.

Government employees.—Included if the employment is such that if in private employment the law would apply.

Burden of payment.—All on the employer.

Compensation for death:

(*a*) Reasonable expenses of burial, not exceeding $75.

(*b*) To a widow or invalid widower alone, $20 per month; for each child under 16 years of age, $5 additional, not over $40 per month in all. To orphan children, $10 per month to each child under 16, the total not to exceed $40.

To other dependents, if there are none of the above, an amount proportionate to the pecuniary loss, not more than $20 per month to a parent or parents, not over $30 in all, for such time as support might reasonably have been expected if decedent had lived.

Payments to children cease at 16, and to a widow on remarriage, but she then receives a lump sum equal to two years' payments.

Payments may not exceed 55 per cent of the average earnings of the deceased, pro rata reductions being made if necessary.

Compensation for disability:

(*a*) Necessary medical care and maintenance, not over $100.

(*b*) For total disability, 55 per cent of the average weekly earnings during its continuance, payments not to be less than $6 weekly unless the earnings are less, when the benefits shall equal the earnings.

(*c*) For partial disability, 55 per cent of the wage loss during the continuance of such disability; if the impairment does not exceed 10 per cent, a lump-sum settlement may be made.

Wages in excess of $2,000 per annum shall not be considered in computing payments. Payments may be commuted to a lump sum, but only with the consent of the beneficiary.

Revision of benefits.—Payments may be reviewed from time to time at the request of either employer or workman, and varied or terminated according to the findings.

Insurance.—Insurance must be taken in an approved company; the form of policy must be satisfactory to the board, but approved employers may carry their own insurance.

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Security of payments.—Insurance companies and self-insuring employers must contribute to a fund to be available for immediate payments on account of compensation due. Payments of not over $500 are entitled to priority over other debts in assignments, etc. Security for future payments must be given in cases of permanent disability or death. Payments are not subject to assignment or attachment.

Settlement of disputes.—Disputes are settled by a workmen's compensation board, which has exclusive and final jurisdiction in all matters.

NEW BRUNSWICK.

Date of enactment.—April —, 1918; in effect on a day to be named by the Lieutenant Governor.

Injuries compensated.—Personal injury due to accident or industrial disease (as classified by the regulations), arising out of and in course of employment, causing death, or disability for more than seven days, unless intentionally caused by the workman, or due wholly or principally to his intoxication or serious or willful misconduct, or to a fortuitous event unconnected with the industry.

Industries covered.—Mining, quarrying, manufacturing, building, engineering, transportation, public utilities, lumber and fuel yards, passenger and freight elevators, public amusements, etc. Agriculture and domestic service and lumbering, logging, stream driving and directly associated operations excluded.

Persons compensated.—Employees in the industries covered, except clerks and salesmen, persons whose employment is casual and not for the purposes of the industry, outworkers, policemen and firemen, and members of the employer's family.

Government employees.—Included in so far as engaged in the industries covered.

Burden of payment.—All on the employer.

Compensation for death:

(*a*) Burial expenses not to exceed $75.

(*b*) To a widow or invalid widower, $20 per month, and $5 additional for each child under 16 years of age, not to exceed 55 per cent of the employer's wages, nor $3,500 in all.

(*c*) To other dependents, amounts proportionate to the assistance furnished. On the remarriage of a widow, payments of two years' benefits terminate the compensation. Payments to children cease at 16, and to other dependents on the expiration of the period during which payments from the employee might reasonably have been expected had he lived.

Compensation for disability:

(*a*) Special surgical or medical treatment where in the opinion of the board it will conserve the accident fund. The board may establish regulations requiring first aid to be supplied.

(*b*) For total disability, 55 per cent of the employee's wages, not less than $6 per week nor more than $125 per month, during the continuance of such disability, but not to exceed $3,500.

(*c*) For temporary partial disability, 55 per cent of the wage loss, if more than 10 per cent reduction, wages in excess of $125 per month not to be considered.

(*d*) For permanent partial disability, awards proportionate to the reduced earning capacity and degree of disfigurement, not over $1,500 in all. Any periodical payment under the act may be commuted to a lump sum.

Revision of compensation.—The board may review claims and awards at any time.

Insurance.—All employers are required to insure in a Provincial accident fund.

Security of payments.—Accident fund managed by Provincial board. Collection of premiums may be enforced.

Settlement of disputes.—Disputes are settled by a workmen's compensation board, with appeal to the supreme court on questions of law.

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NEWFOUNDLAND.

An amendment of March 11, 1914, adds logging to the list of industries covered.

NEW SOUTH WALES.

Date of enactment.—December 13, 1916; in effect July 1, 1917, replacing act of August 19, 1910.

Injuries compensated.—Personal injuries by accident arising out of and in course of employment (including industrial diseases) causing death, or disability for at least two weeks, except when due to serious or willful misconduct on the part of the workman.

Industries covered.—Any employment.

Persons compensated.—All persons employed under contract with an employer, including apprentices, except casual labor, employed otherwise than for the purpose of the employer's trade or business, outworkers, and persons receiving more than £312 ($1,518) per year.

Government employees.—The law applies to workmen in any employment by or under the Crown to which it would apply if the employer were a private person.

Burden of payment.—Entire cost of compensation rests upon the employer.

Compensation for death:

(*a*) For total or partial disability, a sum equal to three years' earnings, but not less than £300 ($1,460) nor more than £500 ($2,433) to those entirely dependent upon the earnings of the deceased. Weekly payments or lump sums paid under this law are deducted from such amount.

(*b*) A sum not exceeding the above amount, as may be agreed upon or determined as being reasonable and proportionate to the loss or damage suffered by those partly dependent.

(*c*) If no dependents are left, the expenses of medical attendance and burial, but not exceeding £20 ($97).

Compensation for disability:

(*a*) A weekly payment not exceeding 50 per cent of average weekly earnings, but no such payment shall exceed £2 ($9.73) with a total liability of £750 ($3,650).

(*b*) In case of partial incapacity, the weekly payment shall in no case exceed the loss of earning capacity.

In fixing the weekly payment, consideration must be given to any financial assistance given by the employer to the injured during incapacity.

(*c*) A lump sum may be substituted for weekly payments after six months, on application of the employer; the amount to be agreed upon or determined in accordance with provisions of the act.

Revision of compensation.—Weekly payments may be revised at the request of either party.

Insurance.—Employers may contract with their employees for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act, if the scheme is officially certified to be not less favorable to the employees and their dependents than the provisions of the act, and is accepted by a majority of the employees. In such case the employer is liable only in accordance with the scheme.

Security of payments.—When an insured employer becomes insolvent, the insurer succeeds to the rights, remedies, and liabilities of the employer, but to no liability greater than that owed by it to the employer.

Claims accrued prior to bankruptcy are preferred in amounts not exceeding £200 ($973) per person.

Settlement of disputes.—Disputes under the act may be settled by an existing mutually representative committee, parties, or by the judge of the district court.

NEW ZEALAND.

Paragraph headed "Date of enactment" should read:

October 10, 1908, in effect January 1, 1909, superseding act of October 18, 1900. Amended December 24, 1909, October 28, 1911, and December 15, 1913.

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NOVA SCOTIA.

The compensation law of Nova Scotia was amended in 1917 (May 17(?)), but not in details affecting the analysis as shown in Bulletin No. 203.

ONTARIO.

The compensation law of Ontario was further amended April 27, 1916, and April 12, 1917. The only change affecting the form of analysis used is the granting of medical, surgical, and hospital aid for the period of one month, to all employees covered by the act.

QUEBEC.

The compensation law of Quebec was amended in 1914 (ch. 57), 1915 (ch. 71), and 1918 (ch. 71). The earlier act authorizes beneficiaries to demand lump-sum settlements after one month from the award in cases of permanent disability or death; the second forbids the retention of any part of an employee's wages for purposes of insurance, while the act of 1918 extends the benefits of the law to persons earning $1,200 per annum instead of $1,000 as a maximum; it also allows maximum benefits of $2,500 instead of the former limitation of $2,000.

SWITZERLAND.

Paragraph headed "Date of enactment" should read:

June 13, 1911, adopted by referendum February 4, 1912; amended and supplemented June 18, 1915. (Not yet in effect at that date.)

To the paragraph "Industries covered" add:

The Federal Council is authorized to extend the scope of compulsory insurance under the act to designated additional classes of industries and occupations, including employment on public works.

WESTERN AUSTRALIA.

Paragraph headed "Date of enactment" should read:

December 21, 1912; in effect February 14, 1913, superseding an act of 1902, amended in 1909.

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APPENDIX.

TEXT OF WORKMEN'S COMPENSATION LAWS, AMENDMENTS, AND SUPPLEMENTAL AND RELATED ACTS—UNITED STATES—1917, 1918.

ALASKA.

ACTS OF 1917.

CHAPTER 44.—*Death benefits.*

SECTION 1. Clause B, section 1 of chapter 71, of the 1915 session laws of Alaska [shall] be amended to read as follows:

Payments on account of children.

B. In those cases where such married employee had children under the age of sixteen (16) years at the time of his death, his widow shall be entitled to receive in addition to the sum above specified, the sum of six hundred dollars ($600) for each child under the age of sixteen (16) years, or child wholly dependent upon his or her parents for support by reason of physical or mental incompetency, or unborn or posthumous child which such employee left at the time of his decease, but not to exceed in all the sum of six thousand dollars ($6,000).

Approved May 3, 1917.

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CALIFORNIA.

ACTS OF 1917.

CHAPTER 586.—*Compensation of workmen for injuries.*[1]

SECTION 1. This act and each and every part thereof is an expression of the police power and is also intended to make effective and apply to a complete system of workmen's compensation the provisions of section seventeen and one-half of article twenty and section twenty-one of article twenty of the constitution of the State of California. A complete system of workmen's compensation includes adequate provision for the comfort, health, safety and general welfare of any and all employees and those dependent upon them for support to the extent of relieving from the consequences of any injury incurred by employees in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment, full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury, full provision for adequate insurance coverage against the liability to pay or furnish compensation, full provision for regulating such insurance coverage in all its aspects including the establishment and management of a State compensation insurance fund, full provision for otherwise securing the payment of compensation, and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any matter arising under this act to the end that the administration of this act shall accomplish substantial justice in all cases expeditiously, inexpensively and without incumbrance of any character; all of which matters contained in this section are expressly declared to be the social public policy of this State, binding upon all departments of the State government. Scope of law.

SEC. 2. This act shall be known and may be cited as the "Workmen's compensation, insurance and safety act of 1917" and shall apply to the subjects mentioned in its title. Title.

SEC. 3. The following terms as used in this act shall, unless a different meaning is plainly required by the context, be construed as follows: Definitions.

(1) The term "commission" means the industrial accident commission of the State of California as created under the provisions of chapter one hundred seventy-six of the laws of 1913.

(2) The term "commissioner" means one of the members of the commission.

(3) The term "compensation" means compensation under this act and includes every benefit or payment conferred by sections six to thirty-one, inclusive, of this act upon an injured employee, or in the event of his death, upon his dependents, without regard to negligence.

(4) The term "injury," as used in this act, shall include any injury or disease arising out of the employment. In case of aggravation of any disease existing prior to such injury, compensation shall be allowed only for such proportion of the disability

[1] This act supersedes and repeals the earlier compensation law of the State (Ch. 176, acts of 1913, as amended), except as to secs. 1, 3 to 11 (relating to the industrial accident commission), 36 to 50 (relating to the State insurance fund), 88 (relating to annual reports), and 91 (repealing inconsistent acts). For these sections see Bulletin No. 203, pp. 375–378, 391–395, 406, and 407.

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due to the aggravation of such prior disease as may reasonably be attributed to the injury.

(5) The term "damages" means the recovery allowed in an action at law as contrasted with compensation under this act.

(6) The term "person" includes an individual, firm, voluntary association, or a public, quasi-public or private corporation.

(7) The term "insurance carrier" includes the State compensation insurance fund and any private company, corporation, mutual association, reciprocal or interinsurance exchange authorized under the laws of this State to insure employers against liability for compensation under this act.

(8) The phrase "compensation provisions of this act" means and includes sections six to thirty-one, inclusive, of this act.

(9) The phrase "safety provisions of this act" means and includes sections thirty-three to fifty-four, inclusive, of this act.

(10) Whenever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

Assistant attorney.

SEC. 4. The commission shall have power and authority to appoint an assistant to its attorney, who shall be an attorney at law of this State, and who shall hold office at the pleasure of the commission. It shall be the right and duty of such assistant attorney to perform any of the duties of the attorney of the commission under the direction of the commission or its attorney.

Powers of commission.

SEC. 5. Said commission is hereby vested with full power, authority and jurisdiction under the provisions of this act and charged with the duties defined by the provisions of this act in addition to all other power, authority, jurisdiction and duties conferred upon it and exercised by it as heretofore created, constituted and existing.

Act exclusive, when.

SEC. 6. (a) Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the injury, both the employer and employee are subject to the compensation provisions of this act.

(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.

(3) Where the injury is proximately caused by the employment, either with or without negligence, and is not caused by the intoxication of the injured employee, or is not intentionally self-inflicted.

(4) Where the injury is caused by the serious and wilful misconduct of the injured employee, the compensation otherwise recoverable by him shall be reduced one-half: *Provided, however*, That such misconduct of the employee shall not be a defense to the claim of the dependents of said employee, if the injury results in death, or to the claim of the employee, if the injury results in a permanent partial disability equaling or in excess of seventy per cent of total: *And provided, further*, That such misconduct of said employee shall not be a defense where his injury is caused by the failure of the employer to comply with any provision of law, or any safety order of the commission, with reference to the safety of places of employment.

(b) Where such conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this act, shall be the exclusive remedy against the employer for the injury or death: *Provided*, That where the employee is injured by reason of the serious and willful misconduct of the employer, or his managing representative, or if the employer be a partnership, on the part of one of the partners, or if a corporation, on the part of an executive or managing officer thereof, the amount of compensation otherwise recoverable for injury or death, as here-

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inafter provided, shall be increased one-half, any of the provisions of this act as to maximum payments or otherwise to the contrary notwithstanding: *Provided, however*, That said increase of award shall in no event exceed twenty-five hundred dollars.

(c) In all other cases where the conditions of compensation do not concur, the liability of the employer shall be the same as if this act had not been passed.

Employers.

SEC. 7. The term "employer" as used in sections six to thirty-one, inclusive, of this act shall be construed to mean: The State, and each county, city and county, city, school district and all public corporations and quasi-public corporations therein, and every person, firm, voluntary association, and private corporation, including any public service corporation, who has any person in service under any appointment or contract of hire, or apprenticeship, express or implied, oral or written, and the legal representative of any deceased employer.

Employees.

SEC. 8. (a) The term "employee" as used in sections six to thirty-one, inclusive, of this act shall be construed to mean: Every person in the service of an employer as defined by section seven hereof, under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also including minors, whether lawfully or unlawfully employed, and all elected and appointed paid public officers, and all officers and members of boards of directors of quasi-public or private corporations, while rendering actual service for such corporations for pay, but excluding any person whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and also excluding any employee engaged in household domestic service, farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising and any person holding an appointment as deputy clerk, deputy sheriff or deputy constable appointed for the convenience of such appointee, who receives no compensation from the county or municipal corporation or from the citizens thereof for services as such deputy: *Provided*, That such last exclusion shall not deprive any person so deputized from recourse against any private person employing him for injury occurring in the course of and arising out of such employment.

Special classes.

(b) Any person rendering service for another, other than as an independent contractor, or as expressly excluded herein, is presumed to be an employee within the meaning of this act. The term "independent contractor" shall be taken to mean, for the purposes of this act: Any person who renders service, other than manual labor, for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished. A working member of a partnership receiving wages irrespective of profits from such partnership shall be deemed an employee within the meaning of this section.

Casual.

(c) The term "casual" as used in this section shall be taken to refer only to employments where the work contemplated is to be completed in not exceeding ten working days, without regard to the number of men employed, and where the total labor cost of such work is less than one hundred dollars. The phrase "course of the trade, business, profession or occupation of his employer" shall be taken to include all services tending toward the preservation, maintenance or operation of the business, business premises or business property of the employer. The words "trade, business, profession or occupation of his employer" shall be taken to include any undertaking actually engaged in by him with some degree of regularity, the trade name, articles of incorporation or principal business of the employer to the contrary notwithstanding.

Course of trade, etc.

Watchmen.

(d) Watchmen for nonindustrial establishments, paid by subscription by several persons, shall not be held to be employees within the meaning of this act. In other cases where watchmen, paid by subscription by several persons, have at the time of the

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injury sustained by them taken out and maintained in full force and effect insurance upon themselves as self-employing persons conferring benefits equal to those conferred by this act, the employer shall not be liable under this act.

Civil service, etc., rules.

(e) It shall not be a defense to the State, or any political subdivision or institution thereof, or public or quasi-public corporation, that a person injured while rendering service for it was not lawfully employed by reason of the violation of any civil service or other law, rule, or regulation respecting the hiring of employees.

Partnerships of workmen.

(f) Workmen associating themselves under a partnership agreement, the principal purpose of which is the performance of the labor on a particular piece of work, shall be deemed employees of the person having such work executed, and, in the event the average weekly earnings are not otherwise ascertainable, shall be deemed to be employed at an average weekly wage of twelve dollars: *Provided, however*, That if such workmen shall have taken out and maintained in full force and effect insurance, in an insurance carrier as defined in this act, insuring to themselves and all persons employed by them benefits identical with those conferred by this act, the person for whom such work is to be done shall not be liable as an employer under this act.

Compensation.

SEC. 9. Where liability for compensation under this act exists, such compensation shall be furnished or paid by the employer and be as provided in the following schedule:

Medical, etc., benefits.

(a) Such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same: *Provided*, That if the employee so requests, the employer shall tender him one change of physicians and shall nominate at least three additional practicing physicians competent to treat the particular case, or as many as may be available if three can not reasonably be named, from whom the employee may choose; the employee shall also be entitled, in any serious case, upon request, to the services of a consulting physician to be provided by the employer; all of said treatment to be at the expense of the employer. If the employee so requests, the employer must procure certification by the commission or a commissioner of the competency for the particular case of the consulting or additional physicians: *Provided, further*, That the foregoing provisions regarding a change of physicians shall not apply to those cases where the employer maintains, for his own employees, a hospital and hospital staff, the adequacy and competency of which have been approved by the commission. Nothing contained in this section shall be construed to limit the right of the employee to provide, in any case, at his own expense, a consulting physician or any attending physicians whom he may desire. Controversies between employer and employee, arising under this section, shall be determined by the commission, upon the request of either party.

Disability.

(b) If the injury causes temporary disability, a disability payment which shall be payable for one week in advance as wages on the eleventh day after the injured employee leaves work as a result of the injury. If the injury causes permanent disability, a disability payment which shall be payable for one week in advance as wages on the eleventh day after the injury. Such indemnity shall thereafter be payable on the employer's regular pay day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, subject, however, to the following limitations:

Waiting time.

(1) If the period of disability does not last longer than ten days from the day the employee leaves work as the result of the injury, no disability payment whatever shall be recoverable.

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(2) If the period of disability lasts longer than ten days from the day the employee leaves work as the result of the injury, no disability payment shall be recoverable for the first ten days of disability suffered.

2. The disability payment shall be as follows: Benefits:

(1) If the injury causes temporary total disability, sixty-five per cent of the average weekly earnings during the period of such disability, consideration being given to the ability of the injured employee to compete in an open labor market; Temporary disability;

(2) If the injury causes temporary partial disability, sixty-five per cent of the weekly loss in wages during the period of such disability;

(3) If the temporary disability caused by the injury is at times total and at times partial the weekly disability payment during the period of each such total or partial disability shall be in accordance with paragraphs one and two of this subdivision respectively;

(4) Paragraphs one, two, and three of this subdivision shall be limited as follows: Aggregate disability payments for a single injury causing temporary disability shall not exceed three times the average annual earnings of the employee, nor shall the aggregate disability period for such temporary disability in any event extend beyond two hundred forty weeks from the date of the injury.

(5) If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the disability payment computed and allowed as follows: For a one per cent disability sixty-five per cent of the average weekly earnings for a period of four weeks; for a ten per cent disability, sixty-five per cent of the average weekly earnings for a period of forty weeks; for a twenty per cent disability, sixty-five per cent of the average weekly earnings for a period of eighty weeks; for a thirty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred twenty weeks; for a forty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred sixty weeks; for a fifty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred weeks; for a sixty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks; for a seventy per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks, and thereafter ten per cent of such weekly earnings during the remainder of life; for an eighty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter twenty per cent of such weekly earnings during the remainder of life; for a ninety per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter thirty per cent of such weekly earnings during the remainder of life; for a hundred per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter forty per cent of such weekly earnings during the remainder of life. Permanent disability.

(6) The payment for permanent disabilities intermediate to those fixed by the foregoing schedule shall be computed and allowed as follows: If under seventy per cent, sixty-five per cent of the average weekly earnings for four weeks for each one per cent of disability; if seventy per cent or over, sixty-five per cent of the average weekly earnings for two hundred forty weeks and thereafter one per cent of such weekly earnings for each one per cent of disability in excess of sixty per cent to be paid during the remainder of life.

(7) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his age at the time of such injury, consideration being given to the

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diminished ability of such injured employee to compete in an open labor market.

(8) Where an injury causes both temporary and permanent disability, the injured employee shall not be entitled to both a temporary and permanent disability payment, but only to the greater of the two.

(9) The following permanent disabilities shall be conclusively presumed to be total in character: Loss of both eyes or the sight thereof; loss of both hands or the use thereof; an injury resulting in a practically total paralysis; an injury to the brain resulting in incurable imbecility or insanity. In all other cases, permanent total disability shall be determined in accordance with the fact.

(10) The percentage of permanent disability caused by any injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any injury previously suffered or any permanent disability caused thereby.

Schedule to be prepared.

(11) The commission may prepare, adopt, and from time to time amend, a schedule for the determination of the percentages of permanent disabilities, such table to be based upon the proper combinations of the factors indicated in subdivision seven above. Such schedule shall be available for public inspection and without formal introduction in evidence shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by said schedule.

Vested rights.

3. The death of an injured employee shall not affect the liability of the employer under subsections (a) and (b) of this section, so far as such liability has accrued and become payable at the date of the death, and any accrued and unpaid compensation shall be paid to the dependents, if any, or, if there are no dependents, to the personal representative of the deceased employee or heirs or other persons entitled thereto, without administration, but such death shall be deemed to be the termination of the disability.

Death benefits.

(c) If the injury causes death, either with or without disability, the burial expense of the deceased employee as hereinafter limited and a death benefit which shall be payable in installments equal to sixty-five per cent of the average weekly earnings of the deceased employee, upon the employer's regular pay day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, which death benefit shall be as follows:

Dependents.

(1) In case the deceased employee leaves a person or persons wholly dependent upon him for support, such dependents shall be allowed the reasonable expense of his burial, not exceeding one hundred dollars, and a death benefit, which shall be a sum sufficient, when added to the disability indemnity which at the time of death has accrued and become payable, under the provisions of subsection (b) hereof, and the said burial expense, to make the total disability indemnity, cost of burial and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than three hundred thirty-three dollars and thirty-three cents nor more than one thousand six hundred sixty-six dollars and sixty-six cents.

Maximum and minimum earnings.

Partial dependents.

(2) In case the deceased employee leaves no person wholly dependent upon him for support, but one or more persons partially dependent therefor, the said dependents shall be allowed the reasonable expense of his burial, not to exceed one hundred dollars, and, in addition thereto, a death benefit which shall amount to three times the annual amount devoted by the deceased to the support of the person or persons so partially dependent: *Provided,* That the death benefit shall not be greater than a sum sufficient, when added to the disability indemnity which, at the time of the death, has accrued and become payable under the provisions of subsection (b) hereof, together with the cost of the burial of such deceased employee, to make the

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total disability indemnity, cost of burial and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than three hundred thirty-three dollars and thirty-three cents nor more than one thousand six hundred sixty-six dollars and sixty-six cents.

No dependents.

(3) If the deceased employee leaves no person dependent upon him for support, the death benefit shall consist of the reasonable expense of his burial not exceeding one hundred dollars.

(d) Payment of compensation in accordance with the order and direction of the commission shall discharge the employer from all claims therefor.

Hospitals to be inspected.

SEC. 10. The commission shall have power to inspect and determine the adequacy of hospitals and hospital facilities supplied by employers or by mutual associations of employees, with or without the concurrence of the employer, for the treatment of injuries coming within the provisions of this act. No part of any contribution paid by employees or deducted from their wages for the maintenance of such hospital facilities shall be devoted to the payment of any portion of the cost of providing compensation prescribed by this act. Nothing contained in this section shall be taken to prevent any hospital association or medical department furnishing the treatment prescribed in this act free of charge to employees. Every such hospital shall make to the commission from time to time, upon demand, but not less frequently than once a year, reports of receipts, disbursements and services rendered to or for employees. If in the judgment of the commission the services or equipment of any hospital are inadequate to meet the reasonable requirements of medical treatment contemplated in section nine (a) of this act, the commission may, after notice and an opportunity to be heard, declare such facilities to be inadequate and thereafter injured employees of such employer may procure treatment elsewhere, and the reasonable cost thereof shall be a charge against such employer under said section nine (a). Any finding of the commission, after such notice, determining the fact of such inadequacy, shall be conclusive evidence in any proceeding for compensation of the fact of such inadequacy during the period covered by such finding. Such finding of inadequacy may be amended, modified or rescinded by the commission at any time upon good cause appearing therefor.

Limitations.

SEC. 11. (a) Unless compensation is paid or an agreement for its payment made within the time limited in this section for the institution of proceedings for its collection, the right to institute such proceedings shall be barred: *Provided*, That the filing of an application with the commission for any portion of the benefits prescribed by this act shall render this section inoperative as to all further claims of any person or persons for compensation arising from the same transaction, and the right to present such further claims shall be governed by the provisions of section twenty (d) and section sixty-five (b) of this act.

(b) The periods within which proceedings for the collection of compensation may be commenced are as follows:

(1) Proceedings for the collection of the benefit provided by subsection (a) of section nine or for the collection of the disability payment provided by subsection (b) of said section nine must be commenced within six months from the date of the injury, except as otherwise provided in this act.

(2) Proceedings for the collection of the death benefit provided by subsection (c) of said section nine must be commenced within one year from the date of death, and in any event within two hundred forty weeks from the date of the injury, and can only be maintained when it appears that death ensued within one year from the date of the injury, or that the injury causing death also caused disability which continued to the date of the death and for which a disability payment was made, or an agreement for its payment made, or proceedings for its collection commenced within the time limited for the commencement of proceedings for the recovery of the disability payment.

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(c) The payment of compensation, or any part thereof, or agreement therefor, shall have the effect of extending the period within which proceedings for its collection may be commenced, six months from the date of the agreement or last payment of such compensation, or any part thereof, or the expiration of the period covered by any such payment: *Provided, however,* That nothing contained in this section shall be construed to bar the right of any injured employee to institute proceedings for the collection of compensation within two hundred forty-five weeks after the date of the injury upon the grounds that the original injury has caused new and further disability; and the jurisdiction of the commission, in such cases, shall be a continuing jurisdiction at all times within such period: *Provided, further,* That the provisions of this section shall not apply to an employee who is totally disabled and bedridden as a result of his injury, during the continuance of such condition or until the expiration of six months thereafter.

Minor and incompetent beneficiaries.

(d) If an injured employee, or in the case of his death, one or more of his dependents, shall be under twenty-one years of age or incompetent at any time when any right or privilege accrues to such person under the provisions of this act, a general guardian, appointed by the court, or a guardian ad litem or trustee appointed by the commission or a commissioner may, on behalf of any such person, claim and exercise any such right or privilege with the same force and effect as if no such disability existed; and no limitation of time provided by this act shall run against any such person under twenty-one years of age or incompetent unless and until such guardian or trustee is appointed. The commission shall have power to determine the fact of the minority or incompetency of any injured employee and may appoint a trustee to receive and disburse compensation payments for the benefit of such minor or incompetent and his family.

Refusing medical treatment.

(e) No compensation shall be payable in case of the death or disability of an employee if his death is caused, or if and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, the risk of which is, in the opinion of the commission, based upon expert medical or surgical advice, inconsiderable in view of the seriousness of the injury.

Second injuries.

(f) The fact that an employee has suffered a previous disability, or receives compensation therefor, shall not preclude him from compensation for a later injury, or his dependents from compensation for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be fixed at such sum as will reasonably represent his annual earning capacity at the time of the later injury.

Voluntary payments.

(g) Any payment, allowance or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this act was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be construed to be an admission of liability for compensation on the part of the employer, or the acceptance thereof as a waiver of any right or claim which the employee or his dependents may have against the employer, but any such payment, allowance or benefit may be taken into account by the commission in fixing the amount of the compensation to be paid.

Limitations an affirmative defense.

(h) The running of the period of limitations prescribed by this section is an affirmative defense and operates to bar the remedy and not to extinguish the right of the employee. It may be waived, and failure to present such defense prior to the submission of the cause for decision shall be a sufficient waiver.

Computing earnings.

SEC. 12. (a) The average annual earnings referred to in section nine hereof shall be fifty-two times the average weekly earnings referred to in said section; in computing such earnings the aver-

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age weekly earnings shall be taken at not less than six dollars and forty-one cents nor more than thirty-two dollars and five cents, and three times the average annual earnings shall be taken at not less than one thousand dollars nor more than five thousand dollars, and between said limits said average weekly earnings shall be arrived at as follows:

(1) If the injured employee has worked in the same employment, whether for the same employer or not, during at least two hundred sixty days of the year preceding his injury, his average weekly earnings shall consist of ninety-five per cent of six times the daily earnings at the time of such injury where the employment is for six full working days a week. Where his employment is for five, five and one-half, six and one-half or seven working days a week, the average weekly earnings shall be ninety-five per cent of five, five and one-half, six and one-half, or seven times the daily earnings at the time of the injury, as the case may be.

(2) If the injured employee has not so worked in such employment during at least two hundred sixty days of such preceding year, his average weekly earnings shall be based upon the daily earnings, wage or salary of an employee of the same class working at least two hundred sixty days of such preceding year in the same or a similar kind of employment in the same or a neighboring place, computed in accordance with the provisions of the preceding subdivision.

(3) If the earnings be irregular or specified to be by the week, month, or other period, then the average weekly earnings mentioned in subdivisions (1) and (2) above shall be ninety-five per cent of the average earnings during such period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.

(4) Where the employment is for less than five days per week or is seasonal or where for any reason the foregoing methods of arriving at the average weekly earnings of the injured employee can not reasonably and fairly be applied, such average weekly earnings shall be taken at ninety-five per cent of such sum as shall reasonably represent the average weekly earning capacity of the injured employee at the time of his injury, due consideration being given to his actual earnings from all sources and employments during the year preceding his injury: *Provided*, That the earnings from other occupations shall not be allowed in excess of the rate of wages paid at the time of the injury.

(b) In determining such average weekly earnings, there shall be included overtime and the market value of board, lodging, fuel, and other advantages received by the injured employee, as part of his remuneration, which can be estimated in money, but such average weekly earnings shall not include any sum which the employer may pay to the injured employee to cover any special expenses entailed on him by the nature of his employment.

(c) If the injured employee is under twenty-one years of age, and his incapacity is permanent, his average weekly earnings shall be deemed, within the limits fixed, to be the weekly sum that under ordinary circumstances he would probably be able to earn after attaining the age of twenty-one years, in the occupation in which he was employed at the time of the injury or in any occupation to which he would reasonably have been promoted if he had not been injured, and if such probable earnings after attaining the age of twenty-one years can not reasonably be determined, such average weekly earnings shall be based upon three dollars a day for a six-day week.

Wage loss.

SEC. 13. The weekly loss in wages in case of temporary partial disability shall consist of the difference between the average weekly earnings of the injured employee, computed according to the provisions of section nine, and the weekly amount which the injured employee will probably be able to earn during the disability, to be determined in view of the nature and extent of the injury. In computing such probable earnings due regard shall

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be given to the ability of the injured employee to compete in an open labor market. If evidence of exact loss of earnings be lacking, such weekly loss in wages may be computed from the proportionate loss of physical ability or earning power caused by the injury.

Dependents.

SEC. 14. (a) The following shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(1) A wife upon a husband with whom she was living at the time of his death, or for whose support such husband was legally liable at the time of his death.

(2) A child or children under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, upon the parent with whom he or they are living at the time of the death of such parent or for whose maintenance such parent was legally liable at the time of death, there being no surviving dependent parent.

(b) In all other cases, questions of entire or partial dependency and questions as to who constitute dependents and the extent of their dependency shall be determined in accordance with the fact, as the fact may be at the time of the injury of the employee.

(c) No person shall be considered a dependent of any deceased employee unless in good faith a member of the family or household of such employee, or unless such person bears to such employee the relation of husband or wife, child, posthumous child, adopted child or stepchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, uncle or aunt, brother-in-law or sister-in-law, nephew or niece.

(d) 1. If there is one or more persons wholly dependent for support upon a deceased employee, such person or persons shall receive the entire death benefit, and any person or persons partially dependent shall receive no part thereof.

2. If there is more than one such person wholly dependent for support upon a deceased employee, the death benefit shall be divided equally among them.

3. If there is more than one person partially dependent for support upon a deceased employee, and no person wholly dependent for support, the amount allowed as a death benefit shall be divided among the persons so partially dependent in proportion to the relative extent of their dependency.

Payments to dependents.

(e) The commission may, anything in this act contained to the contrary notwithstanding, set apart or reassign the death benefit to any one or more of the dependents in accordance with their respective needs and as may be just and equitable, and may order payment to a dependent subsequent in right, or not otherwise entitled, upon good cause being shown therefor. Such death benefit shall be paid to such one or more of the dependents of the deceased or to a trustee appointed by the commission or a commissioner for the benefit of the person or persons entitled, as may be determined by the commission. The person to whom the death benefit is paid for the use of the several beneficiaries shall apply the same in compliance with the findings and directions of the commission. In the event of the death of a dependent beneficiary of any deceased employee, if there be no surviving dependent, the death of such dependent shall terminate the death benefit, which shall not survive to the estate of such deceased dependent, except that payments of such death benefit accrued and payable at the time of the death of such sole remaining dependent shall be paid upon the order of the commission to the heirs of such dependent or, if none, to the heirs of the deceased employee, without administration.

Notice of injury.

SEC. 15. No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the injury which is claimed to have caused the disability or death, notice in writing, stating the name and the address of the person injured, the time and the place where the injury occurred, and the nature of the injury, and signed by

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the person injured or some one in his behalf, or in case of his death, by a dependent or some one in his behalf, shall be served upon the employer: *Provided, however*, That knowledge of such injury, obtained from any source, on the part of such employer, his managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, shall be equivalent to such service: *And provided, further*, That the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for the collection of the claim that there was no intention to mislead or prejudice the employer in making his defense, and that he was not in fact so misled or prejudiced thereby.

Medical examinations.

SEC. 16. (a) Whenever the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time, as may be reasonable, to examination by a practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any physician selected by the commission or any member or referee thereof.

(b) The request or order for such examination shall fix a time and place therefor, due consideration being given to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician provided and paid for by himself present at any examination required by his employer. So long as the employee, after such written request of the employer, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall fail or refuse to submit to examination after direction by the commission, or any member or referee thereof, or shall in any way obstruct the same, his right to the disability payments which shall accrue during the period of such failure, refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to report or testify as to the results thereof.

References to commission.

SEC. 17. (a) Upon the filing with the commission by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation, or concerning any right or liability arising out of, or incidental thereto, jurisdiction over which is vested by this act in the commission, a time and place shall be fixed for the hearing thereof, which hearing, unless otherwise agreed to by all the parties thereto, must be held not less than ten days nor more than thirty days after the filing of such application. The person filing such application shall be known as the applicant and the adverse party shall be known as the defendant. A copy of said application, together with a notice of the time and place of hearing thereof, shall forthwith be served upon all adverse parties and may be served either as a summons in a civil action or in the same manner as any other notice that is authorized or required to be served under the provisions of this act. A notice of the time and place of hearing shall also be served upon the applicant.

(b) The jurisdiction of the commission shall include any controversy relating to or arising out of the provisions of subsection (a) of section nine of this act, unless an express agreement shall have been made between the persons or institutions rendering such treatment and the employer or insurance carrier fixing the amount to be paid for the services.

(c) There shall be but one cause of action for each transaction coming within the provisions of this act, and all claims brought for medical expense, disability payments, death benefits, burial expense, liens or any other matter arising out of such transaction may, in the discretion of the commission, be joined in the same proceeding at any time.

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(d) The death of an employer subsequent to the sustaining of an injury by an employee shall not impair the right of such employee to proceed before the commission against the estate of such employer, and the failure of such employee or his dependents to cause the claim to be presented to the executor or administrator of the estate shall not in any way bar or suspend such right.

Defendant's answer.

SEC. 18. (a) If any defendant desires to disclaim any interest in the subject-matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete, or desires to bring any fact, paper or document to the attention of the commission as a defense to the claim, or otherwise, he may, within five days after the service of the application upon him, file with or mail to the commission his answer setting forth the particulars in which the application is inaccurate or incomplete, and the facts upon which he intends to rely. A copy of such answer must be forthwith served upon all adverse parties. Evidence upon matters not pleaded by answer shall be allowed only upon such terms and conditions as may be imposed by the commission or commissioner or referee holding the hearing.

Procedure.

(b) If the defendant fails to appear or answer, no default shall be taken against him, but the commission shall proceed to the hearing of the matter upon such terms and conditions as it may deem proper. Such defendant failing to appear or answer, or subsequently contending that no service was made upon him, or claiming to be aggrieved in any other manner by want of notice of the pendency of the proceedings, may apply to the commission for relief substantially in accordance with the provisions of section four hundred seventy-three of the Code of Civil Procedure, and the commission is hereby authorized to afford such relief. No right to relief, including the claim that the findings and award of the commission or judgment entered thereon are void upon their face, shall accrue to such defendant in any court unless prior application shall have been made to the commission in accordance with this subsection, and in no event shall any application to any court be allowed except as prescribed in sections sixty-seven and sixty-eight of this act.

(c) If upon the filing of an application, such application shows upon its face that the applicant is not entitled to compensation, the commission may, upon its own motion or upon the motion of the adverse party, and after opportunity to the applicant to be heard orally or in writing, and upon good cause appearing therefor, dismiss the application prior to any hearing thereon. The pendency of such motion or notice of intended dismissal shall not, unless otherwise ordered by the commission, delay the hearing upon the application upon its merits.

(d) Upon the filing of an application by or on behalf of an injured employee or his dependents or any other party in interest, the commission may, in its discretion, in the cases mentioned in section four hundred twelve of the Code of Civil Procedure, direct the county clerk of any county or city and county to issue writs of attachment authorizing the sheriff to attach the property of the defendant in an amount not to exceed the greatest probable award against him in such matter, to be fixed by the commission, as security for the payment of any compensation which may thereafter be awarded. The provisions of part two, title seven, chapter four, of the Code of Civil Procedure of this State, as far as applicable to proceedings before the commission, shall govern the proceedings upon attachment, and the commission shall be substituted for the superior court in said provisions for the purpose of this act. No writ of attachment shall be issued except upon the order of the commission or a commissioner, and such order shall not be made where it appears from the application or affidavit in support thereof that the employer was, at the time of the injury to the employee, insured against liability imposed by this act in any insurance carrier licensed to do business in the State of California. If it should at any time after the levying of an attachment be made to appear that such employer was so insured, and the requisites

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for dismissing said employer from the proceeding and substituting the insurance carrier as defendant under any of the methods prescribed under section thirty (e) of this act be established, the commission must forthwith discharge the attachment. In levying such attachment, preference must be given to the real property of the employer.

Same subject.

SEC. 19. (a) No pleadings, other than the application and answer, shall be required. The hearing on the application may be adjourned from time to time and from place to place in the discretion of the commission or commissioner or referee holding such hearing. Either party shall have the right to be present at any hearing, in person or by attorney or by any other agent, and to present such testimony as shall be pertinent under the pleadings, but the commission may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or the time books and pay roll of the employer to be examined by any commissioner or referee appointed by the commission, and may from time to time direct any employee claiming compensation to be examined by a regular physician; the testimony so taken and the results of any such inspection or examination to be reported to the commission for its consideration.

(b) The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the commission. The commission may thereupon make its findings and award based upon such stipulation, or may in its discretion set the matter down for hearing and take such further testimony or make such further investigations as may be necessary to enable it to completely determine the matter in controversy.

(c) The commission may receive as evidence, either at or subsequent to a hearing, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing:

(1) Reports of attending or examining physicians.

(2) Reports of special investigators appointed by the commission or a commissioner or referee to investigate and report upon any scientific or medical question.

(3) Reports of employers containing copies of time sheets, book accounts, reports and other records, properly authenticated.

(4) Properly authenticated copies of hospital records of the case of the injured employee.

(5) All publications of the commission.

(6) All official publications of State and United States Governments.

(7) Excerpts from expert testimony received by the commission upon similar issues of scientific fact in other cases and the prior decisions of the commission upon such issues: *Provided, however,* That transcripts of all testimony taken without notice and copies of all reports and other matters added to the record, otherwise than during the course of an open hearing, be served upon the parties to the proceeding, and opportunity be given to produce testimony in explanation or rebuttal before decision is rendered.

Affirmative defenses.

(d) The burden of proof lies upon the party holding the affirmative of the issue. The following are affirmative defenses, and the burden of proof shall rest upon the employer to establish them:

(1) That an injured person claiming to be an employee is an independent contractor or otherwise excluded from the protection of this act, where there is proof that such injured person was at the time of his injury actually performing service for the alleged employer.

(2) Intoxication of an employee causing his injury.

(3) Willful misconduct of an employee causing his injury.

(4) Aggravation of disability by unreasonable conduct of the employee.

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(5) Prejudice to the employer by failure of the employee to give notice, as required by section fifteen.

Autopsies. (e) Where it is represented to the commission, either before or after the filing of an application, that an employee has died as a result of injuries sustained in the course of his employment, the commission may require an autopsy, and the report of the physician performing such autopsy may be received in evidence in any proceedings theretofore or thereafter brought. If at the time such autopsy is requested the body of such employee be in the custody of the coroner, the coroner must, upon the request of the commission or of any party interested, afford reasonable opportunity for the attendance of any physicians named by the commission at any autopsy ordered by him. If the coroner should not require, or shall have already performed such autopsy, he shall permit an autopsy or reexamination to be performed by physicians named by the commission. No fee shall be charged by the coroner for any service, arrangement or permission given by him.

If the body is not in the custody of the coroner, the commission shall have authority to authorize the performance of such autopsy and the exhumation of the body for such purpose if necessary. If the dependents, or a majority thereof, of any such deceased employee, having the custody of the body of such deceased employee, shall refuse to allow the performance of such autopsy, such autopsy shall not be held; but upon the hearing of any application for compensation it shall be a disputable presumption that the injury or death was not due to causes entitling the claimants to benefits under this act.

Awards. SEC. 20. (a) After final hearing by the commission, it shall, within thirty days, make and file (1) its findings upon all facts involved in the controversy and (2) its award which shall state its determination as to the rights of the parties.

(b) The commission in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability payment to be made and order payment thereof during the continuance of such disability.

(c) If, in any proceeding under sections six to thirty-one, inclusive, of this act, it is proved that an injury has been suffered for which the employer would be liable to pay compensation if disability had resulted therefrom, but it is not proved that any incapacity had resulted, the commission may, instead of dismissing the application, award a nominal disability indemnity, if it appears that disability is likely to result at a future time.

Revision. (d) The commission shall have continuing jurisdiction over all its orders, decisions and awards made and entered under the provisions of sections six to thirty-one, inclusive, of this act and may at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter or amend any such order, decision or award made by it upon good cause appearing therefor, such power including the right to review, grant or regrant, diminish, increase or terminate, within the limits prescribed by this act, any compensation awarded, upon the grounds that the disability of the person in whose favor such award was made has either recurred, increased, diminished or terminated: *Provided*, That no award of compensation shall be rescinded, altered or amended after two hundred forty-five weeks from the date of the injury. Any order, decision or award rescinding, altering or amending a prior order, decision or award shall have the same effect as is herein provided for original orders, decisions or awards.

Filing awards. SEC. 21. (a) Any party affected thereby may file a certified copy of the findings and award of the commission with the clerk of the superior court of any county, or city and county, and judgment must be entered by the clerk in conformity therewith immediately upon the filing of such findings and award.

(b) The certified copy of the findings and award of the commission and a copy of the judgment shall constitute the judgment

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roll. The pleadings, all orders of the commission, its original findings and award, and all other papers and documents filed in the cause shall remain on file in the office of the commission.

Stay of execution.

(c) The commission, or any member thereof, may stay the execution of any judgment entered upon an award of the commission, upon good cause appearing therefor and upon such terms and conditions as may be imposed. A certified copy of such order shall be filed with the clerk entering judgment. Where it is deemed desirable to stay the enforcement of an award and a certified copy of said findings and award has not been issued by the commission, the commission, or any member thereof, may order such certified copy to be withheld with the same force and under the same conditions as it might issue a stay of execution if said certified copy had been issued and judgment entered thereon.

Satisfaction.

(d) When a judgment is satisfied in fact, otherwise than upon an execution, the commission may, upon motion of either party or of its own motion, order the entry of satisfaction of the judgment to be made, and upon filing a certified copy of such order with the said clerk, he shall thereupon enter such satisfaction, and not otherwise.

Court review.

SEC. 22. The orders, findings, decisions or awards of the commission made and entered under sections six to thirty-one, inclusive, of this act may be reviewed by the courts specified in sections sixty-seven and sixty-eight hereof and within the time and in the manner therein specified and not otherwise.

Fees.

SEC. 23. No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of awards as judgments and for certified copies of transcripts thereof. In all proceedings under this act before the commission, costs as between the parties shall be allowed or not in the discretion of the commission and the commission may, in its discretion, where payments of compensation have been unreasonably delayed, allow the beneficiary thereof interest thereon, at not to exceed one and one-half per cent per month, during such period of delay.

Assignment of claims.

SEC. 24. (a) No claim for compensation shall be assignable before payment, but this provision shall not affect the survival thereof, nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled to such compensation, except as hereinafter provided. No compensation, whether awarded or voluntarily paid, shall be paid to any attorney at law or in fact or other agent, but shall be paid directly to the claimant entitled to the same, unless otherwise ordered by the commission. Any payment made to such attorney at law or in fact or other agent in violation of the provisions of this section shall not be credited to the employer.

Liens.

(b) The commission may fix and determine and allow as a lien against any amount to be paid as compensation:

(1) A reasonable attorney's fee for legal services pertaining to any claim for compensation or application filed therefor and the reasonable disbursements in connection therewith.

(2) The reasonable expense incurred by or on behalf of the injured employee, as defined in subsection (a) of section nine hereof.

(3) The reasonable value of the living expenses of an injured employee, not exceeding sixty-five per cent of his weekly wages between the date of his injury and the payment of the disability payment or death benefit: *Provided*, That no such allowance shall be made while an injured employee is confined to a hospital for treatment.

(4) The reasonable burial expenses of the deceased employee, not to exceed the sum of one hundred dollars.

(5) The reasonable living expenses of the wife or minor children of the injured employee, or both, subsequent to the date of the injury, where such employee has deserted or is neglecting his family, to be allowed in such proportion as the commission shall

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deem proper, upon application of the wife or guardian of the minor children.

Claim a lien, when.

(c) If notice in writing be given to the employer setting forth the nature and extent of any claim that may be allowed as a lien, the said claim shall be a lien against any amount thereafter to be paid as compensation, subject to the determination of the amount and approval thereof by the commission. The commission may, in its discretion, order the amount of such claim as fixed and allowed by it paid directly to the person entitled, either in a lump sum or in installments. Where it appears in any proceeding pending before the commission that a lien should be allowed if the same had been duly requested by the party entitled thereto, the commission may, in its discretion, and without any request for such lien having been made, order the payment of such claim to be made directly to the person entitled, in the same manner and with the same effect as though such lien had been regularly requested, and the award to such person shall constitute a lien against unpaid compensation due at the time of service of said award.

(d) No claim or agreement for the legal services or disbursements mentioned in paragraph (1) of subsection (b) hereof, or for the expense mentioned in paragraph (2) of said subsection (b), in excess of a reasonable amount, shall be valid or binding in any respect, and it shall be competent for the commission to determine what constitutes such reasonable amount.

Preference.

(e) A claim for compensation for the injury or death of any employee, or any award or judgment entered thereon, shall have the same preference over the other unsecured debts of the employer or insurance carrier as is given by law to claims for wages. Such preference shall be for the entire amount of compensation to be paid, but this section shall not impair the lien of any previous award.

Principals and contractors.

SEC. 25. The liability of principal employers and contracting employers, general or intermediate, for compensation under this act, when other than the immediate employer of the injured employee, shall be as follows:

(a) When any such employer undertakes to do, or contracts with another to do, or to have done, any work, either directly or through contractors or subcontractors, then such principal employer or contracting employer shall be liable to pay to any employee injured while engaged in the execution of such work, or to his dependents in the event of his death, or to any other person, any compensation which the immediate employer is liable to pay, and the commission shall have jurisdiction to determine all controversies arising under this section.

(b) The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, and in addition thereto the right to enforce in his own name, in the manner provided by this act, the liability for compensation imposed upon other persons by this section, either by making such other persons parties to the original application or by filing a separate application: *Provided, however,* That payment in whole or in part of such compensation by either the immediate employer or other person shall, to the extent of such payment, be a bar to recovery against the other.

(c) When any person, other than the immediate employer, shall have paid any compensation for which he would not have been liable independently of this section, he shall, unless he caused the injury, be entitled to recover the full amount so paid from the person primarily liable therefor, and jurisdiction to determine his claim shall be vested in the commission: *Provided,* That such right of reimbursement against the person primarily liable for compensation shall not exist in favor of any insurance carrier insuring such other persons upon whom liability is imposed by this section, in any case where the immediate employer shall have joined with any of such other persons in taking out such policy of insurance or shall have contributed to the payment of the pre-

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mium for such insurance, with the intent of securing joint protection thereby, anything in the policy to the contrary notwithstanding.

(d) The liability imposed by this section shall be subject to the following limitations:

(1) Such liability shall exist only in cases where the injury occurred on or in or about the premises on which the principal employer or contracting employer, whether general or intermediate, has undertaken to execute or to have executed any work, or when such premises or work are otherwise under his control or management.

(2) Such liability shall not exist in the event that the immediate employer, or other person primarily liable for the compensation shall, previous to the suffering of such injury, have taken out, and maintained in full force and effect, compensation insurance with any insurance carrier, covering his full liability for compensation.

(3) The commission may, in its discretion, order that execution against such principal employer or contracting employer be stayed until execution against the immediate employer shall be returned unsatisfied.

(e) The findings and award of this commission entered against the immediate employer shall be conclusive for or against all persons upon whom liability is imposed by this section as to the fact and extent of liability of such immediate employer.

Injuries caused by third persons.

SEC. 26. When any injury for which compensation is payable under the provisions of this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may claim compensation under the provisions of this act, but the payment or award of compensation shall not affect the claim or right of action of such injured employee against such other person, but such injured employee may proceed at law against such person to recover damages; and any employer having paid, or having become obligated to pay, compensation may bring an action against such other person to recover damages, and evidence of any amount he has paid or become obligated to pay, as compensation, shall not be admissible: *Provided*, That if either such employee or such employer shall bring such action against such third person, he shall forthwith notify the other in writing, by personal presentation or by registered mail, of such fact and of the name of the court in which suit is brought, filing proof thereof in such action, and such other may join as a party plaintiff in such action within thirty days after such notification, or must consolidate his action, if brought independently, and if such other party fails to join or proceed as party plaintiff, his right of action against such third person shall be barred. In the event that such employer and employee shall join as parties plaintiff in such action and damages are recovered, such damages shall be so apportioned that the claim of the employer shall take precedence over that of the injured employee, and if the damages shall not be sufficient or shall be only sufficient to reimburse the employer for the compensation which he has paid, or has become obligated to pay, with a reasonable allowance for an attorney's fee, to be fixed by the court, and his costs, such damages shall be assessed in his favor; but if the damages shall be more than sufficient to reimburse him, the damages shall be assessed in his favor sufficient to so reimburse him, and the excess shall be assessed in favor of the injured employee. In case such employee shall prosecute such suit to judgment without the union of the employer by joinder or consolidation, the employer shall have a first lien upon any damages secured by the employee by such proceeding for the compensation the employer has paid, or has become obligated to pay, and may, by motion in open court, secure the allowance of said lien at any time before satisfaction of the judgment; and if such suit shall be prosecuted to judgment by the employer alone, such employer shall hold the damages recovered by him, over and

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above the compensation which he has paid, or has become obligated to pay, with a reasonable allowance for an attorney's fee, to be fixed by the court, and his costs, for the benefit of the injured employee or other person entitled, and the injured employee shall, in addition to other remedies provided by law, be entitled, by motion in open court, to have such excess awarded to him in the judgment entered by the court, at any time prior to satisfaction thereof.

Waivers. SEC. 27. (a) No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act, but nothing in this act contained shall be construed as impairing the right of the parties interested to compromise, subject to the provisions herein contained, any liability which may be claimed to exist under this act on account of such injury or death, or as conferring upon the dependents of any injured employee any interest which such employee may not divert by such compromise or for which he, or his estate, shall, in the event of such compromise by him, be accountable to such dependents or any of them.

Settlements. (b) The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employees in his employment when subject to the provisions of this act, and no release of liability or compromise agreement shall be valid unless it provide for the payment of full compensation in accordance with the provisions of this act or unless it shall be approved by the commission.

(c) A copy of such release or compromise agreement signed by both parties shall forthwith be filed with the commission. When such release or compromise agreement is filed with the commission and approved by it, the commission may of its own motion, or on the application of either party, without notice, enter its award based upon such release or compromise agreement.

(d) Every such release or compromise agreement shall be in writing, duly executed and attested by two disinterested witnesses, and shall specify the date of the accident, the average weekly wages of the employee, determined according to section twelve hereof, the nature of the disability, whether total or partial, permanent or temporary, the amount paid or due and unpaid to the employee up to the date of the release or agreement or death, as the case may be, and, if any, the amount of the payment or benefits then or thereafter to be made, and the length of time that such payment is to continue. In case of death there shall also be stated in such release or compromise agreement the date of death, the name of the widow, if any, the names and ages of all children, if any, and the names of all other dependents, if any, and whether such dependents be total or partial, and the amount paid or to be paid as a death benefit and to whom such payment is to be made.

Lump sums. SEC. 28. (a) At the time of making its award, or at any time thereafter, the commission on its own motion, either with or without notice, or upon application of either party with due notice to the other, may, in its discretion, commute the compensation payable under this act to a lump sum, if it appear that such commutation is necessary for the protection of the person entitled thereto, or for the best interest of either party, or that it will avoid undue expense or hardship to either party, or that the employer has sold or otherwise disposed of the greater part of his assets, or is about to do so, or that the employer is not a resident of this State, and the commission may order such compensation paid forthwith or at some future time.

(b) The amount of the commuted payment shall be determined in accordance with the following provisions:

(1) If the injury causes temporary disability, the commission shall estimate the probable duration thereof and the probable amount of the temporary disability payments therefor, in accordance with the provisions of section nine hereof, and shall fix the lump-sum payment at such amount so determined.

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(2) If the injury causes permanent disability or death, the commission shall fix the total amount of the permanent disability payment or death benefit payable therefor in accordance with the provisions of said section nine, and shall estimate the present value thereof, assuming interest at the rate of six per cent per annum, disregarding the probability of the beneficiary's death in all cases except where the percentage of permanent disability is such as to entitle the beneficiary to a life pension, and then taking into consideration the probability of the beneficiary's death only in estimating the present value of such life pension.

(c) The commission in its discretion may order the lump-sum payment, determined as hereinbefore provided, paid directly to the injured employee or his dependents, or deposited with any savings bank or trust company authorized to transact business in this State, that will agree to accept the same as a deposit bearing interest, or the commission may order the same deposited with the State compensation insurance fund. Any such amount so deposited, together with all interest derived therefrom, shall thereafter be held in trust for the injured employee, or in the event of his death, for his dependents, and the latter shall have no further recourse against the employer. Payments from said fund, when so deposited, shall be made by the trustee only in the same amounts and at the same time as fixed by order of the commission and until said fund and interest thereon shall be exhausted. In the appointment of the trustee preference shall be given, in the discretion of the commission, to the choice of the injured employee or his dependents. Upon the making of such payment, the employer shall present to the commission a proper receipt evidencing the same, executed either by the injured employee or his dependents, or by the trustee, and the commission shall thereupon issue its certificate in proper form evidencing the same, and such certificate, upon filing with the clerk of the superior court in which any judgment upon an award may have been entered, shall operate as a satisfaction of said award and shall fully discharge the employer from any further liability on account thereof.

(d) The commission may, where the employer is uninsured and the payments of compensation awarded are to be paid for a considerable time in the future, determine the present worth of said future payments, discounted at the rate of three per cent per annum, and order the said present worth paid into the State compensation insurance fund, which fund shall thereafter pay to the beneficiaries of said award the future payments as they become due.

Payments to be secured.

SEC. 29. (a) Every employer as defined in section seven hereof, except the State and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

1. By insuring and keeping insured against liability to pay compensation in one or more insurance carriers duly authorized to write compensation insurance in this State.

2. By securing from the commission a certificate of consent to self-insure, which may be given upon his furnishing proof satisfactory to the commission of ability to carry his own insurance and pay any compensation that may become due to his employees. The commission may, in its discretion, require such employer to deposit with the State treasurer a bond or securities approved by the commission, in an amount to be determined by the commission. Such certificate may be revoked at any time for good cause shown.

Failure to secure payments.

(b) If any employer shall fail to secure the payment of compensation, any injured employee or his dependents may proceed against such employer by filing an application for compensation with the commission, and, in addition thereto, such injured employee or his dependents may bring an action at law against such

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employer for damages, the same as if this act did not apply, and shall be entitled in such action to the right to attach the property of the employer, at any time upon or after the institution of such action, in an amount to be fixed by the court, to secure the payment of any judgment which may ultimately be obtained. Such judgment shall include a reasonable attorney's fee to be fixed by the court. The provisions of the Code of Civil Procedure, except in so far as they may be inconsistent with this act, shall govern the issuance of any proceedings upon such statement: *Provided,* That if as a result of such action for damages a judgment is obtained against such employer in excess of the compensation awarded under this act, the compensation awarded by the commission, if paid, or if security approved by the court be given for its payment, shall be credited upon such judgment: *Provided, further,* That in such action it shall be presumed that the injury to the employee was a direct result and grew out of the negligence of the employer, and the burden of proof shall rest upon the employer to rebut the presumption of negligence. In such proceeding it shall not be a defense to the employer that the employee may have been guilty of contributory negligence, or assumed the risk of the hazard complained of, or that the injury was caused by the negligence of a fellow servant. No contract, rule or regulation shall be allowed to restore to the employer any of the forgoing defenses.

Mutual, etc., Insurance companies.

SEC. 30. (a) Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance, or the right of the employer to insure in mutual or other companies, in whole or in part, against liability for the compensation provided by this act; or to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act; or the right of the employer to waive the waiting period provided for herein by insurance coverage: *Provided, however,* That it shall be unlawful for any employer to exact or receive from any employee any contribution, or make or take any deduction from the earnings of any employee, either directly or indirectly, to cover the whole or any part of the cost of compensation under this act, and it shall be a misdemeanor so to do.

Liability not to be reduced.

(b) Liability for compensation shall not be reduced or affected by any insurance, contribution, or other benefit whatsoever due to or received by the person entitled to such compensation, except as otherwise provided by this act, and the person so entitled shall, irrespective of any insurance or other contract, except as otherwise provided in this act, have the right to recover such compensation directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, either by making the insurance carrier a party to the original application or by filing a separate application, the liability of any insurance carrier, which may, in whole or in part, have insured against liability for such compensation: *Provided, however,* That payment in whole or in part of such compensation by either the employer or the insurance company shall, to the extent thereof, be a bar to recovery against the other of the amount so paid: *And provided, further,* That as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

Provisions of policies.

(c) Every contract insuring against liability for compensation, or insurance policy evidencing the same, must contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employee and, in the event of his death, to his dependents, to pay the compensation, if any, for which the employer is liable; that, as between the employee and the

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insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier; and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer under the provisions of this act.

(d) Such policy must also provide that the employee shall have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurance carrier, and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employee or his dependents, the said insurance carrier may and shall pay the same directly to the said employee or his dependents, thereby discharging, to the extent of such payment, the obligations of the employer to the employee; and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes insolvent or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing. Every contract insuring against liability for compensation provided by this act, or insurance policy evidencing the same, shall be conclusively presumed to contain all of the provisions required by this act.

Employer relieved, when.

(e) (1) If the employer shall be insured against liability for compensation with any insurance carrier, and if after the suffering of any injury such insurance carrier shall serve or cause to be served upon any person claiming compensation against such employer a notice that it has assumed and agreed to pay the compensation, if any, for which the employer is liable, and shall file a copy of such notice with the commission, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, without notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceedings shall not abate on account of such substitution but shall be continued against such insurance carrier. If at the time of the suffering of an injury for which compensation is claimed, or may be claimed, the employer shall be insured against liability for the full amount of compensation payable, or that may become payable, the employer may serve or cause to be served upon any person claiming compensation on account of the suffering of such injury and upon the insurance carrier a notice that the insurance carrier has in its policy contract or otherwise, assumed and agreed to pay the compensation, if any, for which the employer is liable, and may file a copy of such notice with the commission. If it shall thereafter appear to the satisfaction of the commission that the insurance carrier has, through the issuance of its contract of insurance or otherwise, assumed such liability for compensation, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, after notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceeding shall not abate on account of such substitution, but shall be continued against such insurance carrier.

(2) The commission may, with or without the filing of the notice required by the preceding paragraph, enter its order relieving the employer from liability where it appears from the pleadings, stipulations or proof that an insurance carrier joined as party to the proceeding is liable for the full compensation which the employer in such proceeding is liable to pay.

Insurer's rights.

(f) Where any employee is insured against liability for compensation with any insurance carrier and such insurance carrier

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shall have assumed the liability of the employer therefor in the manner provided by this section, or shall have paid any compensation for which the employer is liable, or furnished or provided any medical services required by this act, such insurance carrier shall be subrogated to all the rights and duties of such employer and may enforce any such rights of its own name.

Reinsurance by State fund.

(g) The State compensation insurance fund may insure against any liability fixed under this act to the same extent as any insurance carrier.

Limited policies.

SEC. 31. (a) If any insurance policy shall be issued covering liability for compensation, which policy shall contain any limitation as to the compensation payable, such limitation shall be printed in the body of such policy in bold-face type and in addition thereto the words "limited compensation policy" shall be printed on the top of the policy in bold-face type not less than eighteen point in size. Failure to observe the foregoing requirement shall render such policy unlimited.

(b) No insurance carrier shall insure against the liability of the employer for the additional compensation recoverable under the provisions contained in section six (b) hereof.

State fund unaffected.

SEC. 32. Nothing contained in this act shall be taken or construed to limit, interfere with, disturb, or render ineffective in any degree, the creation, existence, organization, control, management, contracts, rights, powers, duties and liabilities of the State compensation insurance fund, but all such matters and things are hereby expressly confirmed, saved and continued.[1]

Accidents.

[Sections 33 to 54, inclusive, relate to safety provisions, inspections and accident reporting and investigation, and appear in Bulletin No. 244, Labor Legislation of 1917.]

Proceedings before commission.

SEC. 55. (a) All proceedings for the recovery of compensation, or concerning any right or liability arising out of or incidental thereto, or for the enforcement against the employer or an insurance carrier of any liability for compensation imposed upon him by this act in favor of the injured employee, his dependents or any third person, or for the determination of any question as to the distribution of compensation among dependents or other persons, or for the determination of any question as to who are dependents of any deceased employee, or what persons are entitled to any benefit under the compensation provisions of this act, or for obtaining any order which by this act the commission is authorized to make, or for the determination of any other matter, jurisdiction over which is vested by this act in the commission, shall be instituted before the commission, and not elsewhere, except as otherwise in this act provided, and the commission is hereby vested with full power, authority and jurisdiction to try and finally determine all such matters, subject only to the review by the courts in this act specified and in the manner and within the time in this act provided.

(b) All orders, rules and regulations, findings, decisions and awards of the commission shall be in force and shall be prima facie lawful; and all such orders, rules and regulations, findings, decisions and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the commission or upon a review by the courts in this act specified and within the time and in the manner herein specified.

Service of notices, etc.

SEC. 56. (a) Any notice, order or decision required by this act to be served upon any person or party either before, during or after the institution of any proceeding before the commission, may be served in the manner provided by chapter five, title fourteen of part two of the Code of Civil Procedure of this State, unless otherwise directed by the commission or a member thereof,

[1] Secs. 36 to 50, inclusive, of chapter 176, acts of 1913, being that portion of the act that relates to the State compensation insurance fund, are unchanged. See Bulletin No. 203, pp. 391–395.

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in which event the same shall be served in accordance with the order or direction of said commission or member thereof. The commission or a commissioner may also, in the cases mentioned in the Code of Civil Procedure of this State, order service to be made by publication of the notice of time and place of hearing. Where service is ordered to be made by publication the date of the hearing may be fixed at more than thirty days from the date of filing the application.

(b) Any such notice, order or decision affecting the State or any city and county, city, school district or public corporation therein, shall be served upon the same officer, officers, person or persons, upon whom the service of similar notices, orders or decisions is authorized by law.

(c) The secretary, assistant secretaries and the inspectors appointed by the commission shall have all the powers conferred by law upon peace officers to carry weapons, make arrests and serve warrants and other process in this State.

Powers of commission.

SEC. 57. (a) The commission shall have full power and authority:

(1) To adopt reasonable and proper rules of practice and procedure.

(2) To regulate and provide the manner, and by whom, minors and incompetent persons shall appear and be represented before it.

(3) To appoint a trustee or guardian ad litem to appear for and represent any such minor or incompetent upon such terms and conditions as it may deem proper; and such guardian or trustee must, if required by the commission or a commissioner, give a bond in the same form and of the same character required by law from a guardian appointed by the courts and in such an amount as the commission or a commissioner may fix and determine, such bond to be approved by the commission or a commissioner, and such guardian or trustee shall not be discharged from liability until he shall have filed an account with the commission or with the probate court and such account shall have been approved. The trustee or guardian shall be entitled to receive such compensation for his services as shall be fixed and allowed by the commission or by the probate court.

(4) To provide for the joinder in the same proceeding of all persons interested therein, whether as employer, insurance carrier, employee, dependent, creditor or otherwise.

(5) To regulate and prescribe the kind and character of notices, where not otherwise prescribed by this act, and the service thereof.

(6) To regulate and prescribe the nature and extent of the proofs and evidence.

(b) The commission shall also have jurisdiction to determine controversies arising out of insurance policies issued to self-employing persons, conferring benefits identical with those prescribed by this act.

The commission may try and determine matters referred to it by the parties under the provisions of part three, title ten, of the Code of Civil Procedure, with respect to controversies arising out of insurance issued to self-employing persons under the provisions of this act. Such controversies may be submitted to it by the signed agreement of the parties, or by the application of one party and the submission of the other to its jurisdiction, with or without an express request for arbitration. The state compensation insurance fund must submit to the commission, the consent of the other party being obtained, all controversies susceptible of being arbitrated under this section. In acting as arbitrator under the provisions of this section, the commission shall have all the powers which it may lawfully exercise in compensation cases, and its findings and award upon such arbitration shall have the same conclusiveness and be subject to the same mode of reopening, review and enforcement as in compensation cases. No fee or cost

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shall be charged by the commission to any party for arbitrating the issues presented under this section.

Injuries outside State.

SEC. 58. The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this State in those cases where the injured employee is a resident of this State at the time of the injury and the contract of hire was made in this State, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act.

References.

SEC. 59. The commission may upon the agreement of the parties, upon the application of either, or of its own motion, and either with or without notice, direct and order a reference in the following cases:

(1) To try any or all of the issues in any proceeding before it, whether of fact or of law, and to report a finding, order, decision or award to be based thereon.

(2) To ascertain a fact necessary to enable the commission to determine any proceeding before it or to make any order, decision or award that the commission is authorized to make under this act, or that is necessary for the information of the commission.

(b) The commission may appoint one or more referees in any proceeding, as it may deem necessary or advisable, and may refer matters arising out of the same proceeding to different referees. It may also, in its discretion, appoint general referees who shall hold office during the pleasure of the commission. Any referee appointed by the commission shall have such powers, jurisdiction and authority as is granted under the law, by the order of appointment and by the rules of the commission, and shall receive such salary or compensation for his services as may be fixed by the commission.

(c) Any party to the proceeding may object to the appointment of any person as referee upon any one or more of the grounds specified in section six hundred and forty-one of the Code of Civil Procedure and such objection must be heard and disposed of by the commission. Affidavits may be read and witnesses examined as to such objections.

(d) Before entering upon his duties, the referee must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and determine the matters and issues referred to him, and to make just findings and report according to his understanding.

(e) The referee must report his findings in writing to the commission within fifteen days after the testimony is closed. Such report shall be made in the form prescribed by the commission and shall include all matters required to be included in the order of reference or by the rules of the commission. The facts found and conclusions of law must be separately stated.

(f) Upon the filing of the report of the referee, the commission may confirm, adopt, modify or set aside the same or any part thereof and may, either with or without further proceedings, and either with or without notice, enter its order, findings, decision or award based in whole or in part upon the report of the referee, or upon the record in the case.

(g) The provisions of the preceding subdivisions of this section shall not be construed to prevent the commission from requiring its referees merely to hold hearings and to make return of the testimony to the commission.

Procedure.

SEC. 60. (a) All hearings and investigations before the commission or any member thereof, or any referee appointed thereby, shall be governed by this act and by the rules of practice and procedure adopted by the commission, and in the conduct thereof neither the commission nor any member thereof, nor any referee appointed thereby, shall be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in such manner, through oral testimony and written and printed records, as is best calculated to ascertain the substantial rights of the

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parties and carry out justly the spirit and provisions of this act. No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, rule or regulation made, approved or confirmed by the commission; nor shall any order, award, rule or regulation be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the said common law or statutory rules of evidence and procedure.

(b) The commission, or a commissioner or referee, or any party to the action or proceeding, may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this State, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts: *Provided*, That depositions taken outside of the State may be taken before any officers authorized to administer oaths.

Power to administer oaths, etc.

SEC. 61. The commission and each member thereof, its secretary, assistant secretaries and referees, shall have power to administer oaths, certify to all official acts, and to issue subpœnas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the State. Each witness who shall appear, by order of the commission or a member thereof, or a referee appointed thereby, shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpœnaed, unless otherwise ordered by the commission. When any witness who has not been required to attend at the request of any party is subpœnaed by the commission, his fees and mileage may be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpœnaed, except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission, member thereof, or referee as directed in the subpœna. All fees and mileage to which any witness is entitled, under the provisions of this section, may be collected by action therefor instituted by the person to whom such fees are payable.

Courts to aid.

SEC. 62. The superior court in and for the county, or city and county, in which any inquiry, investigation, hearing or proceeding may be held by the commission or any member thereof or referee appointed thereby, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents, as required by any subpœna issued by the commission or member thereof or referee. The commission or any member thereof or the referee, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpœna, may report to the superior court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been subpœnaed in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpœna, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify or produce said papers before the commission. The court, upon the petition of the commission or such member thereof or referee, shall enter an order directing the witness to appear before the court at a time

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and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he had not attended and testified or produced said papers before the commission, member thereof or referee. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpœna was regularly issued by the commission or member thereof or referee and that the witness was legally bound to comply therewith, the court shall thereupon enter an order that said witness appear before the commission or member thereof or referee at a time and place to be fixed in such order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the commission or a member thereof to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.

General powers.

SEC. 63. (a) The commission is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon it under this act.

(b) The commission and each member thereof shall have power to issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for contempt, in like manner and to the same extent as courts of record. The process issued by the commission or any member thereof shall extend to all parts of the State and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the commission or any member thereof. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

Rehearings.

SEC. 64. (a) Any party or person aggrieved directly or indirectly by any final order, decision, award, rule or regulation of the commission, made or entered under any provision contained in this act, may apply to the commission for a rehearing in respect to any matters determined or covered by such final order, decision, award, rule, or regulation and specified in the application for rehearing within the time and in the manner hereinafter specified, and not otherwise.

(b) No cause of action arising out of any such final order, decision or award shall accrue in any court to any person until and unless such person shall have made application for such rehearing, and such application shall have been granted or denied: *Provided*, That nothing herein contained shall be construed to prevent the enforcement of any such final order, decision, award, rule or regulation in the manner provided in this act.

(c) Such application shall set forth specifically and in full detail the grounds upon which the applicant considers said final order, decision, award, rule or regulation is unjust or unlawful, and every issue to be considered by the commission. Such application must be verified upon oath in the same manner as required for verified pleadings in courts of record and must contain a general statement of any evidence or other matters upon which the applicant relies in support thereof. The applicant for such hearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matter upon which such rehearing is sought other than those set forth in the application for such rehearing.

(d) A copy of such application for rehearing shall be served forthwith upon all adverse parties by the party applying for such rehearing, and any such adverse party may file an answer thereto within ten days thereafter. Such answer must likewise

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be verified. The commission may require the application for rehearing to be served on such other persons or parties as may be designated by it.

(e) Upon filing of an application for a rehearing, if the issues raised thereby have theretofore been adequately considered by the commission, it may determine the same by confirming without hearing its previous determination, or if a rehearing is necessary to determine the issues raised, or any one or more of such issues, the commission shall order a rehearing thereon and consider and determine the matter or matters raised by such application. If at the time of granting such rehearing it shall appear to the satisfaction of the commission that no sufficient reason exists for taking further testimony, the commission may reconsider and redetermine the original cause without setting a time and place for such further rehearing. Notice of the time and place of such hearing, if any, shall be given to the applicant and adverse parties, and to such other persons as the commission may order.

(f) If, after such rehearing and a consideration of all the facts, including those arising since the making of the order, decision or award involved, the commission shall be of the opinion that the original order, decision or award, or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. An order, decision or award made after such rehearing, abrogating, changing or modifying the original order, decision or award, shall have the same force and effect as an original order, decision or award, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order, decision or award, unless so ordered by the commission. An application for a rehearing shall be deemed to have been denied by the commission unless it shall have been acted upon within thirty days from the date of filing: *Provided, however,* That the commission may, upon good cause being shown therefor, extend the time within which it may act upon such application for not exceeding thirty days.

Grounds for rehearing.

SEC. 65. (a) At any time within twenty days after the service of any final order or decision of the commission awarding or denying compensation, or arising out of or incidental thereto, any party or parties aggrieved thereby may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

(1) That the commission acted without or in excess of its powers.

(2) That the order, decision or award was procured by fraud.

(3) That the evidence does not justify the findings of fact.

(4) That the applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(5) That the findings of fact do not support the order, decision or award.

(b) Nothing contained in this section shall, however, be construed to limit the grant of continuing jurisdiction contained in subsection (d) of section twenty of this act.

Same subject.

SEC. 66. (a) At any time within twenty days after the service of any final order, decision, rule or regulation, other than an order or award pertaining to compensation, any party or parties, person or persons aggrieved thereby or otherwise affected, directly or indirectly, may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

(1) That the commission acted without or in excess of its powers.

(2) That the order or decision was procured by fraud.

(3) That the order, decision, rule or regulation is unreasonable.

(b) Nothing contained in this section shall be construed to limit the right of the commission, at any time and from time to time, to adopt new or different rules or regulations or new or

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different standards of safety, or to abrogate, change or modify any existing rule, regulation or standard, or any part thereof, or to deprive the commission of continuing jurisdiction over the same, or to prevent the enforcement in the manner provided by this act, of any rules, regulations or standards of the commission, or any part thereof, when so adopted, or changed, or modified.

Appeal to court.

SEC. 67. (a) Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, any party affected thereby may apply to the supreme court of this State, or to the district court of appeal of the appellate district in which such person resides, for a writ of certiorari or review, hereinafter referred to as a writ of review, for the purpose of having the lawfulness of the original order, rule, regulation, decision or award, or the order, rule, regulation, decision or award on rehearing inquired into and determined.

(b) Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard in the court unless for good cause the same be continued. No new or additional evidence may be introduced in such court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether:

(1) The commission acted without or in excess of its powers.

(2) The order, decision or award was procured by fraud.

(3) The order, decision, rule or regulation was unreasonable.

(4) If findings of fact are made, such findings of fact support the order, decision or award under review.

(c) The findings and conclusions of the commission on questions of fact shall be conclusive and final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the court shall enter judgment either affirming or setting aside the order, decision or award or may remand the case for further proceedings before the commission.

(d) The provisions of the Code of Civil Procedure of this State relating to writs of review shall, so far as applicable and not in conflict with this act, apply to proceedings in the courts under the provisions of this section. No court of this State, except the supreme court and the district courts of appeal to the extent herein specified, shall have jurisdiction to review, reverse, correct or annul any order, rule, regulation, decision or award of the commission, or to suspend or delay the operation or execution thereof, or to restrain, enjoin or interfere with the commission in the performance of its duties: *Provided*, That a writ of mandamus shall lie from the supreme court or the district courts of appeal in all proper cases.

Suspension.

SEC. 68. (a) The filing of an application for a rehearing shall have the effect of suspending the order, decision, award, rule or regulation affected, in so far as the same applies to the parties to such application, unless otherwise ordered by the commission, for a period of ten days, and the commission may, in its discretion and upon such terms and conditions as it may by order direct, stay, suspend or postpone the same during the pendency of such rehearing.

(b) The filing of an application for, or the pendency of, a writ of review, shall not of itself stay or suspend the operation of the order, decision, award, rule or regulation of the commission subject to review, but the court before which such application is filed may, in its discretion, stay or suspend in whole or in part the operation of the order, decision, award, rule or regulation of the commission subject to review, upon such terms and conditions as it may by order direct, except as provided in the following subsection.

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(c) The operation of any order or award entered by the commission under the provisions of sections six to thirty-one, inclusive, of this act, or any judgment entered thereon, shall not at any time be stayed by the court to which petition is made for a writ of review, unless a written undertaking be executed on the part of the petitioner by two or more sureties, to the effect that they are bound in double the amount named in such order, award or judgment; that if the order, award or judgment appealed from, or any part thereof, be affirmed, or the proceeding upon review be dismissed, the petitioner shall pay the amount directed to be paid by the order, award or judgment, or the part of such amount as to which the order, award or judgment is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the petitioner; and that, if the said petitioner does not make such payment within thirty days after the filing with the commission of the remittitur from the reviewing court, judgment may be entered, on motion of the adverse party, in his favor, and to which the said undertaking may be transferred, in any superior court in which a certified copy of the order or award may be filed against the sureties for such amount, together with interest that may be due thereon, and the damages and costs which may be awarded against the said petitioner. The provisions of the Code of Civil Procedure, except in so far as they may be inconsistent with this act, are applicable to said undertaking. Such undertaking shall be filed with the commission, and the certificate of the commission, or any proper officer thereof, of the filing and approval of such undertaking, is sufficient evidence of the compliance of the petitioner with the provisions of this subsection.

Construction.

SEC. 69 (a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court with the purpose of extending the benefits of the act for the protection of persons injured in the course of their employment.

(b) If any section, subsection, subdivision, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, subdivision, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases is declared unconstitutional.

(c) This act shall not be construed to apply to employers or employments which, according to law, are so engaged in interstate commerce as not to be subject to the legislative power of the State, or to employees injured while they are so engaged, except in so far as this act may be permitted to apply under the provisions of the Constitution of the United States or the acts of Congress.

Election.

SEC. 70. (a) Any employer, having in his employment any employee not included within the term "employee" as defined by section eight of this act or not entitled to compensation under this act, and any such employee, may, by their joint election, elect to come under the compensation provisions of this act in the manner hereinafter provided.

(b) Such election on the part of the employer shall be made by filing with the commission a written statement to the effect that he accepts the compensation provisions of this act, which, when filed, shall operate, within the meaning of section six of this act, to subject him to the compensation provisions thereof, and of all acts amendatory thereof, for the term of one year from the date of filing, and thereafter without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or succeeding year, file in the office of the commission a notice in writing that he withdraws his election. Such acceptance shall be held to include employees whose employment is both casual and not in the course of the trade, business, profession or occupation of the employer, unless expressly excluded therefrom. In case any em-

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ployer is insured against liability for compensation under this act, he shall be deemed to have so elected during the period that such policy shall remain in force, without filing such written notice with the commission, as to all classes of employees covered by such policy of insurance, anything in this act to the contrary notwithstanding.

(c) Any employee in the service of any employer who has made an election in either of the modes above prescribed shall be deemed to have accepted, and shall, within the meaning of section six of this act, be subject to the compensation provisions of this act, and of any act amendatory thereof, if, at the time of the injury for which liability is claimed:

(1) The employer charged with such liability is subject to the compensation provisions of this act, whether the employee has actual notice thereof or not; and

(2) Such employee shall not, at the time of entering into the employment, have given to his employer notice in writing that he elects not to be subject to the compensation provisions of this act; or, in the event that such employment was entered into in advance of the election by the employer, such employee shall have given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for five days after the employer has filed his election, in which case the time at which the employee becomes subject to said compensation provisions shall be deemed to be at the beginning of said period.

(d) The State, and all political or other subdivisions thereof, as defined in section seven, and all State institutions, shall be conclusively presumed to have elected to come within the provisions of this act as to all employments otherwise excluded from this act.

(e) All written acceptances filed by employers with the commission prior to the taking effect of this act, accepting the provisions of the workmen's compensation, insurance and safety act, chapter one hundred seventy-six, statutes of 1913, and all acts amendatory thereof, shall, unless written notice be given to the contrary by said employer within sixty days after the taking effect of this act, be deemed acceptances of the provisions of this act, and all acts amendatory thereof, in accordance with the provisions of this section.

Repeals, etc. SEC. 71. Sections two, twelve, * * * [to] thirty-five, fifty-one, * * * [to] eighty-seven of chapter one hundred seventy-six, statutes of 1913, and all other acts and parts of acts inconsistent herewith, are hereby repealed: *Provided*, That nothing contained in this act shall be construed as limiting or repealing sections one, three, * * * [to] eleven, thirty-six, * * *[to] fifty, eighty-eight and ninety of said chapter one hundred seventy-six, statutes of 1913.

Prior and pending transactions. SEC. 72. Nothing contained in this act shall be construed to limit, interfere with, disturb, or render ineffective in any degree, any matter, proceeding or transaction pending, done or performed under the provisions of chapter one hundred seventy-six, statutes of 1913, and all acts amendatory thereof, or supplementary thereto, by the industrial accident commission, or any department or division thereof, or to affect any right or liability accrued or accruing or to accrue under said acts, but each and every part thereof are hereby expressly saved and continued under the jurisdiction of said industrial accident commission, with full power, authority and jurisdiction, and with the right and duty in said industrial accident commission to fully administer and dispose of the same.

Previous injuries. SEC. 73. The compensation provisions of this act, except procedural provisions, shall not apply to any injury sustained prior to the taking effect hereof.

Act in effect. SEC. 74. This act shall take effect on the first day of January, 1918.

Approved May 23, 1917.

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COLORADO.

ACTS OF 1917.

CHAPTER 155.—*Compensation of workmen for injuries.*

[This act amends several sections of the compensation law of the State, chapter 179, acts of 1915.
Section 4 is amended so as to read as follows:]

SECTION 4 (as amended by chapter 155, acts of 1917). The following terms as used in this act shall be construed and have the following meaning unless otherwise specifically defined in the context: **Definitions.**

(a) The term "order" shall mean and include any decision, classification, rate, rule, regulation, direction, requirement or standard of the commission, or any other determination arrived at or decision made by such commission. **"Order."**

(b) The term "place of employment" shall mean and include every place whether indoors or out, or underground, and the premises appurtenant thereto, where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly relating to any industry, trade or business is carried on and where any person is directly or indirectly employed by another for direct or indirect gain or profit, except as otherwise expressly provided in this act. **"Place of employment."**

(c) The term "employment" shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged, except as otherwise expressly provided in this act. **"Employment."**

(d) The term "employer" shall mean and include: **"Employer."**

(1) The State, and each county, city, town, irrigation, drainage, and school district therein, and all public institutions and administrative boards thereof, without regard to the number of persons in the service of any such public employer; and provided that all such public employers shall be at all times subject to the compensation provisions of this act. **Public employment.**

(2) Every person, association of persons, firm and private corporation (including any public service corporation), personal representative, assignee, trustee and receiver, who has four or more persons regularly engaged in the same business or employment (except as otherwise expressly provided in this act), in service under any contract of hire, express or implied, and who, at or prior to the time of the accident to the employee for which compensation is claimed under this act, has elected to become subject to the provisions of this act, and who shall not, prior to such accident, have effected a withdrawal of such election in the manner provided in this act. **Private employment.**

(3) This act is not intended to apply to employers of private domestic servants or farm and ranch labor, nor to employers who employ less than four employees regularly in the same business or in or about the same place of employment: *Provided*, That any such employer may elect to accept the provisions of this act in the manner provided herein, in which event he and his employees shall be subject to and entitled to all provisions of this act. **Exemptions.**

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Interstate carriers. (4) The provisions of this act shall not apply to common carriers engaged in interstate commerce, nor to their employees.

"Employee." (e) The term "employee" shall mean and include:

Public employment. (1) Every person in the service of the State, or of the county, city, town, irrigation, drainage, or school district therein, or of any public institution or administrative board thereof, under any appointment or contract of hire, express or implied, except an elective official of the State, or of any county, city, town, irrigation, drainage, or school district therein, or of any public institution or administrative board thereof, and except all officers and enlisted men of the National Guard of the State of Colorado. Policemen and firemen shall be deemed employees, within the meaning of this paragraph: *Provided,* That any policeman or fireman claiming compensation under this act shall have deducted from such compensation any sum which such policeman or fireman may receive from any pension or any benefit fund to which the municipality may contribute.

Private employment. (2) Every person in the service of any other person, association of persons, firm, private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, under any contract of hire, express or implied, including aliens and also including minors who are legally permitted to work under the laws of this State (who for the purposes of this act shall be considered the same, and shall have the same power of contracting with respect to their employment, as adult employees), but not including any person whose employment is but casual, or who is expressly excluded from this act, or whose employment is not in the usual course of trade, business, profession or occupation of his employer.

Contractors and subcontractors. (3) Every employer who owns any property upon which any business is carried on, who contracts out the work on said premises, to any contractor, subcontractor, person or persons who shall hire four or more employees, or every employer who shall operate his business exclusively or in part by leasing or contracting out any part or all of the work thereof to any contractor, subcontractor, lessee, person or persons, shall be liable for compensation to the said contractor, subcontractor, lessee, person or persons and their employees, for injuries or death under this act, and shall insure the same as herein provided, unless within five days prior to the beginning of said work or business as aforesaid, he shall present in writing to the commission satisfactory proof that said contractor, subcontractor, lessee, person or persons, and his or their employees, have accepted this act and have complied with the insurance provisions thereof, or rejected this act: *Provided, however,* That if said employer, doing business as provided in this section, shall insure the risk of said contractor, subcontractor, lessee, person or persons, and their employees, such employer may deduct the premium for the same from the contract price or proceeds which may be due said contractor, subcontractor, lessee, person or persons.

Loaned employees. (4) Where an employer, who has accepted the provisions of this act and has complied therewith, shall loan the service of any of his employees who have accepted the provisions of this act, to any third person, he shall be liable for any compensation thereafter for any injuries or death of said employee as in this act provided, unless it shall appear from the evidence in said case that said loaning constitutes a new contract of hire between the employee whose services were loaned and the person to whom he was loaned.

Dependents. (f) I. For the purpose of this act, the following described persons shall be conclusively presumed to be wholly dependent:

(1) The wife, unless it be shown that she was voluntarily living apart from her husband at the time of his injury or death, and was not dependent in whole or in part on him for support.

(2) Minor children of the deceased under the age of sixteen years. The term "minor child" shall include posthumous children and a child legally adopted prior to the injury.

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(3) Children between sixteen and eighteen years of age, or those over eighteen if physically or mentally incapacitated from earning, shall, prima facie, be considered dependent.

II. The wife, children, husband, mother, father, grandmother, grandfather, sister, brother, who were wholly supported by the deceased workman at the time of his death, and for a reasonable period of time immediately prior thereto, shall be considered his actual dependents, and payment of compensation shall be made to them in the order named.

III. Any member or members of a class named in this section, who regularly derived part of his support from the wages of the deceased workman at the time of his death, and for a reasonable period of time immediately prior thereto, shall be considered his partial dependents, and payment of compensation shall be made to such dependents in the order named.

Payments to dependents.

IV. Compensation shall be payable to such dependents entitled thereto, subject to the provisions of this act as to minimum and maximum, without administration, on the basis of fifty per cent of the average weekly wages of the deceased for a period of six years from the date of the death of the injured workman, less any sums paid to deceased prior to his death, as compensation for disability as in this act provided. In all cases where compensation is payable to dependents for the benefit of two or more dependents, the commission shall have the power to determine, in its discretion, what proportion of the compensation shall be applied for the benefit of each dependent, and may order the same paid to a guardian or conservator, if necessary.

Remarriage of spouse.

V. In case of remarriage of a spouse without children, he or she shall receive a lump-sum settlement equal to one-half of the amount of compensation remaining unpaid. This amount shall be paid to such spouse within sixty days after written notice to the commission of such remarriage. In case of remarriage of a spouse who has dependent children, the unpaid balance of compensation, which would otherwise become due to such spouse, shall be paid to such children.

Partial dependents.

VI. Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of the wages, regularly contributed by the deceased of such partial dependent at and for a reasonable time immediately prior to the injury, bore to the total income of the dependents during the same time. Where there are persons both wholly dependent and partially dependent, only those wholly dependent shall be entitled to compensation.

Fixing status.

VII. (1) Questions as to who constitute dependents, and the extent of their dependency, shall be determined as of the day of the accident to the injured workman, and their right to death benefits shall become fixed as of said time irrespective of any subsequent change in conditions, and the death benefits shall be directly payable to the dependent or dependents entitled thereto, or to their legal representatives.

Payments cease, when.

(2) When a right to death benefits shall have become fixed, it shall cease upon the happening of any one of the following contingencies:

(a) Upon the marriage of the spouse, with the exception as to lump-sum settlement, as hereinbefore provided.

(b) When a child reaches the age of eighteen years, unless such child at such time is physically or mentally incapacitated from earning.

(c) Upon the death of any dependent.

Provided, however, That in any case where the share of any dependent shall lapse, it shall survive to the remaining dependents.

No dependents.

VIII. Where the deceased workman leaves no dependents, compensation shall be limited to medical, surgical and hospital expenses as herein provided, and to a reasonable funeral expense for such deceased, not to exceed the sum of seventy-five dol-

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lars, together with such sum as the deceased may have been paid for disability.

Funeral expenses. IX. If death shall occur to the injured workman as the proximate result of the accident, and he leaves dependents entitled to compensation, there shall be advanced within thirty days after the said death the sum of not to exceed one hundred dollars for reasonable funeral and burial expenses, which said sum shall be credited against and deducted from the compensation to be received by said dependents, and this sum shall not be affected by the provisions of this act relating to payments in gross.

Alien beneficiaries. X. Death benefits under this act to dependents who are nonresidents of the United States shall be one-third of the amount which a dependent who is a resident of the United States might receive: *Provided,* That in no event shall death benefits to dependents who are nonresidents of the United States exceed the aggregate sum of one thousand dollars.

Dependents not interested, when. XI. No dependent of an 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.

Wage basis. (g) The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits.

(1) The average weekly earnings of all employees shall be taken at not less than the minimum nor more than the maximum provided in this act. Between said limits, said average annual earnings shall be determined as follows:

(2) Whenever the term wages is used it shall be construed to mean the money rate at which the services rendered are recompensed under the contract of hire in force at the time of the accident, either express or implied, and shall not include gratuities received from the employer or others; nor shall it include board, lodging or similar advantages received from the employer, unless the money value of such advantage shall have been fixed by the parties at the time of the hiring; nor shall it include amounts deducted by the employer under the contract of hiring for labor, material, supplies, tools and other things furnished and paid for by the employer and necessary for the performance of such contract by the employee.

(3) The average weekly wage shall be computed as follows: In seasonal employment or employments dependent upon the weather the employee's average weekly wage shall be one-fiftieth of the total wages he has earned in all occupations during the year immediately preceding the accident, unless it be shown that during said year, by reason of exceptional causes, such method of computing does not ascertain fairly the earnings of the employee; in which case the period of calculation shall be extended so as to give a basis for the fair ascertainment of his average weekly wages, but not to exceed a period of two years.

A seasonable [seasonal] employment shall be defined to be an employment which can not by reason of conditions of nature or of business be pursued continuously throughout the year, but is pursued intermittently, or is confined to certain seasons of the year. In all other cases the injured employee's average weekly wage shall be taken to be five and one-half times his average daily wage, excluding earnings from overtime, using as a basis of calculation in securing his average daily wage his earnings from all employers during the six months immediately preceding his accident: *Provided, however,* That if a fair average daily wage can not be secured from his earnings in the preceding six months, the earnings for the year immediately preceding his accident may be used. *Provided,* That if the workman has not been employed six months, his daily average shall be taken from the time he has worked.

Concurrent contracts. Where an employee is working under concurrent contracts with four or more employers, his wages from all employments

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shall be considered as if earned from the employer liable for compensation.

(4) If an employee is a minor, his average daily wage shall be determined on the basis of the earnings that such minor, if not disabled or killed, would probably have earned. If it is established that the injured employee was of such age and experience when injured or killed, as that under natural conditions his wages would be expected to be increased, that fact may be considered in arriving at his average weekly wage. Minors.

(5) The fact that an employee has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death; but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his average annual earning capacity at the time of the latter injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to, the limitations of the provisions of this section. Second injuries.

(h) The term "safe" or "safety" as applied to an employment or place of employment shall mean such freedom from danger to the life, health and safety of employees, and such reasonable means of notification, egress and escape in case of fire, as the nature of the employment will reasonably permit. "Safety."

[Section 7 is amended by inserting in the second line, after the word "act," the words "including the provisions thereof relating to insurance."

Subsection 1 of section 8 is amended by adding the words, "and where the employer has complied with the provisions thereof regarding insurance."

Subsection 3 of section 10 is amended by adding thereto the following:]

Provided, That the State itself, and each county, city, town, irrigation, drainage, and school district therein, and each public institution and each administrative board thereof shall insure and keep insured the payment of such compensation in the State compensation insurance fund. State, etc., to insure in State fund.

[Section 11 is amended so as to read as follows:]

SEC. 11. Every insurance corporation or mutual corporation, and the State compensation insurance fund, authorized to transact business in this State, which insures employers against liability for compensation under the provisions of this act, shall file with the commission its classification of risks and premiums relating thereto, and any subsequent proposed classification of risks and premiums, together with basic rates and schedules, if a system of schedule rating be in use, none of which shall take effect until the commission shall have approved the same as adequate for the risks to which they respectively apply. The commission may withdraw its approval of any premium rate or schedule made by any insurance corporation or mutual corporation, if, in its judgment, such premium rate or schedule is inadequate to provide the necessary reserves. If any insurance carrier willfully violates any of the provisions of this act, the insurance commissioner, on the request of the industrial commission, shall suspend or revoke the license or authority of such carrier to do a compensation business in this State. Duty of insurance companies.

Every contract for the insurance of compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and all provisions thereof in such insurance policy, inconsistent with the provisions of this act, shall be void; and each such contract and each endorsement, rider, letter, or other document affecting such contract shall be of a standard form as nearly as possible, and be approved by the industrial commission. Provisions of policies.

Every contract insuring against liability for compensation, or insurance policy evidencing the same, must contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employee, and in the event of his death, to

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his dependents, to pay compensation, if any, for which the employer is liable; that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer under the provisions of this act.

Such policy must also provide that the employee shall have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurance carrier and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employee or his dependents, the said insurance carrier may and shall pay the same directly to the said employee or his dependents, thereby discharging to the extent of such payments the obligations of the employer to the employee, and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes insolvent or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing.

State fund to be inspected.

The State compensation insurance fund shall be open to visitation and examination by the insurance commissioner, at all reasonable times, and the insurance commissioner may require from the commission reports as to the condition of such fund, as required by law to be made by other insurance carriers doing business in this State, and it shall be the duty of the insurance commissioner to cause a thorough examination of such fund to be made during the month of November of each year, such examination to be made by a competent, fair and impartial examiner, selected by agreement of the insurance commissioner and the commission. Such examination shall be by an actuary of recognized standing, and free from any connection with any interests opposed to the State compensation insurance fund.

[Section 14 is amended by adding thereto the following:]

Notice of injury.

Every employee who sustains an injury shall notify his employer of said injury within two days of its occurrence, unless said employee shall be physically or mentally unable so to do, or unless his employer shall have actual notice of said injury. If said employee shall fail to report said injury he shall lose one day's compensation for each day's failure to so report: *Provided, however*, That if anyone shall report the said accident for said injured employee within the time above specified, to his employer, then the injured employee shall be relieved from reporting the accident as provided above.

[Section 20 is amended by substituting for the word "collected" in the last line thereof the word "constituted."

[Section 23 is amended by adding a proviso to subsection 7, also by adding subsection 8, as follows:]

Expenses.

Provided, That the traveling expenses of any member or members of the commission or of any employee or employees thereof incurred while on business of the commission outside of the State of Colorado shall be paid in the manner aforesaid, but only when such expenses are, in advance, authorized to be incurred by the commission and by the State auditing board.

Reinsurance.

8. The commission may, with the approval of the State auditing board, secure reinsurance covering the catastrophe hazard with respect to any risk or risks carried by the State compensation insurance fund, and the State treasurer shall pay the premium for such reinsurance from the State compensation insurance fund in the manner provided by this act for other disbursements from said fund.

[Section 28 is amended by adding another paragraph, as follows:]

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In determining the amount of reserve to be laid aside to meet deferred payments according to awards, such reserve shall be ascertained by finding the present worth of such deferred payments calculated at a rate of interest not higher than four per cent per annum and such calculation shall be made according to a table of mortality not lower than the American Experience Table of Mortality. **Reserve.**

[Sections 29, 31, 48 and 50 are amended so as to read as follows:]

SEC. 29. The commission shall keep an accurate account of the money paid in premiums by each of the several classes and subclasses of occupations or industries, and the disbursements on account of injuries and death of employees thereof; and it shall also keep an account of the money received from each individual employer and the amount disbursed from the State compensation insurance fund on account of injuries and death of the employees of such employer: *Provided*, That the State compensation insurance fund, including such portions of said fund as may be derived from premiums paid by the State, and its political subdivisions, shall be one fund, indivisible, for the purpose of paying the compensation and benefits provided by this act to the persons legally entitled thereto. **Separate accounts.**

The commission shall set aside such proportions, as it may deem necessary, of the earned premiums paid into the State compensation insurance fund, as a contribution to the surplus of the fund: *Provided*, That until the surplus of the fund shall amount to the sum of five hundred thousand ($500,000) dollars, at least ten per cent of the earned premiums paid into the State compensation insurance fund shall be so set aside. **Surplus fund.**

It is the intention that the amounts raised for such State compensation insurance fund shall ultimately become neither more nor less than to make said fund self-supporting, and the premiums or rates levied for such purpose shall be subject to readjustment from time to time by the commission, as may become necessary. **Adjustment of rates.**

SEC. 31. The commission shall from time to time issue in proper form for distribution a manual showing the rates of premiums to be paid to the State compensation insurance fund by the employers of the several classes and subclasses, based and determined as in this act provided: *Provided*, That the commission may, in its discretion, amend the rate or rates for any class or classes, subclass or subclasses, by serving notice of such change or changes in rate upon all policyholders affected thereby, at least thirty (30) days before the date upon which any change is to take effect: *And provided, further*, That no contract of insurance between the State compensation insurance fund and any employer shall be in effect until a policy or binder has been actually issued by the commission and the premium therefor paid as and when required by the commission: *And provided, further*, That after the inspection of the premises of any employer, the commission may quote with respect to his risk a rate higher than that indicated by its manual as applicable to his risk. **Manual.**

As of the first day of January of each year, and semiannually thereafter, the commission shall tabulate the earned premiums paid by policyholders of the State compensation insurance fund, by classes and subclasses, and shall also tabulate the losses incurred by the State compensation insurance fund by classes and subclasses; should the experience of the entire fund show a balance to the credit of the policyholders after the before-mentioned amounts have been credited to the surplus fund, after payment of all amounts which have fallen due because of injury or death, after setting aside reserves to carry all incurred losses to maturity, then the commission shall distribute such divisible surplus to the policyholders of such classes as have a balance to their credit, in proportion to the premium paid by each such policyholder during the preceding insurance period, and in proportion **Distribution of surplus.**

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to the divisible surplus earned by his class, or subclass, as a credit upon the premium or premiums next due from him.

Second injuries.

SEC. 48. Where an injured employee has sustained a previous injury and disability, as a result of an accident previously sustained, compensation for any subsequent accident shall be determined solely upon the injury resulting from such subsequent accident, and he shall be paid only for the latter injury as if such previous accident, injury, and disability had not occurred.

Medical, etc., benefits.

SEC. 50. Every employer, regardless of his method of insurance, shall furnish such medical, surgical and hospital treatment, medical, hospital and surgical supplies, crutches and apparatus as may be reasonably needed at the time of the injury and thereafter during the disability, but not exceeding thirty days from the date of the accident and $100 in value to cure and relieve from the effects of the injury: *Provided*, That medical, surgical and hospital treatment, payment for which is provided for in any plan now in force between employer and his employees at the time of the enactment of this act or which is thereafter agreed to by the employer and employee, shall be deemed a full compliance with the requirements of this section and shall be received by the employee in full accord and satisfaction thereof: *Provided, however*, That every plan in force between an employer and his employees at the time of the enactment of this act, or which is thereafter agreed to between employer and employee, shall upon the request of the industrial commission, as hereinafter provided, be submitted to it in detail for its approval or disapproval. Upon the submission to the industrial commission of any plan for furnishing medical, surgical and hospital treatment, the commission shall, within fifteen days after the submission of such plan, investigate the same, and shall submit in writing its findings to the parties to the said plan, with its approval, if in its discretion the plan should be approved: *Provided, however*, That the commission shall approve any plan which, in reality, provides injured employees with proper medical, surgical and hospital treatment as required by this act.

Establishment funds.

If, however, the industrial commission shall not approve said plan, it shall submit in writing its findings, together with such suggestions as it may make, to said employer and employee, for the purpose of making said plan comply with the requirements of this section, and shall fix the time in which said plan shall be altered or changed in accordance with the findings of the commission. Upon the service upon the employer of the findings of the industrial commission, the employer shall, within the time specified in the findings of the commission, change said plan in accordance with the findings and recommendations of the commission.

If the commission shall find from the facts that no workable plan can be agreed upon between employer and employee, it may require the employer to take out insurance covering the requirements of this section.

If the employer, upon service upon him of the findings and recommendations of the commission, does not comply with the same within the time specified therein, he shall not be entitled to the benefit of any such plan, but shall forthwith take out insurance covering the requirements of this section, and during such failure shall be liable for medical, surgical and hospital attention, as if no such plan had been made.

It shall be the duty of the industrial commission as soon as practicable after the passage of this act, to make full investigation of all plans now in force for the purpose of determining whether said plans comply with this section and actually do provide the injured employee with the proper medical, surgical and hospital attention required by this section.

When any dispute arises between any insurer or employer and any physician and surgeon in the State, in regard to the payment for medical, surgical or hospital services rendered by virtue of this section, the commission shall have the power to hear the same and fix the value of said services. The commission may, in

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its discretion, establish a schedule of fees as the basis upon which the medical services under this section shall be compensated, and said schedule shall be the basis upon which medical, surgical and hospital services under this section shall be compensated.

[Section 52 is amended by substituting twenty-second for twenty-ninth in the first paragraph; also by substituting two weeks for three weeks in paragraphs (a) and (b). The latter substitution is also made in section 53.

The second item in the schedule in section 54 is amended so as to read: "The loss of a forearm between the wrist and elbow, 139 weeks;" 139 weeks compensation is also allowed for total deafness of the second ear, instead of 104 weeks as formerly.

A new paragraph (f) is added to this section, as follows:]

(f) When an injured workman sustains two injuries coming under this schedule, the disability specified herein shall be added, and the injured workman shall receive the sum of the two.

[Section 62 is amended by adding the words, "and that any disability beginning more than five years from the date of the accident shall be conclusively presumed not to be due to such accident."

Sections 67 and 77 are amended so as to read as follows:]

Deposit of funds.

SEC. 67. The State treasurer is hereby authorized to deposit or invest any portion of the State compensation insurance fund not needed for immediate use, in the same manner and subject to all provisions of law with respect to the deposit or investment of State funds by such treasurer, and the State treasurer may deposit or invest the surplus and reserves of the said fund or any portion thereof in any warrants or bonds of the State of Colorado, and all interest earned by such portion or portions of the State compensation insurance fund as may be deposited or invested shall be collected by the State treasurer and placed to the credit of such fund: *Provided, however*, That none of the funds belonging to the State compensation insurance fund shall be used for any other purpose whatsoever save those of said fund. Said industrial commission shall determine and notify the State treasurer in writing, the amount or percentage of said State compensation insurance fund which in the judgment of the commission may be so invested by the State treasurer.

Vacating orders.

SEC. 77. No action, proceeding or suit to set aside, vacate or amend any finding, order or award of the commission, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have first applied to the commission for a hearing thereon as provided in this act, and unless such action, proceeding or suit shall have been commenced within sixty days after final decision by the commission: *Provided, however*, That no action shall be maintained in the district court to set aside a decision of the commission, unless prior to the bringing of such action within thirty days after final determination by the commission, a verified petition for rehearing as hereinafter provided shall be filed with the industrial commission setting forth all of the alleged errors of the commission.

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CONNECTICUT.

ACTS OF 1917.

CHAPTER 368.—*Compensation of workmen for injuries.*

[This act amends various sections of chapter 138, acts of 1913. Section 6 of part B is amended by adding thereto the following:]

Compromise with third person.

No compromise with such third person by either employer or employee shall be binding upon or affect the rights of the other, unless assented to by him.

[Section 7 is amended by inserting after the word "community," in the next to the last sentence, the words "or similar communities."

Section 8 is amended so as to read as follows:]

Waiting time.

SECTION 8. No compensation shall be payable for total or partial incapacity under the provisions of this act on account of any injury which does not incapacitate the injured employee for a period of more than seven days from earning full wages at his customary employment; but if incapacity extends beyond a period of seven days compensation shall begin at the expiration of the first seven days of total or partial incapacity. In all contracts between parties subject to part B, the injured employee shall be entitled to full wages for the entire day of the injury and said day shall not be counted as a day of incapacity.

[Section 9 is amended by increasing from $10 to $14 the maximum weekly allowance for death.

Section 10 is amended by adding thereto the following:]

Resident dependents.

The other half of the normal compensation may be paid in accordance with the rules of apportionment herein provided to such persons resident in the United States, or its dependencies, or Canada, if any there be, as would be entitled to compensation were there no such nonresident alien dependents.

[Section 11 is amended by increasing from $10 to $14 the maximum weekly allowance for total disability. The same change is made in section 12, for partial disability. The following is also added to section 12:]

Partial loss of use.

In case the injury shall consist of the loss of a substantial part of a member resulting in a permanent partial loss of use of the member, or in case the injury results in a permanent partial loss of function, the commissioner may in his discretion, in lieu of other compensation, award to the injured person such a proportion of the sum herein provided for the total loss or loss of use of such member or for incapacity or both as shall represent the proportion of total loss or loss of use found to exist, and any voluntary agreement submitted in which the basis of settlement is such proportionate payment, may, if otherwise conformable to the act, be approved by the commissioner in his discretion. The word "member" shall include all portions of the human body referred to in subsections (a) to (k), both inclusive.

[Section 13 is amended by adding thereto the following:]

Minors.

For the purpose of determining the amount of compensation to be paid in the case of a minor under the age of eighteen years who has sustained an injury entitling him to compensation for total or partial incapacity for a period of fifty-two or more weeks, or to specific indemnity for any of the injuries enumerated in subsections (a) to (k), both inclusive, of the last preceding section, the commissioner may add fifty per centum to his average weekly wage.

[Section 15 is amended by adding thereto the following:]

Jurisdiction continuing.

The compensation commissioner shall retain jurisdiction over claims for compensation, awards and voluntary agreements, for

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any proper action thereon, during the whole compensation period applicable to the injury in question.

[Section 19 is amended so as to read as follows:]

Salaries and expenses.

SEC. 19. Each of the commissioners shall receive a salary of four thousand dollars per annum, payable in equal monthly installments, and in addition, such allowance, not exceeding five thousand dollars per annum, as may be approved by the comptroller for expenses incurred in the discharge of his duties, but the comptroller shall not allow as expenses any sum in excess of the amount appropriated therefor; and said provision for expenses of commissioners shall also apply to expenses heretofore incurred for the years ending September 30, 1916, and September 30, 1917.

[Section 20 is amended to read as follows:]

Reports of accidents.

SEC. 20. Every employer who has accepted the provisions of part B of this act shall keep a record of such injuries sustained by his employees in the course of their employment as result in incapacity for one day or more; and every such employer shall send each week to the commissioner such report of such injuries, in duplicate, as the commissioner shall require, with such notices of claims for compensation as have been served upon him within one week, in conformity with the provisions of section twenty-one. No other report of injuries to employees shall be required by any department or office of the State from such employers as have accepted part B. The duplicates of such reports shall be transmitted to the factory inspector.

[Section 22 is amended by substituting for the words "two weeks after the date of the injury" in the first sentence, the words "the expiration of the waiting period;" also by adding thereto the following:]

Notice of discontinuance of payments.

Before discontinuing payments on account of total or partial incapacity under any such agreement, the employer shall notify the commissioner and the employee of the discontinuance of such payments, with the date of such discontinuance, and the reason therefor, and until such notices are sent to the commissioner and said employee, the liability for such payments shall continue, unless otherwise ordered by the commissioner.

[Section 27 is amended by adding thereto the following:]

Costs.

Provided, Whenever any appeal shall be taken to the superior court from the finding and award of a compensation commissioner, and such appeal shall be found by said court to be either frivolous, or taken for the purpose of vexation or delay, said court may tax costs in its discretion against the person so taking such appeal.

[Section 36 is amended so as to read as follows:]

Exemption, etc., of payments.

SEC. 36. All sums due for compensation under the provisions of this act shall be exempt from levy, attachment and execution and shall be nonassignable before or after award. The rights of compensation granted by this act, reckoned at their present value, shall have the same preference against the assets of an employer as may be allowed by law to a claim for the unpaid wages of workmen earned within three months.

[Section 42 is amended by adding to the first sentence thereof the following:]

Individual liability.

and if such employer be a corporation or joint-stock association, such action may be brought against any or all of the directors of such corporation, or joint-stock association, who shall be individually and jointly and severally liable for any damage suffered by such employee.

[The following new matter is added to part B, and has been given section numbers by the compensation commissioners:]

Certificates of substitute systems to be filed.

SEC. 45. Any employer who has complied with the provisions of section twenty-nine hereof by entering into an agreement with his employees to provide a system of compensation, benefit and insurance in lieu of the compensation and insurance provided by this act, which agreement has been approved by the insurance commissioner; or any employer who has complied with the provisions of section thirty hereof by filing with the insurance commissioner security guaranteeing the performance of his obligations under this act; or by insuring his full liability, or by a

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combination of the two last-named methods approved by the insurance commissioner, may file in the office of the commissioner who may have jurisdiction in case of injury, a certificate issuing out of the office of the insurance commissioner stating that such substitute system has been approved or that such security guaranteeing the performance of the obligations of this act has been filed with and accepted by said insurance commissioner, or that a combination of the methods contemplated in section thirty has been approved. Any employer who has insured his full liability may file a certificate setting forth such fact and stating the date of expiration of such insurance, which certificate shall thereupon become a part of the records of the office of said compensation commissioner. Whenever any person shall present in writing to the commissioner a claim for compensation, either for injury sustained by himself arising out of and in the course of his employment or for injury resulting in the death of some person of whom he is an alleged dependent, he may ask that a writ of attachment issue to secure the payment of such claim or claims for compensation as may arise out of such injury. Unless it shall appear from the records of said compensation commissioner that there has been a compliance with the provisions of section twenty-nine or section thirty, which compliance is then effective, said compensation commissioner may issue a writ of attachment in the manner and form of writs of attachment in civil actions, and said commissioner is vested with the same jurisdiction as authorities authorized to issue writs of attachment in civil actions. Should any such writ be issued and should it thereafter appear to the satisfaction of the compensation commissioner that there has been a compliance with the provisions of section twenty-nine or thirty hereof, which compliance was then effective and applicable to the injury in question, the compensation commissioner may thereupon vacate such writ of attachment on the payment by the employer of the expense actually incurred under said writ of attachment. The several compensation commissioners are vested with the authority of the various courts to dissolve attachments made under the authority hereinbefore conferred, and on the dissolution of an attachment may require the substitution of a bond in the same manner as any court upon the dissolution of attachments in civil actions.

Reference to supreme court.

SEC. 46. When, in any case arising under the provisions of this act, the superior court shall be of opinion that the decision involves principles of law which are not free from reasonable doubt, and which public interest requires shall be determined by the supreme court of errors, in order that a definite rule be established applicable to future cases, said court may, on its own motion and without any agreement or act of the parties or their counsel, reserve such case for the opinion of the supreme court of errors. Upon a reservation so made, no costs shall be taxed in favor of either party, and no entry fee, record fee, judgment fee or other clerk's fee in either court shall be taxed.

Waivers by defective employees.

SEC. 47. Whenever any person having a contract of employment, or desiring to enter into a contract of employment, shall have any physical defect which imposes upon his employer or prospective employer an undue or unusual hazard, it shall be permissible for such person to waive in writing for himself or his dependents or both, any rights to compensation under the provisions of this act for any personal injury arising out of and in the course of his employment which may be found by the commissioner having jurisdiction to be directly due to such physical defect. No such waiver shall become effective unless the physical defect in question shall be plainly described therein, nor until the commissioner having jurisdiction shall find that the person signing such waiver fully understands the meaning thereof, nor until such commissioner shall, in writing, approve thereof and furnish each of the parties thereto with a copy thereof. No such waiver shall be a bar to a claim by the person signing the same, or his dependents, for compensation for any injury arising out of and in the course

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of his employment, which injury shall not be found to be directly due to the particular condition described therein.

Improper acts of insurance companies.

SEC. 48. Whenever the compensation commissioners, or a majority of them, shall find that any insurance company or association insuring the liability of an employer under the provisions of this act is conducting such business improperly or is dilatory in investigating and adjusting claims or making payments, or fails to comply with the provisions of this act or the rules, procedure and forms adopted by the commission, then said commissioners, or a majority of them, shall notify the insurance commissioner, in writing, setting forth the facts, and thereupon the insurance commissioner shall fix a time and place for a hearing thereof, giving reasonable notice to the commissioners and to such company or association of such hearing, and if he shall find the allegations to be true, he may either suspend for a time or revoke the license of such company or association to transact such business in this State.

Awards for fees.

SEC. 49. Whenever any fees or expenses are, under the provisions of this act, to be paid by the employer or insurer, and not by the employee, the commissioner may make an award directly in favor of the person entitled, which award shall be filed in court, shall be subject to appeal, and shall be enforceable by execution as in other cases. Such award may be combined with an award for compensation in favor of or against the injured employee or the dependent or dependents of a deceased employee or be the subject of an award covering only such fees and expenses.

Employees of individuals.

SEC. 50. In determining the number of employees regularly employed by an individual, the employees of a partnership of which he is a member shall not be included.

GENERAL PROVISIONS.

Decisions to be published.

SEC. 51. The comptroller is directed to cause a digest of the decisions of the compensation commissioners to be compiled, either in one volume or in parts, to include also decisions of the superior court in compensation cases and decisions or references to decisions of the supreme court of errors in such cases, and to have published twenty-five hundred copies thereof for distribution by him as follows: To the commissioners, seven hundred copies, to the State librarian, three hundred copies, and to the secretary of the State, for sale by him at cost, fifteen hundred copies.

Approved, May 16, 1917.

CHAPTER 116.—*Workmen's compensation commission—Reports.*

Biennial reports.

SECTION 1. The workmen's compensation commissioners shall biennially prepare and submit to the governor a report of their doings in conformity with the provisions of section 187 of the general statutes, including such recommendations as they shall think proper.

Approved, April 10, 1917.

CHAPTER 126.—*Workmen's compensation insurance.*

Insurance companies to report.

SECTION 1. Every insurance company writing compensation insurance shall report in writing to the compensation commissioner having jurisdiction of the district in which an employer is insured and to the commissioner in each district in which such employer employs labor, the name of the person or corporation insured, the day on which the policy shall become effective, and the date of its expiration, which report shall be made within one week from the date of the policy. The cancellation of any policy so written and reported shall not become effective until one week after notice of such cancellation has been filed with the commissioner or commissioners with whom such report is filed. Any insurance company violating any provision of this act shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense.

Approved, April 10, 1917.

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DELAWARE.

ACTS OF 1917.

CHAPTER 233.—*Compensation of workmen for injuries.*

SECTION 1. Chapter 90 of the Revised Code of the State of Delaware is hereby amended by adding a new article thereto, entitled, "Masters, apprentices and employees—Article 5.—The Delaware workmen's compensation law of 1917," and the following new sections to be styled as 3193a section 94 to 3193xx section 143, inclusive.

Act in effect.

3193a. SECTION 94. This article shall go into effect on the first day of September, A. D. 1917, and shall be briefly known as and cited as "The Delaware workmen's compensation law of 1917."

Title.

Defenses abrogated.

3193b. SEC. 95. In any action instituted by any person whatsoever on or after the first day of September, A. D. 1917, to recover damages for personal injury sustained by an employee by accident arising out of and in the course of his employment within this State on or after said date, or for death resulting from injury so sustained, it shall not be a defense:

(a) That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of, or by the negligence of, a fellow employee; or

(b) That the employee had either expressly or impliedly assumed the risk of the injury; or

Exceptions.

(c) That injury was caused in any degree by the negligence of such employee; but the foregoing provisions of this section shall not apply to an action instituted by any person whatsoever to recover damages for injuries to or death of an employee who shall have elected not to operate under the compensatory provisions of the subsequent sections of this article, nor to an action instituted against any employer to recover damages for injuries to or death of an employee, when such employer shall have elected to operate under the compensatory provisions of the subsequent sections of this article: *Provided, however,* That when both the employer and the employee shall have elected not to operate under the compensatory provisions of the subsequent sections of this article, then and in such case the employer shall be deprived of the right of interposing the defenses mentioned in this section the same as though he alone had rejected the terms of the subsequent sections of this article.

Plaintiff to show status.

3193c. SEC. 96. In any action at law contemplated by the last preceding section, the plaintiff shall be required to file with his declaration or other first pleading, a certificate of the industrial accident board showing the status of the injured employee and his employer at the time of the injury, with respect to election or refusal of the employee and employer to be bound by the compensatory provisions of this article.

Election presumed.

3193d. SEC. 97. Every employer and employee shall be conclusively presumed to have elected to be bound by the compensatory provisions of this article and to have accepted the provisions of this article, respectively, to pay and to accept compensation for personal injury or death by accident arising out of and in the course of the employment, regardless of the question of negligence, and to the exclusion of all other rights and remedies, unless prior to such injury or death, either party shall have given notice to the other party in the time and manner hereinafter specified. A like presumption shall exist in the case of all minors

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employed unless the notice above referred to be given by or to the parent or guardian of such minor. Every election to be bound by the compensatory provisions of this article shall be conclusively presumed to be coextensive with the contract of hire between the employer and employee.

Waiving exemptions.

3193e. SEC. 98. Either an employer or an employee who has excepted himself by proper notice from the operation of the compensatory provisions of this article, may, at any time, waive such exemption and thereby accept the compensatory provisions of this article by giving the notice provided in 3193 f. section 99 hereof.

Notice of rejection—

3193 f. SEC. 99. Notice of election not to be bound as set forth in 3193 d. section 97 hereof, and notice of acceptance as set forth in 3193 e. section 98 hereof, shall be made in the following manner:

By employer;

(a) By the employer by causing a printed notice thereof, in large type, to be posted in a conspicuous place in the plant, shop, office, room or place where the employee is employed, and where it may readily be seen by his employees, or by serving such notice personally upon the employee. The employer shall also immediately following the posting or serving of such notice file with the industrial accident board an affidavit showing compliance with the above provisions of this section with respect to the posting or serving of such notice.

By employee.

(b) By the employee by mailing to his employer at the place where said employee is employed, or to the employer's office or place of business, a written declaration in ordinary language of such election or acceptance; or by serving such written declaration personally upon the employer or any of his agents upon whom a summons in a civil action may be served under the laws of the State. The employee shall also immediately following the mailing or serving of such notice file with the industrial accident board an affidavit showing compliance with the above provisions of this section with respect to mailing or serving of such notice. Any such notice mentioned in this section shall be given thirty days prior to any accident resulting in injury or death: *Provided,* That if any such injury occurred less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. Election by both the employer and employee to be bound as set forth in this section shall operate as a surrender by said parties of their rights to any other form or amount of compensation or damages for any injury or death arising out of and in the course of the employment or to any method of determination thereof other than is provided in the compensatory provisions of this article, and when at the time of any injury, both the employer and employee are bound as aforesaid, all other persons whatsoever having any rights of any character, with respect to, or growing out of such injury, or death resulting therefrom, shall also be bound.

Waivers forbidden.

3193 g. SEC. 100. No agreement, rule, regulation or other device shall in any manner operate to relieve any employer or employee in whole or in part from any liability created by this article, except as herein specified.

Waiting time.

3193 h. SEC. 101. No compensation shall be paid under this article for any injury which does not incapacitate the employee for a period of fourteen calendar days from earning full wages, but if incapacity extends beyond the period of fourteen calendar days, compensation shall begin on the fifteenth day after the injury: *Provided, however,* That during said fourteen days, the employer shall, if so requested by the employee, or if so ordered by the industrial accident board, furnish free of charge to the injured employee, all medical and surgical aid and assistance that may be reasonably required, including hospital service, not to exceed twenty-five dollars in value.

Medical, etc., aid.

Funeral, etc., expenses.

3193 i. SEC. 102. If death results from the injury within one year, the employer shall pay the reasonable expenses of the last sickness and burial of an injured employee, not exceeding one

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hundred dollars, but without deduction of any amount theretofore paid for compensation or for medical expenses.

3193 j. SEC. 103. The following schedule of compensation is hereby established for injuries resulting in disability: **Compensation for—**

(a) For the first two hundred and seventy weeks after the fourteenth day of total disability for work, fifty per cent of the wages received at the time of injury, but the compensation shall not be more than ten dollars per week, nor less than four dollars per week: *Provided*, That, if at the time of injury, the employee receives wages of less than four dollars per week, then he shall receive the full amount of such wages per week as compensation. And after the first two hundred and seventy weeks of total disability for work, for the remainder of the life of the employee, twenty per cent of the wages received at the time of the injury, but the compensation shall not be more than six dollars per week, nor less than two dollars per week: *Provided*, That, if at the time of the injury, the employee received wages of less than two dollars per week, then he shall receive the full amount of such wages as compensation. Nothing in this subsection (a) shall require the payment of compensation after disability shall cease. Should total disability be followed by partial disability, the period of two hundred and seventy weeks mentioned in this subsection (a) shall be reduced by the number of weeks during which compensation was paid for such total disability. The foregoing provisions of this subsection (a) are subject to the proviso that in no such case shall the total compensation exceed the sum of four thousand dollars. **Total disability;**

(b) For disability for work partial in character (except the particular cases mentioned in the next succeeding subsection (c) of this section), fifty per cent of the difference between the wages received before the injury and the wages at which the employee is actually employed after the injury, but such compensation shall not be more than ten dollars per week. This compensation shall be paid during the period of such partial disability for work, not, however, beyond two hundred and seventy weeks after the fourteenth day of such disability. Should partial disability for work be followed by total disability for work, the period of two hundred and seventy weeks mentioned in this subsection (b) shall be reduced by the number of weeks during which compensation was paid for such partial disability. **Partial disability.**

(c) For all disability for work resulting from permanent injuries of the following classes, the compensation shall be exclusively as follows: **Schedule.**

For the loss of a hand, fifty per cent of wages during one hundred and fifty-eight weeks.

For the loss of an arm, fifty per cent of wages during one hundred and ninety-four weeks.

For the loss of a foot, fifty per cent of wages during one hundred and thirty-five weeks.

For the loss of a leg, fifty per cent of wages during one hundred and ninety-four weeks.

For the loss of an eye, fifty per cent of wages during one hundred and thirteen weeks.

For the loss of any two or more of such members, not constituting total disability for work, fifty per cent of wages during the aggregate of the period specified for each.

The loss of both hands or both arms, or both feet, or both legs, or both eyes, or an injury to the spine resulting in permanent and complete paralysis of both legs, or both arms, or of one leg, or of one arm, or an injury to the skull resulting in incurable imbecility or insanity, shall constitute total disability for work, to be compensated according to the provisions of subsection (a). Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be

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considered as the loss of a leg. Permanent loss of the use of a hand, arm, foot, leg or eye, shall be considered as the equivalent of the loss of such hand, arm, foot, leg or eye.

This compensation shall not be more than ten dollars per week, nor less than four dollars per week: *Provided*, That, if at the time of injury, the employee receives wages of less than four dollars per week, then he shall receive the full amount of such wages per week as compensation.

Compensation for death.

(d) Should the employee die as a result of the injury, the period during which compensation shall be payable to his dependents under the next succeeding section shall be reduced by the period during which compensation was paid to him in his lifetime under this section of this article. No reduction shall be made for the amount which may have been paid for medical, surgical and hospital services and medicines nor for the expenses of last sickness and burial as hereinbefore provided. Should the employee die from some other cause than the injury as herein defined, the liability for compensation, expenses of last sickness and burial of such employee, shall cease.

Death benefits.

3193 k. SEC. 104. In case of death, compensation shall be computed on the following basis and distributed to the following persons:

1. To the child or children, if there be no widow, nor widower entitled to compensation, twenty-five per cent of wages of deceased, with ten per cent additional for each child in excess of two, with a maximum of sixty per cent, to be paid to their guardian.

2. To the widow or widower, if there be no children, twenty-five per cent of wages.

3. To the widow or widower, if there be one child, forty per cent of wages.

4. To the widow or widower, if there be two children, forty-five per cent of wages.

5. To the widow or widower, if there be three children, fifty per cent of wages.

6. To the widow or widower, if there be four children, fifty-five per cent of wages.

7. To the widow or widower, if there be five children or more, sixty per cent of wages.

Such compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the industrial accident board may from time to time apportion such compensation between them in such way as it deems best. The industrial accident board, in its discretion, may require payments to be made direct to a minor who has been injured, and may also require payments to be made to the person caring for any dependent minor, when, in the opinion of the industrial accident board, the expense of securing the appointment of a guardian would be disproportionate to the amount of compensation payable to such minor.

8. If there be neither widow, widower nor children, then to the father and mother, or the survivor of them, if dependent to any extent upon the employee for support at the time of his death, twenty per cent of wages.

9. If there be neither widow, widower, children nor dependent parent, then to the brothers and sisters, if actually dependent to any extent upon the decedent for support at the time of his death, fifteen per cent of wages for one brother or sister, and five per cent additional for each additional brother or sister, with a maximum of twenty-five per cent; such compensation to be paid to their guardian.

Age of children.

Compensation shall be payable under this section to or on account of any child, brother or sister, only if and while such child, brother and sister, is under the age of sixteen years. No

Dependence of widow.

compensation shall be payable under this section to a widow, unless she was living with her deceased husband at the time of his death or was then actually dependent upon him for support,

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but in such case, compensation shall be distributed to the persons who would be dependents in case there were no widow. No compensation shall be payable under this section to a widower, unless he be incapable of self-support at the time of his wife's death and be at such time dependent upon her for support. Widower.

The terms "child" and "children" shall include stepchildren and adopted children if members of the decedent's household at the time of his death, and shall include posthumus children, but shall not include married children.

Should any dependent of a deceased employee die, or should the widow or widower remarry, or should the widower become capable of self-support, the right of such dependent or such widow or widower to compensation under this section shall cease. Termination of payments.

If the compensation payable under this section to or on account of any person shall for any cause cease, the compensation of 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: *Provided, however*, That the period shall be reduced by the number of weeks during which payments were made to the deceased.

The wages upon which death compensation shall be based shall not in any case be taken to exceed twenty dollars per week nor to be less than eight dollars per week. Subject to the provision of subsection (d) of the last preceding section, this compensation shall be paid during two hundred and seventy weeks and in the case of children entitled to compensation under clause 1 of this section, the compensation of each child shall (if the other parent be dead or have abandoned such child) continue until such child reach the age of sixteen, at the rate of fifteen per cent of wages if there be but one child, with ten per cent additional for each additional child, with a maximum of sixty per cent. Basic wages.

3193 l. SEC. 105. Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the employee or some one on his behalf, or some of the dependents, or some one on their behalf, shall give written or printed notice thereof to the employer within fourteen days after the accident, no compensation shall be due until such notice be given or knowledge obtained. If such notice be given or the knowledge obtained after fourteen days, but within thirty days after the accident, the delay shall not bar compensation unless the employer shall show that he was prejudiced thereby, and then only to the extent of such prejudice. If such notice be given or the knowledge obtained after thirty days but within ninety days after the accident, and if the employee or other beneficiary shall show that his delay in giving notice was due to his mistake or ignorance of fact or of law, or to his physical or mental inability, or to fraud, misrepresentation or deceit of the employer or someone authorized to represent such employer, or to any other reasonable cause or excuse, then compensation shall be allowed, except to the extent that the employer shall show that he was prejudiced by such delay. Unless knowledge be obtained or such notice given within ninety days after the accident, no compensation shall be allowed. Notice of accident.

The notice referred to in this section shall be in writing and shall be sufficient to inform the employer that a certain employee, by name and residence, received an injury by accident (the character of which is described in ordinary language), arising out of and in the course of his employment on or about a time specified and at or near a place specified.

3193 m. SEC. 106. After an injury, and during the period of resulting disability, the employee, if so requested by his employer, or ordered by the industrial accident board, must submit himself for examination at reasonable times and places and as often as may be reasonably requested, to a physician or physicians legally authorized to practice his or their profession under the laws of such place, who shall be selected and paid by the employer. If the employee requests, he shall be entitled to have a Medical examinations.

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physician or physicians, qualified as aforesaid, of his own selection, to be paid by him, present to participate in such examination. For all examinations after the first, the employer shall pay the reasonable traveling expenses and loss of wages incurred by the employee in order to submit to such examination. The refusal of the employee to submit to such examination or his obstruction of such examination shall deprive him of the right to compensation under this act during the continuance of such refusal or obstruction, and the period of such refusal or obstruction shall be deducted from the period during which compensation would otherwise be payable. No fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged either in the hearings provided for in this article, or in any action at law.

Settlement by agreement.

3193 n. SEC. 107. If the employer and the injured employee, or his dependents in case of his death, reach an agreement in regard to compensation in accordance with the provisions of this article, a memorandum of such agreement, signed by the parties in interest, shall be filed with the industrial accident board, and if approved by it, shall be deemed final and binding unless modified as provided in 3193 p, section 109. Such agreement shall be approved by said board only when the terms thereof conform to the provisions of this article.

Notice to accident board.

3193 o. SEC. 108. If the employer and the employee, or his dependents in case of his death, fail to reach an agreement in regard to compensation under this article, or if, after they reach such an agreement, the industrial accident board shall refuse to approve the same, either party may notify the industrial accident board of the facts, and the said board shall thereupon, after notice of the time and place of hearing served on all parties in interest, hear and determine the matter in accordance with the facts and the law, and state its conclusion of fact and rulings of law.

Decision.

Review.

3193 p. SEC. 109. On the application of any party in interest on the ground that the incapacity of the injured employee has subsequently terminated, increased, diminished or recurred, or that the status of the dependent has changed, the board may at any time, but not oftener than once in six months, review any agreement or award, and on such review may make an award ending, diminishing, increasing or renewing the compensation previously agreed upon or awarded, and designating the persons entitled thereto, subject to the provisions of this article, and shall state its conclusions of fact and rulings of law, and immediately send to the parties, a copy of the award, but this section shall not apply to a commutation of payments under 3193 t, section 113.

Procedure.

3193 q. SEC. 110. In all hearings before the board, it shall make such inquiries and investigations as it shall deem necessary. The hearings of the board shall be held at some reasonable location in the city or county where the injury occurred, and each award of the board shall be in writing and shall be filed among its records, and a copy thereof shall be served on each of the parties in interest within one week after the making of such award.

Awards.

3193 r. SEC. 111. An award of said board in the absence of fraud shall be final and conclusive between the parties except as provided in 3193 p, section 109, unless, within ten days after a copy thereof has been sent to the parties, either party appeals to the superior court for the county in which the injury occurred. In case of every such appeal the cause shall be determined by the court without the aid of a jury. The prothonotary shall not require any deposit or security to cover the costs incident to the taking of any such appeal.

Appeals.

The superior courts for the several counties of the State of Delaware are hereby vested with jurisdiction to hear and determine all appeals taken pursuant to this article. Said courts may, by proper rules, prescribe the procedure to be followed in the case of such appeals: *Provided, however,* That the court shall fix a time for such hearings at the pending or next term of said

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court after the date of such appeal, but the court may extend the time for adequate cause shown.

Decisions.

The decision of the court shall be in writing and shall show conformity to the provisions of this article, and shall be filed with the prothonotary of said court, and such prothonotary shall file a certified copy thereof with the industrial accident board. When any such certified copy of the decision of said court shall be filed as aforesaid, it shall be subject to the provisions of 3193 p, section 109, and if the board shall, in accordance with the provisions of 3193 p, section 109, end, diminish, increase or renew the compensation, then and in such case there shall be the same right of appeal as is above provided in this section.

Costs.

Costs may be awarded by said court in its discretion, and when so awarded, the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services in the same court. Upon the hearing of any appeal, the court may, in its discretion, appoint one or more impartial physicians or surgeons to examine the injuries of the claimant and to report thereon to the court. Said court shall have power to fix the compensation of such physicians or surgeons, and to tax the same as a part of the costs of the proceedings. Such report shall not be conclusive of the facts therein stated, but shall be advisory only.

Medical advisers.

Alien beneficiaries.

3193 s. SEC. 112. Compensation under this article to alien dependent widows and children 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 alien dependents not residents of the United States, by paying to such alien dependents two-thirds of the total amount of such future installments of compensation. Alien widowers, parents, brothers, and sisters not residents of the United States shall not be entitled to any compensation.

Lump sums.

3193 t. SEC. 113. The compensation contemplated by this article may be commuted by said industrial accident board at its present value when discounted at five per cent interest, with annual rests, disregarding (except in commuting payments due under subsection (a) 3193 j, section 103, of this article) the probability of the beneficiary's death, upon application of either party, with due notice to the other, if it appear that such commutation will be for the best interest of the employee or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, or that such employee or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the whole or greater part of his business or assets.

Upon paying such amount, the employer shall be discharged from all further liability on account of the injury or death. Commutation shall not be allowed for the purpose of enabling the injured employee or the dependents of a deceased employee to satisfy a debt (other than a mortgage upon his or their home or household furniture, created before the accident).

Deposits.

3193 u. SEC. 114. At any time after the entry of the award, or after the filing of the agreement for compensation, a sum equal to all future installments of compensation may (where death or the nature of the injury renders the amount of future payments certain) by leave of the industrial accident board, be paid by the employer to any trust company approved by said board and chartered and doing business in this State and having an office in the county in which the award was entered, and such sum, together with all interest arising from the investment thereof, shall thereafter be held in trust for the employee, or his dependents, who shall have no further recourse against the employer.

Such payment of such sum by the employer shall operate as a satisfaction of such award or agreement as to the employer.

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Payments from said fund shall be made by the said trustee on orders from the industrial accident board in the same amounts and at the same periods as are herein required of the employer. If, after liability shall have ceased, any balance of said fund shall remain, the same shall be returned to the employer who deposited the same on an order signed as aforesaid.

Limitation of one year.

3193 v. SEC. 115. In case of personal injury, all claims for compensation shall be forever barred unless, within one year after the accident, the parties shall have agreed upon the compensation as before provided, or unless, within one year after the accident, one or more of the interested parties shall have appealed to the industrial accident board as in this article provided. In cases of death, all claims for compensation shall be forever barred unless, within one year after the death, the parties shall have agreed upon the compensation as before provided, or unless, within one year after the death, one or more of the interested parties shall have appealed to the industrial accident board as in this article provided. Where, however, payments of compensation have been made in any case, said limitation shall not take effect until the expiration of one year from the time of the making of the last payment.

Industrial accident board.

3193 w. SEC. 116. The governor shall, within thirty days after the approval of this article by the governor, appoint three competent persons to be known as the "Industrial accident board," which board shall have jurisdiction of all cases arising under the compensation schedule of this article. Such appointments shall originally be as follows: One member shall be appointed for the term of two years, another for the term of four years, and another for the term of six years. Thereafter, as the terms of office of members expire, either by death, resignation, removal from the State, or otherwise, appointments shall be made for terms of six years each.

Each person appointed under the provisions of this section shall hold office until his successor is appointed and qualified. The governor may remove any member of said board with or without cause. Each member, before entering upon the duties of his office, shall take the constitutional oath required of State officers. Said board shall provide itself with a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words—"Industrial accident board—Delaware—Seal."

Organization.

The board shall organize by choosing one of its members as president and may appoint a secretary to be selected by the board at a salary not exceeding twenty-five hundred dollars per year, and may remove said secretary with or without cause, and appoint a successor. The board may also employ such clerical and other assistants as it may deem necessary, and subject to like approval, fix the compensation of all persons so employed.

Expenses.

The members of said board and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the board, but such expense shall be sworn to by the person who incurred the same, and any such person falsely making any such report shall be guilty of perjury and punishable accordingly.

Payments.

The salary of the members of the board and its assistants shall be paid monthly in the same manner as the salaries of State officers are paid, and the expenses of said board, after approval by two members and the State auditor, shall be paid by the State treasurer out of the general funds of the State.

Duties of board.

It shall be the duty of said board to maintain and keep open, during reasonable hours, an office adequate for the transaction of its business. It shall keep a record of all its proceedings and such other books and records as shall be required by the proper and efficient administration of this article.

It shall hear disputes as to compensation to be paid under the provisions of this article, make its own rules of procedure for carrying out the provisions of this article, furnish blanks for in-

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formation, record all awards, and shall have power to compel the attendance of witnesses.

Powers.

It shall have power to issue subpœnas and administer oaths in any proceeding and in all other cases where it may be necessary in the exercise of its powers and duties, and to examine persons as witnesses, take evidence, require the production of documents, and do all other things conformable to law which may be necessary to enable it effectively to discharge the duties of office. Such oaths may be administered and such subpœnas issued by any member of said board. Any subpœna, process, or order of said board, of any notice or paper requiring service, may be served by any sheriff, deputy sheriff, constable, or any employee of the board, and return thereof made to said board. Such officer shall receive the same fees as are now provided by law for like service in civil actions: *Provided, however,* That the employee of the board serving such notice shall not receive any fee, but shall be paid his actual expenses. If any person shall, in proceedings before said board, disobey or resist any lawful order or process, or misbehave during a hearing or so near the place thereof as to obstruct the same, neglect to produce after having been ordered to do so, any pertinent document, or refuse to appear after having been subpœnaed, or upon appearing, refuse to take the oath as a witness, or after having taken the oath, refuse to be examined according to law, said board shall certify the facts under the hand of its secretary or president to any judge of the Supreme Court of the State of Delaware, who shall thereupon hear the evidence as to the acts complained of, and if the evidence so warrant, punish such person in the same manner and to the same extent as for a contempt committed before the Superior Court of the State of Delaware, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of said court.

The board may, with or without notice to either party, cause testimony to be taken or inspection of the premises where the injury occurred to be had, or the time books or the pay roll of the employer to be examined.

Quorum.

A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this article, and a decision or an award by a majority shall be valid.

Salary.

Each member of the board shall receive an annual salary of twenty-five hundred dollars.

Physicians.

Said board may, in any case, upon the application of either party, or on its own motion, appoint a disinterested and duly qualified physician to make any necessary medical examination of the employee, and testify in respect thereto. Said physician shall be allowed a reasonable fee to be fixed by said board, not exceeding five dollars for each examination, which shall be included by said board in its expense account: *Provided, however,* That said board shall in every case receive the testimony of any physician called by either the employer, the employee, or the dependents of such employee.

Witness fees, etc.

Witness fees and mileage shall be computed at the rate allowed to witnesses in the Superior Court of the State of Delaware. Costs legally incurred may be taxed against either party, or apportioned between the parties in the sound discretion of said board, as the justice of the case may require.

Study of accidents, etc.

Said board shall inquire into the causes and results of industrial accidents of every character, study the most advanced methods of safeguarding against such accidents, inquire into the subject of fair compensation for those who are injured in such accidents and for the families of those who shall be killed as a result thereof, study the operation and effect of this article, and

Reports.

make a full report in writing of its findings, together with such recommendations as it may deem proper, at each session of the General Assembly of the State of Delaware. The board shall prepare and cause to be printed and upon request, furnish free of charge to any employer or employee, such blank forms and

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literature as it shall deem requisite to facilitate and promote the efficient administration of this article.

Employers to report accidents.

3193 x. SEC. 117. Every employer bound by the compensatory provisions of this article shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment, [and] within ten days after knowledge of the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing by the employer to the industrial accident board on blanks to be procured from said board for that purpose. Upon the termination of the disability of the injured employee, the employer shall make a supplemental report to the board. The said reports shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, age, sex, and occupation of the injured employee, and state the time, the nature and cause of the injury, and such other information as may be required for properly carrying out the provisions of this article. Any employer who refuses or neglects to make a report required by this section shall, upon conviction before any justice of the peace of this State, be punished by a fine of not less than ten dollars nor more than fifty dollars for each offense, and in default of the payment of such fine may be imprisoned for any period not exceeding twenty days.

Reports not evidence.

Reports made in accordance with this section shall not be evidence against the employer in any proceeding under this article or otherwise, but shall be exclusively for the information of said board in securing data to be used in connection with the performance of their duties in making recommendations to the general assembly hereinbefore provided.

Employers to insure.

3193 y. SEC. 118. Every employer who accepts the compensation provisions of this article shall insure the payment of compensation to his employees, or their dependents, in the manner hereinafter provided, and while such insurance remains in force, he shall be liable to any employee, or his dependents, for personal injury or death by accident only to the extent and in the manner herein specified.

Same.

3193 z. SEC. 119. Every employer under this article shall either insure or keep insured his liability hereunder in some corporation, association or organization approved by the industrial accident board and authorized to transact the business of workmen's compensation insurance in this State, or shall furnish to the industrial accident board satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this article. In the latter case, the board may, in its discretion, require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred.

Proof of financial ability.

Evidence of compliance.

3193 aa. SEC. 120. Every employer accepting the compensation provisions of this article shall, within sixty days after this article takes effect, file with said board in form prescribed by it, and thereafter annually, or as often as may be required by said board, evidence of his compliance with the provisions of 3193 z, section 119 of this article and all other sections relating thereto.

Failure to comply.

If an employer refuses or neglects to comply with these provisions, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of ten cents per day for each employee in his service at the time when the insurance became due, but not less than one dollar nor more that fifty dollars for each day of such refusal or neglect and until the same ceases, and shall be liable, during continuance of such neglect or refusal, to his injured employees, either for compensation under this article, or in an action at law for damages, in which last case, upon proof that he has not complied with this section, it shall not be a defense in such action:

(a) That the employee was negligent; or

(b) That the employee had assumed the risk of the injury; or

(c) That the injury was caused by the negligence of a fellow employee.

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Furthermore, if after the first day of January, 1918, any employer shall be in default under 3193 z, section 119 for a period of thirty days, he may be enjoined by the court of chancery of this State from carrying on his business while such default continues.

Self-insurers.

3193 bb. SEC. 121. Whenever an employer had complied with the provisions of 3193 z, section 119 of this article relating to self-insurance, the industrial accident board shall issue to such employer, a certificate which shall remain in force for a period fixed by the board, but the board may, upon at least sixty days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. After the expiration of one year from such revocation, the board may grant a new certificate to the employer upon his petition.

Mutual insurance.

3193 cc. SEC. 122. For the purpose of complying with the provisions of 3193 z, section 119 of this article, groups of employers may form mutual insurance associations under the laws of this State, subject to such reasonable conditions and restrictions as may be fixed by the industrial accident board. Membership in such mutual insurance associations, so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with the provisions of 3193 z, section 119 of this article.

Benefit schemes.

3193 dd. SEC. 123. Subject to the approval of the industrial accident board, any employer may enter into or continue any agreement with his employees to provide a system of compensation, benefit or insurance, in lieu of the compensation and insurance provided by this article.

No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this article, nor if it requires contributions from the employees, unless it confers benefits in addition to those provided under this article at least commensurate with such contributions. Such substitute system may be terminated by the industrial accident board on reasonable notice and hearing to the interested parties, if it shall be shown that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason, it fails to accomplish the purposes of this article; and in this case the board shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the superior court of this State.

Insurer bound.

3193 ee. SEC. 124. All policies insuring the payment of compensation under this article must contain a clause to the effect that as between the employee and the insurer, the notice to or knowledge of the occurrence of the injury or death on the part of the insured shall be deemed notice or konwledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purposes of this article shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, judgments or decisions rendered against such insured.

Provisions of policies.

3193 ff. SEC. 125. No policy of insurance against liability arising under this article shall be issued, unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same, all benefits conferred by this article and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforcible in his name.

Policies subject to act.

3193 gg. SEC. 126. Every policy for insurance of the liability herein specified shall be deemed to be subject to the provisions of this article. No corporation, association, or organization shall issue any such policies of insurance unless the form of policy and the stability of the company shall have been approved by the industrial accident board: *Provided, however*, That the industrial

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accident board may permit the issuance of policies insuring against the loss from segregated risks of employment if in the judgment of the board all the risks of the same employment are sufficiently covered by other policies of insurance or otherwise insured by the employer. Such policies for segregated risks shall be deemed to be limited in their scope to the particular risks mentioned therein. All questions as to the liability under such policies for segregated risks and other policies or forms of insurance shall be determined by the industrial accident board.

Payment of benefits.

3193 hh. SEC. 127. Except as herein otherwise provided, all compensation payable under the compensatory provisions of this article, shall be payable in periodical installments, as the wages of the employee were payable before the accident: *Provided, however,* That the industrial accident board may, in its discretion, having regard to the welfare [of the] employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly, instead of weekly.

Contractors.

3193 ii. SEC. 128. No contractor or subcontractor shall receive compensation under this article, but shall be deemed to be an employer, and all rights of compensation of the employees of any such contractor or subcontractor shall be against their said employer and not against any other employer.

Intoxication, willful intent, etc.

3193 jj. SEC. 129. If any employee be injured as a result of his intoxication, or because of his deliberate and reckless indifference to danger, or because of his willful intention to bring about the injury or death of himself, or of another, or because of his willful failure or refusal to use a reasonable safety appliance provided for him, or to perform a duty required by statute, he shall not be entitled to recover damages in an action at law, or compensation, or medical or hospital service under the compensatory provisions of this article. The burden of proof under the provisions of this section shall be on the defendant employer.

Joint employment.

3193 kk. SEC. 130. Whenever any employee for whose injury or death, compensation is payable under this article, at the time of the injury, be in the joint service of two or more employers subject to this article, such employers shall contribute to the payment of such compensation in the proportion to their wage liability to such employee, regardless of the question for whom such employee was actually working at the time of the injury.

Actions against third parties.

3193 ll. SEC. 131. Whenever an injury for which compensation is payable under this article shall have been sustained under circumstances creating in some other person than the employer, a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this article, or obtain damages from, or proceed at law against such other person to recover damages, but he shall not proceed against both; and if compensation is awarded under this article, the employer having paid the compensation or having become liable therefor, shall be subrogated to the rights of the injured employee, or of his dependents to recover damages against such third person, and may recover in his own name or that of the injured employee from the other person in whom legal liability for damages exists, the indemnity paid or payable to the injured employee. Any recovery against such third person in excess of the compensation theretofore paid and thereafter payable by the employer (less the cost of securing and collecting same) shall be paid forthwith, when collected, to the employee or the dependents.

Preference, exemption, etc., of payments.

3193 mm. SEC. 132. The right of compensation granted by this article shall have the same preference or priority for the whole amount thereof against the assets of the employer as is now or hereafter may be allowed by law for unpaid wages for labor.

Claims or payment for compensation due or to become due under this article shall not be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors. If default shall be made by the employer for thirty days after demand, in the payment of any amount due under this article, the

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same may be recovered in the same manner as claims for wages are now collectible.

Fees of attorneys and physicians for services under the provisions of this article shall be subject to the approval of the industrial accident board. **Fees.**

3193 nn. SEC. 133. If an injured employee refuses employment suitable to his capacity, procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the industrial accident board, such refusal was justifiable, and if an employee receives an injury for which compensation is payable, after having received an injury in another employment, he shall be entitled to compensation by the subsequent employer (not being the employer for whom he worked at the time of a former injury) for the subsequent injury in the same amount as if the previous injury had not occurred. **Payments suspended, when.**

3193 oo. SEC. 134. Wherever in this article the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included. **Construction.**

3193 pp. SEC. 135. The following shall constitute employers subject to the provisions of this article: **Employers.**

Every person, firm, association and corporation (excepting the employers mentioned in 3193 vv. section 141 and 3193 ww. section 142 hereof) having in his or its service any employee as defined in 3193 qq. section 136 of this article. If the employer is insured, it shall include his insurer as far as practicable.

3193 qq. SEC. 136. The term "employee" as used in this article shall be construed to mean: **Employees.**

Every person in the service of every natural person, firm, association and corporation (excepting the employees mentioned in 3193 vv. section 141 and 3193 ww. section 142 hereof) under any contract of hire for a valuable consideration, but not including any person whose employment is casual and not in the regular course of the trade, business, profession, or occupation of his employer, and not including persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in the worker's own home, or on other premises not under the control or management of the employer.

3193 rr. SEC. 137. The terms "injury" and "personal injury" as used in this article, shall be construed to mean only violence to the physical structure of the body and such disease or infection as naturally results directly therefrom when reasonably treated; and whenever death is mentioned as a cause for compensation under this article, it shall mean only death resulting from such violence and its resultant effects when reasonably treated as aforesaid, and occurring within two hundred and seventy weeks after the accident. **Injury.**

3193 ss. SEC. 138. The term "personal injury sustained by accident arising out of and in the course of the employment": **Restrictive clause.**

(a) Shall not cover an employee except while he is engaged in, on, or about the premises where his services are being performed, which are occupied by, or under the control of the employer (his presence being required by the nature of his employment), or while he is engaged elsewhere in or about his employer's business where his services require his presence as a part of such service at the time of the injury.

(b) It shall not include any injury caused by the willful act of another directed against him by reasons personal to such employee and not directed against him as an employee or because of his employment.

(c) It shall not include a disease or infection, except as it shall result from the injury when reasonably treated.

3193 tt. SEC. 139. The term "dependent" shall include all persons other than the injured employee who are entitled to compensation under the provisions of the elective schedule set forth in this article, and wherever the context requires it shall be held to include the personal representatives, and the widow or widower **Dependent.**

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of the deceased, and guardians of infants and trustees for incompetent persons.

Wages.

3193 uu. SEC. 140. Wherever in this article the term "wages" is used, it shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, and shall not include gratuities received from the employer or others, nor shall it include board, lodging or similar advantages received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring. In occupations involving seasonal employment or employments dependent upon the weather, the employee's weekly wages shall be taken to be one-fiftieth of the total wages which he has earned from all occupations during the year immediately preceding the accident, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not fairly ascertain the earnings of the employee, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings. In continuous employments, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, his weekly wages shall be found by dividing the total amount earned, excluding earnings from overtime, during so much of the preceding six months as he worked for the same employer, by the number of weeks, or fraction thereof, in such period. If the employee had been permanently advanced or demoted in position or his rate of wages permanently increased or decreased within such period, only the earnings and number of weeks of such position or at such rate should be considered in computing his average weekly wage.

Exemptions.

3193 vv. SEC. 141. This article shall not apply to farm laborers, domestic servants, officers and servants of the State, or any governmental agency created by it, nor to their respective employers; nor to the employers or employees in any employment in which less than five persons are employed.

Interstate commerce.

3193. ww. SEC. 142. This article shall not apply to employees injured or killed while engaged in interstate or foreign commerce, nor to their employers, in case, and whenever, the laws of the United States provide for compensation or for liability for such injury or death.

Act a unit.

3193 xx. SEC. 143. If any portion of this article shall be held unconstitutional, the whole article shall become ineffective and void.

In effect, when.

This act shall begin and take effect from the first day of January A. D., 1918.

Approved April 2, 1917.

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HAWAII.

ACTS OF 1917.

ACT No. 227.—*Compensation of workmen for injuries.*

[This act amends several sections of the compensation law of the Territory, act No. 221, acts of 1915. Section 1 is amended so as to read as follows:]

SECTION 1. This act shall apply to any and all industrial employment, as hereinafter defined. If a workman received [receives] personal injury by accident arising out of and in the course of such employment or by disease proximately caused by such employment, or resulting from the nature of such employment, his employer or the insurance carrier shall pay compensation in the amounts and to the person or persons hereinafter specified. Scope of law. Disease.

[Section 10 is amended by substituting the word "act" for the word "section" in the first line thereof.]

SEC. 3. Section 12 of act 221 of the session laws of Hawaii, 1915, is hereby amended so as to read as follows:

SEC. 12. During the disability the employer shall furnish reasonable surgical, medical and hospital services and supplies not exceeding the amount of one hundred and fifty dollars ($150). The pecuniary liability of the employer for the medical, surgical, and hospital service herein required shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person. Medical, etc., attendance.

In the event of the failure of the employer promptly to provide such physician or surgeon or such medical, surgical, or hospital services, the injured employee may provide the same at the expense of the employer.

If it shall appear to the board that the injured employee has refused to accept the services of a competent physician or surgeon, or has refused the reasonable surgical, medical or hospital services provided by the employer, the board may in its discretion reduce the amount provided for medical attendance to which said employee might otherwise be entitled or consider such refusal on the part of the employee to be a waiver by him of any right to medical attendance hereunder.

[Section 13 is amended by changing 14 to 7 in the third line, to correspond with the reduction of the waiting period, also by adding at the end of the first paragraph the words: "But no adjudication of permanent disability shall be made until after two weeks from the date of injury."]

SEC. 5. Section 14 of act 221 of the session laws of Hawaii, 1915, is hereby amended so as to read as follows:

SEC. 14. (a) Where the injury causes partial disability for work, the employer, during such disability and for a period of three hundred and twelve weeks beginning with the first day of disability, shall pay the injured workman a weekly compensation equal to fifty per cent of the difference between his average weekly wages before the accident and the weekly wages he will most probably be able to earn thereafter, but not more than twelve dollars ($12) a week. In no case shall the weekly payments continue after the disability ends, and in case the partial disability begins after a period of total disability the period of total disability shall be deducted from such total period of three Partial disability.

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hundred and twelve weeks, nor shall the amount of compensation paid in any case exceed in the aggregate the sum of five thousand dollars ($5,000). But no adjudication of disability shall be made until after two weeks from the date of injury.

(b) In case of disability partial in character but permanent in quality the compensation shall be fifty per cent of the average weekly wages and shall be paid to the employee for the period named in the schedule as follows:

Schedule.

For the loss of a thumb, sixty weeks;

For the loss of a first finger, commonly called index finger, forty-six weeks;

For the loss of a second finger, thirty weeks;

For the loss of a third finger, twenty-five weeks;

For the loss of a fourth finger, commonly called the little finger, fifteen weeks;

The loss of the first phalange of the thumb or finger shall be considered to be equal to the loss of one-half of such thumb or finger, and compensation shall be one-half of the amount above specified. The loss of more than one phalange shall be considered as the loss of the entire thumb or finger: *Provided, however*, That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

For the loss of a great toe, thirty-eight weeks;

For the loss of one of the toes other than the great toe, sixteen weeks;

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe, and the compensation shall be one-half of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe;

The loss of a hand, two hundred and forty-four weeks;

For the loss of an arm, three hundred and twelve weeks;

For the loss of a foot, two hundred and five weeks;

For the loss of a leg, two hundred and eighty-eight weeks;

For the loss of an eye, one hundred and twenty-eight weeks;

The permanent and complete loss of hearing in both ears, three hundred and twelve weeks. The permanent and complete loss of hearing in one ear, sixty weeks. The loss of both ears, one hundred and twenty-eight weeks. The loss of one ear, sixty weeks;

Permanent loss of the use of hand, arm, foot, leg, eye, thumb, finger, toe, or phalange, shall be considered as the equivalent of the loss of such hand, arm, foot, leg, eye, thumb, finger, toe or phalange;

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of hand. Amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of the leg.

The compensation for the foregoing specific injuries shall be in lieu of all other compensation, except the benefits provided in section 13 of this act.

In case of an injury resulting in serious facial or head disfigurement the board may, in its discretion, make such award or compensation as it may deem proper and equitable, in view of the nature of the disfigurement, but not to exceed five thousand dollars ($5,000).

In all other cases in this class of disability, the compensation shall be fifty per cent of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the board on its own motion or upon application of any party in interest.

SEC. 6. Section 30 of act 221 of the session laws of Hawaii, 1915, is hereby amended so as to read as follows:

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Agreements.

SEC. 30. If the employer and the injured employee reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the board, and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of section 39, unless modified as provided in section 37.

Such agreement shall be approved by the board only when the terms conform to the provisions of act 221 of the session laws of Hawaii, 1915, as amended.

No agreement between the parties for a lesser sum than that which may be determined by the board to be due shall operate as a bar to the determination of the controversy upon its merits, or to the award of a larger sum, if it be determined by the board that the amount agreed upon is less than the injured employee or his dependents are properly entitled to receive.

SEC. 7. Section 31 of act 221 of the session laws of Hawaii, 1915, is hereby amended so as to read as follows:

Awards by board.

SEC. 31. If the compensation is not settled by agreement, the board shall upon the filing with the board of a copy of the claim for compensation allow a full trial and shall make an award which shall be filed with the record of proceedings, and shall state its conclusions of fact and rulings of law and shall immediately send to the parties a copy of the award.

Committees of arbitration.

Provided, however, That at any time prior to the filing with the board of a copy of the claim for compensation, either party may make application to the board for the formation of a committee of arbitration. Such committee shall consist of three members, one of whom shall be a member of the industrial accident board, or appointed by it, who shall act as chairman. The other two members shall be named, respectively, by the parties. If a vacancy occurs, it shall be filled in the same way as the original appointment.

SEC. 8. Section 34 of act 221 of the session laws of Hawaii, 1915, is hereby amended so as to read as follows:

Medical examination.

SEC. 34. Each industrial accident board may appoint a duly qualified impartial physician to examine the injured employee and to report.

SEC. 9. Section 39 of act 221 of the session laws of Hawaii, 1915, is hereby amended so as to read as follows:

Enforcement of award.

SEC. 39. Any party in interest may file in the circuit court in the jurisdiction of which the injury occurred a certified copy of a decision of the board awarding compensation, from which no appeal has been taken, within the time allowed therefor, or a certified copy of a decision of the board awarding compensation from which decision an appeal has been taken but as to which decision neither the board nor the court has ordered that the appeal therefrom shall operate as a supersedeas or stay, or a certified copy of a decision of an arbitration committee awarding compensation from which no claim for review has been filed within the time allowed therefor, or a certified copy of a memorandum of agreement approved by the board, whereupon said court shall render a decree or judgment in accordance therewith and notify the parties thereof. Such decree or judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said decree or judgment had been rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom.

Provided, however, That in all cases where an appeal from the decision of the board has been taken within the time provided therefor, but where neither the board nor the court has ordered that such appeal shall operate as a supersedeas or stay, the decree or judgment of said circuit court shall provide that said decree or judgment shall become null and void in the event that the court shall set aside the decision or award of the board.

SEC. 10. Section 45 of act 221 or the session laws of Hawaii, 1915, is hereby amended so as to read as follows:

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Exemption of awards.

SEC. 45. No claims for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors. Claims of attorneys and of

Fees.

physicians for services under this act shall not be a valid claim against the person to or for whom said services were rendered unless and until approved by the board.

SEC. 11. Section 47 of act 221 of the session laws of Hawaii, 1915, is hereby amended so as to read as follows:

Notice of insurance.

SEC. 47. If the insurance so effected is not under subdivision 3 or 4 of section forty-six the employer shall forthwith file with the board in form prescribed by the board a notice of his insurance, together with a copy of the contract or policy of insurance.

SEC. 12. Section 49 of act 221 of the session laws of Hawaii, 1915, is hereby amended so as to read as follows:

Provisions of policies.

SEC. 49. Every policy of insurance and every guarantee contract covering the liability of the employer for compensation, whether issued by a stock company, or by a mutual association authorized to transact workmen's compensation or guarantee insurance in this Territory shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by at any time filing a separate claim or by at any time making the insurance carrier a party to the original claim, the liability of the insurance carrier in whole or in part for the payment of such compensation: *Provided, however,* That payment in whole or in part of such compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

From and after the thirtieth day of June, 1918, all insurance policies shall be of a standard form, said form to be designated by and approved by the commissioner of insurance of the Territory of Hawaii. No policy of insurance different in form from said designated and approved form shall be approved by the board.

[Section 60 is amended by substituting six months for two years in subsection (c), by striking out the second sentence in subsection (d), and by changing the first sentence of subsection (e) to read as follows:]

Employment for gain.

(e) "Industrial employment," in the case of private employers, includes employment only in a trade, occupation or profession which is carried on by the employer for the sake of pecuniary gain.

Approved this 2d day of May, 1917.

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IDAHO.

ACTS OF 1917.

CHAPTER 81.—*Compensation of workmen for injuries.*

PART I.

SECTION 1. (a) This act shall apply to all public employment, as defined in section 2 and to all private employment in a trade or occupation which is carried on by the employer for the sake of pecuniary gain, not expressly excepted by the provisions of section 3. **Scope of act.**

(b) The common-law system governing the remedy of workmen against employers for injuries received in industrial and public work is inconsistent with modern industrial conditions. The administration of the common-law system in such cases has produced the result that little of the cost to the employer has reached the injured workman, and that little at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such employments formerly occasional, have become frequent and inevitable. The welfare of the State depends upon its industries, and even more upon the welfare of its wageworkers. The State of Idaho, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for injured workmen and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as is otherwise provided in this act, and to that end all civil actions, and civil causes of action for such personal injuries, and all jurisdiction of the courts of the State over such causes are hereby abolished, except as in this act provided. **Common-law system abolished.**

SEC. 2. This act shall apply to employees of the State and of all counties, cities, cities under special charter or commission form of government, villages, school districts, irrigation districts, drainage districts, highway districts, road districts and other public and municipal corporations within the State; but not to public officials who are elected by popular vote or who receive salaries exceeding twenty-four hundred dollars a year. Policemen and firemen and others entitled to pensions shall be deemed employees within the meaning of this act. If, however, any policeman or fireman or other person entitled to a pension claims compensation under this act there shall be deducted from such compensation any sum which such policeman or fireman or other person may be entitled to receive from any pension or other benefit fund to which the State or municipal body may contribute. **Public employment.**

SEC. 3. None of the provisions of this act shall apply to: **Employments excluded.**

(a) Agricultural pursuits;

(b) Household domestic service;

(c) Casual employment;

(d) Employment by charitable organizations; or

(e) Employment of outworkers, or of

(f) Members of the employer's family dwelling in his house:

Unless the employer and employee expressly agree in writing filed with the board that the provisions of the act shall apply. Any such agreement may be terminated by either party upon sixty days' notice to the other and to the board in writing prior to any accident.

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PART II.

Right accrues, when.

SECTION 4. If a workman receives personal injury by accident arising out of and in the course of any employment covered by this act his employer or the surety shall pay compensation in the amounts and to the person or persons hereinafter specified.

Injuries not covered.

SEC. 5. No compensation shall be allowed for an injury caused (1) by the employee's willful intention to injure himself or to injure another, or (2) by his intoxication. If the employer claims an exemption or forfeiture under this section the burden of proof shall be upon him.

Remedy exclusive.

SEC. 6. The rights and remedies herein granted to an employee on account of a personal injury for which he is entitled to compensation under this act shall exclude all other rights and remedies of such employee, his personal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury.

Employers, who hire workmen within this State to work outside of the State, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this State by accident arising out of and in the course of such employment; and all contracts of hiring in this State shall be presumed to include such an agreement.

Injuries by third persons.

SEC. 7. When an injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee to recover against that person: *Provided*, If the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this act, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

Contracting out.

SEC. 8. No contract, rule, regulation, or devise whatsoever shall operate to relieve the employer in whole or in part from any liability created by this act, other than as provided in sections 9 and 17.

Substitute systems.

SEC. 9. With the approval of the board, an employer who is subject to the provisions of this act, may enter into an agreement with his employees to provide a system of compensation or benefits in lieu of the compensation provided by this act, subject, however, to the following restrictions:

(a) The benefits to injured employees shall be at least equivalent to those herein provided.

(b) If contributions are required from employees the additional benefits shall be commensurate with such contributions.

(c) If acceptance of such substitute system is made a condition of employment, equitable provision shall be made for the withdrawal of employees from it and the distribution of its assets. An employer who is authorized to substitute a plan under the provisions of this section shall give his employees notice thereof in the form prescribed by the board and a statement of the plan approved shall be filed with the board. Copies of settlements made under the provisions of this section shall be filed with the board.

PART III.

Compensation for death.

SECTION 10. If death results from the injury within two years, the employer or the surety shall pay to the person entitled to compensation or, if there are none, then to the personal representative of the deceased employee, burial expenses not to exceed one hundred dollars; and shall also pay to or for the following persons for the following periods, a weekly compensation equal

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to the following percentages of the deceased employee's average weekly wages as defined in section 24:

(a) To the dependent widow or widower, if there be no dependent children, forty-five per cent.

(b) To the dependent widow or widower, if there be a dependent child or children, fifty-five per cent for such widow or widower and children. Such compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the board may from time to time apportion such compensation between them in such way as it deems best. If a child has a guardian other than the surviving widow or widower, the compensation payable on account of such child shall be paid to such guardian.

(c) If there be no dependent widow or widower, but a dependent child or children, twenty-five per cent for one child and ten per cent for each additional child, not to exceed a total of fifty-five per cent to be divided equally among such children if more than one.

(d) To the parents, if one be wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, twenty-five per cent; if both are wholly dependent, twenty per cent to each; if one be or both are partly dependent, a proportionate amount in the discretion of the board.

The above percentages shall be paid if there be no dependent widow, widower, or child. If there be a widow, widower, or child, there shall be paid so much of the above percentages as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of fifty-five per cent.

(e) To the brothers, sisters, grandparents, and grandchildren, if one be wholly dependent upon the deceased employee for support at the time of his death, twenty per cent to such dependent; if more than one be wholly dependent, thirty per cent, divided among such dependents share and share alike; if there be no one of them wholly dependent, but one or more partly dependent, ten per cent divided among such dependents share and share alike.

The above percentages shall be paid if there be no dependent widow, widower, child or parent. If there be a dependent widow, widower, child, or parent, there shall be paid so much of the above percentages as, when added to the total percentage payable to the widow, widower, children, and dependent parents, will not exceed a total of fifty-five per cent.

(f) In case there are two or more classes of persons entitled to compensation under this section and the apportionment of such compensation, above provided, would result in injustice, the board may, in its discretion, modify the apportionment to meet the requirements of the case.

(g) In case there are no dependents of the deceased employee, the employer shall pay into the State treasury to be deposited in the industrial administration fund the sum of one thousand dollars.

Dependents.

SEC. 11. The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of this act:

A child if under 18 years of age, or incapable of self-support and unmarried, whether actually dependent upon the deceased or not.

The widow only if living with the deceased, or actually dependent wholly or partially, upon him.

The widower only if incapable of self-support and actually dependent, wholly or partially, upon the deceased at the time of her injury.

A parent or grandparent only if actually dependent, wholly or partially, upon the deceased.

A grandchild, brother, or sister only if under 18 years of age, or incapable of self-support, and wholly dependent upon the deceased.

The relation of dependency must exist at the time of the injury.

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Periods of compensation.

SEC. 12. The compensation herein provided for shall be payable during the following periods:

To a widow, until death or remarriage, but in no case to exceed 400 weeks.

To a widower, during disability or until remarriage, but in no case to exceed 400 weeks.

To or for a child, until 18 years of age, but in the case of a child incapable of self-support and unmarried as long as so incapable, but in no case to exceed 400 weeks beyond said age of 18 years.

To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed 400 weeks.

To or for a grandchild, brother, or sister, during dependency as hereinbefore defined, but in no case to exceed 400 weeks.

Upon the cessation of compensation under this section to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period, during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

Aliens.

SEC. 13. Except as otherwise provided by treaty, whenever, under the provisions of this act, compensation is payable to a dependent who is an alien not residing in the United States, the employer shall pay fifty per cent of the compensation herein otherwise provided to such dependent and the remaining fifty per cent into the State treasury to be deposited in the industrial administration fund. But if a nonresident alien dependent is a citizen of a Government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, then all of the compensation which would otherwise be payable to such dependent shall be paid into the industrial administration fund.

Definitions.

SEC. 14. As used in the foregoing sections the term child includes stepchildren, adopted children, posthumous children, and acknowledged illegitimate children, but does not include married children unless dependent. The terms "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers nor married sisters unless dependent. The term "grandchild" includes children of adopted children and children of stepchildren; but does not include stepchildren of children, stepchildren of stepchildren, stepchildren of adopted children, nor married grandchildren, unless dependent. The term "parent" includes step-parents and parents by adoption. The term "grandparent" includes parents of parents by adoption, but does not include parents of step-parents, step-parents of parents, nor step-parents of step-parents. The words "adopted" and "adoption" as used in this act shall include cases where persons are treated as adopted as well as those of legal adoption.

Maximum and minimum benefits.

SEC. 15. In computing death benefits the total weekly compensation shall be subject to a maximum of twelve dollars per week and a minimum of six dollars per week, but if at the time of the injury the employee received wages of less than six dollars per week, then the compensation shall not exceed the full amount of such wages.

Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants he may apply to the board to decide between them.

In case death occurs after a period of disability, either total or partial, the period of disability shall be deducted from the total periods of compensation respectively stated in section 12.

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The compensation of a person who is insane shall be paid to his or her guardian.

Medical, etc., attendance.

SEC. 16. The employer shall provided for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required or be requested by the employee immediately after an injury, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. All fees and other charges for such treatment and services and compensation therefor shall be subject to regulation by the board. The pecuniary liability of the employer for the treatment and other service herein required shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person. In determining what fees and charges are reasonable, the board shall consider the increased security of payment afforded by this act.

Hospital contracts.

SEC. 17. Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of section 16 of this act and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee.

Such hospital contracts or agreements must provide for medical, hospital and surgical attendance for such employee for sickness contracted during the employment (except venereal diseases and sickness as a result of intoxication), as well as for injuries received arising out of and in the course of the employment.

Employees' payments.

No assessment of employee for such hospital contracts or benefits shall exceed one dollar per month for each employee, except in cases where it shall appear to the satisfaction of the board, after a hearing had for that purpose, that the actual cost of such service exceeds the said sum of one dollar per month, and any such finding of the board may be modified at any time when justified by a change of conditions, or otherwise, either upon the board's own motion, or the application of any party in interest.

No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessment. It is the purpose and intent of this act to provide that each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employees for sickness and injury, as provided in this act shall be under the supervision of the board as to services and treatment rendered such employees, and shall, from time to time make reports of such services, attendances, treatments, receipts and disbursements as the board may require.

Total disability.

SEC. 18. Where the injury causes total disability for work the employer during such disability, but not including the first seven days thereof, shall pay the injured employee a weekly compensation equal to fifty-five per cent of his average weekly wages, but not more than twelve dollars nor less than six dollars a week for a period not exceeding 400 weeks, and thereafter a weekly compensation of six dollars a week. In no case shall the weekly payments continue after the disability ends.

In case of an employee whose average monthly wages are less than six dollars a week the weekly compensation shall be the full amount of such average weekly wages, but where the disability is permanent the weekly compensation in such cases shall be six dollars.

In case the total disability begins after a period of partial disability, the period of partial disability shall be deducted from such total period of 400 weeks.

Presumptions.

SEC. 19. In the case of the following injuries in the absence of conclusive proof to the contrary the disability caused thereby shall be deemed total and permanent; to wit:

(a) The total and permanent loss of sight in both eyes.

(b) The loss of both feet at or above the ankle.

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(c) The loss of both hands at or above the wrist.

(d) The loss of one hand and one foot.

(e) An injury to the spine resulting in permanent and complete paralysis of both legs or arms or of one leg and one arm.

(f) An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive.

Partial disability.

SEC. 20. Where the injury causes partial disability for work, the employer, during such disability and for a period not exceeding 150 weeks beginning on the eighth day of disability, shall pay the injured workman a weekly compensation equal to fifty-five per cent of the difference between his average weekly wages before the accident and the weekly wages he is most probably able to earn thereafter, taking into account the nature of the physical injury or disfigurement, the occupation of the injured employee and his age at the time of the injury, not exceeding, however, the difference between the wages which the injured employee is most probably able to earn after the injury and the maximum compensation allowed in cases of total disability: *Provided, however,* That such a sum shall be paid as compensation in each case, which, when added to the wages which the injured employee is able to earn after the injury, will equal the minimum compensation allowed in cases of total disability. In no case shall the weekly payments continue after the disability ends, and in case the partial disability begins after a period of total disability the period of total disability shall be deducted from such total period of 150 weeks.

Schedule.

SEC. 21. In the case of the following injuries the compensation shall be fifty-five per cent of the average weekly wages, but not more than twelve dollars, to be paid weekly for the periods stated against such injuries respectively, to wit:

For the loss of—	For the following number of weeks.
One arm at or near the shoulder	200
One arm at the elbow	180
One arm between the wrist and elbow	160
One hand	150
One thumb and the metacarpal bone thereof	60
One thumb at the proximal joint	30
One thumb at the second distal joint	20
One first finger and the metacarpal bone thereof	30
One first finger at the proximal joint	20
One first finger at the second joint	15
One first finger at the distal joint	10
One second finger and the metacarpal bone thereof	30
One second finger at the proximal joint	15
One second finger at the second joint	10
One second finger at the distal joint	5
One third finger and the metacarpal bone thereof	20
One third finger at the proximal joint	12
One third finger at the second joint	8
One third finger at the distal joint	4
One fourth finger and the metacarpal bone thereof	12
One fourth finger at the proximal joint	9
One fourth finger at the second joint	6
One fourth finger at the distal joint	3
One leg at or so near the hip joint as to preclude use of an artificial limb	180
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	150
One leg between the knee and ankle	140
One foot at the ankle	125
One great toe with the metatarsal bone thereof	30
One great toe at the proximal joint	15
One great toe at the second joint	10
One toe other than great toe with the metatarsal bone	12
One toe other than great toe at proximal joint	6

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For the loss of—	For the following number of weeks.
One toe other than great toe at second or distal joint	3
One eye by enucleation	120
Total blindness of one eye	100

In all other cases in this class, compensation shall bear such relation to the amount stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule.

Hernia.

SEC. 22. In all cases of hernia resulting from injury alleged to have been sustained in the course of and resulting from employee's employment, it must be proven:

(1) That it was an injury resulting in hernia; (2) that the hernia appeared suddenly and immediately following the injury; (3) that the hernia did not exist in any degree prior to the injury for which compensation is claimed.

Malingering.

SEC. 23. If a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by, or secured for him, he shall not be entitled to any compensation.

Computation of wages.

SEC. 24. Average weekly wages shall be computed in such a manner as is best calculated to give the average weekly earnings of the workman during the twelve months preceding his injury: *Provided*, That where by reason of the shortness of the time during which the workman has been in the employment, or the casual nature of the employment, it is impracticable to compute the rate of remuneration, regard may be had to the average weekly earnings which, during the twelve months previous to the injury, were being earned by a person in the same grade employed at the same work by the employer of the injured workman, or if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

If a workman at the time of the injury is regularly employed in a higher grade of work than formerly during the year and with large[r] regular wages, only such larger wages shall be taken into consideration in computing his average weekly wages.

Voluntary payments.

SEC. 25. Any payments made by the employer or his insurer to the injured workman during the period of disability, or to his dependents, which, by the terms of this act, were not due and payable when made, may, subject to the approval of the board, be deducted from the amount to be paid as compensation: *Provided*, That in case of disability such deduction shall be made by shortening the period during which compensation must be paid, and not by reducing the amount of the weekly payments.

Times of payments.

SEC. 26. The board, upon the application of either party, may in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

Lump sums.

SEC. 27. Whenever the board determines that it is for the best interest of all parties, the liability of the employer for compensation may, on application to the board by any party interested, be discharged in whole or in part by the payment of one or more lump sums to be determined by or with the approval of the board.

Any such lump-sum payment shall not exceed the present value of all future payments of compensation computed at four per cent true discount compounded annually. The probability of the beneficiary's death before the expiration of the period [within] which he is entitled to compensation shall be determined according to the American experience table of mortality; but in the case of compensation to the widow or widower of the deceased employee, such lump sum shall not exceed 100 weeks' compensation. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. The board shall not commute any payments to a widow or widower except at her or his request.

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Trustees.

SEC. 28. Whenever for any reason the board deems it expedient any lump sum which is to be paid as provided in section 27 shall be paid by the employer to some suitable person or corporation appointed by the probate court as trustee to administer or apply the same for the benefit of the person or persons entitled thereto in the manner provided by the board. The receipt of such trustee for the amount so paid shall discharge the employer or anyone else who is liable therefor.

PART IV.

Medical examinations.

SECTION 29. After an injury and during the period of disability, the workman, if so requested by his employer, or ordered by the board, shall submit himself to examination, at reasonable times and places, to a duly qualified physician or surgeon designated and paid by the employer. The workman shall have the right to have a physician or surgeon designated and paid by himself present at such examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured workman at all reasonable times and under all reasonable conditions during total disability. If a workman refuses to submit himself to or in any way obstructs such examination, his right to take or prosecute any proceeding under this act shall be suspended until such refusal or obstruction ceases, and no compensation shall be payable for the period during which such refusal or obstruction continues. If an injured workman persists in insanitary, injurious or unreasonable practices which tend to imperil or retard his recovery, the board may, in its discretion, order the compensation of such workman to be suspended or reduced.

Notice and claim.

SEC. 30. No proceedings under this act for compensation for any injury shall be maintained unless a notice of the injury shall have been given to the employer as soon as practicable after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within one year after the date of the injury; or, in the case of death, then within one year after such death, whether or not a claim had been made by the employee himself for compensation. Such notice and such claim may be given or made by any person claiming to be entitled to compensation or by some one on his behalf. If payments of compensation have been made voluntarily the making of a claim within said period shall not be required.

Form.

SEC. 31. Such notice and such claim shall be in writing, and such notice shall contain the name and address of the employee, and shall state in ordinary language the time, place, nature, and cause of the injury, and shall be signed by him or by a person on his behalf, or, in the event of his death, by any one or more of his dependents, or by a person on their behalf. The notice may include the claim.

Giving of notice.

SEC. 32. Any notice under this act shall be given to the employer, or, if the employer be a partnership, then to any one of the partners. If the employer be a corporation, then the notice may be given to any agent of the corporation upon whom process may be served, or to any officer of the corporation, or any agent in charge of the business at the place where the injury occurred. Such notice shall be given by delivering it or by sending it by mail by registered letter addressed to the employer at his or its last known residence or place of business. The foregoing provisions shall apply to the making of a claim.

Sufficiency.

SEC. 33. A notice given under the provisions of section thirty of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature, or cause of the injury, or otherwise, unless it is shown that the employer was in fact misled to his injury thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this act if it be shown that the employer, his agent or representative,

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had knowledge of the accident, or that the employer has not been prejudiced by such delay or want of notice.

Incompetents.

SEC. 34. No limitation of time provided in this act shall run as against any person who is mentally incompetent or a minor dependent so long as he has no committee, guardian, or next friend.

PART V.

Industrial accident board created.

SECTION 35. A board is hereby created to be known as the industrial accident board, consisting of three members, to be appointed by the governor, with the approval of the senate. The term of office of each member of said board shall be six years, excepting that of the members of said board first appointed, one shall be appointed to hold office until the second Monday of January, 1919, one until the second Monday of January, 1921, and one until the second Monday of January, 1923. Not more than one of the appointees to such board shall be a person who, on account of his previous vocations, employment or affiliations can be classed as a representative of employers, and not more than one of such appointees shall be a person who, on account of his previous vocation, employment or affiliations can be classed as a representative of workmen; not more than two of the members of the board shall belong to the same political party. Any vacancy during a term may be filled by appointment by the governor with the approval of the senate. If any appointment is made during the recess of the legislature it shall be subject to confirmation by the senate during its next ensuing session. After due notice and public h[illegible] the governor may remove any commissioner for cause and the good of the public service.

No person shall be eligible to appointment as a member of the board unless he shall be at least thirty (30) years of age, a qualified elector of the State of Idaho and a resident of Idaho not less than three years consecutively next preceding his appointment, of good moral character and of a previous experience and training to qualify him to efficiently and justly discharge the duties of his office.

No person accepting appointment as a member of the board and qualifying as such shall be eligible to election or appointment to any public office during any calendar year which shall include any part of the term of membership on the board for which he may have been appointed and qualified and in which such election shall be held or appointment made. Resignation from membership on the board shall not relieve such member from any of the provisions of this act, and the acceptance of appointment and qualification as a member of the board shall constitute a valid waiver of any and all statutory or constitutional rights to or eligibility for holding any other public office during such time.

Salaries.

SEC. 36. The salary of each member of the board shall be three thousand dollars per year.

General provisions.

SEC. 37. A majority of the board shall constitute a quorum for the transaction of business. The members of the board shall select one of their number as chairman. A vacancy on the board shall not impair the right of the remaining members to perform all the duties and exercise all the powers and authority of the board. The act of a majority of the board, when in session as a board, shall be deemed to be the act of the board, but any investigation, inquiry or hearing which the board has power to undertake or to hold may be undertaken or held by or before any member thereof or any examiner or referee appointed by the board for that purpose. Every finding, order, decision or award made by any commissioner, examiner, or referee pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office shall be deemed to be the finding, order, decision or award of the board.

Seal.

SEC. 38. The board shall have a seal bearing the following inscription: "Industrial accident board, State of Idaho, seal."

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The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the board shall direct. All courts shall take judicial notice of said seal.

Office. SEC. 39. The board shall keep its principal office in the capital of the State and shall be provided with suitable rooms, necessary office furniture, stationery and other supplies. For the purpose of holding sessions in other places the board shall have power to rent temporary quarters.

Employees. SEC. 40. The board shall employ such assistance and other employees as it may deem necessary to carry out the provisions of this act.

Salaries, etc. SEC. 41. All officers and employees of the board shall receive such compensation for their services as may be fixed by the board, shall hold office at the pleasure of the board, and shall perform such duties as are imposed on them by law or by the board.

Payment of salaries. SEC. 42. The salaries of every person holding office or employment under the board, as fixed by law or by the board, shall be paid monthly after being approved by the board upon claims therefor to be audited and approved by the State board of examiners.

Expenses. SEC. 43. All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees incurred while on business of the board, either within or without the State, shall, unless otherwise provided in this act, be paid from the industrial administration fund after being approved by the board upon claims therefor to be audited and approved by the State board of examiners.

Forms. SEC. 44. The board shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the board and such other books or records as it shall deem requisite for the purpose and efficient administration of this act. All such records are to be kept in the office of the board.

Reports. SEC. 45. The board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its annual report, such further reports and bulletins covering its operations, proceedings and matters relative to its work as it may deem advisable.

Fees. SEC. 46. The board shall have power and authority to charge and collect the following fees:

(1) For copies of papers and records not required to be certified or otherwise authenticated by the board, fifteen cents for each folio; for certified copies of official documents and orders filed in its office or of the evidence taken at any hearing, twenty cents for each folio.

(2) To fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the State to the credit of the industrial administration fund and shall be accompanied by a detailed statement thereof.

Legal adviser. SEC. 47. The attorney general shall be the legal adviser of the board and shall represent it in all proceedings whenever so requested by the board or any member thereof.

PART VI.

Procedure. SECTION 48. Process and procedure under this act shall be as summary and simple as reasonably may be and as far as possible in accordance with the rules of equity. The board or any member thereof shall have the power to subpœna witnesses, administer oaths, and to examine such of the books and records of the parties to a proceeding as relate to the

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questions in dispute. The district court shall have power to enforce by proper proceedings the attendance and testimony of witnesses, and the production and examination of books, papers and records. Upon request of any party, a stenographic report of the testimony at any hearing shall be taken at the cost of such party.

Witnesses subpœnaed by the board or a member thereof shall be allowed such fees and traveling expenses as are allowed in civil actions, to be paid by the party in whose interest such witnesses are subpœnaed.

Agreements.

SEC. 49. If the employer and the injured employee reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the board and, if approved by it, thereupon the memorandum shall for all purposes be enforcible under the provisions of section 58 unless modified as provided in section 56.

Such agreements shall be approved by the board only when the terms conform to the provisions of this act.

Committees of arbitration.

SEC. 50. If the compensation is not settled by agreement, either party may make an application to the board for the formation of a committee of arbitration. Such committee shall consist of three members, one of whom shall be a member of the industrial accident board, or appointed by it, who shall act as chairman. The other two members shall be named, respectively, by the parties. If a vacancy occurs it shall be filled in the same way as the original appointment.

Appointment.

SEC. 51. Immediately after such application the board shall designate one of its members, or a substitute, to act as chairman of the committee of arbitration, and shall request the parties to appoint their respective representatives. If within seven days after such request, or after a vacancy has occurred, either party does not appoint his representative the board shall fill the vacancy and notify the parties to that effect.

Hearings and awards.

SEC. 52. The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee, unless otherwise agreed, shall be held in the city or town where the injury occurred if within this State, and the award of the committee, together with a statement of its findings of fact, ruling of law, and any other matters pertinent to the questions arising before it, shall be filed with the industrial accident board. A copy of the award shall be immediately sent to the parties. Unless a claim for a review is filed by either party within thirty days the award shall be enforcible under the provisions of section 56.

Medical examination.

SEC. 53. The industrial accident board, or any member thereof, may appoint a duly qualified impartial physician to examine the injured employee and to report. The fee for this service shall be ten dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

Fees.

SEC. 54. The fees and expenses of arbitrators under section 52 and of physicians under section 53 shall be paid by the State, as the other expenses of the board are paid.

Review.

SEC. 55. If an application for review is made to the board, or if the committee fails to make an award within thirty days after its formation, the board shall allow a full trial and shall make an award which shall be filed with the record of proceedings and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award.

Modifications.

SEC. 56. On the application of any party on the ground of a change in conditions, the board may at any time, but not oftener than once in six months, review any agreement or award, and on such review may make an award ending, diminishing, or increasing the compensation previously agreed upon or awarded, subject to the maximum and minimum provided in this act, and shall state its conclusions of fact and rulings of law, and immediately

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send to the parties a copy of the award, but this section shall not apply to a commutation of payments under section 27.

Appeals. SEC. 57. An award of the board in the absence of fraud, shall be final and conclusive between the parties except as provided in section 56, unless within thirty days after a copy has been sent to the parties, either party appeals to the district court. On such appeal the jurisdiction of said court shall be limited to a review of questions of law.

Enforcement. SEC. 58. Any party in interest may file in the district court for the county in which the injury occurred, if such injury occurred within the State, otherwise in the district court for the county where the employer and employee resides, a certified copy of a decision of the board awarding compensation, from which no appeal has been taken within the time allowed therefor, or a certified copy of a memorandum of agreement approved by the board, whereupon said court shall render a decree or judgment in accordance therewith and notify the parties thereof. Such decree or judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same, as though said decree or judgment had been rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom, and the same shall not constitute a lien upon the real property of the employer unless execution shall be levied thereon.

Costs. SEC. 59. If the committee of arbitration, the board or any court before whom any proceedings are brought under this act, determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, he or it may assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

Powers of board. SEC. 60. All questions arising under this act, if not settled by agreement of the parties interested therein, with the approval of the board, shall, except as otherwise herein provided, be determined by the board. The decisions of the board shall be enforcible by the district court under the provisions of section 58. There shall be a right of appeal from decisions of the board to the district court as provided in section 57, but in no case shall such an appeal, either under this section or under section 57, operate as a supersedeas or stay unless the board or the district court shall so order.

Revision of decrees. SEC. 61. The district court, upon the filing with it of a certified copy of a decision of the board, ending, diminishing, or increasing compensation previously awarded, shall revoke or modify its prior decree or judgment so it will conform to said decision.

Injuries outside of State. SEC. 62. If a workman who has been hired in this State receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this State even though such injury was received outside of this State.

If a workman who has been hired outside of this State is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the State where he was hired, he shall be entitled to enforce against his employer his rights in this State if his rights are such that they can reasonably be determined and dealt with by the board and the courts in this State.

PART VII.

Status of awards. SECTION 63. All rights of compensation granted by this act shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Exemption, etc., of payments. SEC. 64. No claims for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors. Claims of attorneys and of physicians for services under this act shall be subject to the approval of the board.

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PART VIII.

Security of payments.

SECTION 65. Employers, but not including the State or the municipal bodies mentioned in section 2, shall secure compensation to their employees in one of the following ways:

(a) By insuring and keeping insured the payment of such compensation in the State insurance fund, or

(b) By depositing and maintaining with the State insurance manager security satisfactory to the board securing the payment by said employer of compensation according to the terms of this act. Such security may consist of a surety bond or guaranty contract with any company authorized to do surety or guaranty business in Idaho and having a sufficient deposit with the State treasurer upon which execution may lawfully be issued against said company on behalf of any workman secured under said bonds or contracts.

No company shall be permitted to write surety bonds or guarantee contracts covering the liability hereunder of employees of this State unless it shall have been authorized to do business under the laws of this State and until it shall have received the approval of the board. The board is hereby authorized to make and change such reasonable regulations as they may deem necessary with reference to the capital stock, surplus, and reserves of such companies, to the end that the workmen secured under this act by any such company, shall be adequately protected. The approval by the board of any such company, may be withdrawn if it shall appear to the board that workmen secured therein under this act are not fully protected.

The board is also authorized to make and change such rules and regulations as they shall deem necessary to secure the prompt payment of compensation awards under this act, and shall withdraw their approval of any company, whenever it appears that such company unnecessarily delays the payment of such awards.

Notice.

SEC. 66. If the security so effected is not with the State insurance fund, the employer shall forthwith file with the State insurance manager, in form prescribed by the board, a notice of his security.

Notice to be posted.

SEC. 67. Every employer who has complied with section 65 of this act shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the board, stating the fact that he has complied with the law as to securing the payment of compensation to his employees and their dependents in accordance with the provisions of this act.

Failure to secure compensation.

SEC. 68. If an employer subject to the provisions of this act fails to comply with the provisions of section 65 he shall be liable to a penalty for every day during which such failure continues, of one dollar for every employee to be recovered in an action brought by the State insurance manager in the name of the State or in his own name, and the amount so collected shall be paid into the State insurance fund.

The State insurance manager may, however, in his discretion, for good cause shown, remit any such penalty in whole or in part, provided, the employer in default secures compensation, as provided in section 65.

Furthermore, if any employer shall be in default under section 65 for a period of thirty days, he may be enjoined by the district court from carrying on his business while such default continued.

Provisions of contracts.

SEC. 69. Every policy of insurance in the State insurance fund and every guarantee contract or surety bond covering the liability of the employer for compensation, shall cover the entire liability of the employer to his employees covered by the policy, bond, or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by at any time filing a separate claim or by at any time making the surety a party to the original claim, the liability of the surety in whole or in part for the payment of such compensation: *Provided, however,*

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That payment in whole or in part of such compensation by either the employer or the surety shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

Effect of notice to employer.

SEC. 70. Every such policy and contract shall contain a provision that, as between the employee and the surety, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the surety; that the jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the surety, and that the surety shall in all things be bound by and subject to the orders, findings, decisions, or awards rendered against the employer for the payment of compensation under the provisions of this act.

Insolvency.

SEC. 71. Every such policy and contract shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the surety from the payment of compensation for injuries or death sustained by an employee during the life of such policy or contract.

Notice of cancellation.

SEC. 72. No policy of insurance or guaranty contract or surety bond issued against liability arising under this act shall be canceled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract on a date specified in such notice, shall have been filed in the office of the State insurance manager, and also served on the employer.

Public corporations.

SEC. 73. Any sums necessary to be paid under the provisions of this act by any public corporation for premiums or compensation shall be considered to be ordinary and necessary expenses of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums whenever necessary, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriation ordinance, or otherwise.

Deductions from wages.

SEC. 74. No agreement by an employee to pay any portion of the premiums paid by his employer to the State insurance fund or to contribute to a benefit fund or department maintained by such employer, except as authorized by sections 9 and 17, or to the cost of other security maintained for or carried for the purpose of securing compensation as herein required shall be valid; and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this act shall be guilty of a misdemeanor.

PART IX.

State insurance fund.

SECTION 75. There is hereby created a fund, to be known as "The State insurance fund," for the purpose of insuring employers against liability for compensation under this workmen's compensation act and of assuring to the persons entitled thereto the compensation provided by said act. Such fund shall consist of all premiums and penalties received and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys belonging to the fund and deposited or invested as herein provided.

Such fund shall be administered by the State insurance manager without liability on the part of the State beyond the amount of such fund. Such fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of compensation under the workmen's compensation act and of expenses of administering this part, which part may be cited as the "State insurance act."

Manager.

SEC. 76. The governor, with the approval of the senate, shall appoint a manager of the State insurance fund, who shall hold office for the term of five years unless sooner removed by the governor for cause stated. Any vacancy in said office may be filled at any time by appointment made by the governor with the approval of the senate. If such an appointment is made during a

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recess of the legislature it shall be subject to confirmation by the senate at its next ensuing session.

Powers and duties.

SEC. 77. It shall be the duty of such State insurance manager to conduct the business of the State insurance fund and he is hereby vested with full authority over the said fund, and may do any and all things which are necessary or convenient in the administration thereof, or in connection with the insurance business to be carried on by him under the provisions of this act.

Rates.

SEC. 78. The State insurance manager shall have full power to determine the rates to be charged for insurance in said fund, and to conduct all business in relation thereto, all of which business shall be conducted in his official name of State insurance manager.

Power as to suits.

SEC. 79. The State insurance manager may in his official name sue and be sued in all the courts of the State, and before the industrial accident board in all actions or proceedings arising out of anything done or offered in connection with the State insurance fund or business relating thereto.

Contracts.

SEC. 80. The State insurance manager may in his official name make contracts of insurance as herein provided and such other contracts relating to the State insurance fund as are authorized or permitted under the provisions of this act.

Employees.

SEC. 81. The State insurance manager may employ such assistants, experts, statisticians, actuaries, accountants, inspectors, clerks, and other employees as he may deem necessary to carry out the provisions of this act or to perform the duties imposed upon him by this act.

Personal liability.

SEC. 82. The State insurance manager shall not, nor shall any person employed by him, be personally liable in his private capacity for or on account of any act performed or contract entered into in an official capacity in good faith and without intent to defraud, in connection with the administration of the State insurance fund or affairs relating thereto.

Salary.

SEC. 83. The salary of the State insurance manager shall be four thousand dollars per year. His salary, and the salaries or compensation of his several employees, and all expenses incurred by him shall be audited and paid in the first instance out of the State treasury in the manner prescribed for similar expenditures in other departments or branches of the State service.

Delegation of powers.

SEC. 84. The State insurance manager may act through proper deputies and may delegate to such deputies such powers as he deems necessary or convenient.

Among the powers which may be so delegated shall be the power to enter into contracts of insurance, insuring employers against liability for compensation under the workmen's compensation act, and insuring to employees the compensation fixed by said act; also the power to make agreements, subject to the approval of the industrial accident board having jurisdiction, for the settlement of claims against said fund for compensation for injuries in accordance with the provisions of said act; also the power to determine to whom and through whom payments of such compensation shall be made; and also the power to contract with physicians, surgeons, and hospitals for medical and surgical treatment and care and nursing of injured persons entitled to compensation from said fund.

Bond.

SEC. 85. Before entering on the duties of his office the State insurance manager shall give an official bond in the sum of fifty thousand dollars and shall take and subscribe an official oath. Said bond shall be approved and filed as in the case of other official bonds required of State officials.

Custody of fund.

SEC. 86. The State treasurer shall be the custodian of the State insurance fund; and all disbursements therefrom shall be paid by him upon warrants or vouchers authorized and signed by the State insurance manager, and also signed by the State auditor. The State treasurer shall give a separate and additional bond in an amount to be fixed by the governor, and with sureties approved by him, conditioned for the faithful performance of his duty as custodian of the State insurance fund. The State treasurer may de-

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posit any portion of the said fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of other State funds by him. Interest earned by such portion of the State insurance fund deposited by the State treasurer shall be collected by him and placed to the credit of the fund.

Surplus and reserve.

SEC. 87. Ten per cent of the premiums collected from employers insured in the fund shall be set aside by the State insurance manager for the creation of a surplus, until such surplus shall amount to the sum of one hundred thousand dollars, and thereafter five per cent of such premiums, until such time as in the judgment of the State insurance manager such surplus shall be sufficiently large to cover the catastrophe hazard and all other unanticipated losses. The State insurance manager shall also set up and maintain a reserve adequate to meet anticipated losses and carry all claims and policies to maturity. The amount of such surplus and reserve shall be subject to the approval of the State insurance commissioner.

Investments.

SEC. 88. The State insurance manager may invest any of the surplus or reserve funds belonging to the State insurance fund in the same securities and investments authorized for investments by savings banks. All such securities or evidences of indebtedness shall be placed in the hands of the State treasurer, who shall be the custodian thereof. He shall collect the principal and interest thereof, when due, and pay the same into the State insurance fund. The State treasurer shall pay all warrants or vouchers drawn on the State insurance fund for the making of such investments when signed by the State insurance manager and by the State auditor. The State insurance manager, with the consent of the State auditor, may sell any of such securities, the proceeds thereof to be paid over to the State treasurer for said State insurance fund.

Expenses.

SEC. 89. The entire expense of administering the State insurance fund shall be paid in the first instance by the State, out of moneys appropriated therefor. In the month of July, nineteen hundred eighteen, and semiannually thereafter in such month, the State insurance manager shall ascertain the just amount of expense incurred by him during the preceding calendar year, in the administration of the State insurance fund, including expense incurred for the examination, determination, and payment of losses and claims, and shall refund such amount to the State treasury.

Classifications.

SEC. 90. Employments insured in the State insurance fund shall be divided by the State insurance manager, for the purposes of the said fund, into classes. Separate accounts shall be kept of the amounts collected and expended in respect to each such class for convenience in determining equitable rates; but for the purpose of paying compensation the State insurance fund shall be deemed one and indivisible. The State insurance manager shall have power to rearrange any of the classes by withdrawing any employment embraced in it and transferring it wholly or in part to any other class, and from such employments to set up new classes in his direction [discretion]. The State insurance manager shall determine the hazards of the different classes and fix the rates of premiums therefor based upon the total pay roll and number of employees in each of such classes of employment at the lowest possible rate consistent with the maintenance of a solvent State insurance fund and the creation of a reasonable surplus and reserve; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each individual risk.

Separate accounts.

SEC. 91. The State insurance manager shall keep an account of the money paid in premiums by each of the several classes of employments, and the expense of administering the State insurance fund and the disbursements on account of injuries and deaths of employees in each of said classes, including the setting up of reserves adequate to meet anticipated and unexpected losses and to carry the claims to maturity; and also an account of the

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money received from each individual employer; and of the amount disbursed from the State insurance fund for expenses, and on account of injuries and death of the employees of such employer, including the reserves so set up.

Dividends.

SEC. 92. At the end of every year, and at such other times as the State insurance manager in his discretion may determine, a readjustment of the rate shall be made for each of the several classes of employments or industries. If at any time there is an aggregate balance remaining to the credit of any class of employment or industry which the State insurance manager deems may be safely and properly divided, he may in his discretion credit to each individual member of such class who shall have been a subscriber to the State insurance fund for a period of six months or more, prior to the time of such readjustment, such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums since the last readjustment of rates.

Assessments.

SEC. 93. If the premiums fixed for any class and collected from its members are subsequently found by the State insurance manager to have been too small for any period, he may determine what additional premiums are required from said class for said period, and may make assessments accordingly, and each of the members of such class shall be liable to the said manager to pay such assessment so made upon him within thirty days after notice thereof.

Readjustments.

SEC. 94. If the amount of premium collected from any employer at the beginning of any period is ascertained by using the estimated expenditure of wages for the period of time covered by such premium payment as a basis, an adjustment of the amount of such premium shall be made at the end of such period and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for such period; and if such wage expenditure for such period is less than the amount on which such estimated premium was collected, such employer shall be entitled to receive a refund from the State insurance fund of the difference between the amount so paid by him and the amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments at his option; and if such actual premium, when so ascertained, exceeds in amount a premium so paid by such employer at the beginning of such period, such employer shall immediately, upon being advised of the true amount of such premium due, forthwith pay to the State insurance manager an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of such period.

Policies.

SEC. 95. (1) Every employer insuring in the State insurance fund shall receive from the State insurance manager a contract or policy of insurance in a form to be approved by the State insurance commissioner.

Payment of premiums.

(2) Except as otherwise provided in this act, all premiums shall be paid by every employer who elects to insure with the State insurance fund to the State insurance manager on or before January first, nineteen hundred and eighteen, and semi-annually thereafter or at such other times as may be prescribed by the State insurance manager. Receipts shall be given for such payments and the money shall be paid over to the State treasurer to the credit of the State insurance fund.

Defaults.

SEC. 96. If an employer shall default in any payment required to be made by him to the State insurance fund, the amount due from him shall be collected by civil action against him in the name of the State or of the State insurance manager, and it shall be the duty of the State insurance manager forthwith to bring or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due; and the same, when collected by the State insurance manager, shall be paid into the State insurance fund, and such

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employer's compliance with the provisions of this act requiring payments to be made to the State insurance fund shall date from the time of the payment of said money so collected to the State insurance manager.

An employer who is in default for ten days in payment of any premium shall also be liable to a penalty for every day during which such failure continues of one dollar for every employee, to be recovered in an action brought by the State insurance manager in the name of the State, or in his own name and the amounts so collected shall be paid into the State insurance fund.

The State insurance manager may, however, in his discretion for good cause shown, remit any such penalty in whole or in part, provided the employer in default subsequently pays the premium.

Withdrawal from fund.

SEC. 97. Any employer may, upon complying with subdivision (b) of section 65 of this act, withdraw from the fund by turning in his insurance contract or policy for cancellation: *Provided*, He is not in arrears for premiums due to the fund and has given to the State insurance manager written notice of his intention to withdraw thirty days before the expiration of the period for which he has elected to insure in said fund; *And also provided*, That in case any employer so withdraws, his liability to assessments shall continue after the date of such withdrawal as against all liabilities for such compensation accruing prior to such withdrawal.

Any employer so withdrawing may, however, terminate his entire liability by paying to the State insurance manager such sum as said manager may deem sufficient to cover such liabilities.

Reinsurance.

SEC. 98. The State insurance manager may reinsure any risk, or any part thereof, and may enter into agreements of reinsurance in the same way and to the same extent as other insurance carriers.

Pay rolls.

SEC. 99. Every employer who is insured in the State insurance fund shall keep a true and accurate record of the number of his employees and the wages paid by him, and shall furnish to the State insurance manager, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as the State insurance manager shall require to verify the number of employees and the amount of pay roll.

Misrepresentations.

SEC. 100. An employer who shall willfully misrepresent the amount of the pay roll upon which the premiums chargeable by the State insurance fund are to be based shall be liable to the State in ten times the amount of the difference between the premiums paid and the amount the employer should have paid had his pay roll been correctly computed; and the liability to the State under this section shall be enforced in a civil action by the State insurance manager in the name of the State, or in his own name, and any amount so collected shall become a part of State insurance fund.

Same.

SEC. 101. Any person who willfully misrepresents any fact in order to obtain insurance in the State insurance fund at less than the proper rate for such insurance, or in order to obtain payment out of such fund, shall be guilty of a misdemeanor.

Inspections.

SEC. 102. The State insurance manager shall have the right to inspect the plants and establishments of employers insured in the State insurance fund; and the inspectors designated by the State insurance manager shall have free access to such premises during regular working hours, and at other reasonable times.

Information confidential.

SEC. 103. Information acquired by the State insurance manager or his officers or employees from employers or employees pursuant to this act shall not be open to public inspection, and any officer or employee of the State insurance manager who, without authority of the State insurance manager or pursuant to his rules, or as otherwise required by law, shall disclose the same shall be guilty of a misdemeanor.

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Premium rates to be approved.

SEC. 104. All premium rates fixed by the State insurance manager for the State insurance fund shall be subject to the approval of the insurance commissioner in the same way and to the same extent as may be provided by law in the case of private insurance carriers.

Allotments for payments.

SEC. 105. The State insurance manager shall submit each month to the State board of examiners an estimate of the amount necessary to meet the current disbursements for insurance losses and workmen's compensation from the State insurance fund, during each succeeding calendar month, and when such estimate shall be approved by the State board of examiners, the State treasurer is authorized to pay the same out of the State insurance fund. At the end of each calendar month the State insurance manager shall account to the State board of examiners for all moneys so received, furnishing proper vouchers therefor.

Reports.

SEC. 106. The State insurance manager shall file with the State insurance commissioner such reports as may be required of other insurance carriers; and shall also, whenever so requested by the State insurance commissioner, furnish him with such further information as he may need for the performance of the duties imposed upon him by this act.

Public corporations.

SEC. 107. A public corporation may insure against its liability for compensation with the State insurance fund and not with any other insurance carrier, unless such fund shall refuse to accept the risk when the application for insurance is made.

PART X.

Reports of accidents.

SECTION 108. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within forty-eight hours, not counting Sundays and legal holidays, after the occurrence of an injury causing absence from work for one day or more, a report therefor shall be made in writing to the board in the form prescribed by the board.

Upon the termination of the disability of the injured employee, the employer shall make a supplemental report to the board, in form prescribed by the board. If the disability extends beyond a period of sixty days, the employer shall report to the board at the end of such period that the injured employee is still disabled, and upon the termination of the disability shall file a final supplemental report as provided above.

The said reports shall contain the name and nature of the business of the employer, the situation of the establishment, the name, age, sex, wages and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than five hundred dollars for each offense.

Within sixty days after the termination of the disability of the injured employee, the employer or other party liable to pay the compensation provided for by this act shall file with the board a statement showing the total payments made or to be made for compensation and for medical services for such injured employee.

Interstate commerce.

SEC. 109. This act shall affect the liability of employers to employees engaged in interstate or foreign commerce, or otherwise, only so far as the same is permissible under the laws of the United States.

Definitions.

SEC. 110. In this act, unless the context otherwise requires, words and phrases shall have the following meanings:

Employer.

SEC. 110-a. "Employer" unless otherwise stated, includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer. It includes the owner or lessee of premises, or other person

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who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor, or for any other reason, is not the direct employer of the workmen there employed. If the employer is secured it includes his surety so far as applicable.

Workman. SEC. 110-b. "Workman" is used as synonymous with "employee" and means any person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. It does not include any person engaged in any of the excepted employments enumerated in section 3, unless an agreement as provided in said section is in force between employer and employee making the provisions hereof applicable, nor does it include a person whose remuneration exceeds twenty-four hundred dollars a year. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

A minor working at an age legally permitted under the laws of this State shall be deemed sui juris for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump-sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

Outworkers. SEC. 110-c. An "outworker" is a person to whom articles or materials are given to be treated in any way on premises not under the control or management of the person who gave them out.

Injury. SEC. 110-d. "Injury" or "personal injury" includes death resulting from injury within two years.

Scope. SEC. 110-e. The words "personal injury by accident arising out of and in the course of such employment" shall include an injury caused by the willful act of a third person directed against an employee because of his employment. They shall not include a disease except as it shall result from the injury.

Employment. SEC. 110-f. "Employment," in the case of private employers, includes employment only in a trade or occupation which is carried on by the employer for the sake of pecuniary gain. It shall also include any of the pursuits specified in section 3 when the employer and the employee shall have elected to come under the act as in said section provided.

Board. SEC. 110-g. The word "board," whenever used in this act, unless the context shows otherwise, shall be taken to mean the industrial accident board.

Partial disability. SEC. 110-h. "Partial disability." Diminished ability to obtain employment owing to disfigurement resulting from an injury may be held to constitute partial disability.

Wages. SEC. 110-i. "Wages" shall include the market value of board, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as a part of his remuneration. "Wages" shall not include any sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

Surety. SEC. 110-j. "Surety" shall include the State insurance manager, representing the State insurance fund, and also any companies from any of which employers have obtained surety bonds or guaranty contracts in accordance with the provisions of this act.

Number and sex. SEC. 110-k. Any terms shall include the singular and both sexes where the context so requires.

Provisions severable. SEC. 111. If any part or section of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid.

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SEC. 112. If for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, any one willfully makes a false statement or representation, he shall be guilty of a misdemeanor and he shall forfeit all right to compensation under this act after conviction for such offense. False statements.

SEC. 113. The provisions of this act shall not apply to injuries sustained, or accidents which occur, prior to the taking effect hereof. Prior injuries.

SEC. 114. This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those States which enact it. Construction.

SEC. 115. For the purpose of carrying out Part IX of this act there is hereby appropriated out of the funds in the State treasury not otherwise appropriated, the sum of twenty thousand dollars or so much thereof as may be necessary to be placed in the State insurance fund and to be refunded as provided in section 89 of this act. There is also hereby appropriated out of the funds in the State treasury not otherwise appropriated the sum of fifteen thousand dollars, or so much thereof as may be necessary, to be placed in the industrial administration fund. Appropriation.

SEC. 116. This act may be cited as the "Workmen's compensation act." Title.

SEC. 117. Part IX of this act shall take effect on the first day of July, 1917; the remainder thereof shall take effect on the first day of January, 1918. Act in effect.

Approved, March 16, 1917.

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ILLINOIS.

ACTS OF 1913.

Compensation of workmen for injuries.

(Page 335.)

[This act is so extensively amended by acts of 1917, pp. 490 and 505, that it is reproduced throughout, in its amended form.]

Election by certain employers.

SECTION 1 (as amended by act, p. 505, acts of 1917). Any employer in this State, who does not come within the classes enumerated by section three (3) of this act, may elect to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this act, and thereby relieve himself from any liability for the recovery of damages, except as herein provided.

How made.

(a) Election by any employer to provide and pay compensation according to the provisions of this act shall be made by the employer filing notice of such election with the industrial board.

Terms.

(b) Every employer within the provisions of this act who has elected to provided [provide] and pay compensation according to the provisions of this act, shall be bound thereby as to all his employees covered by this act until January 1 of the next succeeding year and for terms of each year thereafter: *Provided,* Any such employer who may have once elected, may elect not to provide and pay the compensation herein provided for accidents resulting in either injury or death and occurring after the expiration of any such calendar year by filing notice of such election with the industrial board at least sixty days prior to the expiration of any such calendar year, and by posting such notice at a conspicuous place in the plant, shop, office, room or place where such employee is employed, or by personal service, in written or printed form, upon such employee, at least sixty (60) days prior to the expiration of any such calendar year.

Notice of withdrawal.

Presumption as to employees.

(c) In the event any employer mentioned in this section, elects to provide and pay the compensation provided in this act, then every employee of such employer, as a part of his contract of hiring or who may be employed at the time of the taking effect of this act and the acceptance of its provisions by such employer, shall be deemed to have accepted all the provisions of this act and shall be bound thereby unless within thirty (30) days after such hiring or after the taking effect of this act, and its acceptance by such employer, he shall file a notice to the contrary with the industrial board, whose duty it shall be to immediately notify the employer, and until such notice to the contrary is given to the employer, the measure of liability of such employer shall be determined according to the compensation provisions of this act: *Provided, however,* That any employee may withdraw from the operation of this act upon filing a written notice of withdrawal at least ten (10) days prior to January 1st of any year with the industrial board, whose duty it shall be to immediately notify such employer by registered mail, and, until such notice to the contrary is given to such employer, the measure of liability of such employer shall be determined according to the compensation provisions of this act.

Notice of withdrawal.

(d) Any such employer or employee may, without prejudice to any existing right or claim, withdraw his election to reject this

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act by giving thirty (30) days' written notice in such manner and form as may be provided by the industrial board.

SEC. 2. (Repealed.)

Employments automatically covered.

SEC. 3 (as amended by act, p. 505, acts of 1917). The provisions of this act hereinafter following, shall apply automatically, and without election to all employers and their employees engaged in any of the following enterprises or businesses which are hereby declared to be extra hazardous, namely:

1. The erection, maintaining, removing, remodeling, altering or demolishing of any structure, except as provided in subsection 8 of this section.

2. Construction, excavating or electrical work, except as provided in subsection 8 of this section.

3. Carriage by land or water and loading or unloading in connection therewith.

4. The operation of any warehouse or general or terminal store houses.

5. Mining, surface mining or quarrying.

6. Any enterprise in which explosive materials are manufactured, handled or used in dangerous quantities.

7. In any enterprise wherein molten metal, or explosive or injurious gases or vapors, or inflammable vapors or fluids, or corrosive acids, are manufactured, used, generated, stored or conveyed in dangerous quantities.

8. In any enterprise in which statutory or municipal ordinance regulations are now or shall hereafter be imposed for the regulating, guarding, use or the placing of machinery or appliances or for the protection and safeguarding of the employees or the public therein; each of which occupations, enterprises or businesses are hereby declared to be extra hazardous: *Provided*, Nothing contained herein shall be construed to apply to any work, employment or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise or lease land for any such purposes, or to any one in their employ or to any work done on a farm or country place no' matter what kind of work or service is being done or rendered.

Pleading.

SEC. 3½ (added by act, p. 490, acts of 1917). (a) If the plaintiff in any action mentioned in section 3 shall in his declaration or in his other pleading allege that the employer has filed notice of his election not to provide and pay compensation according to the provisions of the workmen's compensation act and such allegation be not denied by a verified pleading, then such employer shall for the purposes of that action be conclusively presumed to have filed his notice of nonelection.

Certificate of nonelection.

(b) A certificate of the fact of the filing by an employer of the notice of nonelection provided in section 2 and of the nonwithdrawal thereof shall be prima facie proof in any action mentioned in section 3 of the fact of the filing of such notice of nonelection and of the nonwithdrawal thereof. Such certificate may be under the seal of the industrial board and signed by any member or the secretary thereof, of which seal and signature as such officer the court shall take judicial notice. Said certificate may be in substantially the following form:

This is to certify that the attached is a correct copy of notice filed with the industrial board by _____ on the _____ day of _____, 19__, electing not to provide and pay compensation according to the provisions of the workmen's compensation act of Illinois, and that the original of said notice is now on file in the office of the industrial board and has not been withdrawn since the date of the filing thereof.

In witness whereof, this certificate has been subscribed and the seal of the industrial board affixed this____day of_____, 19__

_____,

_____ of Industrial Board.

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Who are employers.

SEC. 4 (as amended by act, p. 505, acts of 1917). The term "employer" as used in this act shall be construed to be:

First. The State, and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.

Second. Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable corporations or associations who has any person in service or under any contract for hire, express or implied, oral or written, and who is engaged in any of the enterprises or businesses enumerated in section three (3) of this act, or who at or prior to the time of the accident to the employee for which compensation under this act may be claimed, shall in the manner provided in this act, have elected to become subject to the provisions of this act, and who shall not, prior to such accident, have effected a withdrawal of such election in the manner provided in this act.

Employees.

SEC. 5 (as amended by act, p. 490, acts of 1917). The term "employee" as used in this act shall be construed to mean:

First. Every person in the service of the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation therein, under appointment, or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city, town, township, incorporated village, school district, body politic or municipal corporation therein: *Provided*, That any such employee, his personal representative, beneficiaries or heirs, who is, are or shall be entitled to receive a pension or benefit for or on account of disability or death arising out of or in the course of his employment from a pension or benefit fund to which the State or any county, town, township, incorporated village, school district, body politic or municipal corporation therein is a contributor, in whole or in part, shall be entitled to receive only such part of pension or benefit as is in excess of the amount of compensation recovered and received by such employee, his personal representative, beneficiaries or heirs under this act: *And, provided, further*, That one employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic or municipal corporation, therein, through its representatives, shall not be considered, as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract.

Second. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and minors, who are legally permitted to work under the laws of the State, who, for the purpose of this act, shall be considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees, but not including any person who is not engaged in the usual course of the trade, business, profession or occupation of his employer: *Provided*, That employees shall not be included within the provisions of this act when excluded by the laws of the United States relating to liability of employers to their employees for personal injuries where such laws are held to be exclusive.

Suits abolished.

SEC. 6. No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee other than the compensation herein provided shall be available to any employee who is covered by the provisions of this act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

Compensation for death.

SEC. 7 (as amended by act, p. 490, acts of 1917). The amount of compensation which shall be paid for an injury to the employee resulting in death shall be:

(a) If the employee leaves any widow, child or children whom he was under legal obligation to support at the time of his injury, a sum equal to four times the average annual earnings of the em-

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ployee, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(b) If no amount is payable under paragraph (a) of this section and the employee leaves any parent who at the time of injury was totally dependent upon the earnings of the employee, then a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred fifty dollars, and not more in any event than three thousand five hundred dollars.

(c) If no amount is payable under paragraph (a) or (b) of this section and the employee leaves any parent, grandparent or grandchild who at the time of injury was dependent upon the earnings of the employee, then such proportion of a sum equal to four times the average annual earnings of the employee as such dependency bears to total dependency, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amounts payable on death.

(d) If no amount is payable under paragraphs (a), (b) or (c) of this section and the employee leaves collateral heirs dependent at the time of the injury to the employee upon his earnings, such a percentage of the sum provided in paragraph (a) of this section as the average annual contributions which the deceased made to the support of such collateral dependent heirs during the two years preceding the injury bears to his average annual earnings during such two years.

(e) If no amount is payable under paragraph (a) or (b) or (c) or (d) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses.

(f) All compensation except for burial expenses, provided for in this section to be paid in case injury results in death, shall be paid in installments equal to one-half the average earnings, at the same intervals at which the wages or earnings of the employee were paid; or if this shall not be feasible, then the installments shall be paid weekly: *Provided*, Such compensation may be paid in a lump sum upon petition as provided in section 9 of this act.

(g) The compensation to be paid for injury which results in death, as provided in this section, shall be paid at the option of the employer either to the personal representative of the deceased employee or to his beneficiaries, and shall be distributed to the heirs who formed the basis for determining the amount of compensation to be paid by the employer, the distributees' share to be in the proportion of their respective dependency at the time of the injury on the earnings of the deceased: *Provided*, That, in the judgment of the court appointing the personal representative, a child's distributive share may be paid to the parent for the support of the child. The payment of compensation by the employer to the personal representative of the deceased employee shall relieve him of all obligations as to the distribution of such compensations so paid. The distribution by the personal representative of the compensation paid to him by the employer shall be made pursuant to the order of the court appointing him.

(h) 1. Whenever in paragraph (a) of this section a minimum of one thousand six hundred fifty dollars is provided, such minimum shall be increased in the following cases to the following amounts:

One thousand seven hundred fifty dollars in case of a widow and one child under the age of 16 years at the time of the death of the employee.

One thousand eight hundred fifty dollars in case of a widow and two or more children under the age of 16 years at the time of the death of the employee.

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2. Wherever in paragraph (a) of this section a maximum of three thousand five hundred dollars is provided, such maximum shall be increased in the following cases to the following amounts:

Three thousand seven hundred fifty dollars in case of a widow and one child under the age of 16 years at the time of the death of the employee.

Four thousand dollars in case of a widow and two or more children under the age of 16 years at the time of the death of the employee.

Nonfatal injuries.

SEC. 8 (as amended by act, p. 490, acts of 1917). The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:

Medical, etc., services.

(a) The employer shall provide necessary first aid, medical, surgical and hospital services; also medical, surgical and hospital services for a period not longer than eight weeks, not to exceed, however, the amount of $200. The employee may elect to secure his own physician, surgeon or hospital services at his own expense.

Temporary disability.

(b) If the period of temporary total incapacity for work lasts for more than six working days, compensation equal to fifty per cent of the earnings, but not less than $6 nor more than $12 per week, beginning on the eighth day of such temporary total incapacity, and continuing as long as the temporary total incapacity lasts, but not after the amount of compensation paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said paragraph (a), section 7.

Disfigurement.

(c) For any serious and permanent disfigurement to the hand, head or face, the employee shall be entitled to compensation for such disfigurement, the amount fixed by agreement or by arbitration in accordance with the provisions of this act, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7: *Provided,* That no compensation shall be payable under this paragraph where compensation is payable under paragraph (d), (e) or (f) of this section: *And, provided further,* That when the disfigurement is to the hand, head or face as a result of any injury, for which injury compensation is not payable under paragraph (d), (e) or (f) of this section, compensation for such disfigurement may be had under this paragraph.

Partial disability.

(d) If, after the injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in the cases covered by the specific schedule set forth in paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to fifty per cent of the difference between the average amount which he earned before the accident, and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. In the event the employee returns to the employment of the employer in whose services he was injured, the employee shall not be barred from asserting a claim for compensation under this act: *Provided,* Notice of such claim is filed with the industrial board within eighteen months after he returns to such employment, and the said board shall immediately send to the employer, by registered mail, a copy of such notice.

Schedule.

(e) For injuries in the following schedule, the employee shall receive in addition to compensation during the period of temporary total incapacity for work resulting from such injury, in accordance with the provisions of paragraphs (a) and (b) of this section, compensation, for a further period, subject to the limitations as to time and amounts fixed in paragraphs (b) and (h) of

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this section, for the specific loss herein mentioned, as follows, but shall not receive any compensation for such injuries under any other provision of this act:

1. For the loss of a thumb, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during sixty weeks;

2. For the loss of a first finger, commonly called the index finger, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during thirty-five weeks;

3. For the loss of a second finger, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during thirty weeks;

4. For the loss of a third finger, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during twenty weeks;

5. For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during fifteen weeks;

6. The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts above specified;

7. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb: *Provided, however*, That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

8. For the loss of a great toe, fifty per cent of the average weekly wage during thirty weeks;

9. For the loss of one toe other than the great toe, fifty per cent of the average weekly wage during ten weeks, and for the additional loss of one or more toes other than the great toe, fifty per cent of the average weekly wage during an additional ten weeks;

10. The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified;

11. The loss of more than one phalange shall be considered as the loss of the entire toe;

12. For the loss of a hand, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during one hundred and fifty weeks;

13. For the loss of an arm, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during two hundred weeks;

14. For the loss of a foot, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during one hundred and twenty-five weeks;

15. For the loss of a leg, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during one hundred and seventy-five weeks;

16. For the loss of the sight of an eye or for the permanent and complete loss of its use, fifty per cent of the average weekly wage during one hundred weeks;

17. For the permanent partial loss of use of a member or sight of an eye, fifty per cent of the average weekly wage during that portion of the number of weeks in the foregoing schedule provided for the loss of such member or sight of an eye which the partial loss of use thereof bears to the total loss of use of such member of [or] sight of eye:

18. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this section: *Provided*, That these specific cases of total and permanent disability shall not be construed as excluding other cases.

Permanent total disability.

(f) In case of complete disability, which renders the employee wholly and permanently incapable of work, compensation equal to fifty per cent of his earnings, but not less than $6 nor more than

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$12 per week, commencing on the day after the injury and continuing until the amount paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said paragraph (a), section 7, and thereafter a pension during life annually equal to 8 per cent of the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7. Such pension shall not be less than $10 per month and shall be payable monthly.

Death during compensation period.

(g) In case death occurs as a result of the injury before the total of the payments made equals the amount payable as a death benefit, then in case the employee leaves any widow, child or children, parents, grandparents or other lineal heirs, entitled to compensation under section 7, the difference between the compensation for death and the sum of the payments made to the employee shall be paid, at the option of the employer, either to the personal representative or to the beneficiaries of the deceased employee, and distributed, as provided in paragraph (f) of section 7, but in no case shall the amount payable under this paragraph be less than $500.

Maximum benefits.

(h) In no event shall the compensation to be paid exceed fifty per cent of the average weekly wage or exceed $12 per week in amount; nor, except in cases of complete disability, as defined above, shall any payments extend over a period of more than eight years from the date of the accident. In case an injured employee shall be incompetent at the time when any right or privilege accrues to him under the provisions of this act, a conservator or guardian may be appointed, pursuant to law, and may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been competent and had claimed or exercised said right or privilege; and no limitations of time by this act provided shall run so long as said incompetent employee is without a conservator or guardian.

Installments.

(i) All compensations provided for in paragraphs (b), (c), (d), (e), and (f) of this section, other than cases of pension for life, shall be paid in installments at the same intervals at which the wages or earnings of the employee were paid at the time of the injury, or if this shall not be feasible, then the installments shall be paid weekly.

Amounts added for children.

(j) 1. Wherever in this section there is a provision for fifty per cent, such per cent shall be increased five per cent for each child of the employee under 16 years of age at the time of injury to the employee until such per cent shall reach a maximum of sixty-five per cent.

2. Wherever in this section a weekly minimum of $6 is provided, such minimum shall be increased in the following cases to the following amounts:

$6.50 in case of an employee with one child under the age of 16 years at the time of injury to the employee.

$7 in case of an employee with two children under the age of 16 years at the time of injury to the employee.

$7.50 in case of an employee with three or more children under the age of 16 years at the time of injury to the employee.

3. Wherever in this section a weekly maximum of $12 is provided, such maximum shall be increased in the following cases to the following amounts:

$13 in case of an employee with one child under the age of 16 years at the time of injury to the employee.

$14 in case of an employee with two children under the age of 16 years at the time of injury to the employee.

$15 in case of an employee with three or more children under the age of 16 years at the time of injury to the employee.

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4. The increases in the above per cent and the minimum and maximum amounts shall be paid only so long as the child upon which the increase is based remains under the age of 16 years.

Lump sums.

SEC. 9 (as amended by act, p. 400, acts of 1915). Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the industrial board, asking that such compensation be so paid, and if, upon proper notice to the interested parties and a proper showing made before such board, it appears to the best interest of the parties that such compensation be so paid, the board may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per cent per annum, with annual rests: *Provided,* That in cases indicating complete disability no petition for a commutation to a lump-sum basis shall be entertained by the industrial board until after the expiration of six months from the date of the injury, and where necessary, upon proper application being made, a guardian, conservator or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this act, and liable to pay such compensation, may petition for the appointment of the public administrator, or a conservator, or guardian, where no legal representative has been appointed or is acting for such party or parties so under disability. Either party may reject an award of a lump-sum payment of compensation, except an award for compensation under section 7 or paragraph (e) of section 8 or for the injuries defined in the last paragraph of paragraph (e) of section 8 as constituting total and permanent disability, by filing his written rejection thereof with the said board within ten days after notice to him of the award, in which event compensation shall be payable in installments as herein provided.

Computing compensation.

SEC. 10. The basis for computing the compensation provided for in sections 7 and 8 of the act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages or earnings if in the employment of the same employer continuously during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If the injured person has not been engaged in the employment of the same employer for the full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same employment and same location, (or if that be impracticable, of neighboring employments of the same kind) have earned during such period.

(d) As to employees in employments in which it is the custom to operate throughout the working days of the year, the annual earnings, if not otherwise determinable, shall be regarded as 300 times the average daily earnings in such computation.

(e) As to employees in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number, if the annual earnings are not otherwise determinable, shall be used instead of 300 as a basis for computing the annual earnings: *Provided,* The minimum number of days which shall be so used for the basis of the year's work shall be not less than 200.

(f) In the case of injured employees who earn either no wage or less than the earnings of adult day laborers in the same line of employment in that locality, the yearly wage shall be reckoned according to the average annual earning of adults of the same

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class in the same (or if that is impracticable then of neighboring) employments.

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employee, who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

(i) To determine the amount of compensation for each installment period, the amount per annum shall be ascertained pursuant hereto, and such amount divided by the number of installment periods per annum.

Limit of liability.

SEC. 11 (as amended by act, p. 505, acts of 1917). The compensation herein provided, together with the provisions of this act shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in section three (3) of this act, or of any employer who is not engaged in any such enterprises or businesses, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this act, and whose election to continue under this act, has not been nullified by any action of his employees as provided for in this act.

Medical examinations.

SEC. 12 (as amended by act, p. 400, acts of 1915). An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer, at a time and place reasonably convenient for the employee, as soon as practicable after the injury, and also one week after the first examination and thereafter at intervals not oftener than once every four weeks, which examination shall be for the purpose of determining the nature, extent and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which may be due the employee from time to time for disability according to the provisions of this act: *Provided, however*, That such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires. In all cases where the examination is made by a surgeon engaged by the employer and the injured employee has no surgeon present at such examination, it shall be the duty of the surgeon making the examination at the instance of the employer to deliver to the injured employee, upon his request or that of his representative, a statement in writing of the condition and extent of the injury to the same extent that said surgeon reports to the employer. If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this act for such period. It shall be the duty of surgeons treating an injured employee who is likely to die and treating him at the instance of the employer to have called in another surgeon, to be designated and paid for by either the injured employee or by the person or persons who would become his beneficiary or beneficiaries, to make an examination before the death of such injured employee.

Industrial board.

SEC. 13 (as amended by act, p. 505, acts of 1917). (a) There is hereby created a board which shall be known as the industrial board to consist of five members to be appointed by the governor, by and with the consent of the senate, two of whom shall be rep-

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resentative citizens of the employing class operating under this act, and two of whom shall be representative citizens of the class of employees operating under this act, and one of whom shall be a representative citizen not identified with either the employing or employee classes and who shall be designated by the governor as chairman. Appointment of members to places on the first board or to fill vacancies on said board may be made during recesses of the senate, but shall be subject to confirmation by the senate at the next ensuing session of the legislature.

Change of designation.

(b) When there shall become effective the act known as "The Civil Administrative Code of Illinois," being an act entitled "An act in relation to the civil administration of the State government," there shall thereupon be vested in the industrial commission and the industrial officers thereof by said act created, all of the powers and duties vested in the industrial board by the workmen's compensation act, and thereupon wherever in the workmen's compensation act reference shall be made to the industrial board, the board or to any member thereof, it shall be construed as referring and shall apply to the said industrial commission, the said commission, and any industrial officer thereof, respectively.

Salaries, etc.

SEC. 14 (as amended by act, p. 490, acts of 1917). The salary of each of the members of the board so appointed by the governor shall be five thousand dollars ($5,000) per year. The board shall appoint a secretary and shall employ such assistants and clerical help as may be necessary. The salary of the arbitrators designated by the board shall be at the rate of twenty-four hundred dollars ($2,400) per year. The members of the board and the arbitrators shall have reimbursed to them their actual traveling expenses and disbursements made or incurred by them in the discharge of their official duties while away from their places of residence in the performance of their duties. The board shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the name of the board and the words "Illinois—Seal."

Jurisdiction.

SEC. 15. The industrial board shall have jurisdiction over the operation and administration of this act, and said board shall perform all the duties imposed upon it by this act, and such further duties as may hereafter be imposed by law and the rules of the board not inconsistent therewith.

Powers.

SEC. 16 (as amended by act, p. 490, acts of 1917). The board may make rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed prima facie reasonable and valid; and the process and procedure before the board shall be as simple and summary as reasonably may be. The board upon application of either party may issue dedimus potestatem directed to a commissioner, notary public, justice of the peace or any other officer authorized by law to administer oaths, to take the depositions of such witness or witnesses as may be necessary in the judgment of such applicant. Such dedimus potestatem may issue to any of the officers aforesaid in any State or Territory of the United States or in any foreign country. The board shall have the power to adopt necessary rules to govern the issue of such dedimus potestatem. The board, or any member thereof, or any arbitrator designated by said board shall have the power to administer oaths, subpœna and examine witnesses, to issue subpœnas duces tecum, requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry, and to examine and inspect the same and such places or premises as may relate to the question in dispute. Said board, or any member thereof, or any arbitrator designated by said board, shall, on written request of either party to the dispute, issue subpœnas for the attendance of such witnesses and production of such books, papers, records, and documents as shall be designated in said applications: *Provided, however*, That the parties applying for such subpœna shall advance the officer and witness fees provided for in suits pending

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in the circuit court. Service of such subpœnas shall be made by any sheriff or constable or other person. In case any person refuses to comply with an order of the board or subpœna issued by it or any member thereof, or any arbitrator designated by said board, or to permit an inspection of places or premises, or to produce any books, papers, records, or documents, or any witness refuses to testify to any matters regarding which he may be lawfully interrogated, the county court of the county in which said hearing or matter is pending, on application of any member of the board or any arbitrator designated by the board, shall compel obedience by attachment proceedings, as for contempt, as in a case of disobedience of the requirements of a subpœna from such court on a refusal to testify therein.

Records.

The board at its expense shall provide a stenographer to take the testimony and record of proceedings at the hearings before an arbitrator, committee of arbitration, or the board, and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him therefor of five cents per one hundred words for the original and three cents per one hundred words for each copy of such transcript.

Fees.

The board shall have the power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any service performed in connecton with this act, or for which payment is to be made under this act or rendered in securing any right under this act.

Blanks and records.

SEC. 17. The board shall cause to be printed and furnish free of charge upon request by any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act, and the performance of the duties of the board; it shall provide a proper record in which shall be entered and indexed the name of any employer who shall file a notice of declination or withdrawal under this act, and the date of the filing thereof; and a proper record in which shall be entered and indexed the name of any employee who shall file such a notice of declination or withdrawal, and the date of the filing thereof; and such other notices as may be required by the terms and intendment of this act; and records in which shall be recorded all proceedings, orders and awards had or made by the board, or by the arbitration committees, and such other books or records as it shall deem necessary, all such records to be kept in the office of the board.

Disputes.

SEC. 18. All questions arising under this act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the industrial board.

SEC. 19. (as amended by act, p. 490, acts of 1917). Any disputed questions of law or fact upon which the employer and employee or personal representative can not agree, shall be determined as herein provided.

Arbitration.

(a) It shall be the duty of the industrial board, upon notification that the parties have failed to reach an agreement, to designate an arbitrator: *Provided*, That if the compensation claimed is for a partial permanent or total permanent incapacity or for death, then the dispute may, at the election of either party, be determined by a committee of arbitration, which election for a determination by a committee shall be made by petitioner filing with the board his election in writing with his petition or by the other party filing with the board his election in writing within five days of notice to him of the filing of the petition, and thereupon it shall be the duty of the industrial board, upon either of the parties having filed their election for a committee of arbitration as above provided, to notify both parties to appoint their respective representatives on the committee of arbitration. The board shall designate an arbitrator to act as chairman, and if either party fails to appoint its member on the committee within seven days after notification as above provided, the board shall appoint a person to fill the vacancy and notify the parties to that

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effect. The party filing his election for a committee of arbitration shall with his election deposit with the board the sum of twenty dollars, to be paid by the board to the arbitrators selected by the parties as compensation for their services as arbitrators, and upon a failure to deposit as aforesaid, the election shall be void and the determination shall be by an arbitrator designated by the board. The members of the committee of arbitration appointed by either of the parties or one appointed by the board to fill a vacancy by reason of the failure of one of the parties to appoint, shall not be a member of the board or an employee thereof.

(b) The arbitrator or committee of arbitration shall make such inquiries and investigations as he or they shall deem necessary, and may examine and inspect all books, papers, records, places, or premises relating to the questions in dispute, and hear such proper evidence as the parties may submit. The hearings before the arbitrator or committee of arbitration shall be held in the vicinity where the injury occurred, after ten days' notice of the time and place of such hearing shall have been given to each of the parties or their attorneys of record. The decision of the arbitrator or committee of arbitration shall be filed with the industrial board, which board shall immediately send to each party or his attorney a copy of such decision, together with a notification of the time when it was filed, and unless a petition for a review is filed by either party within fifteen days after the receipt by said party of the copy of said decision and notification of time when filed, and unless such party petitioning for a review shall within twenty days after the receipt by him of the copy of said decision, file with the board either an agreed statement of the facts appearing upon the hearing before the arbitrator or committee of arbitration, or if such party shall so elect, a correct stenographic report of the proceedings at such hearings, then the decision shall become the decision of the industrial board: *Provided,* That such industrial board may for sufficient cause shown grant further time, not exceeding thirty days, in which to petition for such review or to file such agreed statement or stenographic report. Such agreed statement of facts or correct stenographic report, as the case may be, shall be authenticated by the signatures of the parties or their attorneys and in the event they do not agree as to the correctness of the stenographic report it shall be authenticated by the signature of the arbitrator designated by the board.

Physician. (c) The industrial board may appoint, at its expense, a duly qualified, impartial physician to examine the injured employee and report to the board. The fee for this service shall not exceed five dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases. The fees and the payment thereof of all attorneys and physicians for services authorized by the board under this act, shall, upon request of either the employer or the employee or the beneficiary affected, be subject to the review and decision of the industrial board.

Insanitary practices, etc. (d) If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the board may, in its discretion, reduce or suspend the compensation of any such injured employee.

Review. (e) If a petition for review and agreed statement of facts or stenographic report is filed, as provided herein, the industrial board shall promptly review the decision of the arbitrator or committee of arbitration and all questions of law or fact which appear from the said statement of facts or stenographic report, and such additional evidence as the parties may submit. After such hearing upon review, the board shall file in its office its decision thereon, and shall immediately send to each party or his attorney a copy of such decision and a notification of the time when it was filed.

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Such review and hearing may be held in its office or elsewhere as the board may deem advisable: *Provided*, That the taking of testimony on such hearing may be had before any member of the board and in the event either of the parties may desire an argument before others of the board such argument may be had upon written demand therefor filed with the board within five days after the commencement of such taking of testimony, in which event such argument shall be had before not less than a majority of the board: *Provided*, That the board shall give 10 days' notice to the parties or their attorneys of the time and place of such taking of testimony and of such argument.

In any case the board in its discretion may in its discretion find specially upon any question or questions of law or fact which shall be submitted in writing by either party, whether ultimate or otherwise. Any party may, within twenty days after the receipt of notice of the board's decision, or within such further time, not exceeding thirty days, as the board may grant, file with the board either an agreed statement of the facts appearing upon the hearing, or, if such party shall so elect, a correct stenographic report of the additional proceedings presented before the board, in which report the party may embody a correct statement of such other proceedings in the case as such party may desire to have reviewed, such statement of facts or stenographic report to be authenticated by the signatures of the parties or their attorneys, and in the event that they do not agree, then the authentication of such stenographic report shall be by the signature of the chairman of the board. The applications for adjustment of claim and other documents in the nature of pleadings filed by either party, together with the decisions of the arbitrator and of the industrial board, and the statement of facts or stenographic reports hereinbefore provided for in paragraphs (b) and (c) shall be the record of the proceedings of said board, and shall be subject to review as hereinafter provided.

Decisions conclusive.

(f) The decision of the industrial board, acting within its powers, according to the provisions of paragraph (e) of this section, and of the arbitrator or committee of arbitration, where no review is had and his or their decision becomes the decision of the industrial board in accordance with the provisions of this section, shall, in the absence of fraud, be conclusive unless reviewed as in this paragraph hereinafter provided.

Review by court.

(1) The circuit court of the county where any of the parties defendant may be found shall by writ of certiorari to the industrial board have power to review all questions of law presented by such record. Such writ shall be issued by the clerk of such court upon præcipe. Service upon any member of the industrial board or the secretary thereof shall be service on the board, and service upon other parties interested shall be by scire facias, or service may be made upon said board and other parties in interest by mailing notice of the commencement of the proceedings and the return day of the writ to the office of said board and the last known place of residence of the other parties in interest at least ten days before the return day of said writ; or (2) any party in interest may commence a suit in chancery in the circuit court of the county where any of the parties defendant may be found to review the decision of the board only for errors of law appearing on the said record of the said board. Such suit by writ of certiorari or in chancery shall be commenced within twenty days of the receipt of notice of the decision of the board.

(3) No such writ of certiorari shall issue and no such suit in chancery shall be commenced by one against whom the industrial board shall have rendered an award for the payment of money unless such one shall upon the filing of his præcipe for such writ or upon the commencement of such suit file with the clerk of said court a bond conditioned that if he shall not successfully prosecute said writ or said suit he will pay the said award, and the costs of the proceedings in said court. The amount of the bond shall be fixed by any member of the industrial board and the

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surety or sureties on said bond shall be approved by the clerk of said court.

The court may confirm or set aside the decision of the arbitrator or committee of arbitration or industrial board. If the decision is set aside and the facts found in the proceedings before the board are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the industrial board for further proceedings, and may state the questions requiring further hearing, and give such other instructions as may be proper.

Judgments, orders and decrees of the circuit court under this act shall be reviewed only by the supreme court upon a writ of error. Upon motion, the trial court shall enter of record a certificate that the cause is, or is not, in his opinion, one proper to be reviewed by the supreme court. Upon filing with the clerk of the supreme court a certified copy of such a certificate that the cause is not one proper to be reviewed, writ of error shall issue. If the trial court certifies that the cause is not one proper to be reviewed, the supreme court, in its discretion, or one of the judges of said court in vacation, may, nevertheless, order that a writ of error issue. A writ of error, when issued, shall operate as a supersedeas.

The decision of a majority of the members of a committee of arbitration or of the industrial board shall be considered the decision of such committee or board, respectively.

Judgment.

(g) Either party may present a certified copy of the decision of the industrial board, when no proceedings for review thereof have been taken, or of the decision of such arbitrator or committee of arbitration when no claim for review is made, or of the decision of the industrial board after hearing upon review, providing for the payment of compensation according to this act, to the circuit court of the county in which such accident occurred or either of the parties are residents, whereupon such court shall render a judgment in accordance therewith; and in cases where the employer does not institute proceedings for review of the decision of the industrial board and refuses to pay compensation according to the award upon which such judgment is entered, the court shall, in entering judgment thereon, tax as costs against him the reasonable costs and attorney fees in the arbitration proceedings and in the court entering the judgment, for the person in whose favor the judgment is entered, which judgment and costs, taxed as herein provided shall, until and unless set aside, have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed. The circuit court shall have power, at any time, upon application, to make any such judgment conform to any modification required by any subsequent decision of the supreme court upon appeal, or as the result of any subsequent proceedings for review, as provided in this act.

Judgment shall not be entered until fifteen days' notice of the time and place of the application for the entry of judgment shall be served upon the employer by filing such notice with the industrial board; which board shall, in case it has on file the address of the employer or the name and address of its agent, upon whom notices may be served, immediately send a copy of the notice to the employer or such designated agent; and no judgment shall be entered in the event the employer shall file with the said board its bond, with good and sufficient surety in double the amount of the award, conditioned upon the payment of said award in the event the said employer shall fail to prosecute with effect proceedings for review of the decision, or the said decision, upon review, shall be affirmed.

Review of awards.

(h) An agreement or award under this act, providing for compensation in installments, may at any time within eighteen months after such agreement or award be reviewed by the industrial board at the request of either the employer or the employee, on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended: and on

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such review, compensation payments may be reestablished, increased, diminished or ended: *Provided*, That the board shall give fifteen days' notice to the parties of the hearing for review: *And provided, further*, Any employee, upon any petition for such a review being filed by the employer, shall be entitled to one day's notice for each one hundred miles necessary to be traveled by him in attending the hearings of the board upon said petition and three days in addition thereto, and such employee shall, at the discretion of the board, also be entitled to five cents per mile necessarily traveled by him in attending such hearing not to exceed a distance of 300 miles, to be taxed by the board as costs and deposited with the petition of the employer.

Addresses to be furnished.

(i) Each party, upon taking any proceedings or steps whatsoever before any arbitrator, committee of arbitration, industrial board or court, shall file with the industrial board his address, or the name and address of an agent upon whom all notices to be given to such party shall be served, either personally or by registered mail addressed to such party or agent at the last address so filed with the industrial board: *Provided*, That in the event such party has not filed his address, or the name and address of an agent, as above provided, service of any notice may be had by filing such notice with the industrial board.

Proceedings after death of employee.

(j) Whenever in any proceeding testimony has been taken or a final decision has been rendered, and after the taking of such testimony, or after such decision has become final, the injured employee dies, then in any subsequent proceeding brought by the personal representative or beneficiaries of the deceased employee, such testimony in the former proceeding may be introduced with the same force and effect as though the witnesses having so testified were present in person in such subsequent proceeding and such final decision, if any, shall be taken as a final adjudication of any of the issues which are the same in both proceedings.

Reports of board.

SEC. 20. The industrial board shall report in writing to the governor on the 30th day of June, annually, the details and results of its administration of this act, in accordance with the terms of this act, and may prepare and issue such special bulletins and reports from time to time as, in the opinion of the board, seems advisable.

Exemption, etc., of payments.

SEC. 21 (as amended by act, p. 400, acts of 1915). No payment, claim, award or decision under this act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages. In case of insolvency of the employer, every decision of the industrial board for compensation under this act shall, upon the filing of a certified copy of the decision with the recorder of deeds of the county, constitute a lien upon all property of the employer within said county, paramount to all other claims or liens, except for wages and taxes, and mortgages or trust deeds, and such liens shall be enforced by order of the court. Any right to receive compensation hereunder shall be extinguished by the death of the person or persons entitled thereto, subject to the provisions of this act relative to compensation for death received in the course of employment: *Provided*, That upon the death of a beneficiary, who is receiving compensation provided for in section 7, leaving surviving a parent, sister or brother of the deceased employee, at the time of his death dependent upon him for support, who were receiving from such beneficiary a contribution to support, then that proportion of the compensation of the beneficiary which would have been paid but for the death of the beneficiary, but in no event exceeding said unpaid compensation, which the contribution of the beneficiary to the dependent's support within one year prior to the death of the beneficiary bears to the compensation of the beneficiary within that year, shall be continued for the benefit of such dependents, notwithstanding the death of the beneficiary.

Death of beneficiary.

Agreements within seven days.

SEC. 22. Any contract or agreement made by any employer or his agent or attorney with any employee or any other beneficiary

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of any claim under the provisions of this act within seven days after the injury shall be presumed to be fraudulent.

Waivers. SEC. 23. No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the industrial board.

Notice. SEC. 24. No proceedings for compensation under this act shall be maintained unless notice of the accident has been given the employer as soon as practicable, but not later than 30 days after the accident. In cases of mental incapacity of the employee, notice must be given within six months after such accident. No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings by arbitration or otherwise by the employee, unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. Notice of the accident shall in substance apprise the employer of the claim of compensation made and shall state the name and address of the employee injured, the approximate date and place of the accident, if known, and in simple language the cause thereof; which notice may be served personally or by registered mail, addressed to the employer at his last known residence or place of business: *Provided*, That the failure on the part of any person entitled to such compensation to give such notice shall not relieve the employer from his liability for such compensation, when the facts and circumstances of such accident are known to such employer, his agent or vice principal in the enterprise. No proceedings for compensation under this act shall be maintained unless claim for compensation has been made within six months after the accident, or in the event that payments have been made under the provisions of this act, unless written claim for compensation has been made within six months after such payments have ceased.

Employers' options. SEC. 25. Any employer against whom liability may exist for compensation under this act, may, with the approval of the industrial board, be relieved therefrom by:

(a) Depositing the commuted value of the total unpaid compensation for which such liability exists, computed at three per cent per annum in the same manner as provided in section 9, with the State treasurer, or county treasurer in the county where the accident happened, or with any state or national bank or trust company doing business in this State, or in some other suitable depository approved by the industrial board: *Provided*, That any such depository to which such compensation may be paid shall pay the same out in installments as in this act provided, unless such sum is ordered paid in, and is commuted to, a lump-sum payment in accordance with the provisions of this act.

(b) By the purchase of an annuity, in an amount of compensation due or computed, under this act within the limitation provided by law, in any insurance company granting annuities and licensed or permitted to do business in this State, which may be designated by the employer, or the industrial board.

SEC. 26 (as amended by act, p. 505, acts of 1917).

Guaranty of payments. (a) Any employer who shall come within the provisions of section three (3) of this act and any other employer who shall elect to provide and pay the compensation provided for in this act, shall, within ten (10) days of receipt by the employer of a written demand by the industrial board (1) file with the board a sworn statement showing his financial ability to pay the compensation provided for in this act, normally required to be paid, or (2) furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this act normally required to be paid, or (3) insure to a reasonable amount his normal liability to pay such compensation in some corporation, association or organization authorized, licensed or permitted to do such insurance business in this State, or (4) make some other provisions for the securing of the payment of compen-

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sation provided for in this act, normally required to be paid, and shall, within twenty (20) days of the receipt of such written demand, furnish to the board evidence of his compliance with one of the above alternatives: *Provided*, That the sworn statement of financial ability, or security, indemnity or bond, or amount of insurance or other provisions, filed, furnished, carried or made by the employer as the case may be, shall be subject to the approval of the board, upon the approval of which the board shall send to the employer written notice of its approval thereof: *And, provided, further*, That demand shall not be made upon the employer by the board oftener than once in any calendar year.

Liability in absence of guaranty.

(b) If no sworn statement or no security, indemnity or bond, or no insurance is filed, furnished or carried, or other provisions made by the employer within ten (10) days of receipt by the employer of the written demand provided for in paragraph (a), or if the statement, security, indemnity, bond or amount of insurance filed, furnished or carried, or other provision made by the employer, as provided in paragraph (a) shall not be approved by the board, and written notice of such nonapproval shall be given to the employer and the employer shall not comply with one of the alternatives of paragraph (a) of this section within ten (10) days after the receipt by the employer of such written notice of nonapproval, then the employer shall be liable for compensation to any injured employee, or his personal representative, according to the terms of this act, or for damages in the same manner as if this act had not been passed, at the option of such employee or his personal representative: *Provided*, That it shall be no defense in favor of such employer in such case that (1) the employee assumed the risks of the employment, (2) the injury or death was caused in whole or in part by the negligence of a fellow servant, (3) the injury or death was proximately caused by the contributory negligence of the employee: *Provided*, Such option is exercised, and written notice thereof is given to the employer within thirty (30) days after the accident to such employee; otherwise the employer shall be liable only for the compensation payable according to the provisions of this act: *And, provided, further*, That if at any time thereafter the employer shall comply with any of the alternatives of paragraph (a), then as to all accidents occurring after the said compliance, the employer shall only be liable for compensation according to the terms of this act: *And, provided, further*, That upon the failure of any employer to comply with the provisions of this section, the industrial board may, for the purpose of furnishing notice to the employees of such employer, publish the fact of such failure by such employer in any newspaper having a general circulation in the county where such employer does business.

Defenses abrogated.

Insurance, etc.

SEC. 27. (a) This act shall not affect or disturb the continuance of any existing insurance, mutual aid, benefit, or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employees, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him: *Provided*, The employer contributes to such association or department an amount not less than the full compensation herein provided, exclusive of the cost of the maintenance of such association or department and without any expense to the employee. This act shall not prevent the organization and maintaining under the insurance laws of this State of any benefit or insurance company for the purpose of insuring against the compensation provided for in this act, the expense of which is maintained by the employer. This act shall not prevent the organization or maintaining under the insurance laws of this State of any voluntary mutual aid, benefit or relief association among employees for the payment of additional accident or sick benefits.

(b) No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained, be authorized to discontinue its operation without first dis-

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charging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

No costs on employees.

(c) Any contract, oral, written or implied, of employment providing for relief benefit, or insurance or any other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this act shall be null and void, and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or both, in the discretion of the court.

Employers' insolvency.

SEC. 28. Any person, who shall become entitled to compensation under the provisions of this act, shall, in the event of his inability to recover such compensation from the employer on account of his insolvency, be subrogated to all the rights of such employer against any insurance company, association, or insurer which may have insured such employer against loss growing out of the compensation required by the provisions of this act to be paid by such employer, and, in such event only, the said insurance company, association, or insurer shall become primarily liable to pay to the employee or his personal representative the compensation required by the provisions of this act to be paid by such employer.

Liability of third persons.

SEC. 29 (as amended by act, p. 505, acts of 1917). Where an injury or death for which compensation is payable by the employer under this act, was not proximately caused by the negligence of the employer or his employees, and was caused under circumstances creating a legal liability for damages in some person other than the employer to pay damages, such other person having also elected to be bound by this act, or being bound thereby under section three (3) of this act, then the right of the employee or personal representative to recover against such other persons shall be subrogated to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained in an amount not exceeding the aggregate amount of compensation payable under this act, by reason of the injury or death of such employee. Where the injury or death for which compensation is payable under this act was not proximately caused by the negligence of the employer or his employees and was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person having elected not to be bound by his act, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this act, but in such case if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or his personal representative: *Provided*, That if the injured employee or his personal representative shall agree to receive compensation from the employer or to institute proceedings to recover the same or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all the rights of such employee or personal representative and may maintain, or in case an action has already been instituted, may continue an action either in the name of the employee or personal representative or in his own name against such other person for the recovery of damages to which but for this section the said employee or personal representative would be entitled, but such employer shall nevertheless pay over to the injured employee or personal representative, all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid

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or to be paid under this act, and all costs, attorneys' fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability.

Accidents to be reported.

SEC. 30. It shall be the duty of every employer within the provisions of this act to send to the industrial board in writing an immediate report of all accidental injuries arising out of or in the course of the employment and resulting in death; it shall also be the duty of every such employer to report between the 15th and the 25th of each month to the industrial board all accidental injuries for which compensation has been paid under this act, which injuries entail a loss to the employee of more than one week's time, and in case the injury results in permanent disability, a further report shall be made as soon as it is determined that such permanent disability has resulted or will result from such injury. All reports shall state the date of the injury, including the time of day or night, the nature of the employer's business, the name, address, the age, sex, conjugal condition of the injured person, the specific occupation of the injured person, the direct cause of the injury and the nature of the accident, the character of the injury, the length of disability, and, in case of death, the length of disability before death, the wages of the injured person, whether compensation has been paid to the injured person, or to his legal representatives or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians', surgeons', and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known. The making of reports as provided herein shall release the employer covered by the provisions of this act from making such reports to any other officer of the State.

Contractors.

SEC. 31 (as amended by act, p. 490, acts of 1917). Any one engaging in any business or enterprise referred to in subsections 1 and 2 or paragraph (b) of section 3 of this act who undertakes to do any work enumerated therein, shall be liable to pay compensation to his own immediate employees in accordance with the provisions of this act, and in addition thereto if he directly or indirectly engages any contractor, whether principal or subcontractor to do any such work, he shall be liable to pay compensation to the employees of any such contractor or subcontractor unless such contractor or subcontractor shall have insured, in any company or association authorized under the laws of this State to insure the liability to pay compensation under this act, or guaranteed his liability to pay such compensation.

In the event any such person shall pay compensation under this section he may recover the amount thereof from the contractor or subcontractor, if any, and in the event the contractor shall pay compensation under this section he may recover the amount thereof from the subcontractor, if any.

This section shall not apply in any case where the accident occurs elsewhere than on, in or about the immediate premises on which the principal has contracted that the work shall be done.

Rights of action safeguarded.

SEC. 32 (as amended by act, p. 505, acts of 1917). If any of the provisions of this act providing for compensation for injuries to or death of employees shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of any injury or death and such repeal or final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury. Any claim, disagreement or controversy existing or arising under "An act to promote the general welfare of the people of this State, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, shall be adjusted in accordance with the provisions of said act, notwithstanding the repeal thereof, or may by agreement of the parties be adjusted in accordance with the method of pro-

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cedure provided in this act for the adjustment of differences, jurisdiction to adjust such differences so submitted by the parties being hereby conferred upon the industrial board or committee of arbitration provided for in this act.

Violations. SEC. 33. Any willful neglect, refusal, or failure to do the things required to be done by any section, clause, or provision of this act, on the part of the persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, or any other person charged with the duty of administering or enforcing the provisions of this act, shall be deemed a misdemeanor, punishable by a fine of not less than $10 nor more than $500 at the discretion of the court.

Title. SEC. 33½ (added by act, p. 400, acts of 1915). This act may be cited as the workmen's compensation act.

Provisions severable. SEC. 34. The invalidity of any portion of this act shall in no way affect the validity of any other portion thereof which can be given effect without such invalid part.

ACTS OF 1917.

Department of labor—Industrial commission.

(Page 2.)

Officers and boards. SECTION 5. In addition to the directors of departments, the following executive and administrative officers, boards and commissions, which said officers, boards and commissions in the respective departments shall hold offices hereby created and designated as follows:

* * * * *

IN THE DEPARTMENT OF LABOR.

Industrial commission. * * * The industrial commission, which shall consist of five officers designated industrial officers.

SEC. 7.

* * * * *

Membership. Of the five industrial officers, two shall be representative citizens of the employing class operating under the workmen's compensation act, two shall be representative citizens chosen from among the employees operating under such act, and the other shall be a representative citizen not identified with either the employing or employee classes.

* * * * *

Salaries. SEC. 9. The executive and administrative officers whose offices are created by this act shall receive annual salaries, payable in equal monthly installments, as follows:

* * * * *

* * * Each industrial officer shall receive five thousand dollars.

* * * * *

Powers and duties. SEC. 44. The department of labor shall exercise and discharge the rights, powers and duties vested by law in the industrial board under an act * * * [workmen's compensation law] approved June 28, 1913, in force July 1, 1913 [p. 335, acts of 1913], or any future amendments thereto or modifications thereof.

Said act and all amendments thereto and modifications thereof, if any, shall be administered by the industrial commission created by this act, and in its name, without any direction, supervision, or control by the director of labor.

Approved March 7, 1917.

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INDIANA.

Compensation of workmen for injuries.

[The compensation law of the State (chapter 106, acts of 1915), is amended by various acts of 1917. Section 1 is amended by chapter 165 by adding thereto the following:]

This act shall not apply to railroad employees engaged in train service. **Certain railroad employees exempt.**

[Section 28 is amended by chapter 81 by reducing the waiting time from 14 days to 7 days, and making liability payments begin the eighth day after the injury. Corresponding changes are also made in sections 29, 30, and 57.

Sections 59, 60, and 61 are amended by chapter 63 so as to read as follows:]

SECTION 59. The board, by any or all of its members, shall hear the parties at issue, their representatives and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceedings, and a copy thereof shall immediately be sent to each of the parties in dispute. **Award.**

SEC. 60. If an application for review is made to the board within seven days from the date of an award, made by less than all the members, the full board, if the first hearing was not held before the full board, shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives and witnesses as soon as practicable and shall make an award and file same, with a finding of the facts on which it is based, and the rulings of law by the full board, if any, and send a copy thereof to each of the parties in dispute, in like manner as specified in the foregoing section. **Review.**

SEC. 61. An award of the board by less than all of the members, as provided in section 59, if not reviewed as provided in section 60, shall be final and conclusive. **Appeals to court.**

An award by the full board shall be conclusive and binding as to all questions of fact, but either party to the dispute may, within thirty days from the date of such award, appeal to the appellate court for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

The board, of its own motion, may certify questions of law to said appellate court for its decision and determination.

An assignment of error that the award of the full board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts.

All such appeals and certified questions of law shall be submitted upon the date filed in the appellate court, shall be advanced upon the docket of said court, and shall be determined at the earliest practicable date, without any extensions of time for filing briefs.

An award of the full board, affirmed on appeal, shall be increased thereby five per cent.

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IOWA.

Compensation of workmen for injuries.

[The compensation law of the State (chapter 147, acts of 1913, codified as sections 2477–m to 2477–m–51) is amended in several sections by acts of 1917. Section 1 (sec. 2477–m) is amended by chapter 418 by adding to subdivision (a) the following:]

Pension funds.

The provisions of this act shall not apply as between a municipal corporation, city or town and any person or persons receiving any benefits under, or who may be entitled to, benefits from any "firemen's pension fund" or "policemen's pension fund" of any municipal corporation, city or town.

[Section 10 (sec. 2477–m–9) is amended by chapter 270, by so changing the provisions of subdivision (b) as to allow medical, etc., aid for four weeks instead of two. Subdivision (g) of the same section is amended so as to read as follows:]

Waiting time.

(g) No compensation shall be paid for an injury which does not incapacitate the employee for a period of at least two weeks from earning full wages: *Provided, however,* That this provision shall not apply to those injuries resulting in disability partial in character and permanent in quality and compensated according to the schedule found in section twenty-four hundred seventy-seven–m–9 (j) (2477–m–9–j), Supplement to the Code, 1913. Should such incapacity extend beyond a period of two weeks, compensation shall begin on the fifteenth day after the injury: *Provided, however,* That if the period of incapacity extends beyond the thirty-fifth day following the date of injury, then the compensation for the fifth week of incapacity shall be increased by adding thereto an amount equal to two-thirds (⅔) of the weekly compensation; if the period of incapacity extends beyond the forty-second (42) day following the date of injury, then the compensation for the sixth week of incapacity shall be increased by adding thereto an amount equal to two-thirds (⅔) of the weekly compensation; if the period of incapacity extends beyond the forty-ninth (49) day following the date of injury, then the compensation for the seventh week of incapacity shall be increased by adding thereto an amount equal to two-thirds (⅔) of the weekly compensation; if the period of incapacity extends beyond the forty-ninth (49) day following the date of injury, then the compensation thereafter shall be only the weekly compensation provided for in this law.

Proviso.

[Subdivisions (h) and (i) are amended by making the maximum weekly payments $15 instead of $10, and the minimum $6 instead of $5.

Subdivision (j) is amended by striking out the words "based upon the extent of such disability," in the first paragraph, and substituting therefor the words "as follows."

A new paragraph (17) is inserted in subdivision (j), as follows:]

Loss of hearing.

(17) For the loss of hearing in one ear, fifty (50) per cent of daily wages during fifty (50) weeks, and for the loss of hearing in both ears, fifty (50) per cent of the daily wages during one hundred fifty (150) weeks.

[Old paragraphs (17), (18), and (19) are renumbered (18), (19), and (20), respectively, and the paragraph now numbered (18) is amended so as to read as follows:]

Permanent total disability.

(18) The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or of any two thereof, caused by a single accident, shall constitute total and permanent disability, to be com-

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pensated according to the provisions of section twenty-four hundred seventy-seven-m-9 (i) (2477-m-9-i), Supplement to the Code, 1913.

[Section 14 (sec. 2477-m-13) is amended by inserting between the first and second words the words "an injured minor employee or."

This section is also amended by chapter 336, which adds new paragraphs, as follows:]

Representation of aliens.

In case a deceased employee for whose injury or death compensation is payable leaves surviving him an alien dependent or dependents residing outside the United States, the consul general, consul, vice consul or consular agent of the nation of which the said dependent or dependents are citizens shall be regarded as the exclusive representative of such dependent or dependents. Such consular officer, or his duly appointed representative residing in the State of Iowa, shall have the exclusive right in behalf of such nonresident dependent or dependents to present, prosecute, litigate, adjust, and settle all claims for compensation provided by this act, and to receive for distribution to such dependent or dependents all compensation arising hereunder.

Such consular officer or his duly appointed representative shall file with the industrial commissioner a copy of his exequatur or evidence of his authority and the industrial commissioner shall notify such consular officer or his said representative of the death of all employees leaving alien dependent or dependents residing in the country of said consular officer so far as same shall come to his knowledge: *Provided, however,* That nothing herein shall abridge the right of any relative of such decedent who may reside in the State of Iowa to take out administration upon the estate of such decedent, and as such receive the funds due said estate: *And provided further,* That before said consular agent or his representative shall have the right to receive funds due the estate of said decedent he shall regularly take out administration in the county where said decedent last resided, and give bond as administrator for the protection of such funds as provided by law.

[Section 15 (sec. 2477-m-14) is amended by chapter 270 by adding to the first sentence the following:]

Commissioner to approve commutations.

Provided, however, That no judge of the district court shall consider any such application until there is endorsed thereon by the Iowa industrial commissioner his approval of such commutation, and no order shall be issued by such judge contrary to the endorsement of said industrial commissioner.

Casual employees.

[Section 17 (sec. 2477-m-16) is amended by substituting "or" for "and" after the word "casual" in subdivision (b); also by adding to the first sentence in subdivision (c) (1), the following:]

If no dependent children.

and should the deceased employee leave no dependent children, and should the surviving spouse remarry, then all compensation payable to her shall terminate on the date of such remarriage.

[Subdivision (h) is repealed, and subdivision (i) becomes (h).

Section 20 (sec. 2477-m-19) is repealed.

Section 23 (sec. 2477-m-22) is amended by adding thereto the following:]

Deputy.

The Iowa industrial commissioner shall appoint a deputy, for whose acts he shall be held responsible, who shall hold office during the pleasure of said industrial commissioner. Such appointment shall be made in writing, and must be approved by the executive council of the State of Iowa. The deputy, in the absence or disability of the Iowa industrial commissioner, shall have all of the powers and perform all of the duties of the industrial commissioner pertaining to his office, and shall receive an annual salary of two thousand (2,000) dollars, payable in equal monthly installments, out of the State treasury, and in the same manner as are the salaries of other State officials.

[Section 25 (sec. 2477-m-24) is amended by chapters 188, 270, and 409, so as to read as follows:]

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Rules.

SEC. 25. The commissioner may make rules and regulations not inconsistent with this act for carrying out the provisions of the act.

Employer to furnish statements.

The employer shall furnish upon request of an injured employee or dependent or any legal representative acting for such person, a statement of the earnings, wages, or salary and other matters relating to such earnings, wages, or salary during the year or part of the year that such employee was in the employment of such employer for the year preceding the injury: *Provided, however*, That not more than one report shall be required for each on account of any one injury.

Procedure.

Process and procedure under this act shall be as summary as reasonably may be. While sitting as an arbitration committee, or when conducting a hearing upon review, or in the making of any investigation or inquiry, neither the commissioner nor the arbitration committee shall be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but may hold such arbitrations or conduct such hearings and make such investigations and inquiries in the manner best suited to ascertain the substantial rights of the parties. The commissioner shall have the power to subpœna witnesses, administer oaths, and to examine such books and records of the parties to a proceeding or investigation as relate to questions in dispute or under investigation. The fees for attending as a witness before the industrial commissioner shall be $1.50 per diem; for attending before an arbitration committee $1 per diem; in both cases five cents per mile for traveling to and from the place of hearing. The district court is hereby empowered to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records. The deposition of any witness may be taken and used in evidence in any hearing pending before a board of arbitration in workmen's compensation proceeding in connection therewith.

Such deposition shall be taken in the same manner as provided for the taking of depositions in the district court, and when so taken shall be admissible in evidence in such hearings in the same manner subject to the same rules governing the admission of evidence in the district court.

Application for permission to take depositions in such case shall be filed in the district court of the county wherein the case for arbitration shall be heard.

Reports.

The commissioner shall make biennial reports to the governor who shall transmit the same to the general assembly, in which, among other things, the commissioner shall recommend such changes in the law covered by this act as he may deem necessary.

[Section 26 (sec. 2477-m-25) is amended by chapter 270 by inserting before the last sentence thereof the following:]

Minors.

In case the injured employee is a minor, either he or the trustee provided for in section twenty-four hundred seventy-seven-m-13 (2477-m-13), supplement to the code, 1913, may execute the memorandum of agreement provided for herein, and may give a valid and binding release for the compensation paid on his account under the terms of this act.

[Section 34 (sec. 2477-m-33) is amended by chapter 270 so as to read as follows:]

Enforcement of award.

SEC. 34. Any party in interest may present a certified copy of an order or decision of the commissioner, or an award of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the district court of the county in which the injury occurred, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree, in the absence of an appeal from the decision of the industrial commissioner, shall have the same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court. Upon the presentation to the court of a certified copy of a decision of the

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industrial commissioner, ending, diminishing or increasing a weekly payment under the provisions of this act, the court shall revoke or modify the decree to conform to such decision.

Review. No order or award of an arbitration committee is appealable direct to the courts, but if any party in interest is aggrieved thereby, he may within five (5) days from the date thereof apply to the industrial commissioner for a review of the same by such industrial commissioner in the manner as hereinbefore provided. If any such party is aggrieved by reason of an order or decree of the Iowa industrial commissioner, such party may appeal therefrom to the district court of Iowa, only in the manner and upon the grounds following:

Appeals to court. Within thirty (30) days from the date of such order or decree of the industrial commissioner, the party aggrieved may file an application in writing with the Iowa industrial commissioner asking for an appeal from such order or decree, stating generally the grounds upon which such appeal is sought. In the event such application is filed as hereinbefore provided, the industrial commissioner shall, within thirty days from the filing of same, cause certified copies of all documents and papers then on file in his office in the matter, and a transcript of all testimony taken therein, to be transmitted with his findings and order or decree to the clerk of the district court of Iowa in and for that county wherein the injury occurred. The application for such appeal may thereupon be brought on for hearing before said district court upon such record by either party on ten (10) days' written notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling of another judge. The findings of fact made by the industrial commissioner within his powers shall, in the absence of fraud, be conclusive, but upon such hearing the court may confirm or set aside such order or decree of the industrial commissioner, if he finds:

(1) That the industrial commissioner acted without or in excess of his powers; or

(2) That the order or decree was procured by fraud; or

(3) That the facts found by the industrial commissioner do not support the order or decree.

(4) That there is not sufficient competent evidence in the record to warrant the industrial commissioner in making the order or decree complained of.

No order or decree of the industrial commissioner shall be set aside by the court upon other than the grounds just stated.

Upon the setting aside of any such order or decree, the court may recommit the controversy to the industrial commissioner for further hearing or proceedings, or it may enter the proper judgment upon the findings, as the nature of the case may demand. Such decree shall have the same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court.

An abstract of the judgment entered by the trial court upon the appeal from any order or decree shall be made by the clerk thereof upon the docket entry of any judgment which may hereinbefore have been rendered upon it. Such order or decree and transcript of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties within the State.

Any party in interest who is aggrieved by a judgment entered by the district court upon the appeal of an order or decree, may appeal therefrom within the time and in the manner provided for in appeal from the orders, judgments and decrees of the district court of Iowa; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as criminal causes on such calendar.

Fees. No fee shall be charged by the clerk of any district court for the performance of any official service required by this act, except for the docketing of judgments and for certified copies or transcripts thereof. In proceedings on appeal from an order or de-

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cree, costs as between the parties shall be allowed or not, in the discretion of the court.

[Section 35 (sec. 2477-m-34) is amended by changing subdivision (a) so as to read as follows:]

Review of payments.

(a) Any payment required to be made under this act, which has not been commuted, may be reviewed by the industrial commissioner at the request of the employer or of the employee, and if on such review the commissioner finds the condition of the employee warrants such action, he may end, diminish or increase the compensation, subject to the maximum or minimum amounts provided for in this act. All hearings upon review by the Iowa industrial commissioner under the provisions of this section, or under section twenty-four hundred seventy-seven-m-32 (2477-m-32), Supplement to the Code, 1913, shall be held at Des Moines, Iowa, unless the interested parties and the Iowa industrial commissioner mutually agree by written stipulation that the same may be held at some other place.

Upon the presentation to the court of a certified copy of a decision of the industrial commissioner ending, diminishing or increasing a weekly payment under the provisions of this act, the court shall revoke or modify any judgment or decree then on record in his court to conform to such decision.

[Section 37 (sec. 2477-m-36) is amended by changing its first paragraph so as to read as follows:]

Accidents to be reported.

Every employer shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment and resulting in incapacity for a longer period than one day. Within forty-eight hours, not counting Sundays and legal holidays, after the employer has knowledge of the occurrence of an accident resulting in personal injury causing incapacity for a longer period than one day, a report shall be made in writing by the employer to the industrial commissioner on blanks to be procured from the commissioner for that purpose.

[Section 42 (sec. 2477-m-41) is amended so as to read as follows:]

Insurance required.

SEC. 42. Every employer, subject to the provisions of this act, shall insure his liability thereunder in some corporation, association or organization approved by the State department of insurance. Every such employer shall within thirty (30) days after this act goes into effect exhibit on demand of the State insurance department evidence of his compliance with this section. And if such employer refuses, or neglects to comply with this section, he shall be liable in case of injury to any workman in his employ under the common law as modified by statute, and in the same manner and to the same extent as though such employer had legally exercised his right to reject the compensation provisions of chapter eight (8)-A, Title XII, Supplement to the Code, 1913.

Any employer who fails to insure his liability as required herein shall post and keep posted a sign of sufficient size and so placed as to be easily seen by his employees in the immediate vicinity where working, which sign shall read as follows:

NOTICE TO EMPLOYEES.

You are hereby notified that the undersigned employer has failed to insure his liability to pay compensation as required by law, and that because of such failure he is liable to his employees in damages for personal injuries sustained by his employees in the same manner and to the same extent as though he had legally exercised his right to reject the compensation provisions of chapter eight-a (8-A), Title XII, Supplement to Code, 1913.

(Signed)_____

Any employer coming under the provisions of this act who fails to comply with this section or to post and keep posted the above notice in the manner and form herein required shall be guilty of a misdemeanor.

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ACTS OF 1917.

CHAPTER 67.—*Compensation payments to State employees.*

Payment of claims.

SECTION 1. All valid claims now due or which may hereafter become due employees of the State of Iowa under the provisions of [the Iowa workmen's compensation statute], chapter 8-A, Title XII, Supplement to the Code, 1913, shall be paid out of any funds in the State treasury not otherwise appropriated.

Mode.

SEC. 2. The auditor of State is hereby authorized and directed to draw warrants on the State treasury for any and all amounts due such employees under the Iowa workmen's compensation act, upon there being filed in his office, either a memorandum of settlement approved by the commissioner, or of an award made by an arbitration committee, for which no review is pending, or an order of the industrial commissioner from which no appeal has been taken, or a judgment of any court of the State, accompanied by a certificate of the Iowa industrial commissioner setting forth the amount of compensation due and the statutory provisions under which the same should be paid.

Approval not required.

SEC. 3. The provisions found in section one hundred seventy-s (170-s), Supplemental Supplement to the Code, 1915 [requiring approval of warrants by the State board of audit], shall not apply to the compensation claims referred to herein.

Approved, March 23, 1917.

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KANSAS.

Compensation of workmen for injuries.

[The compensation law of this State (chapter 218, acts of 1911, as codified in the General Statutes of 1915), was so extensively amended by chapter 226, acts of 1917, that it is reproduced in full, in its amended form.]

Compensation payable, when.

SECTION 5896 (as amended by chapter 226, acts of 1917). If in any employment to which this act applies, personal injury by accident arising out of and in the course of employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation to the workman in accordance with this act. Save as herein provided no such employer shall be liable for any injury for which compensation is recoverable under this act: *Provided*, That (a) the employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he is employed; (b) if it is proved that the injury to the workman results from his deliberate intention to cause such injury, or from his willful failure to use a guard or protection against accident required pursuant to any statute and provided for him, or a reasonable and proper guard and protection voluntarily furnished him by said employer, or solely from his deliberate breach of statutory regulations affecting safety of life or limb, or from his intoxication, any compensation in respect to that injury shall be disallowed.

Fines, etc.

SEC. 5897. Nothing in this act shall affect the liability of the employer or employee to a fine or penalty under any other statute.

Contractors.

SEC. 5898. (a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of his trade or business or which he has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed. (b) Where the principal is liable to pay compensation under this section, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of this section, and shall have a cause of action therefor. (c) Nothing in this section shall be construed as preventing a workman from recovering compensation under this act from the contractor instead of the principal. (d) This section shall not apply to any case where the accident occurred elsewhere than on or in, or about the premises on which the principal has undertaken to execute work or which are otherwise under his control or management, or on, in, or about the execution of such work under his control or management. (e) A principal contractor, when sued by a workman of a subcontractor, shall have the right to implead the subcontractor. (f) The principal con-

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tractor who pays compensation voluntarily to a workman of a subcontractor shall have the right to recover over against the subcontractor.

Injuries by third parties.

SEC. 5899. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability against some person other than the employer to pay damages in respect thereof: (a) The workman may take proceedings against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and (b) if the workman has recovered compensation under this act, the person by whom the compensation was paid, or any person who has been called on to indemnify him under the section of this act relating to subcontracting, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the workman to recover damages therefor.

Scope of law.

SEC. 5900 (as amended by chapter 226, acts of 1917). This act shall apply only to employment in the course of the employer's trade or business on, in or about a railway, factory, mine or quarry, electric, building or engineering work, laundry, natural gas plant, county and municipal work, and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or gain; each of which employments is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risk to the life and limb of the workman engaged therein are inherent, necessary, or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for injuries to workmen. This act shall not apply in any case where the accident occurred before this act takes effect, and all rights which have accrued, by reason of any such accident, at the time of the publication of this act, shall be saved the remedies now existing therefor and the court shall have the same power as to them as if this act had not been enacted. Agricultural pursuits and employments incident thereto are hereby declared to be non-hazardous and exempt from the provisions of this act: *Provided*, That employers whose work, trade or business is not such as described and included in this section of this act, and employers commencing or renewing in this State any work, trade or business, may elect to come within the provisions of this act by filing with the secretary of state a written statement of election to accept thereunder, and such election shall be effective when so filed, and such election shall continue in effect unless and until such employer thereafter desiring to change his election shall do so by filing a written declaration thereof with the secretary of state, and the employee of any such employer so filing such election shall be included herein unless such employee elects not to come within this act as provided by section * * * [5939], and if the employee of such employer elects not to come within the provisions of this act, as herein provided, such election shall continue in effect unless and until such employee thereafter desiring to change his election shall do so by filing a written declaration thereof with the secretary of state.

Exempt employments.

Interstate commerce.

SEC. 5901. This act shall not be construed to apply to business or employments which, according to law, are so engaged in interstate commerce as to be not subject to the legislative power of the State, nor to persons injured while they are so engaged.

Small employers.

SEC. 5902. It is hereby determined that the necessity for this law and the reason for its enactment, exist only with regard to employers who employ a considerable number of persons. This act, therefore, shall only apply to employers by whom five or more workmen have been (employed) continuously for more than one month at the time of the accident: *Provided, however*, That employers having less than five workmen may elect to come within

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the provisions of this act in which case his employees shall be included herein, as hereinafter provided: *And, provided further,* That this act shall apply to mines without regard to the number of workmen employed.

Definitions.

SEC. 5903 (as amended by chapter 226, acts of 1917). In this act, unless the context otherwise requires: (a) "Railway" includes street railways and interurbans; and "employment on railways" includes work in depots, power houses, roundhouses, machine shops, yards, and upon the right of way, and in the operation of its engines, cars and trains, and to employees of express companies while running on railroad trains, except as provided in section 5901 of General Statutes of 1915. (b) "Factory" means any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article or articles for the purpose of trade or gain or of the business carried on therein, including expressly any brickyard, meat-packing house, foundry, smelter, oil refinery, lime-burning plant, steam heating plant, electric lighting plant, electric power plant, and water power plant, grain elevator, powder plant, blast furnace, paper mill, printing plant, flour mill, glass factory, beet sugar factory, cement plant, artificial gas plant, machine or repair shop, salt plant, and chemical manufacturing plant. (c) "Mine" means any opening in the earth for the purpose of extracting any minerals and all underground workings, slopes, shafts, galleries and tunnels, and other ways, cuts and openings connected therewith, including those in the course of being opened, sunk or driven; and includes all the appurtenant structures at or about the openings of the mine, and any adjoining adjacent work place where the material from a mine is prepared for use or shipment. (d) "Quarry" means any place, not a mine, where stone, slate, clay, sand, gravel, or other solid material is dug or otherwise extracted from the earth for the purpose of trade or bargain or of employer's trade or business. (e) "Electrical work" means any kind of work in or directly connected with the construction, installation, operation, alteration, removal, or repair of wires, cables, switchboards or apparatus used for the transmission of electrical current, or operation of telegraph or telephone lines. (f) "Building work" means any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenances. (g) "Engineering work" means any work in the construction, alteration, extension, repair or demolition of a railway (as hereinbefore defined), bridge, jetty, dike, dam, reservoir, underground conduit, pole lines constructed or used for carrying conductors, sewer, oil or gas well, oil tank, gas tank, water tower, or waterworks (including standpipes or mains), any caisson work or work in artificially compressed air, any work in dredging, pile driving, moving buildings, moving safes, construction and repairing of streets, roads and highways, or in laying, repairing or removing underground pipes and connections; the erection, installing, repairing, or removing of boilers, furnaces, engines and power machinery (including belting and other connections), and any work in grading or excavating where shoring is necessary or power machinery or blasting powder, dynamite or other high explosives are in use (excluding mining and quarrying). (h) "Employer" includes any person or body of persons, corporate or unincorporate, and the legal representatives of a deceased employer or the receiver or trustee of a person, corporation, association or partnership; and when any mine, quarry, factory, or other place, covered by the provisions of this act in which work is being or to be performed, is leased or let to any lessee or lessees under any form of contract or agreement other than on a royalty basis, then and in all such cases the lessee or lessees and the lessor or lessors shall be deemed to be operating said mine, quarry, factory or other place described above as employers jointly. (i) "Workman" means any person who has entered into the employment of or works under contract of service or

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apprenticeship with an employer, but does not include a person who is employed otherwise than for the purpose of the employer's trade or business. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents, as hereinafter defined, or to his legal representatives, or where he is a minor or incompetent, to his guardian. (j) "Dependents" means such members of the workman's family as were wholly or in part dependent upon the workman at the time of the accident. "Members of a family," for the purpose of this act means only widow or husband, as the case may be, and children; or if no widow, husband or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section parents include stepparents, children include stepchildren, and grandchildren include step-grandchildren, and brothers and sisters include stepbrothers and stepsisters, and children and parents include that relation by legal adoption. In the meaning of this section a widow shall not be regarded as a dependent of a deceased workman nor as a member of his family, if she shall have for more than six months willfully or voluntarily deserted or abandoned him prior to the date of his death; and a husband, whether he be capable of wage earning or not, shall not, within the meaning of this section, be regarded as a dependent of his deceased wife, nor as a member of her family, if he shall have for more than six months willfully or voluntarily deserted or abandoned her prior to the time of her death. (k) The words "arising out of and in the course of employment" as used in this act shall not be construed to include injuries to the employee occurring while he is on his way to assume the duties of his employment or after leaving such duties, the approximate cause of which injury is not the employer's negligence.

Incompetent persons.

SEC. 5904. In case an injured workman is mentally incompetent or a minor, or where death results from the injury, in case any of his dependents as herein defined is mentally incompetent or a minor, at the time when any right, privilege or election accrues to him under this act, his guardian may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in this act provided for, shall run, so long as such incompetent or minor has no guardian.

Medical, etc., treatment.

SEC. 5905 (as amended by chapter 226, acts of 1917). The amount of compensation under this act shall be: 1. On demand, the employer shall pay the cost, not exceeding $150, of a physician and all such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus as may be reasonably necessary for a period of not longer than 50 days, to cure and relieve from the effects of the injury, and in case of the refusal or neglect of the employer to reasonably do so, the employer shall be liable for the reasonable expenses incurred by or on behalf of the employee in providing the same within the limits as to time and amount hereinbefore expressed: *Provided*, That no employer shall be liable for any medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, nor for any physician's or surgeon's fees in excess of the amount hereinbefore set forth. 2. (a) If a workman leaves any dependents wholly dependent upon his earnings, a sum equal to three times his average yearly earnings, computed as provided in section * * * [5906], but not exceeding thirty-eight hundred dollars ($3800) and not less than fourteen hundred dollars ($1400): *Provided*, That any payment under this act on account of any injury from which death shall thereafter result, except such payments as may be made under paragraph 1 of this section, shall be deducted from such sum: *And provided, however*, That if the workman does not leave any dependents citizens of and residing at the time of the accident and injury in the United States or the Dominion of Canada, the amount of compensation shall not exceed in any case

Compensation for death.

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the sum of seven hundred fifty dollars ($750). (b) If a workman does not leave any such dependents, but leaves dependents in part dependent on his earnings, such proportion of the amount payable under the provisions of paragraph 2 (a) of this section as may be agreed upon or determined to be proportionate to the degree of dependency of the said dependents. (c) If a workman does not leave any dependents, the reasonable expense of his burial, not exceeding one hundred and fifty dollars ($150). (d) Marriage of any dependent shall terminate all compensation of such dependent, but shall not affect the compensation allowed other dependents. When any minor dependent, not physically or mentally incapable of wage earning, shall become eighteen (18) years of age, such compensation shall cease. 3. (a) Where total permanent disability results from the injury, no compensation shall be paid during the first week of disability, except that provided in paragraph 1 of this section, but after the expiration of said first week, payment shall be made as provided in section 5907 of the General Statutes of 1915 during such permanent total disability of a sum equal to sixty per cent (60%) of the average weekly earnings of the injured workman, computed as provided in section * * * [5906], but in no case less than $6 per week nor more than $15 per week. The payment of compensation for total permanent disability shall not extend over a period exceeding eight years from the date of injury. Loss of both eyes, both hands, both arms, both feet or both legs shall, in the absence of proof to the contrary, constitute total permanent disability. Substantially total paralysis, or incurable imbecility or insanity, resulting from an injury independent of all other causes, shall constitute total permanent disability. In all other cases total permanent disability shall be determined in accordance with the facts. (b) Where temporary total disability results from the injury no compensation shall be paid during the first week of disability, except that provided in paragraph 1 of this section, but after the expiration of said first week payment shall be made in accordance with the provisions of section 5907 of the General Statutes of 1915, during such temporary total disability, of a sum equal to sixty per cent of the average weekly earnings of the injured workman, computed as provided in section * * * [5906], but in no case less than $6 per week nor more than $15 per week: *Provided*, That if such temporary total disability is followed by a permanent partial disability resulting from the injury, payment for such permanent partial disability shall be made as provided in clause (c) of this paragraph of this section. (c) Where disability, partial in character but permanent in quality, results from the injury, the injured workman shall be entitled to the compensation provided in paragraph 1 of this section, but shall not be entitled to any other or further compensation for or during the first week following the injury. Thereafter, compensation in a lump sum shall be paid as provided in the following schedule, the average weekly wages to be computed as provided in section * * * [5906], and the compensation to be in no case less than $6 per week nor more than $12 per week.

Permanent total disability.

Temporary total disability.

Permanent partial disability.

Schedule.

(1) For the loss of a thumb, 50 per cent of the average weekly wages during 60 weeks.

(2) For the loss of a first finger, commonly called the index finger, 50 per cent of the average weekly wages during 37 weeks.

(3) For the loss of a second finger, 50 per cent of the average weekly wages during 30 weeks.

(4) For the loss of a third finger, 50 per cent of the average weekly wages during 20 weeks.

(5) For the loss of a fourth finger, commonly called the little finger, 50 per cent of the average weekly wages during 15 weeks.

(6) The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger, and the compensation shall be one-half of the amounts specified above. The loss of the first phalange and any part of the second phalange of any finger, which includes the

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loss of any part of the bone of such second phalange, shall be considered to be equal to the loss of two-thirds of such finger, and the compensation shall be two-thirds of the amounts specified above. The loss of the first phalange and any part of the second phalange of a thumb, which includes the loss of any part of the bone of such second phalange, shall be considered to be equal to the loss of the entire thumb. The loss of the first and second phalanges and any part of the third proximal phalanges of any finger, which includes loss of any part of the bone of the third or proximal phalange, shall be considered as the loss of the entire finger.

(7) For the loss of a great toe, 50 per cent of the average weekly wages during 30 weeks.

(8) For the loss of any other toe than the great toe, 50 per cent of the average weekly wages during 10 weeks.

(9) The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and the compensation shall be one-half of the amounts above specified.

(10) The loss of more than one phalange of a toe shall be considered to be equal to the loss of the entire toe.

(11) For the loss of a hand, 50 per cent of the average weekly wages during 150 weeks.

(12) For the loss of an arm, 50 per cent of the average weekly wages during 210 weeks.

(13) For the loss of a foot, 50 per cent of the average weekly wages during 125 weeks.

(14) For the loss of a leg, 50 per cent of the average weekly wages during 200 weeks.

(15) For the loss of an eye, or the complete loss of the sight thereof, 50 per cent of the average weekly wages during 110 weeks.

(16) Amputation or severance between elbow and wrist shall be considered as the loss of a hand. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation between knee and ankle shall be considered as the loss of a foot. Amputation at or above the knee shall be considered as the loss of a leg.

(17) For the complete loss of hearing of both ears, 50 per cent of the average weekly wages during 100 weeks.

(18) For the complete loss of hearing of one ear, 50 per cent of the average weekly wages during 25 weeks.

Injuries not covered.

(19) Should the employer and employee be unable to agree upon the amount of compensation to be paid in any case of injury not covered by the schedule, the amount of compensation shall be settled according to the provisions of this act as in other cases of disagreement: *Provided, however,* In case of partial disability not covered by schedule the workman shall receive during such period of partial disability not exceeding eight (8) years, 60 per cent of the difference between the amount he was earning prior to said injury as in this act provided and the amount he is able to earn after such injury.

Death during term of compensation.

(20) If a workman has received an injury for which compensation is being paid him, and his death is caused by other and independent causes, any payments of compensation already due him at the time of his death and then unpaid, shall be paid to his dependents direct, or to his legal representatives if he left no dependents, but the liability of the employer for payments of compensation not yet due and payable at the time of the death of such workman shall cease and be abrogated by his death.

Second injuries.

(21) If a workman has suffered a previous disability and receives a later injury, the effects of which together with the previous disability shall result in total permanent disability, then and in that event the compensation due said workman shall be the difference between the amount provided in the schedule of this section for his prior injury and the total sum which would be due said employee for such total disability computed as pro-

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vided in section * * * [5906], but in no case less than $6 per week nor more than $15 per week.

(22) Permanent loss of the use of a hand, arm, foot, leg or eye, as a direct result of an injury, shall be considered as the equivalent of the loss of such hand, arm, foot, leg or eye. Loss of use.

(23) The compensation for the foregoing specific injuries shall be in lieu of all other compensation, except the benefits provided in paragraph 1 of this section. Where the said minor or his dependents are entitled to compensation under the provisions of this act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or cause of action shall inure or accrue to, or exist in favor of the parent or parents of such minor employee on account of any damage resulting to such parent or parents on account of the loss of earnings or loss of service of such minor employee resulting from or growing out of the injury to or death of such minor employee. In any case of injury to or death of a female employee, where the said female employee or her dependents are entitled to compensation under the provisions of this act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim of action shall inure or accrue to or exist in favor of the surviving husband or any relative or next of kin of such female employee on account of any damage resulting to such surviving husband or any relative or next of kin on account of the loss of earnings, services or society of such female employee or on any other account resulting from or growing out of the injury or death of such female employee. Schedule benefits exclusive. Minors. Females.

SEC. 5906 (as amended by chapter 226, acts of 1917). 1. The average annual earnings of a workman shall, for the purpose of the provisions of this act, be computed as follows: (a) Where the workman has been continuously employed by the same employer for one year or longer, the actual amount of money paid by the employer to the employee as wages or remuneration for his services during the year immediately preceding the injury, undiminished by loss due to absence from work on account of illness or other unavoidable cause. (b) Where the workman has been employed less than one year by the employer in whose employ he received the injury, 52 times the average weekly amount which, during the twelve months immediately preceding the accident, was being earned by a person in the same grade employed at the same work by the same employer, undiminished by loss due to absence from work on account of illness or other unavoidable cause; and if there is no person in the same grade employed at the same work by the same employer, then 52 times the average weekly earnings of a person in the same grade employed by the same or other employer in the same district at the same or similar work or employment. (c) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average annual earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the injury. (d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed upon him by the nature of his employment, the sums so paid shall not be reckoned as part of the earnings of the workman; nor shall tips or gratuities received from the employer or other persons be considered or included as part of the workman's earnings, but reasonable value of board, rent, housing, lodging, fuel or other similar advantages received from the employer as a part of remuneration of the employee and the value of which can be estimated in money, shall be considered and included as a part of the workman's earnings. (e) If arbitration or litigation is necessary to establish the amount of compensation, credit shall be given to the employer by the arbitrator, arbitration committee or court for any amounts paid under this Earnings computed, how.

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act prior to the date of the award or prior to the trial and judgment.

2. The average weekly wages of a workman shall be one fifty-second part of his average annual earnings computed as provided by paragraph 1 of this section.

3. In computing average earnings of a workman under the preceding paragraphs of this section regard shall be had to the earnings for what is commonly regarded as a day's work or a week's work for the employment on which the average earnings are calculated.

4. If a workman has suffered a previous disability and receives a later injury, his average earnings used as a basis for the compensation for such later injury shall be such amount as will reasonably represent his earning capacity at the time of the later injury in the employment at which he was working at such time.

Payments.

SEC. 5907. The payments shall be made at the same time, place and in the same manner as the wages of the workman were payable at the time of the accident, but a judge of any district court having jurisdiction upon the application of either party may modify such regulation in a particular case as to him may seem just.

Payments to dependents.

SEC. 5908. Where death results from the injury and the dependents of the deceased workman, as herein defined, have agreed to accept compensation, and the amount of such compensation and the apportionment thereof between them has been agreed to or otherwise determined, the employer may pay such compensation to them accordingly (or to an administrator if one be appointed) and thereupon be discharged from all further liability for the injury. Where only the apportionment of the agreed compensation between the dependents is not agreed to, the employer may pay the amount into any district court having jurisdiction, or to the administrator of the deceased workman, with the same effect. Where the compensation has been so paid into court or to an administrator, the proper court, upon the petition of such administrator or any of such dependents, and upon such notice and proof as it may order shall determine the distribution thereof among such dependents. Where there are no dependents, medical and funeral expenses may be paid and distributed in like manner.

Payments exempt from execution, etc.

SEC. 5909 (as amended by chapter 226, acts of 1917). No claim for compensation, or compensation agreed upon, awarded, adjudged, or paid, shall be assignable or subject to levy, execution, attachment, garnishment, or any other remedy or procedure for the recovery or collection of a debt, and this exemption can not be waived.

SEC. 5910. [Repealed by chapter 226, acts of 1917.]

Medical examinations.

SEC. 5911 (as amended by chapter 226, acts of 1917). (a) After an injury to an employee, he shall, upon request of the employer, submit himself for examination at some reasonable time and place, to a reputable physician or surgeon selected by the employer, and shall so submit himself for examination thereafter at intervals during the pendency of his claim for compensation and during the receipt by him of payments under this act, upon request of the employer, but he shall not be required to submit himself for examination oftener than once in four weeks unless in accordance with such orders as may be made by the judge of the district court wherein proceedings may be had for the determination or collection of his compensation. Either party may upon demand require a report of any examination made by the physician or surgeon selected by the other party, upon payment of a fee of $1 therefor, but the employee shall not be liable for any fees or charge of any physician or surgeon selected by the employer for making any examination of the employee. (b) If the employee requests he shall be entitled to have a physician or surgeon of his own selection present at the time to participate in such examination. (c) Unless there be a reasonable opportunity thereafter for such physician selected by the employee to par-

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ticipate in the examination in the presence of the physician selected by the employer, the physician selected by the employer shall not be permitted afterwards to give evidence of the condition of the employee in a dispute as to the injury. (d) Except as provided herein, there shall be no other disqualification or privilege preventing the testimony of a physician who actually makes an examination.

Special examinations.

SEC. 5912. In case of a dispute as to the injury, the committee, or arbitrator as hereinafter provided, or the judge of the district court shall have the power to employ a neutral physician of good standing and ability, whose duty it shall be, at the expense of the parties to make an examination of the injured person, as the court may direct, on the petition of either or both the employer and employee or dependents.

Evidence not admitted, when.

SEC. 5913 (as amended by chapter 226, acts of 1917). If the employer or the employee has a physician or surgeon make such examination and no reasonable opportunity is given to the other party to have his physician or surgeon make examination, then, in case of a dispute as to the injury, the physician of the party making such examination shall not give evidence before the court in any action for compensation.

Refusing medical examination.

SEC. 5914 (as amended by chapter 226, acts of 1917). If the employee refuses to submit himself for examination upon request of the employer as provided for in section * * * [5911], or if the employee or his physician or surgeon unnecessarily obstructs or prevents such examination by the physician or surgeon of the employer, the employee's right to payment of compensation shall be and remain suspended until he shall submit to examination and until such examination shall have taken place, and no compensation shall be payable under this act during the period of suspension.

Certificates not evidence, when.

SEC. 5915 (as amended by chapter 226, acts of 1917). No report of any examination of any employee by a physician or surgeon, as hereinbefore in this act provided for, nor any certificate issued or given by the physician or surgeon making such examination, shall be competent evidence in any court proceeding for the determining or collection of compensation unless supported by the testimony of such physician or surgeon, if his testimony is admissible, nor competent evidence in any case where the testimony of such physician or surgeon is not admissible.

Notice and claim.

SEC. 5916. Proceedings for the recovery of compensation under this act shall not be maintainable unless written notice of the accident, stating the time, place and particulars thereof, and the name and address of the person injured, has been given within ten days after the accident, and unless a claim for compensation has been made within three months after the accident or in case of death, within six months from the date thereof. Such notice shall be delivered by registered mail, or by delivery to the employer. The want of, or any defect in such notice, or in its service, shall not be a bar unless the employer proves that he has, in fact, been thereby prejudiced, or if such want or defect was occasioned by mistake, physical or mental incapacity or other reasonable cause, and the failure to make a claim within the period above specified shall be a bar: *Provided, however*, That in case of incapacity of an injured employee the limitation herein shall not run during such incapacity.

Agreements.

SEC. 5917 (as amended by chapter 226, acts of 1917). Compensation due under this act may be settled by agreement.

Arbitration.

SEC. 5918 (as amended by chapter 226, acts of 1917). If compensation be not so settled by agreement: (a) If any committee representative of the employer and the workman exists, organized for the purpose of settling disputes under this act, said committee shall have the power to adopt rules governing its procedure and action, and the matter shall, unless either party objects by notice in writing delivered or sent by registered mail to the other party before the committee meets to consider the matter, be settled in accordance with said rules by such committee or by an ar-

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bitrator selected by it. (b) If either party objects or there is no such committee, or the committee or the arbitrator to whom it refers the matter fails to settle it within sixty days from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or appointed by any judge of a court where an action might be maintained upon the written application of either party to said court. The consent to arbitration shall be in writing and signed by the parties, and may limit the fees of the arbitrator and the time within which the award must be made, and unless such consent or order of appointment expressly refers other questions, only the question of the amount of compensation shall be deemed to be in issue, but either party shall have the right to require that the arbitrator shall also find the character and quality of the disability and the period for which payments of compensation shall continue in accordance with the provisions of this act.

Procedure. SEC. 5919 (as amended by chapter 226, acts of 1917). The committee or arbitrator shall not be bound by technical rules of procedure or evidence but shall give the parties reasonable opportunity to be heard and to present evidence, and shall act reasonably and without partiality, and shall make and file an award, with the consent to arbitration or the order of the court appointing the arbitrator attached, in the office of the clerk of the proper district court within sixty days after the committee meets to consider the claim or after the selection of the arbitrator, and shall give notice of such filing to the parties by mail. The parties may agree in writing to extend the time for filing the award, and if so, the award shall be filed within such extended time as is so agreed upon. If any committee or arbitrator to whom a claim for compensation shall have been submitted shall fail or neglect to file its or his award within the time fixed by this section, the court shall, upon the application of either party, order such committee or arbitrator to file such award within such time as the court shall by such order fix, which time shall in no case be greater than ten days from the date of such order.

Fees. SEC. 5920. The arbitrator's fees shall be fixed by the consent to arbitration or be agreed to by the parties before the arbitration, and if not so fixed or agreed to, they shall not exceed ten dollars per day, for not to exceed ten days, and disbursements for expense. The arbitrator shall tax or apportion the costs of such fees in his discretion and shall add the amount taxed or apportioned against the employer to the first payment made under the award, and he shall note the amount of his fees on the award and shall have a lien therefor on the first payments due under the award.

Awards to be in writing. SEC. 5921 (as amended by chapter 226, acts of 1917). Every award of compensation made by any committee representing the employer and workman, or by any arbitrator selected by such committee, or by any arbitrator selected by the employer and the employee, or appointed by order of court, shall be in writing, signed and acknowledged by the arbitrator or by the secretary of the committee hereinbefore referred to, and shall specify the amount due and unpaid by the employer to the workman up to the date of the award, and, if any, the amount of the payments thereafter to be paid by the employer to the workman and the length of time such payment shall continue. No award shall be or provide for payment of compensation in a lump sum, except as to such portion of the compensation as shall be found to be due and unpaid at the time of the award, and credit shall be given to the employer in such award for any amount or amounts paid by him to the employee as compensation prior to the date of the award.

Modification. SEC. 5922 (as amended by chapter 226, acts of 1917). Any award of compensation may be modified by subsequent written agreement of the parties, but no such agreement modifying an award shall be valid as against the workman unless such agreement or a verified copy thereof be filed by the employer in the office of the

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clerk of the district court in the county in which the accident occurred, within sixty days after the execution of such agreement.

Final receipts.

At the time of making any final payment of compensation, the employer shall be entitled to a final receipt for compensation, executed and acknowledged or verified by the workman, which final receipt may be in form a release of liability under this act, and every such final receipt for compensation or release of liability or a duly verified copy thereof shall be filed by the employer in the office of the clerk of the district court wherein the accident occurred, within sixty days after the date of execution of such final receipt or release of liability, and if the employer shall fail or neglect to so file such final receipt or release of liability, same shall be void as against the workman. The said clerk of the district court shall accept, receipt for, and file every award, agreement modifying an award, final receipt for compensation or release of liability or verified copy thereof, without fee, and record and index same in a book kept for that purpose. All records and books necessary for the clerk of the district court in order to carry out all of the provisions of this law, shall be furnished to said clerk upon request, by the board of county commissioners.

Review, etc.

SEC. 5923 (as amended by chapter 226, acts of 1917). At any time before the final payment has been made under or pursuant to any award or modification thereof agreed upon by the parties, it may be reviewed by the judge of the district court having jurisdiction, upon the application of either party, and in connection with such review the court may appoint a physician or surgeon or two physicians or surgeons to examine the workman and report to the court, and the court shall hear all competent evidence offered, and if the court shall find that the award has been obtained by fraud or undue influence or that the committee or arbitrator making the award acted without authority or was guilty of serious misconduct or that the award is grossly excessive or grossly inadequate, or that the incapacity or disability of the workman has increased or diminished, the court may modify such award, upon such terms as may be just, by increasing or diminishing the compensation, subject to the limitations hereinbefore provided in this act; and, if the court shall find that the workman has returned to work for the same employer in whose employ he was injured or for another employer and is earning the same or higher wages than he did at the time of the accident or injury, or is gaining an income from any trade or employment which is equal to or greater than the wages he was earning at the time of the accident or injury, or shall find that the workman has absented himself and continues to absent himself so that a reasonable examination can not be made of him by a physician or surgeon selected by the employer, or has departed beyond the boundaries of the United States or Dominion of Canada, the court may cancel the award and end the compensation: *Provided*, That the provisions of this section shall not apply to awards of compensation provided for in the schedule of specific injuries in section * * * [5905].

SEC. 5924. [Repealed by chapter 226, acts of 1917.]

Judgments for lump sum.

SEC. 5925 (as amended by chapter 226, acts of 1917). At any time before final payment of compensation has been made under or pursuant to any award, or agreement of the parties modifying same, the workman may, upon notice to the employer, apply to the said district court for judgment against the employer for a lump sum equal to 80 per cent of the amount of payments due and unpaid and prospectively due under said award; and unless the proceeding be stayed as hereinafter provided in [this] section * * * or unless said award be canceled as provided in section * * * [5923], or the liability thereunder redeemed as provided in section * * * [5927], the court shall hear all competent evidence offered, and if satisfied that the workman's application for judgment is made because of doubt as to the security of his compensation, shall compute the sum and enter judgment accordingly, as if in an action: *Provided*, That if the employer shall give a good and sufficient bond, approved by the

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court, no execution shall issue on such judgment so long as the employer continues to make payments in accordance with the original award undiminished by the discount.

Stay. In any proceeding upon the application of a workman for a judgment against his employer upon an award, as provided in section * * * [5925], and before judgment has been granted, the employer may stay the proceedings upon such application by filing in the office of the clerk of the district court wherein the proceedings are pending: (a) A certificate of a licensed or authorized insurance company, or reciprocal or interinsurer's exchange or association that the amount of the compensation to the workman is insured by it; or (b) a proper bond undertaking to secure the payment of the compensation. Such certificate or bond shall first be approved by the judge of the said district court.

SEC. 5926. [Repealed by chapter 226, acts of 1917.]

Lump-sum payments after six months. SEC. 5927 (as amended by chapter 226, acts of 1917). Where payments under an award have been made for not less than six months, the liability under such award may be redeemed by the employer at his option by the payment to the workman of a lump sum equal to 80 per cent of the amount of payments due and unpaid and prospectively due under the award, such amount to be determined by agreement, or, in default thereof, upon application of either party, upon notice to the other party by the judge of the district court having jurisdiction. Upon paying such amount, the employer shall be discharged of and from all further liability under said award.

Insurer's rights and duties. SEC. 5928. Where the payment of compensation to the workman is insured, by a policy or policies, at the expense of the employer, the insurer shall be subrogated to the rights and duties under this act of the employer, so far as appropriate.

Courts. SEC. 5929. All references hereinbefore to a district court of the State of Kansas having jurisdiction of a civil action between the parties shall be construed as relating to the then existing code of civil procedure. Such court shall make all rules necessary and appropriate to carry out the provisions of this act.

Legal enforcement. SEC. 5930 (as amended by chapter 226, acts of 1917). A workman's right to compensation under this act may, in default of agreement or if the employer shall have refused to consent to an arbitration of the workman's claim for compensation, be determined and enforced by action in any court of competent jurisdiction, but no such action shall be maintained until and unless the workman shall have consented to an arbitration or applied to the court as hereinbefore provided for an arbitrator. In every such action the right to trial by jury shall be deemed waived and the case tried by the court without a jury, unless either party shall within ten days after issues are joined demand a jury trial. The judgment in the action, if in favor of the plaintiff, shall be for a lump sum equal to the amount of the payments then due under this act, with interest on the payments overdue, or, in the discretion of the trial judge, for periodical payments, as in an award: *Provided*, In no case shall a lump-sum judgment be rendered for any injury not ascertainable by objective examination, but in such cases the court may order periodical payments during incapacity of such sums as may be due under the provisions of section * * * [5906] and such judgment may be reviewed at any time after the expiration of six months upon the application of either party and the amount allowed by the court reduced or raised in accordance with the evidence introduced at the time of such review. Where death results from injury, the action shall be brought by the dependent or the dependents entitled to the compensation or by the legal representative of the deceased for the benefit of the dependents as herein defined; and in such action the judgment may provide for the proportion of the compensation to be distributed to or between the several dependents; otherwise such proportion shall be determined by the proper probate court. An action to set aside a release or other discharge of liability on the ground of fraud or mental incompetency may be joined with an

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action for compensation under this act. No action or proceeding provided for in this act shall be brought or maintained outside of the State of Kansas, and notice thereof may be given by publication against nonresidents of the State in the manner now provided by article 6 of chapter 93, General Statutes of Kansas of 1915, so far as the same may be applicable, and by service of a true copy of the first publication within twenty-one days after the date of the said first publication unless excused by the court upon proper showing that such service can not be made.

Rights accrue, when.

SEC. 5931 (as amended by chapter 226, acts of 1917). The cause of action shall be deemed in every case, including a case where death results from the injury, to have accrued to the injured workman or his dependents or legal representatives at the time of the accident; and the time limit in which to commence an action for compensation therefor shall run as against him, his legal representatives and dependents from the date of the accident.

Attorneys' fees.

SEC. 5932 (as amended by chapter 226, acts of 1917). No claim of any attorney at law for services rendered in or about securing any compensation or agreement, award or judgment for compensation shall be an enforceable lien thereon unless the services were rendered pursuant to and under the terms of a written contract between such attorney at law and the workman or the guardian of the workman, if the latter be a minor or incompetent, nor unless such written contract be approved in writing by the judge of the court where the action brought by the workman be tried, or, if no trial is had, then by the judge of the district court in the county where the workman resided at the time of the injury, to which judge the matter may be regularly submitted on due notice to the party or parties in interest of such submission.

Certified schemes.

SEC. 5933. If the superintendent of insurance by and with the advice and written approval of the attorney general certifies that any scheme of compensation, benefit or insurance for the workman of an employer in any employment to which this act applies, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workman, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act or their equivalents, the employer may, while the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act; and thereupon the employer shall be liable only in accordance with that scheme; but, save as aforesaid, this act shall not apply notwithstanding any contract to the contrary made after this act becomes a law.

Provisions to be equitable.

SEC. 5934. No scheme shall be so certified which does not contain suitable provisions for the equitable distribution of any moneys or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already accrued, if and when such certificate is revoked or the scheme otherwise terminated.

Certificate may be revoked.

SEC. 5935. If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or other valid and substantial reasons therefor exist, the superintendent of insurance by and with the attorney general shall revoke the certificate and the scheme shall thereby be terminated.

Reports.

SEC. 5936. Where a certified scheme is in effect the employer shall answer all such inquiries and furnish all such accounts in regard thereto as may be required by the superintendent.

Rules.

SEC. 5937. The superintendent of insurance may make all rules and regulations necessary to carry out the purposes of the four preceding sections.

Election by employers;

SEC. 5938 (as amended by chapter 226, acts of 1917). Every employer entitled to come within the provisions of this act, as de-

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fined and provided by this act, shall be presumed to have done so, except such employer privileged to elect to come within the provisions of this act, as provided in section * * * [5900] and section 5902 of the General Statutes of 1915, unless such employer shall file with the secretary of state at Topeka, Kansas, a written statement that he elects not to accept thereunder, and thereafter any such employer desiring to change his election shall only do so by filing a written declaration thereof with the secretary of state. Notice of such election shall be forthwith posted by such employer in conspicuous places in and about his place of business.

By employees.

SEC. 5939 (as amended by chapter 226, acts of 1917). Every employee entitled to come within the provisions of this act shall be presumed to have done so unless such employee shall file with the secretary of state, before injury, a written declaration that he elects not to accept thereunder and at the same time file a duplicate of said election with his employer, and thereafter any such employee desiring to change his election shall only do so by filing a written declaration thereof with the secretary of state, and a duplicate of same with his employer. Any contract wherein an employer requires of an employee as a condition of employment that he shall elect not to come within the provisions of this act shall be void.

Abrogation of defenses.

SEC. 5940 (as amended by chapter 226, acts of 1917). In any action to recover damages for a personal injury sustained within this State by an employee (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of due care of the employer, or of any officer, agent or servant of the employer, where such employer is within the provisions hereof, it shall not be a defense to any employer (as herein in this act defined) who shall have elected, as hereinbefore provided, not to come within the provisions of this act: (a) That the employee either expressly or impliedly assumed the risk of the hazard complained of. (b) That the injury or death was caused in whole or in part by the want of due care of a fellow servant. (c) That such employee was guilty of contributory negligence.

Defenses allowed, when.

SEC. 5941 (as amended by chapter 226, acts of 1917). In an action to recover damages for a personal injury sustained within this State by an employee (entitled to come within the provisions of this act) while engaged in the line of his duty as such, or for death resulting from personal injury so sustained in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer, and where such employer at the time of the injury is operating under the provisions of this act and has not filed his election not to accept thereunder, it shall be a defense for such employer in all cases where said employee has elected not to come within the provisions of this act: (a) that the employee either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of the fellow servant; (c) that said employee was guilty of contributory negligence: *Provided, however,* That none of these defenses shall be available where the injury was caused by the willful negligence of such employer or of any managing officer, or of managing agent of said employer.

Construction of statute.

SEC. 5942. Nothing in this act shall be construed to amend or repeal section 6999 of the General Statutes of Kansas of 1909 or house bill No. 240 of the session of 1911, the same being "An act relating to the liability of common carriers by railroads to their employees in certain cases, and repealing all acts and parts of acts so far as the same are in conflict herewith."

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KENTUCKY.

ACTS OF 1918.

CHAPTER 176.—*Compensation of workmen for injuries.*

[This act amends the compensation law of the State (ch. 33, acts of 1916) by substituting three for five in the first line of section 1, thus making the law applicable to employers of three or more employees, instead of only to those employing five or more persons.

Section 7 is amended by substituting the words "seven days" for the words "two weeks" where they occur, thus reducing the waiting time by one-half; but this provision is not to be in effect until August 1, 1918.

Sections 16 and 17 are likewise amended by substituting the words "seven days" for the words "two weeks" where they occur.

Section 45 is amended to read as follows:]

SEC. 45. The place of residence of each member shall be shown upon the official stationery used by the said board.

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LOUISIANA.

ACTS OF 1918.

No. 37.—*Workmen's compensation insurance—Committee of legislature.*

Composition of committee.

A committee of five, two from the senate and three from the house of representatives, shall be appointed by the presiding officer of each house, respectively, for the purpose of investigating and taking into consideration the establishment of an industrial insurance commission or some similar commission for the purpose of providing for the insurance of employees under the workman's compensation act and other insurance of a like character; also to consider the advisability of the State carrying the insurance on all public buildings in the State of Louisiana and report its findings to the next general assembly.

Duties.

Said committee shall investigate the laws of other States and the workings of all such departments, showing a saving, if any, to employers as well as employees, and shall have full authority to conduct these investigations in any way that it sees proper and report its findings fully as provided for herein.

No. 38.—*Compensation of workmen for injuries.*

[This act amends various sections of the State compensation act, Io. 20, acts of 1914.

Section 2 is amended by substituting the word "employee" for the word "workman" where it occurs.

Sections 3, 4, and 5 are amended so as to read as follows:]

Election provided for.

SEC. 3. This act, except sections 4 and 5, relating to defenses, shall not apply to any employer or employee engaged in any trade, business, or occupation specified in paragraph 2 of section 1, or in any that may be determined to be hazardous under the operation of paragraph 3 of section 1, unless prior to the injury they shall have so elected by agreement, either express or implied, as hereinafter provided. Such an agreement shall be a surrender by the parties thereto of their rights as against each other to any method, form, or amount of compensation, or damages, or determination thereof other than as provided in this act, and shall bind the employee himself, his widow, and relatives, personal representatives, heirs, and dependents as hereinafter defined, as well as the employer and those conducting his business during bankruptcy and insolvency.

Presumption as to existing contracts;

2. Every contract of hiring, verbal, written, or implied, between employer and any employee engaged in any trade, business, or occupation specified in paragraph 2 of section 1, or engaged in any trade, business, or occupation that may be determined to be hazardous under the operation of paragraph 3 of section 1, now in operation or made or implied prior to the time fixed for this act to take effect shall after this act takes effect be presumed to continue subject to the provisions of this act, and it shall be presumed that the parties have elected to be subject to the provisions of this act and to be bound thereby unless such election be terminated as hereinafter provided.

New contracts.

3. Every contract of hiring, verbal, written, or implied, between an employer or any employee engaged in any trade, business, or occupation specified in paragraph 2 of section 1, or engaged in any trade, business, or occupation that may be determined to be hazardous under the operation of paragraph 3 of section 1, made subsequent to the time provided for this act to take effect, shall be presumed to have been made subject to the provisions of this act, unless there be as a part of said contract

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an express statement in writing either in the contract itself or by written notice by either party to the other, that the provisions of this act other than sections 4 and 5 are not intended to apply, and it shall be presumed that the parties have elected to be subject to the provisions of this act and to be bound thereby, unless such election be terminated as hereinafter provided.

Termination of agreements.

4. Any agreement or election, either express or implied, or presumed under the provisions of paragraph 2 or paragraph 3 of this section, between an employer and any employee engaged in any trade, business, or occupation specified in paragraph 2 of section 1, or engaged in any trade, business, or occupation that may be determined to be hazardous under the operation of paragraph 3 of section 1, for the operation of the provisions of this act, may be terminated by either party to the contract of hiring, giving written notice not less than thirty days prior to the accident to the other party of such contract that the provisions of this act other than sections 4 and 5 shall no longer apply.

Waiver of election.

5. Either an employee who has given notice to his employer in writing as aforesaid or an employer who had given notice to his employee in writing as aforesaid that he elects not to be subject to the provisions of this act, may waive such election by a notice in writing which shall take effect immediately.

Minors.

6. Any employee of the age of eighteen and upwards engaged in any trade, business, or occupation specified in paragraph 2 of section 1, or engaged in any trade, business, or occupation that may be determined to be hazardous under the operation of paragraph 3 of section 1, shall himself exercise the right of election or termination or waiver authorized by this section. Such right of election or termination or waiver shall be exercised on behalf of any employee under the age of eighteen by either his father, mother, or tutor, or if neither of these can readily be gotten to act, then by the court: *Provided*, That this act shall not apply to employees of less than the minimum age prescribed by law for the employment of minors in the trades, businesses, or occupations specified in paragraph 2 of section 1, or that may be determined to be hazardous under the operation of paragraph 3 of section 1.

Notice to parents, etc., when.

7. Where notice is to be served upon one who is under the age of eighteen years, said notice must be served upon either the father, mother, or tutor of the said individual under the age of eighteen years.

Abrogation of defenses.

SEC. 4. If an employee has elected as aforesaid to come under this act and his employer has elected as aforesaid not to come under this act, then if an action is brought by the employee or his dependents to recover for personal injury sustained by the employee and arising out of and in the course of his employment, after such election by the employer, it shall not be a defense:

(*a*) That the employee assumed the risks inherent to or incidental to or arising out of his employment, or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work or arising from the failure of the employer to furnish reasonably safe tools and appliances, or that the employer exercised reasonable care in selecting reasonably competent employees in the trade, business, or occupation.

(*b*) That the injury was caused by the negligence of a fellow employee.

(*c*) That the employee was negligent.

Presumption as to negligence.

and it shall be presumed that the injury to the employee was the direct result and arose out of the negligence of the employer, and that such negligence was the proximate cause of the injury; and in such case the burden of proof shall rest upon the employer to rebut the presumption of negligence, unless before the injury such election shall have been waived as provided in paragraph 5 of section 3.

Defenses available when.

SEC. 5. If an employer has elected as aforesaid to come under this act and his employee has elected as aforesaid not to come under this act, then if an action is brought by the employee or

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his dependent to recover damages for personal injury sustained by the employee and arising out of and in the course of his employment, after such election by the employee, the employer shall have all the defenses which he would have had if this act had not been enacted, unless before the injury such election shall have been waived as provided in paragraph 5 of section 3.

[Sections 6 and 7 are amended by substituting the word "employee" for the word "workman" where it occurs; also by inserting the words "or his dependent" after the word "employee" where referred to as claimant or beneficiary.

Section 8 is amended so as to read as follows:]

Compensation for—

SEC. 8. 1. For injury producing disability compensation shall be paid under this act to an injured employee in accordance with the following schedule of payments:

Temporary total disability;

(*a*) For injury producing temporary total disability to do work of any reasonable character, fifty-five per centum of wages during the period of disability, not, however, beyond three hundred weeks.

(*b*) For the loss of both hands, or both feet, or both eyes, or one hand and one foot, or any injury producing permanent total disability to do work of any reasonable character, fifty-five per centum of wages during the period of disability, not, however, beyond four hundred weeks.

Partial disability.

(*c*) For injury producing partial disability to do work of any reasonable character, fifty-five per centum of difference between wages at the time of the injury and wages which the injured employee is able to earn thereafter during the period of disability, not, however, beyond three hundred weeks.

Schedule.

(*d*) In the following cases the compensation shall be as follows:

For the loss of a thumb, fifty-five per centum of wages during fifty weeks.

For the loss of a first finger, commonly called the index finger, fifty-five per centum of wages during thirty weeks.

For the loss of any other finger, or a great toe, fifty-five per centum of wages during twenty weeks.

For the loss of any toe other than a great toe, fifty-five per centum of wages during ten weeks.

For the loss of a hand, fifty-five per centum of wages during one hundred and fifty weeks.

For the loss of an arm, fifty-five per centum of wages during two hundred weeks.

For the loss of a foot, fifty-five per centum of wages during one hundred and twenty-five weeks.

For the loss of a leg, fifty-five per centum of wages during one hundred and seventy-five weeks.

For the loss of an eye, fifty-five per centum of wages during one hundred weeks.

The loss of the first phalanx of a thumb, or of two phalanges of any finger, or toe, shall be considered to be equal to the loss of one-half of such member, and the compensation shall be one-half of the amount above specified.

The loss of more than one phalanx of a thumb or more than two phalanges of any finger or toe shall be considered as the loss of the entire member: *Provided, however*, That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand, or the amount received for the loss of more than one toe exceed the amount provided in this schedule for the loss of a foot.

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be equivalent to the loss of a foot.

(*e*) In cases not falling within any of the provisions already made, where the employee is seriously permanently disfigured about the face or head, or where the usefulness of a member or any physical function is seriously permanently impaired, the

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court may allow such compensation as is reasonable in proportion to the compensation hereinabove specifically provided in the cases of specific disabilities above named, not to exceed fifty-five per centum of wages during one hundred weeks.

Death.

2. For injury causing death within one year after the accident weekly compensation shall be paid under this act for a period of three hundred weeks to the following persons:

(*a*) If widow or widower alone, and no children, then to such widow or widower twenty-five per centum of wages.

(*b*) If widow or widower and one child, then to such widow or widower and child for their joint benefit, forty per centum of wages.

(*c*) If widow or widower and two or more children, then to such widow or widower and children for their joint benefit, fifty-five per centum of wages.

(*d*) If one child alone and no widow or widower, then to such child twenty-five per centum of wages.

(*e*) If two children and no widow or widower, then to such children forty per centum of wages.

(*f*) If three or more children and no widow or widower, then to such children fifty-five per centum of wages.

(*g*) If there be neither widow or widower nor child, then to the father or mother of the deceased employee if actually dependent on the deceased employee to any extent for support at the time of the injury and death, twenty-five per centum of wages; if in such event both the father and the mother of the deceased survive and were actually dependent on the deceased employee to any extent for support at the time of the injury and death, fifty-five per centum of wages for their joint benefit.

(*h*) If there be neither widow or widower nor children nor dependent parent surviving the deceased employee entitled to compensation, then to the brothers and sisters and other members of the family of the deceased employee not hereinabove specifically provided for, if such brother or sister or other member of the family not otherwise specifically provided for was actually dependent on the deceased employee for support to any extent at the time of the injury and death, twenty-five per centum of wages for one brother or sister or other dependent member of the family not otherwise provided for, and ten per centum additional for each additional brother or sister or other dependent member of the family not otherwise provided for, subject to a maximum of fifty-five per centum of wages.

(*i*) Whenever under this schedule compensation is due to several persons in the same class, it shall be equally divided among them; and where the aggregate of such compensation would exceed fifty-five per centum of wages were the maximum limit not imposed, the compensation due each individual shall be abated proportionately so as to bring the total compensation within the limit.

(*j*) Where there is a surviving widow or widower and a child or children entitled to compensation, the compensation above described shall be paid entirely to the widow or widower for the common benefit of such widow or widower and the child or children, and the appointment of a tutor shall not be necessary. Where there is no surviving parent, payment shall be made to the duly appointed tutor.

(*k*) Compensation shall be payable under this schedule to or on account of any child or brother or sister or other dependent member of the family not otherwise specifically provided for, only if and while such child, brother, sister, or other dependent member of the family not otherwise specifically provided for, is under the age of eighteen years, unless such child, brother, sister, or other dependent member of the family is mentally or physically incapacitated from earning a living.

(*l*) No compensation shall be payable under this schedule to a widow unless she be living with her deceased husband at the time of injury and death, or be then actually dependent upon

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him for support. No compensation shall be payable under this schedule to a widower unless he be living with his deceased wife at the time of injury and death or be at such time incapable of self-support and actually dependent upon her for support.

(*m*) The terms "child" and "children" shall cover only legitimate children or acknowledged illegitimate children, but shall include stepchildren, posthumous children and adopted children. The terms "brother" and "sister" shall include stepbrothers and stepsisters, and brothers and sisters by adoption.

(*n*) In all cases provided for in this schedule the relation of dependency must exist at the time of the injury and at the time of the death.

(*o*) Should any dependent of a deceased employee die, or should the widow or widower remarry, or should the widower become capable of self-support, or should any dependent not physically or mentally incapacitated from earning a living pass beyond the age of eighteen years, the payments of the portion of the compensation theretofore due such dependent or widow or widower shall cease. If the compensation payable under this schedule to any person shall, for any cause, cease, the compensation to the remaining persons entitled hereunder shall thereafter be the same for the unexpired part of the period during which their compensation is payable 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 employee. **Payments cease, when.**

(*p*) When weekly payments have been made to an employee before his death, the compensation for dependents as provided for in this schedule shall begin on the date of the last of such payments, and shall not continue for more than three hundred weeks from the date of injury.

3. The term "wages" as used in this act is defined to mean the daily rate of pay at which the service rendered by the injured employee is recompensed under the contract of hiring in force at the time of the injury, and anything herein contained to the contrary notwithstanding, the maximum compensation to be paid under this act shall be sixteen dollars per week and the minimum compensation shall be three dollars per week: *Provided*, That if at the time of the injury the employee was receiving wages at the rate of three dollars or less per week, then the compensation shall be full wages. **Wages.**

4. No compensation shall be paid for the first week after the injury is received, nor in any case unless the employer is notified thereof within the period specified in section 11: *Provided, however*, That in cases where disability from injury continues for six weeks or longer after the injury is received, then after six weeks have elapsed compensation for the first week shall be paid. **Waiting time.**

5. The employer shall in every case furnish the employee reasonable medical, surgical, and hospital service and medicines not to exceed one hundred and fifty dollars in value, unless the employee refuses to allow them to be furnished by the employer, and in every case of death, the employer shall pay or cause to be paid the reasonable expenses of the burial of the employee, not exceeding one hundred dollars. **Medical, etc., aid.** **Burial.**

6. Any voluntary payments made by the employer or his insurer to the injured employee, during the period of his disability, or to his dependents, which, by the terms of this act, were not due and payable when paid, may, subject to the approval of the court, be deducted from the amount to be paid as compensation: *Provided*, That in case of disability, such deduction shall be made by shortening the period during which compensation shall be paid, and not by reducing the amount of the weekly payments. **Voluntary payments.**

7. Payments of compensation under this act shall be paid as near as may be at the same times and places as wages were payable to the injured employee before the accident; but a longer interval may be substituted by agreement, with the approval of the court. **Time, etc., of payments.**

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Lump sums.

8. The amounts payable as compensation may be commuted to a lump-sum settlement at any time by agreement of the parties if approved by the court as solely and clearly in the interest of the employee or his dependent: *Provided*, That in making such lump-sum settlement the payments due the employee or his dependent under this act shall not be discounted at a rate greater than six per centum per annum. If such lump-sum settlement be made without the approval of the court, or at a discount greater than six per centum per annum even if approved by the court, the employee or his dependents shall be at all times entitled to demand and receive from the employer such additional payments as may be due under this act, but upon the payment of such lump-sum settlement, discounted at not more than six per centum per annum and with the approval of the court, the liability under this act of the employer making such payment shall be fully satisfied.

[Sections 9 and 10 are amended by substituting the word "employee" for the word "workman" where it occurs; section 9 also by referring disputes simply to a court, without limitation.

Sections 12 and 13 are amended so as to read as follows:]

Statement to be posted.

SEC. 12. 1. It shall be the duty of the employer to cause to have printed and to keep posted at some convenient and conspicuous point about the place of business a notice reading substantially as follows: "In case of accidental injury or death the injured employee or some person claiming to be entitled to compensation or some one acting in behalf of the injured employee or person claiming to be entitled to compensation must give notice to (here shall follow the name and address of the party) within six months, and unless notice be given to the above party within six months, no payments will be made under the law for such injury or death." In the event of the failure of the employer to keep posted said notice, the time in which notice of the injury shall be given as provided in section 11 shall be extended to twelve months from the date of injury.

Form of notice.

SEC. 13. The notice provided for in section 11 shall be made in writing and shall contain the name and address of the employee, and shall state in ordinary language the time, place, nature and cause of the injury, and shall be signed by the person giving or making same. The notice may include the claim.

[Section 14 is changed slightly in language, but without affecting its meaning.

Section 16 is amended by substituting the word "employee" for the word "workman" in the first line.

Section 17 is amended by striking out the remainder of the second sentence after the word "court" where it first occurs; also by inserting the words "or his dependent" after the word "employee" where it occurs.

Section 20 is amended so as to read as follows:]

Modification of awards.

SEC. 20. 1. A judgment of compensation may be modified at any time by subsequent agreement between employer and employee or his dependent, with the approval of the judge of the court that rendered the judgment sought to be modified, or any time after one year after said judgment of compensation shall have become operative, it may be reviewed by the judge of the court that rendered the judgment sought to be modified upon the application of either employer or employee, on the ground that the incapacity of the injured employee has subsequently diminished or increased, such increase growing directly out of the injury for which compensation has been allowed. In such case the provisions of paragraphs 1 and 3 of section 9 with reference to medical examination shall apply.

Burden of payment.

[Section 27 is amended so as to require all premiums for benefits referred to therein to be paid by the employer alone.

Section 33 is amended so as to read as follows:]

Failure to pay installments.

SEC. 33. 1. In the event the employer against whom there has been rendered a judgment of court awarding compensation in favor of any employee or his dependent should become insolvent or fail to pay six successive installments as they become due, the

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installments not yet payable under said judgment shall immediately become due and exigible and the judgment shall become executory for the whole amount: *Provided*, That if the employee or his dependent is adequately protected by insurance and receives payments thereunder this right shall not accrue.

[Section 34 is amended by inserting the words "or his dependent" after the word "employee" where it first occurs.

Sections 38 and 39 are consolidated as section 38, and a new section 39 is added, as follows:]

Definitions.

SEC. 38. 1. The word "accident," as used in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event happening suddenly or violently, with or without human fault, and producing at the time objective symptoms of an injury. The terms "injury" and "personal injuries" shall include only injuries by violence to the physical structure of the body and such diseases or infections as naturally result therefrom. The said terms shall in no case be construed to include any other form of disease or derangement, howsoever caused or contracted.

Same.

SEC. 39. The word "dependent" as used in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean the person or persons to whom under the provisions of section 8 compensation shall be paid upon the death of the injured employee. The word "court" as used in section 37 of this act means the criminal court having jurisdiction of the person making the false statement or representation, but wherever else used in this act, the word "court" shall be construed to mean the court which shall have jurisdiction over the employer in a civil case involving more than one hundred dollars, unless said court shall not have jurisdiction on account of the amount involved, in which event it shall mean the court having jurisdiction, or where there is more than one judge of said court, then either or any of said judges of said court.

Approved, June 27, 1918.

No. 39.—*Workmen's compensation and employers' liability insurance—Payment of premiums.*

Deductions from wages.

SECTION 1. It shall be unlawful for any employer, either person, firm, association, or corporation, or his or its agent or representative, to collect from any of its employees directly or indirectly either by way of deduction from such employee's wages, salary, or compensation or otherwise any amount whatever, or to demand, request, or accept any amount from any employee, either for the purpose of paying the premium in whole or in part on any liability or compensation insurance of any kind whatever on behalf of any employee or to reimburse such employer in whole or in part for any such premium or for the premium on any insurance against any liability whatever to any employee or for the purpose of the employer carrying any such insurance for the employer's own account, or to demand or request of any employee that such employee make any payment or contribution for any such purpose to any other person, firm, association, or corporation: *Provided*, That nothing herein shall be construed to prevent any employer from carrying his or its own insurance toward his or its own employees: *And provided*, That nothing herein shall apply to an employer qualified under the laws of this State to engage in the liability insurance business.

Penalty.

SEC. 2. Any person, firm, or corporation violating any provision of this act shall be guilty of a misdemeanor, and on conviction shall be punished by fine not exceeding five hundred ($500) dollars, or by imprisonment in the parish prison or jail not exceeding a year, or by both such fine and imprisonment, at the discretion of the court.

Approved, June 27, 1918.

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MAINE.

CHAPTER 230.—*Compensation of workmen for injuries—Public employees.*

SECTION 1. All persons employed by the State or under the direction and control of any department of the State shall be entitled to the benefits of chapter fifty of the Revised Statutes. The governor and council shall order such compensation as shall be assessed, paid from the State contingent fund.

Public employees included.

Approved April 7, 1917.

CHAPTER 241.—*Compensation of workmen for injuries.*

[This act amends section 6 of the compensation law of the State (ch. 295, acts of 1915) by adding to Paragraph IV the following:]

Any town or city may, in lieu of the compensation and insurance provided by this act, continue any member of the fire department in said town, who may have been injured in the course of his duties, on the pay roll at full pay, if such full pay exceeds the maximum compensation provided for employees under this act.

Substitute provisions.

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MASSACHUSETTS.

Compensation of workmen for injuries.

[The compensation law of the State (ch. 751, acts of 1911) is amended in various sections by acts of 1917.

Section 5 of Part II is amended by chapter 198 so as to read as follows:]

Section 5. During the first two weeks after the injury, and, if the employee is not immediately incapacitated thereby from earning full wages, then from the time of such incapacity, and in unusual cases, in the discretion of the board, for a longer period, the association shall furnish adequate and reasonable medical and hospital services, and medicines, when they are needed. The employee shall have the right to select a physician other than the one provided by the association, and in case he shall be treated by a physician of his own selection, or, where, in case of emergency or for other justifiable cause, a physician other than the one provided by the association is called in to treat the injured employee, the reasonable cost of his services shall be paid by the association, subject to the approval of the industrial accident board. Such approval shall be granted only if the board finds that the employee was so treated by such physician, or that there was such emergency or justifiable cause, and, in all cases, that the services were adequate and reasonable and the charges reasonable.

Medical, etc., aid.

Choice of physician.

[Section 8 of Part II is amended by chapter 269 so as to read as follows:]

Sec. 8. In all cases the association shall pay the reasonable expense of burial which shall not exceed one hundred dollars. If the employee leaves dependents, such sum shall be a part of the compensation payable, and shall to that extent diminish the period of payment.

Burial expenses.

[Section 9 of Part II is amended by chapter 249, acts of 1917, by changing the maximum weekly payment for total disability from $10 to $14 per week, and by chapter 113, acts of 1918, by changing the minimum from $4 to $5.

Section 1 of Part III is affected by the provisions of section 1 of chapter 297, which reads as follows:]

Sec. 1. The industrial accident board, established by section one of Part III of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, as amended by section six of chapter five hundred and seventy-one of the acts of the year nineteen hundred and twelve, shall hereafter consist of seven instead of five members. The term of office of the two additional members shall be five years, except that when first appointed one shall be appointed for a term of five years and one for a term of three years. The chairman of the said board shall, from time to time, designate five members to serve as a reviewing board, and three members shall constitute a quorum to decide all matters which are required to be heard by the board.

Industrial accident board.

[This chapter also amends other sections of Part III. Section 5 is amended so as to read as follows:]

Sec. 5. If the association and the injured employee fail to reach an agreement in regard to compensation under this act, or if they have reached such an agreement, which has been signed and filed in accordance with the provisions of this act, and compensation has been paid or is due in accordance therewith and the parties thereto then disagree as to the continuance of any weekly

Adjustment of disagreements.

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payments under such agreement, either party may notify the industrial accident board which shall thereupon assign the case for hearing by a member of the board.

[Section 6 is repealed.

Section 7 is amended so as to read as follows:]

Hearings. Sec. 7. The member of the board shall make such inquiries and investigations as shall be deemed necessary. The hearing shall be held in the city or town where the accident occurred, or in such other place as the board may designate; and the decision of the member, together with a statement of the evidence, his findings of fact, rulings of law, and any other matters pertinent to questions arising before him shall be filed with the industrial accident board. Unless a claim for review is filed by either party within seven days, the decision shall be enforceable under provisions of section eleven of Part III.

[Section 9 is repealed.

Section 10 is amended by striking out the word "committee" where it occurs, and substituting therefor the word "member."

Section 11 is amended by striking out the words "an arbitration committee" where they appear, and substituting therefor the words "a member."

Sections 12, 13 and 14 are amended so as to read as follows:]

Review of awards. Sec. 12. Any weekly payment under this act may be reviewed by the industrial accident board or any member thereof, and on such review the board or member may, in accordance with the evidence and subject to the provisions of this act, issue any order which may be deemed advisable. If the case is heard and decided by a member, his decision shall be subject to review as provided by sections seven and ten of Part III, and the general provisions of the act.

Fees. Sec. 13. Fees of attorneys and physicians and charges of hospitals for services under this act shall be subject to the approval of the industrial accident board. If the association and any physician or hospital, or the employee and any attorney, fail to reach an agreement as to the amount to be paid for such services, either party may notify the board, which may thereupon assign the case for hearing by a member of the board in accordance with the provisions of this act, and all proceedings thereunder shall be in accordance with the provisions of this act. The member shall report the facts to the industrial accident board for decision, and the decision shall be enforceable as provided by Part III of section eleven.

Costs. Sec. 14. If the industrial accident board, any member thereof, or any court before whom any proceedings are brought under this act determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, it shall assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

[Section 23 is amended by chapter 119, acts of 1918, so as to read as follows:]

Claim. Sec. 23. The claim for compensation shall be in writing and shall state the time, place, cause, and nature of the injury; it shall be signed by the person injured or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf, and shall be filed with the industrial accident board. A claim for compensation shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, cause or nature of the injury, unless it is shown that it was the intention to mislead and that the association was in fact misled thereby. The failure to make a claim within the period prescribed by section fifteen shall not be a bar to the maintenance of proceedings under this act if it is found that it was occasioned by mistake or other reasonable cause.

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ACTS OF 1918.

CHAPTER 125.—*Employees on bridges of Boston and Cambridge.*

[This act is in effect a supplement of chapter 807, acts of 1913, providing for the application of the compensation law to public employees, and specifically provides for its application to laborers, workmen, mechanics, draw tenders, and assistant draw tenders, employed on the bridges of Boston and Cambridge.]

CHAPTER 216.—*Workmen's compensation insurance.*

Section 1. Two or more insurance companies authorized to make such insurance in this Commonwealth may unite in issuing joint several workmen's compensation policies, subject to approval by the insurance commissioner as provided in chapter two hundred and eighty-seven of the general acts of nineteen hundred and fifteen, in which case the policies may be headed by the names of all the companies assuming the joint and several obligations under the contract.

Approved May 21, 1918.

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MICHIGAN.

Compensation of workmen for injuries.

[Part I of the compensation law of the State (act No. 10, first extra session of 1912) is amended by act No. 249, acts of 1917, by adding thereto a new section, as follows:] **Act may be investigated.**

Section 9. Whenever in the opinion of the governor the provisions of this act shall be unfair to either employees or employers, he may appoint a commission consisting of three members, whose duty it shall be to thoroughly investigate the workings of this act and report thereon to the governor, such report to be submitted by him to the legislature at its first regular or special session held after the receipt of said report. Such report, in addition to the recommendations thereof, shall contain the text of needed changes or amendments to place this act upon a perfectly fair basis. The members of said commission shall have power to summon witnesses, administer oaths and compel the production of books and papers. They shall each receive compensation at the rate of ten dollars per day, together with actual and necessary expenses incurred in the performance of official duties, such compensation and expenses to be audited and allowed by the board of State auditors and paid out of the general fund in the State treasury: *Provided, however,* Such compensation and expenses shall not exceed the sum of three thousand dollars. **Powers of commission.**

[Section 11 of Part II is amended by act No. 41, acts of 1917, so as to read as follows:]

Sec. 11. (a) The term "average annual earnings" as used in this act is defined to be fifty-two times the average weekly wages of the employee as arrived at according to the provisions of this section. **Earnings computed, how.**

(b) The term "average weekly wages" as used in this act is defined to be six times the daily wage, salary or emolument which the injured employee is earning at the time he suffers the accidental injury.

(c) In cases where it is impossible to ascertain the exact daily wage, salary or emolument the injured employee is earning at the time he suffers the accidental injury, such daily earnings shall be taken and held to be for all the purposes of this act such a sum as having regard to the previous daily earnings of the injured employee and of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality shall most nearly approximate the daily earnings of the said injured employee at the time he receives the accidental injury, in the employment in which he was working at such time. After the amount of said daily wage, salary or emolument shall be determined as in this subsection provided, said amount shall be multiplied by six, and the product so obtained shall be for all the purposes of this act taken and held to be the average weekly wages of such employee.

(d) The fact that an employee has suffered a previous disability or received compensation therefor, shall not preclude compensation for the later injury or for death, but in determining compensation for the later injury or death his average annual earnings shall be held to be such sum as will reasonably represent his annual earning capacity at the time of the later injury in the employment in which he was working at such time and shall be **Second injuries.**

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arrived at according to and subject to the provisions of this section.

Wage loss. (e) The weekly loss in wages referred to in this act shall consist of such percentage of the average weekly earnings of the injured employee computed according to the provisions of this section as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

[Section 9 of Part V is amended by chapter 206, so as to read as follows:]

Receipts, expenditures, etc. Sec. 9. The commissioner of insurance shall issue proper receipts for all moneys so collected and received from employers, as aforesaid, and shall take receipts for all sums paid to employees for compensation under the provisions of this act, and shall keep full and complete records of all business transacted by him in the administration of such funds. He may employ such deputies and assistants and clerical help as may be necessary, and as the advisory board, hereinafter created, may authorize, for the proper administration of said funds, and the performance of the duties imposed upon him by the provisions of this act, at such compensation as may be fixed by the advisory board, and may also remove them. The commissioner of insurance and such deputies and assistants shall be entitled to receive from the State their actual and necessary expenses while traveling upon the business of the accident fund, and all such salaries and expenses as authorized by the provisions of this act shall, when audited by the board of State auditors, be charged to and paid out of said accident fund. He shall include in his annual report a full and correct statement of the administration of such fund, showing its financial status, and outstanding obligations, the claims contested and why, and general statistics in respect to all business transacted by him under the provisions of this act.

[New sections are also added by the same chapter, as follows:]

Annual meetings. Sec. 12. An annual meeting of the employers contributing to the accident fund, shall be called by the commissioner of insurance, to be held in the city of Lansing, in the month of September, which may be attended by the members in person or by an attorney. Notice of the annual meeting shall be by ordinary mail, at least ten days prior to the date of meeting. At the annual meeting so held there shall be nominated by the members present, five contributing members to constitute an advisory board, who, when so nominated and certified by the governor, shall receive an appointment as such by the governor, to serve for the term of two years. In case of vacancy in the advisory board, a nomination may be made by the remaining members to the governor, for the purpose of filling said vacancy. The advisory board shall elect one of its members chairman, and the board shall meet quarterly on the call of the chairman, in the city of Lansing.

Advisory board.

Duties of advisory board. Sec. 13. The advisory board shall advise with the commissioner of insurance as to the means and methods of administering the affairs of the said accident fund, not inconsistent with the provisions of this act.

[Section 7 of Part VI is amended by chapter 235, as follows:]

Appropriations. Sec. 7. To carry out the provisions of this act there is hereby appropriated for the expenses of the industrial accident board for the fiscal year ending June thirty, nineteen hundred eighteen, and annually thereafter, the sum of seventy thousand dollars. The auditor general shall add to and incorporate into the State tax, the sum of seventy thousand dollars annually, which said sum shall be included in the State taxes apportioned by the auditor general on all taxable property of the State, to be levied, assessed and collected as other State taxes, and when so assessed and collected, to be paid into the general fund to reimburse said fund for the appropriation made by this act.

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MINNESOTA.

Compensation of workmen for injuries.

[Section 13 of the compensation law of the State (chapter 467, acts of 1913) is amended by chapter 351, acts of 1917, by substituting sixty for fifty as the percentage of wages used as a measure of compensation;[1] also by fixing the maximum weekly payment at $12 instead of $11.

Paragraph (e) is amended so as to read as follows:]

(e) The total and permanent loss of the sight of both eyes or the loss of both arms at the shoulder, or complete and permanent paralysis, or total and permanent loss of mental faculties, or any other injury which totally incapacitates the employee from working at any occupation which brings him an income, shall constitute total disability. Total disability.

[Paragraph (e)1, added by chapter 209, Acts of 1915, is repealed.

Section 17 is amended by chapter 302 by substituting the words "first week" for the words "first two weeks."]

[1] By what is doubtless an oversight, the percentage was not changed in the case of the loss of an arm, the law remaining 50 per cent, as before.

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NEBRASKA.

ACTS OF 1917.

CHAPTER 85.—*Compensation of workmen for injuries.*

[This act amends the compensation law of the State in a number of particulars, while other sections of the chapter add new provisions, though not formally added to the original act itself. These provisions relate to administration, the duty of administering the law being taken out of the hands of the State insurance commissioner and placed in the hands of the commissioner of labor, who is made compensation commissioner, and the term "compensation commissioner" is substituted for "insurance commissioner," where it occurs throughout the act.

Section 6 (sec. 3647) is also otherwise amended so as to read as follows:]

Scope of law.

Section 3647. (1) The provisions of this act shall apply to the State of Nebraska and every governmental agency created by it, and to every employer in this State employing one or more employees, in the regular trade, business, profession, or vocation of such employer. (2) The following are declared not to be hazardous occupations and not within the provisions of this act: Employers of household domestic servants and employers of farm laborers. Railroad companies engaged in interstate or foreign commerce are declared subject to the powers of Congress and not within the provisions of this act. (3) Any employer not included in the preceding paragraphs of this section and the employees of such employers may, by their joint election, filed with the compensation commissioner, accept the provisions of Part II of this act, and such acceptance shall subject them to the said provisions of Part II hereof to all intents and purposes as if they had been originally included in the terms of subdivision 1 of this section: *Provided, however*, That either such employer or workmen (prior to accident) shall have the right to waive such election to come under Part II hereof, the procedure being the same as indicated in subdivisions (a) and (b) of section 103 of this chapter.

[Section 15 (sec. 3656) is amended by adding to subsection (2) thereof the following:]

Injuries to minors.

No parent or guardian of an injured minor employee shall be entitled to recover any damages by reason of said injury other than as expressly provided in this article.

[Sections 19, 20 and 21 (secs. 3660, 3661 and 3662) are amended so as to read as follows:]

Waiting time.

Sec. 3660. No compensation shall be allowed for the first seven calendar days after disability begins, except as provided in the next following section, but if disability extends beyond the period of seven days, compensation shall begin on the eighth calendar day after the injury: *Provided, however*, That if such disability continues for six weeks or longer, such compensation shall be computed from the date of the injury.

Medical, etc., aid.

Sec. 3661. During the first twenty-one days after disability begins the employer shall be liable for reasonable medical and hospital services and medicines as and when needed, not, however, to exceed two hundred dollars in value, unless the employee refuses to allow them to be furnished by the employer: *Provided, however*, In cases of dismemberment or injuries involving major surgical operations, the employer shall be liable for reasonable medical and hospital services and medicines as and when needed

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beyond as well as within the twenty-one day period, not, however, to exceed two hundred dollars in value: *Provided, further*, That where the injured employee refuses or neglects to avail himself of such medical or surgical treatment, the employer shall not be liable for any aggravation of such injury due to said neglect or refusal.

Compensation for total disability;

Sec. 3662. The following schedule of compensation is hereby established for injuries resulting in disability.

(1) For the first three hundred weeks of total disability the compensation shall be sixty-six and two-thirds per cent of the wages received at the time of injury, but such compensation shall not be more than twelve dollars per week nor less than six dollars per week: *Provided*, That, if at the time of injury the employee receives wages of less than six dollars per week, then he shall receive the full amount of such wages per week as compensation. After the first three hundred weeks of total disability, for the remainder of the life of the employee, he shall receive forty-five per cent of the wages received at the time of the injury, but the compensation shall not be more than nine dollars per week nor less than four dollars and fifty cents per week: *Provided*, That if at the time of the injury the employee receives wages of less than four dollars and fifty cents per week then he shall receive the full amount of such wages as compensation. Nothing in this subdivision shall require the payment of compensation after disability shall cease. Should partial disability be followed by total disability, the period of three hundred weeks mentioned in this subdivision of this section shall be reduced by the number of weeks during which compensation was paid for such partial disability.

Partial disability.

(2) For disability partial in character (except the particular cases mentioned in subdivision 3 of this section), the compensation shall be sixty-six and two-thirds per cent of the difference between the wages received at the time of injury and the earning power of the employee thereafter, but such compensation shall not be more than twelve dollars per week. This compensation shall be paid during the period of such partial disability; not, however, beyond three hundred weeks after the date of the accident causing disability. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability.

Schedule.

(3) For all disability resulting from permanent injury of the following classes, the compensation shall be exclusively as follows:

For the loss of a thumb, sixty-six and two-thirds per cent of daily wages during sixty weeks.

For the loss of a first finger, commonly called index finger, sixty-six and two-thirds per cent of daily wages during thirty-five weeks.

For the loss of a second finger, sixty-six and two-thirds per cent of daily wages during thirty weeks.

For the loss of a third finger, sixty-six and two-thirds per cent of daily wages during twenty weeks.

For the loss of a fourth finger, commonly called little finger, sixty-six and two-thirds per cent of daily wages during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be for one-half of the periods of time above specified, and compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb: *Provided, however*, That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

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For the loss of a great toe, sixty-six and two-thirds per cent of daily wages during thirty weeks.

For the loss of one of the toes other than a great toe, sixty-six and two-thirds per cent of daily wages during ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be for one-half of the periods of time above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, sixty-six and two-thirds per cent of daily wages during one hundred and fifty weeks.

For the loss of an arm, sixty-six and two-thirds per cent of daily wages during two hundred weeks.

For the loss of a foot, sixty-six and two-thirds per cent of daily wages during one hundred and twenty-five weeks.

For the loss of a leg, sixty-six and two-thirds per cent of daily wages during one hundred and seventy-five weeks.

For the loss of an eye, sixty-six and two-thirds per cent of daily wages during one hundred weeks.

For the loss of an ear, sixty-six and two-thirds per cent of daily wages during twenty-five weeks.

For the loss of the nose, sixty-six and two-thirds per cent of daily wages during fifty weeks.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of subdivision 1 of this section.

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent loss of the use of a hand, arm, foot, leg or eye shall be considered as the equivalent of the loss of such hand, arm, foot, leg or eye.

Loss of use.

In all cases involving a permanent partial loss of the use or function of any of the members mentioned in subdivision 3 of section 3662, the compensation shall bear such relation to the amounts named in said subdivision 3 of section 3662 as the disabilities bear to those produced by the injuries named therein. Should the employer and the employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to the provisions of section 3680.

Range of payments.

Compensation under this subdivision shall not be more than twelve dollars per week, nor less than six dollars per week: *Provided*, That, if at the time of injury the employee receives wages of less than six dollars per week, then he shall receive the full amount of such wages per week as compensation.

Prior injuries.

It is expressly provided that not anything contained in this section or this entire amendatory act is intended to or shall operate to affect the amount or amounts recoverable for any character of injury sustained by any person or persons prior to the going into effect of this amendatory act.

[Subsection (1) of section 22 (sec. 3663) is amended by changing 50 to 66⅔ where it occurs; also by changing ten dollars to twelve dollars and five dollars to six dollars in each instance as the measure of maximum and minimum weekly payments in case of death.

Sections 25 and 26 (secs. 3666 and 3667) are amended so as to read as follows:]

Payments to be periodical.

Sec. 3666. Except as hereinafter provided, all amounts of compensation payable under the provisions of this article shall be payable periodically in accordance with the methods of payment of the wages of the employee at the time of the injury or death: *Provided*, Fifty per cent shall be added for waiting time for all delinquent payments after 30 days' notice has been given.

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Wages.

Sec. 3667. Wherever in this article the term "wages" is used, it shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, and shall not include gratuities received from the employer or others, nor shall it include board, lodging or similar advantages received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring. In occupations involving seasonal employment or employment dependent upon the weather, the employee's weekly wages shall be taken to be one-fiftieth of the total wages which he has earned from all occupations during the year immediately preceding the accident, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employee, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings. In continuous employments, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, his weekly wages shall be taken to be his average weekly income for the period of time ordinarily constituting his week's work, and using as the basis of calculation his earnings during as much of the preceding six months as he worked for the same employer; the calculation, furthermore, to be made with reference to average earnings for a working-day of ordinary length and exclusive of earnings from overtime.

[Section 33 (sec. 3674) is amended by adding the following to the first paragraph:]

Disputes.

Provided, That all disputed claims for compensation or benefits shall be first submitted to the compensation commissioner, as provided in section [39].

[Sections 36 to 43 (3677 to 3684) are amended to read as follows:]

Agreements.

Sec. 3677. The interested parties shall have the right to settle all matters of compensation between themselves in accordance with the provisions of this article: *Provided*, That a copy of such settlement shall be filed with the compensation commissioner, and no such settlement shall be binding unless in accord with the provisions of this article.

Arbitration.

Sec. 3678. All disputed claims for compensation or for benefits under this article must be submitted to the compensation commissioner for an award. If either party at interest is dissatisfied with the award of the compensation commissioner, then the matter may be submitted to the district court of the county which would have jurisdiction of a civil action between the parties, which court shall have authority to hear and determine the cause as a suit in equity and enter final judgment therein determining all questions of law and fact in accordance with the provisions of this article, which judgment shall be final and conclusive unless reversed or modified on appeal or otherwise modified pursuant to the provisions of this act.

Limitation.

Sec. 3679. In case of personal injury, all claim for compensation shall be forever barred unless, within one year after the accident, the parties shall have agreed upon the compensation payable under this act, or unless within one year after the accident, one of the parties shall have filed a petition as provided in section 3680 hereof. In case of death, all claims for compensation shall be forever barred unless, within one year after the death, the parties shall have agreed upon the compensation under this act, or unless within one year after the death, one of the parties shall have filed a petition as provided in section 3680 hereof. Where, however, payments of compensation have been made in any case, said limitation shall not take effect until the expiration of one year from the time of the making of the last payment. In the event of legal disability of an injured employee, said limitation shall not take effect until the expiration of one year from the time or removal of such legal disability.

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Procedure.

Sec. 3680. Procedure in cases of dispute shall be as follows: Either party may file with the compensation commissioner a verified petition setting forth the names and residences of the parties and the facts relating to the employment at the time of the injury, the injury in its extent and character, the amount of wages being received at the time of injury, the knowledge of or notice to the employer of the occurrence of said injury and such other facts as may be necessary for the information of the commissioner, and also stating the matter or matters in dispute and the contention of the petitioner with reference thereto.

Upon the filing of such petition a summons shall issue and be served upon the adverse party, as in civil causes, together with a copy of the petition. Return of service shall be made within four days from the issuance of the summons. Within seven days after the return day of such summons the party upon whom the same is served shall file an answer to said petition, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute, as disclosed by the petition. The answer shall be verified in like manner as required for a petition. At the expiration of the time fixed for filing the answer the compensation commissioner shall proceed to hear all parties at interest and make such recommendations and awards as such compensation commissioner may be authorized by law to make.

In case either party refuses to accept the recommendations or awards of the compensation commissioner, either party may submit to the district court a verified petition setting forth the names and residences of the parties and the facts relating to the employment at the time of the injury, the injury in its extent and character, the amount of wages being received at the time of injury, the knowledge of or notice to the employer of the occurrence of said injury and such other facts as may be necessary for the information of the court, and also stating the matter or matters in dispute and the contention of the petitioner with reference thereto.

Upon the filing of such petition a summons shall issue and be served upon the adverse party, as in civil causes, together with a copy of the petition. Return of service shall be made within four days from the issuance of the summons. Within seven days after the return day of such summons the party upon whom the same is served shall file an answer to said petition, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute, as disclosed by the petition. The answer shall be verified in like manner as required for a petition. At the expiration of the time fixed for filing answer the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the form of law. Any appeal from such judgment shall be prosecuted in accordance with the general laws of the State regulating appeals and actions at law except that such appeal shall be perfected within thirty days from the entry of the judgment and the cause shall be advanced for hearing in the supreme court so as to bring said cause on for argument before such court within sixty days from the filing of the appeal and said supreme court shall render its judgment and opinion in such cases within thirty days after submission.

Lump sums.

Sec. 3681. The amounts of compensation payable periodically under the law, by agreement of the parties with the approval of the compensation commissioner, may be commuted to one or more lump-sum payments, except compensation due for death and permanent disability, which may be commuted only upon the order or decision of the district court: *Provided*, That where commutation is agreed upon, or ordered by the court, the lump sum to be paid shall be fixed at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five per cent per annum with annual rests. Upon paying such amount the employer shall be discharged from all further liability on account

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of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or decree shall be discharged of record.

Whenever an injured employee or his dependents and the employer agree that the amounts of compensation due in periodic payments for death, permanent disability, or claimed permanent disability, under this article, shall be commuted to one or more lump payments, such settlement or agreement therefor shall be submitted to the district court in the following manner:

An application for the approval of such settlement, signed by both parties, shall be filed with the clerk of the district court, and shall be entitled the same as an action by such employee or dependents against such employer; and shall contain a concise statement of the terms of the settlement sought to be approved, together with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, and the nature of the employment. The judge of the district court, immediately, or within one week after the filing of said application, unless there be good cause for continuance, at chambers or in open court and in or out of term time, shall hold a hearing on said application, and proof may be adduced, witnesses subpœnaed and examined, the same as in an action in equity. If, after such inquiry, the court finds said settlement fair, just, and for the best interests of said employee or his dependents under all the circumstances, he shall make an order approving the same. If such agreement or settlement be not approved the court may dismiss said application at the cost of the employer or continue the hearing, in the discretion of the court.

The fees of the clerk of the district court for filing, docketing, and indexing such application shall be one dollar.

What settlements final.

Sec. 3682. All settlements by agreement of the parties with the approval of the compensation commissioner and all awards of compensation made by the court, except those amounts payable periodically for six months or more, shall be final and not subject to readjustment.

Reviews.

Sec. 3683. All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employee or his dependents, by lump-sum payments, shall be final, but the amount of any agreement or award payable periodically for more than six months may be modified as follows:

(a) At any time by agreement of the parties with the approval of the compensation commissioner.

(b) If the parties can not agree, then at any time after six months from the date of the agreement or award, an application may be made to the court by either party on the ground of increase or decrease of incapacity due solely to the injury, or that the condition of a dependent has changed as to age or marriage, or by reason of the death of a dependent. In such case the same procedure shall be followed as in section 3680 in case of disputed claim for compensation.

Payments to trustees.

Sec. 3684. At any time after the amount of any award has been agreed upon by the parties and approved by the compensation commissioner, or found and ordered by the court, a sum equal to the present value of all future installments of compensation may (where death or the nature of the injury renders the amount of future payments certain) by leave of court, be paid by the employer, or by the insurance company carrying such risk, as the case may be, to any savings bank or trust company of this State, in good standing, and such sum together with all interest thereon, shall thereafter be held in trust for the employee or the dependents of the employee, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee to be filed with the compensation commissioner, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by

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the trustee in the same amounts and at the same time as are herein required of the employer until said fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the injured employee or the dependents of the deceased employee, as the case may be.

[Sections 45 to 47 (3686 to 3688) are amended to read as follows:]

Reports.

Sec. 3686. Reports of accidents and settlements shall be made in form and manner as prescribed and directed by the compensation commissioner. Such reports, if filed by an insurance company on behalf of an employee, shall be deemed to have been filed by the employer.

Aliens.

When an injury results in the death of an employee who is a citizen or subject of a foreign country, the compensation commissioner shall, after such death has been reported to him, at once notify the superior consular officer of the country of which the employee at the time of his death was a citizen or subject, and whose consular district embraces the State of Nebraska, or the representative, residing in the State of Nebraska, of such consular officer, whom he shall have formally designated as his representative by a communication in writing to the compensation commissioner. Such notification shall contain in addition to the name of the employee, such further information as the compensation commissioner may possess respecting the place of birth, parentage, and names and addresses of the dependents of the employee.

Insurance.

Sec. 3687. Every employer in the occupations described in section 97 of this chapter shall either insure and keep insured his liability under this article in some corporation, association or organization authorized and licensed to transact the business of workmen's compensation insurance in this State, or shall furnish to the compensation commissioner satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this act. In the latter case the compensation commissioner may in his discretion require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred. Every employer who fails, neglects or refuses to comply with the conditions set forth in this section shall be deemed to have elected not to come under Part II hereof, and shall be required to respond in damages to an employee for personal injuries, or where personal injuries result in the death of an employee, then to his dependents, in like manner as if the employer had filed an election with the compensation commissioner rejecting the provisions of Part II of the compensation act.

Provisions of policies.

Sec. 3688. No policy of insurance against liability arising under this act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same all benefits conferred by this act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

Every policy for the insurance of the compensation herein provided, or against liability thereof, shall be deemed to be made subject to the provisions of this act. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the compensation commissioner.

All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employer and the insurer the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the in-

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surer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured.

[Paragraph (d) of section 52 (sec. 3693) is amended so as to read as follows:]

Willful negligence.

(d) For the purpose of this act, willful negligence shall consist of (1) deliberate act, or (2) such conduct as evidences reckless indifference to safety, or (3) intoxication at the time of injury, such intoxication being without the consent or knowledge or acquiescence of the employer or the employer's agent.

[A new paragraph is also added to this section, as follows:]

Commissioner.

(h) The designation "compensation commissioner" or "commissioner" as used herein is intended to mean the State official designated by the statutes to administer this article.

[New material added is as follows:]

Duty of county attorneys.

Sec. 24. It shall be the duty of the county attorneys of the several counties and the attorney general of the State to appear as counsel for claimants for compensation and benefits under this article, and to assist and act in an advisory capacity to the compensation commissioner, upon his request.

Prior injuries.

Sec. 25. It is expressly provided that not anything contained in this entire amendatory act is intended to or shall operate to affect the amount or amounts recoverable for any character of injury sustained by any person or persons prior to the going into effect of its amendatory act.

Compensation division.

Sec. 26. There is hereby created a compensation division in the bureau of labor for the State of Nebraska.

Commissioner of labor to act.

Sec. 27. The commissioner of labor of the State is hereby made the compensation commissioner and there is hereby imposed upon him the duty of executing all of the provisions of article 8, chapter 35, Revised Statutes of Nebraska for the year 1913, and any act or acts amendatory thereof. To aid him in the discharge of his duty he is hereby authorized to appoint a chief deputy compensation commissioner who shall serve for a period of two years from the date of appointment and until his successor is appointed and qualifies, and shall receive such remuneration for his services and in such manner as provided by legislative enactment. The chief deputy compensation commissioner shall succeed to the powers and discharge the duties vested in the compensation commissioner. The compensation commissioner shall from time to time promulgate such rules and regulations as are necessary and proper to promptly and effectively enforce the provisions of article 8, chapter 35, Revised Statutes of Nebraska for the year 1913, and any act or acts amendatory thereof. In the performance of his duties the compensation commissioner, or the chief deputy compensation commissioner, is authorized and empowered to examine under oath or otherwise any person, any employee, any employer, any agent or superintendent or foreman or officer of any copartnership or corporation, or any officer of any domestic insurance company, or any agent of any foreign insurance company, or any medical practitioner; to issue subpœnas for the appearance of witnesses and the production of books and papers and administer oaths with like effect as is done in courts of law in this State. In the examination of any witness and in requiring the production of books, papers and other evidence, the commissioner of compensation shall have and exercise all of the powers of a judge, magistrate or other officer in the taking of depositions or the examination of witnesses, including the power to enforce his orders by commitment for refusal to answer or for the disobedience of any such order.

Deputy.

Powers and duties.

Assistants.

Sec. 28. The compensation commissioner may employ such assistants as may be necessary to carry out the provisions of this act: *Provided*, That the expenses incurred shall not exceed the appropriation therefor. The compensation commissioner shall provide a seal for the certification of his orders, awards, and

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proceedings upon which shall be inscribed the words "Compensation commissioner, State of Nebraska—Official seal."

Powers of commission.

Sec. 29. The compensation commission shall, for the purpose contemplated by this act, have power to issue subpœnas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Nebraska as now provided by law, compel the production of pertinent books, pay rolls, accounts, papers, records, documents and testimony. If a person in attendance before the compensation commissioner shall refuse, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper when ordered to do so by the compensation commissioner, the compensation commissioner may apply to the district court of any judicial district in the State of Nebraska, upon proof by affidavit of the fact, for a rule or order returnable in not less than two or more than five days, directing such person to show cause before the judge who made the order, or any other judge aforesaid, why he should not be committed to jail; upon the return of such order, the judge before whom the matter and such persons shall come on for a hearing shall examine under oath such person and such person shall be given an opportunity to be heard; and if the judge shall determine that such person has refused without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith commit the offender to jail, there to remain until he submits to do the act which he was so required to do, or is discharged according to law. No person shall be excused from testifying or from producing any books or papers or documents in any investigation or inquiry by or upon any hearing before the compensation commissioner, when ordered to do so by the compensation commissioner, upon the ground that the testimony or evidence, books, papers or documents required by him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath have, by order of the compensation commissioner, testified to or produced documentary evidence of: *Provided, however,* That no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

Procedure.

(a) Subject to the provisions of article 8, chapter 35, Revised Statutes of Nebraska for the year 1913, and any act or acts amendatory thereof, the compensation commissioner shall adopt reasonable and proper rules to govern procedure, which procedure shall be as summary and simple as reasonably may be. The compensation commissioner shall regulate and provide the kind and character of notices, the services thereof, and in cases of injury by accident to employees, the nature and extent of the proofs and evidence and the method of taking and furnishing the same for the establishment of the right to compensation; he shall determine the nature and forms of application of those claiming to be entitled to benefits or compensation, and shall regulate the method of making investigations, physical examinations and inspections and prescribe the time within which adjudications and awards shall be made: *Provided always,* That such rules and regulations shall conform to the provisions of article 8, section 35, Revised Statutes of Nebraska for 1913, and any act or acts amendatory thereof.

(b) The compensation commissioner shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided, but may make the investigation in such manner as in his judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of article 8, chapter 35, Revised Statutes of Nebraska for 1913, and any act or acts amendatory thereof.

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(c) A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation taken by a stenographer for the compensation commissioner, being certified and sworn to by such stenographer, to be a true and correct transcript of the testimony, or of a particular witness, or any specific part thereof, or to be a correct copy of the transcript of the proceedings had on such investigation so purporting to be taken and transcribed, may be received in evidence by the compensation commissioner with the same effect as if such stenographer were present and testified to the facts certified. A copy of such transcript shall be furnished on demand to any party in interest upon payment of the fee therefor, as provided for transcripts in the district courts of the State of Nebraska.

Records. (d) The compensation commissioner shall keep and maintain a full and true record of all proceedings, of all documents or papers ordered filed, of all rules and regulations, of all decisions or orders.

Blanks. (e) The compensation commissioner shall prepare and furnish free of cost to employers, and to insurance companies licensed to write compensation insurance in this State, blank forms of application for benefits or compensation, elections to operate under Part II of chapter 35, Revised Statutes of Nebraska for 1913, and any act or acts amendatory thereof, reports of injury, proofs of injury or death, reports of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable. The compensation commissioner shall provide rules for the distribution of the blanks so prepared, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks.

Annual reports. (f) Annually on or before the first day of January of each year the compensation commissioner shall issue a bulletin which shall include a statement of the number and amount of settlements and awards made by the compensation commissioner, the causes of the accidents leading to the injuries for which the settlements and awards were made and a total statement of the expense of the compensation commissioner, together with any other matters which the compensation commissioner deems proper to include, as well as any recommendations he may desire to make.

Claims. (g) Every claim for benefits under the provisions of article 8, chapter 35, Revised Statutes of Nebraska for the year 1913, and any act or acts amendatory thereof, may be presented to the compensation commissioner for adjudication and an order and an award. Any party at interest may present a claim in person or by an attorney. Every order and award of the compensation commissioner shall be binding upon each party at interest unless notice of intention to appeal to the district court has been filed with the compensation commissioner within seven days following the date of rendition of the order of award: *Provided*, That the order and award shall be binding and final, notwithstanding notice of intention to appeal has been filed within the time limit, until the appeal has been perfected and service had upon the opposite party or parties.

Costs. (h) Each applicant for an order or an award by the compensation commissioner shall pay all expense of his or their own making: *Provided*, That there shall be no filing fees charged by the compensation commissioner, and that the compensation commissioner may at his discretion assess the costs of the applicant or applicants against the respondent or respondents as in like manner done in courts of the State.

Provisions severable. Sec. 30. In case for any reason any papagraph or any provision of article 8, chapter 35, Revised Statutes of Nebraska for 1913, or any paragraph or any provision of this act shall be questioned in any court and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of article 8, chapter 35, Revised Statutes of Nebraska for 1913, or any paragraph or any provision of this act, except

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that Parts I and II of said article are hereby declared to be inseparable, and if either part be declared void or inoperative in an essential part, so that the whole of such part must fall, the other part shall fall with it and not stand alone. Part I of this article shall not apply in cases where Part II becomes operative in accordance with the provisions thereof, but shall apply in all other cases when the employer is subject to the provisions of this article and in such cases shall be in extension or modification of the common law.

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NEVADA.

ACTS OF 1917.

State insurance fund.

CHAPTER 233.—*Compenstion of workmen for injuries.*

Section 1 of * * * [chapter 111, acts of 1913] is hereby amended so as to read as follows: **Effect of election.**

SECTION 1. (a) When, as in this act provided, an employer shall accept the terms of this act and be governed by its provisions, every such employer shall be conclusively presumed to have elected to provide, secure, and pay compensation according to the terms, conditions, and provisions of this act for any and all personal injuries by accident sustained by an employee arising out of and in the course of the employment; and in such cases the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury, unless by the terms of this act otherwise provided.

(b) Where a State, county, municipal corporation, school district, cities under special charter and commission form of government, is the employer, the terms, conditions and provisions of this act, for the payment of premiums to the State insurance fund for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon both employer and employee. **Compulsory as to public employees.**

(c) If an employer having the right under the provisions of this act to accept the terms, conditions and provisions thereof, shall fail to accept the same as herein provided, every such employer shall be deemed to have rejected the terms, conditions, and provisions thereof, and in such case such employer shall not escape liability for personal injury by accident sustained by an employee of such employer when the injury sustained arises out of and in the usual course of the employment, because: **Failure of employers to elect.**

(1) The employee assumed the risks inherent or incidental to, or arising out of, his or her employment; or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of the employer to furnish reasonably safe tools or appliances, or because the employer exercised reasonable care in selecting reasonably competent employees in the business; **Defenses abrogated.**

(2) That the injury was caused by the negligence of a coemployee;

(3) That the employee was negligent, unless and except it shall appear that such negligence was willful and with intent to cause the injury, or the result of intoxication on the part of the injured party;

(4) In actions by an employee against an employer for personal injuries sustained, arising out of and in the course of the employment where the employer has rejected the provisions of this act, it shall be presumed that the injury to the employee was the first result, and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such case the burden of proof shall rest upon the employer to rebut the presumption of negligence. **Presumptions.**

(d) Every such employer shall be conclusively presumed not to have elected to provide, secure, and pay compensation to employees for injuries sustained arising out of and in the course of the employment according to the provisions of this act, unless **Election by employers.**

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and until notice in writing of an election to accept shall have been given to the Nevada Industrial Commission, substantially in the following form:

EMPLOYER'S NOTICE TO ACCEPT.

To the Nevada Industrial Commission:

You are hereby notified that the undersigned accepts the provision of the "Nevada industrial insurance act."

Signed_____

Construction of contracts.

(e) Where the employer has given notice of an election to accept the terms of this act, and the employee has not given notice of an election to reject the terms of this act, every contract to hire, express or implied, shall be construed as an implied agreement between them, and a part of the contract on the part of the employer to provide, secure and pay, and on the part of the employee to accept, compensation in the manner as by this act provided for all personal injuries sustained arising out of and in the course of employment.

Employer to pay premiums.

(f) Every such employer electing to be governed by the provisions of this act, before becoming entitled to the benefits of the act in the providing, securing, and paying of compensation to the employees thereunder, shall, on or before the first day of July, 1917, and thereafter during the period of his election to be governed by the provisions of the act, pay to the Nevada Industrial Commission all premiums in the manner hereinafter provided; and during the period of his election to be governed by the provisions of the act shall comply with all conditions and provisions of the act, hereinafter stated.

Failure to pay.

(g) Failure on the part of any such employer to pay the premiums as by the provisions of this act required shall operate as a rejection of the terms of the act. In the event of any rejection of this act or the terms hereof, such rejecting employer shall post a notice of rejection of the terms of the act upon his premises in a conspicuous place. Failure to post said notice shall constitute a misdemeanor.

Notices.

(h) It shall be the duty of such employer at all times to maintain the notice or notices so provided for the information of his employees, and any person failing so to maintain the same shall be guilty of a misdemeanor.

SEC. 2. The above-entitled act is hereby amended by the adding of an additional section to be known as section 2½, which shall read as follows:

No deductions from wages.

SEC. 2½. It shall be unlawful for any employer who has elected to reject the terms, conditions and provisions of this act, to make any charge against an employee, or to deduct from the wages of any employee any sum of money to meet the costs, in whole or in part, of the liability incurred by the employer by reason of his rejection of the Nevada industrial insurance act. Any such employer who makes a deduction for such purpose from the salary or wage of any employee shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred ($100) dollars nor more than five hundred ($500) dollars for each offense. It is hereby made the duty of the district attorney of the county where a violation of this provision is charged to prosecute such cases upon complaint of the commission, or upon complaint of any employee who submits proper evidence of a violation of this provision.

SEC. 3. Section 4 of the above-entitled act, * * * is hereby amended so as to read as follows:

Election in force.

SEC. 4. (a) When the employer has accepted the terms of this act, or the employee has rejected the terms thereof in compliance with the provisions of this act, such election shall continue and be in force until such employer shall thereafter reject the provisions of this act, or said employee accept the provisions of this act, respectively, as provided in subsection (b) of this section.

(b) When an employer accepts, or an employee rejects, the provisions of this act, such party may at any time thereafter elect

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to waive such acceptance or rejection by giving notice in writing in the same manner required by the employer in accepting, or by the employee in rejecting, the provisions of this act, and which shall become effective when filed with the Nevada Industrial Commission.

SEC. 4. Section 21 of the above-entitled act is hereby amended so as to read as follows:

Premiums.

SEC. 21. (a) Every employer electing to be governed by the provisions of this act shall, on or before the first day of July, A. D. 1917, and monthly thereafter, pay to the Nevada Industrial Commission for a State insurance fund premiums in such a percentage of his estimated total pay roll as shall be fixed by order of the Nevada Industrial Commission: *Provided, however,* That all premium rates now in effect shall be continued in full force and effect until changed, altered or amended by order of the Nevada Industrial Commission.

The Nevada Industrial Commission may require all premiums required by this act to be paid for three months in advance upon the estimated pay roll of the employer, unless the commission be satisfied of the financial responsibility of the employer, or unless a good and sufficient surety bond for the payment of premiums be given by the employer to the Nevada Industrial Commission.

(b) The Nevada Industrial Commission shall have the power, as experience and conditions demand, to increase or decrease the rates above provided; sixty days' notice of any change in rate shall be given before the same shall become effective; the commission shall have the power, and it shall be their duty, to classify occupations with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premiums of the same, based upon the total pay roll and number of employees in each of said classes of occupation and sufficiently large to provide an adequate fund for the compensation provided for in this act, and to create a surplus sufficiently large to guarantee a satisfactory State insurance fund from year to year.

SEC. 5. Section 23 of the above-entitled act is hereby amended to read as follows:

Medical, etc., aid.

SEC. 23. (a) Every injured employee within the provisions of this act shall be entitled to receive, and shall receive promptly, such medical, surgical and hospital or other treatment, nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members as may reasonably be required at the time of the injury and within ninety days thereafter, which may be extended to one year by the Nevada Industrial Commission. The benefits conferred by this paragraph upon the injured employee shall hereinafter be termed "accident benefits."

Benefit fund.

(b) For the purpose of providing a fund to take care of said accident benefits as in this act provided the Nevada Industrial Commission is authorized and directed to collect a premium upon the total pay roll of every employer except as hereinafter provided in such a percentage as the commission shall by order fix; every employer paying such premium shall be relieved from furnishing accident benefits, and the same shall be provided by the Nevada Industrial Commission. Every employer paying such premium for accident benefits may collect one-half thereof, not to exceed one dollar per month, from each employee, and may deduct the same from the wages of such employee.

Employees to pay one-half.

Rules.

The Nevada Industrial Commission shall have the authority to adopt such reasonable rules and regulations as may be necessary to carry out the provisions of this subdivision of this section. All fees and charges for such accident benefits shall be subject to regulation by the commission, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living.

The State insurance fund provided for in this act shall not be liable for any accident benefits provided by this section, but the

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fund provided for accident benefits shall be a separate and distinct fund, and shall be so kept.

First aid. (c) It shall be the duty of every employer accepting the provisions of this act, immediately upon the occurrence of any injury to any of his employees, to render to such employee all necessary first aid, including cost of transportation of the injured employee from the place of injury to the nearest place of proper treatment where the injury is such as to make it reasonably necessary for such transportation; such employer shall forthwith notify the commission of such accident, giving the name of the injured employee, the nature of the accident and where and by whom the injured employee is being treated, and the date of the accident. Every employer paying accident benefit premiums to the Nevada Industrial Commission furnishing such first aid shall be entitled to receive from the commission the amount of such expenditure reasonably made.

Joint arrangements. (d) Every employer operating under this act alone or together with other employers may make arrangements for the purpose of providing accident benefits as defined in this act for injured employees, and such employers may collect one-half of the cost of such accident benefits from their collective employees, not to exceed one dollar per month from any one employee, and may deduct the same from the wages of each employee. Employers electing to make such arrangements for providing accident benefits shall notify the Nevada Industrial Commission of such election, and in the event of failure to so notify said Nevada Industrial Commission of such election they shall be liable for premiums for accident benefits as heretofore provided by subdivision (b) of this section.

Insufficient aid. (e) If it be shown or the commission finds that the employer is furnishing the requirements of medical, surgical, or hospital aid or treatment provided for in this act in such a manner that there are reasonable grounds for believing that the health, life, or recovery of the employee is being endangered or impaired thereby, the commission may, upon application of the employee or upon its own motion, order a change in the physician or other requirements, and if the employer fails to promptly comply with such order, the injured employee may elect to have such medical, surgical, or hospital aid or treatment provided by or through the Nevada Industrial Commission, in which event the cause of action of said injured employee against the employer or hospital association shall be assigned to the Nevada Industrial Commission for the benefit of the State insurance fund, and the Nevada Industrial Commission shall furnish to said injured employee the medical, surgical, or hospital aid or treatment provided for in this act.

SEC. 6. Section 25 of the above-entitled act * * * is hereby amended so as to read as follows:

Compensation. SEC. 25. Every employee in the employ of an employer within the provisions of this act, who shall be injured by accident arising out of and in the course of employment, or his dependents, as hereinafter defined, shall be entitled to receive the following compensation:

(A) DEATH BENEFITS.

Death. If the injury causes death, the compensation shall be known as a death benefit, and shall be payable in the amount and to and for the benefit of the persons following:

1. Burial expenses not to exceed one hundred and twenty-five ($125) dollars in addition to the compensation payable under this act.

2. To the widow, if there is no child, thirty per cent of the average wage of the deceased. This compensation shall be paid until her death or remarriage, with two years' compensation in one sum upon remarriage.

3. To the widower, if there is no child, thirty per cent of the average wage of the deceased, if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or remarriage.

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4. To the widow or widower, if there is a child or children, the compensation payable under clause (1) or clause (2), and in addition the additional amount of ten per cent of such wage for each such child until the age of eighteen years, not to exceed a total of sixty-six and two-thirds per cent for such widow or widower and the children. If the children have a guardian other than the surviving widow or widower, the compensation on account of such children may be paid to such guardian. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of eighteen years, or if over eighteen years, and incapable of self-support, becomes capable of self-support.

5. If there be surviving child or children of the deceased under the age of eighteen years, but no surviving wife (or dependent husband) then for the support of each such child until the age of eighteen years, fifteen per cent of the wages of the deceased: *Provided*, That the aggregate shall in no case exceed sixty-six and two-thirds per cent of such wages.

6. If there be no surviving wife (or dependent husband) or child under the age of eighteen years, there shall be paid to the parent or parents, if wholly dependent for support upon the deceased employee at the time of his death, twenty-five per cent of the average monthly wage of the deceased during dependency; to the brothers or sisters, under the age of eighteen years, if one is wholly dependent upon the deceased employee for support at the time of the injury causing death, twenty per cent of the average monthly wage for the support of such brother or sister, until of the age of eighteen years. If more than one brother or sister is wholly dependent, thirty per cent of the average monthly wage at the time of the injury causing death, divided among such dependents share and share alike. If there is no one of them wholly dependent, but one or more partly dependent, ten per cent divided among such dependents share and share alike.

7. In all other cases, questions of total or partial dependency shall be determined in accordance with the facts as the facts may be at the time of the injury. If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid shall be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the employee to such partial dependents bears to the average wage of deceased at the time of the injury resulting in his death. The duration of such compensation to partial dependents shall be fixed by the commission in accordance with the facts shown, but in no case shall exceed compensation for one hundred months.

8. Compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the commission may, from time to time, apportion such compensation between them in such way as it deems best for the interests of all beneficiaries.

If a dependent to whom a death benefit is to be paid is an alien not residing in the United States the compensation shall be only sixty (60) per cent of the amount or amounts above specified.

9. Any excess of wages over one hundred and twenty ($120) dollars a month shall not be taken into account in computing compensation for death benefits.

10. In such cases where compensation is awarded to the widow, dependent children, or persons wholly dependent, no lump-sum settlement shall be allowed.

(B) TOTAL DISABILITY.

Total disability.

1. Temporary total disability: For temporary total disability, compensation of fifty per cent (50%) of the average monthly wage, but not more than seventy dollars ($70) nor less than twenty dollars ($20) per month for a period not to exceed twelve

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(12) months. At the end of twelve (12) months from the date of injury, should the disability persist and exist, a physical examination of the injured man shall be made and the character and quality of the disability determined. Thereafter, the compensation shall not exceed the sum of sixty dollars ($60) per month.

2. Permanent total disability: In cases of total disability adjudged to be permanent, compensation of fifty per cent (50%) of the average monthly wage, but not less than twenty dollars ($20) per month nor more than fifty dollars ($50) per month during the life of the injured person.

In cases of the following specified injuries, in the absence of proof to the contrary, the disability caused thereby shall be deemed total and permanent:

1. The total and permanent loss of sight in both eyes.
2. The loss by separation of both legs at or above the knee.
3. The loss by separation of both arms at or above the elbow.
4. An injury to the spine resulting in permanent and complete paralysis of both legs and both arms.
5. An injury to the skull resulting in incurable imbecility or insanity.
6. The loss by separation of one arm at or above the elbow, and one leg by separation at or above the knee, may be deemed a permanent total disability.

The above enumeration is not taken as exclusive; and in all other cases, permanent total disability shall be determined in accordance with the facts.

(C) PARTIAL DISABILITY.

Partial disability.

1. Temporary partial disability: For temporary partial disability, one-half of the difference between the wages earned before the injury and the wages which the injured person is able to earn thereafter, but not more than forty dollars ($40) per month for a period not to exceed sixty (60) months during the period of said disability. For the purpose of this provision any excess of wages over one hundred and forty dollars ($140) per month shall not be taken into account in computing compensation for temporary partial disability.

Schedule.

2. In case of any of the following specified injuries, the disability caused thereby shall be deemed a permanent partial disability, and the amounts named, subject to a minimum of twenty dollars ($20) per month and a maximum of sixty dollars ($60) per month, shall be paid in addition to the compensation paid for temporary total disability.

(a) For the loss of a thumb, fifty per cent (50%) of the average monthly wages during fifteen (15) months.

(b) For the loss of the first finger, commonly called the index finger, fifty per cent (50%) of the average monthly wages during nine (9) months.

(c) For the loss of a second finger, fifty per cent (50%) of the average monthly wages during seven (7) months.

(d) For the loss of the third finger, fifty per cent (50%) of [the average monthly wages during five (5) months].

[(e) For the loss of the fourth finger, commonly called the] little finger, fifty per cent (50%) of the average monthly wages during four (4) months.

(f) The loss of the distal or second phalange of the thumb, or the distal or third phalange of the first, second, third, or fourth finger, shall be considered a permanent partial disability, and equal to the loss of one-half of such thumb or finger, and compensation shall be one-half of the amount specified for the loss of the entire thumb or finger.

(g) The loss of more than one phalange of the thumb or finger shall be considered as the loss of the entire finger or thumb: *Provided, however,* That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

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(h) For the loss of a great toe, fifty per cent (50%) of the average monthly wages during seven (7) months.

(i) For the loss of one of the toes other than the great toe, fifty per cent (50%) of the average monthly wages during two and one-half months.

(j) However, the loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

(k) The loss of more than one phalange shall be considered as the loss of the entire toe.

(l) For the loss of a hand, fifty per cent (50%) of the average monthly wages during forty (40) months.

(m) For the loss of an arm, fifty per cent (50%) of the average monthly wages during fifty (50) months.

(n) For the loss of a foot, fifty per cent (50%) of the average monthly wages during thirty-five (35) months.

(o) For the loss of a leg, fifty per cent (50%) of the average monthly wages during forty-five (45) months.

(p) For the loss of an eye, fifty per cent (50%) of the average monthly wages during twenty-five (25) months.

(q) For permanent and complete loss of hearing in one ear, fifty per cent (50%) of the average monthly wages during twenty (20) months.

(r) For permanent and complete loss of hearing in both ears, fifty per cent (50%) of the average monthly wages during sixty (60) months.

(s) The permanent and complete loss of the use of a finger, toe, arm, hand, foot, or leg may be deemed the same as the loss of any such member by separation.

(t) The permanent and complete loss of sight in one eye may be deemed as the loss of one eye.

(u) Facial disfigurement: For permanent disfigurement about the head or face, which shall include injury to or loss of teeth, the commission may allow such sum for compensation thereof as it may deem just, in accordance with the proof submitted, but said compensation shall not exceed fifty per cent (50%) of the average monthly wage, nor to exceed sixty dollars ($60) per month during twelve (12) months.

Other injuries.

(v) In all cases of permanent partial disability, not otherwise specified in the foregoing schedule, the percentage of disability to the total disability shall be determined. For the purpose of computing compensation a disability that is partial in character but permanent in quality, the sum of sixty dollars ($60) per month for the period of one hundred (100) months shall represent a one hundred per cent (100%) disability.

Age, occupation, etc., to be considered.

In determining the percentage of disability, consideration shall be given, among other things, to any previous disability, the occupation of the injured employee, the nature of the physical injury, and the age of the employee at the time of the injury; and the compensation paid therefor shall be the percentage of the disability caused by the injury times fifty per cent (50%) of the average monthly wage, not to exceed sixty dollars ($60) per month, for one hundred (100) months during the life of the injured employee. Whenever the monthly payments under this subsection are so small that the payments thereof during the full period will work a hardship on the beneficiary, or be of no substantial benefit, the period may be shortened and the payments correspondingly increased in such manner that the same may be of substantial benefit to the injured employee.

Second injuries.

(w) Where there is a previous disability as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

Powers of commission.

(x) The commission may adopt a schedule for rating permanent disabilities and reasonable and proper rules to carry out the provisions of this subsection.

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Refusing medical aid.

No compensation shall be payable for the death or disability of an employee, if his death be caused by, or in so far as his disability may be aggravated, caused or continued by an unreasonable refusal or neglect to submit to or follow any competent and reasonable surgical treatment or medical aid.

SEC. 7. Section 26 of the above-entitled act * * *. is hereby amended so as to read as follows:

Dependence.

SEC. 26. (a) The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee:

1. A wife upon a husband whom she has not voluntarily abandoned at the time of the injury.

2. A husband, mentally or physically incapacitated from wage earning, upon a wife whom he has not voluntarily abandoned at the time of injury.

3. [(a)] A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of eighteen years, or over that age, if physically or mentally incapacitated from wage earning upon the parent with whom he or they are living at the time of the injury resulting in the death of such parent, there being no surviving parent. Step-parents may be regarded in this act as parents, if the fact of dependency is shown, and a stepchild or stepchildren may be regarded in this act as a natural child or children, if the existence and fact of dependency is shown.

(b) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident or injury to the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefits shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or to their legal guardians or trustees.

SEC. 8. Section 33 of the above-entitled act is hereby amended so as to read as follows:

Reports of injuries.

SEC. 33. (a) Every employer electing to be governed by the provisions of this act, and every physician and surgeon who attends an injured employee, within the purview of this act, is hereby required to file with the commission, under such rules and regulations as the commission may from time to time make, a full and complete report of every known injury to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such report shall be furnished to the commission in such form and in such detail as the commission may, from time to time prescribe, and shall make special answers to all questions required by the commission under its rules and regulations. It shall be unlawful for any person, firm or corporation, agent or officer of any firm or corporation, or any attending physician or surgeon to fail or refuse to comply with any of the provisions of this section; and any person, firm, or corporation, agent or officer of any firm or corporation, or physician or surgeon, who fails or refuses to comply with the provisions of this section, shall be guilty of a misdemeanor for each and every offense, and, upon conviction thereof, shall be punished by a fine of not less than fifty ($50) dollars nor more than two hundred ($200) dollars.

(b) Any physician, having attended an employee within the purview of this act, in a professional capacity, may be required to testify before the commission when it shall so direct. Information gained by the attending physician or surgeon, while in attendance on the injured man, shall not be considered a privileged communication, if required by the commission for a proper understanding of the case and a determination of the rights involved.

(c) Whenever any accident occurs to any employee, it shall be the duty of the employee to forthwith report such accident and the injury resulting therefrom to the employer, and it shall also be the duty of any physician employed by such injured employee

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to forthwith report such accident and the injury resulting therefrom to the employer and to the Nevada Industrial Commission. Whenever any accident occurs to any employee, and knowledge of same comes to the attention of the employer by such report or otherwise, the employer may at once designate, and send the physician so chosen by such employer and authorized by such employer in writing; and the physician, so chosen, shall be permitted by the employee or any person or persons in charge of said employee to make one examination of said injured employee in order to ascertain the character and extent of the injury occasioned by such accident. Thereupon, it shall be the duty of the said physician, so chosen, to forthwith report to the employer and to the Nevada Industrial Commission the character and extent of the said injury, as so ascertained by said physician.

(d) If the happening of the said accident, or the infliction of said injury to said employee, shall not have been reported by said employee or his said physician forthwith, as above described and immediately after the happening of said accident and injury, or if the said injured employee or those in charge of him (the injured employee being a party to the refusal) shall refuse to permit the employer's physician, so chosen, to make such examination, no compensation shall be paid for the injury so claimed to result from said accident; but it shall be within the discretion of the Nevada Industrial Commission to relieve said injured person or his dependents from such loss or forfeiture of compensation, if the said Nevada Industrial Commission shall be of the opinion, after investigation, that the circumstances attending the failure on the part of the employee, or of his physician, to report said accident and injury are such as to have excused the said employee and his physician for such failure to so report, and that such relieving of the employee or his dependents from the consequences of such failure to report will not result in an unwarrantable charge against said State insurance fund.

SEC. 10. The above-entitled act is hereby amended by adding an additional section thereto to be known as section 34½, which shall read as follows:

Notice.

SEC. 34½. Notice of the injury for which compensation is payable under this act shall be given to the commission as soon as practicable, but within thirty days after the happening of the accident. In case of the death of the employee resulting from such injury, notice shall be given to the commission as soon as practicable, but within sixty days after such death. The notice shall be in writing and contain the name and address of the injured employee and state in ordinary language the time, place, nature and cause of the injury and be signed by said injured employee, or by a person in his behalf, or in case of death, by one or more of his dependents or by a person on their behalf. No proceeding under this act for compensation for an injury shall be maintained unless the injured employee, or some one in his behalf, files with the commission a claim for compensation with respect to said injury within ninety days after the happening of the accident, or, in case of death, within one year after such death. The notice required by this section shall be served upon the commission, either by delivery to and leaving with it a copy of such notice, or by mailing to it by registered mail a copy thereof in a sealed, postpaid envelope addressed to the commission at its office, and such mailing shall constitute complete service; the failure to give such notice or to file such claim for compensation within the time limit specified in this secton shall be a bar to any claim for compensation under this act, but such failure may be excused by the commission on one or more of the following grounds: (1) That notice for some sufficient reason could not have been made. (2) That failure to give such notice will not result in an unwarrantable charge against the State insurance fund. (3) That the employer had actual knowledge of the occurrence of the accident resulting in such injury. (4) That failure to give notice was due to employee's or beneficiary's mistake or ignorance of fact or of

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law, or of his physical or mental inability, or to fraud, misrepresentation or deceit.

SEC. 10. The above-entitled act is hereby amended by adding an additional section thereto to be known as section 40½, which shall read as follows:

Accounts to be audited.

SEC. 40½. It shall be the duty of the industrial commission board, provided for by section 8 of this act, annually or as often as they may deem necessary to make an audit of all books of accounts and record and of funds and securities of the Nevada Industrial Commission, and said industrial commission board is authorized to employ and fix the compensation of a competent accountant for the purpose of making such audit or audits, the expenses thereof to be paid out of the State insurance fund.

SEC. 10½. Section 37 of the above-entitled act is hereby repealed.

Approved March 27, 1917.

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NEW JERSEY.

ACTS OF 1917.

CHAPTER 178.—*Workmen's compensation insurance.*

SECTION 1. This act shall be known as the workmen's compensation insurance act. Title.

ARTICLE I.

SEC. 2. Any employer, except the State or a municipality, or county or school district, who by agreement, express or implied, is now or hereafter becomes subject to the provisions of section two of an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven, and the amendments thereof and supplements thereto, hereinafter referred to as the workmen's compensation act, as therein provided, shall forthwith make sufficient provision for the complete payment of any obligation which he may incur to any injured employee or his dependents under the provisions of section two of said workmen's compensation act, by one of the following methods, as hereinafter set forth in sections three and four of this act; and he shall, upon demand, file with the commissioner of banking and insurance proof in such forms as hereinafter set forth. Any corporation, firm, or person, refusing or failing to comply shall, for each offense, be liable to a penalty of fifty dollars, to be recovered in an action of debt, brought by the commissioner of banking and insurance, in the name of the State of New Jersey. Each failure to comply shall be regarded as a separate offense. Insurance required.

SEC. 3. Providing the employer can reasonably satisfy the commissioner of banking and insurance as to the permanence and financial standing of his business, he may carry his own liability insurance. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the commissioner of banking and insurance showing his financial ability to pay such compensation, whereupon the commissioner of banking and insurance, if satisfied of the applicant's financial ability, shall by written order make such exemption. The commissioner of banking and insurance may, from time to time, require further statements of the financial ability of such employer, and, if at any time in the opinion of the commissioner of banking and insurance such employer appear no longer able to pay compensation, the commissioner shall revoke his order granting exemption; in which case the employer shall immediately insure his liability in a mutual association or other insurance company. Any employer providing insurance according to the provisions of this section may, for his own protection, reinsure the whole or any part of his risk. Such contract of insurance shall operate only between the employer and his insurance carrier, and shall not be subject to any of the provisions of this act. Self-insurance.

SEC. 4. Every employer not operating under section three of this act as hereinbefore set forth shall insure and keep insured his liability in any stock company or mutual association au- Stock, etc., companies.

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thorized to engage in workmen's compensation or employer's liability insurance in this State. If insurance be affected by either method mentioned in this section, said insurance company or mutual assocation shall file with the commissioner of banking and insurance a notice setting forth the name of such insurance company, its principal office in this State, together with a copy of the policy of insurance and copies of all endorsements attached and such other data in relation thereto as the commissioner of banking and insurance may require.

Failure to insure.

SEC. 5. Any employer who shall fail to provide the protection prescribed in this act within ninety days after it becomes effective shall be liable to a fine of not more than one dollar for each of his employees per day, not to exceed one hundred dollars per day for the period such failure shall continue, recoverable by the commissioner of banking and insurance in the name of the State of New Jersey, in an action of debt.

Notice.

SEC. 6. Every employer who has complied with the provisions of this act shall post and maintain in a conspicuous place or places in and about his place or places of business, typewritten or printed notices stating the fact that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this act, and shall name the company or companies insuring his liability, or shall state the fact that the employer has qualified before the commissioner of banking and insurance for the carrying of his own liability.

Cancellation of contracts.

SEC. 7. No contract of insurance issued by a stock company or mutual association against liability arising under the said workmen's compensation act shall be canceled within the time limited in such contract for its expiration, until at least ten days after notice of cancellation of such contract on a date specified in such notice shall be filed in the office of the commissioner of banking and insurance, and also served on the employers. Such notice shall be served on the employer by delivering it to him or sending it by registered letter, addressed to the employer at his or its last known place of business: *Provided*, That if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to the agent or any officer of the corporation upon whom legal process may be served.

Employer liable.

SEC. 8. An employer securing the payment of compensation by any of the methods prescribed in section four of this act notwithstanding, shall be liable primarily for the payment of proper compensation for personal injuries or death sustained by his employees. The employer shall have recourse for the amount thereof against his insurance carrier. But the insurance carrier shall be directly liable to the injured employee, or his dependents, in event of the death, insolvency, bankruptcy or other proceedings, as a result of which the conduct of the employer's business may be and continue to be in the charge of an executor, administrator, receiver, trustee or assignee.

Provisions of contracts.

SEC. 9. Every contract of insurance covering the liability of an employer for compensation to injured employees or their dependents, under the provisions of section two of the said workmen's compensation act, hereafter written by a stock company or a mutual association, shall provide, or be construed to provide, that it is made for the benefit of the several employees of the insured employer and their dependents, and that such contract may be enforced by any of such employees or their dependents, suing thereon in his or their names as though distinctly made party thereto.

Same.

SEC. 10. Every such contract shall further provide, or be construed to provide, that any injured employee or his dependents may enforce the provisions thereof to his or their benefit, either by agreement with the employer and the insurance carrier, in event that compensation be settled by agreement, or by joining the insurance carrier with the employer in his petition filed for the purpose of enforcing his claim for compensation, or by subse-

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quent application to the court of common pleas, upon the failure of the employer, for any reason, to make adequate and continuous compensation payments.

Effect of notice to employer.

SEC. 11. Every such contract shall provide, or be construed to provide, that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation.

Death, insolvency, etc.

SEC. 12. Every such contract shall provide, or be construed to provide, that, upon the death, insolvency or bankruptcy of the insured employer, or upon his assignment for the benefit of creditors, the insurance carrier shall immediately become directly liable for all compensation payments due to any injured employee or his dependents by virtue of prior agreement or award until completion thereof, or that may thereafter become due during the period for which the requisite premiums have been paid by such employer.

Self-insurers.

SEC. 13. Nothing herein contained shall be held to apply to a contract for insurance between an insurance carrier and an employer who has provided self-insurance.

Limitations forbidden.

SEC. 14. No policy of insurance against liability arising under this act shall contain any limitations of the liability of the insurer to an amount less than that payable by the insured on account of the risk insured against under this act, nor shall any such policy contain any limitation of the total liability of the insurer because of injuries to two or more persons in a single accident, nor shall any such policy of insurance or any indorsement thereon insure the employer against any liability whatsoever other than liability arising under this act, nor shall any actions be maintained for the collection of premiums on any policy violating this act; but a policy may be issued to an employer insuring him against his liability under this act upon any particular business, plant, or employment carried on by him, provided that all other businesses plans, or employments carried on by the same employer are insured or exempted as provided for in this act.

Classifications, etc., to be filed.

SEC. 15. Every insurance company or mutual association which insures employers against liability for compensation under this act shall file with the commissioner of banking and insurance its classifications of risks and premiums and rules pertaining thereto, together with the basis rate and system of merit or schedule rating, which system of merit or schedule rating shall be applied as hereinafter provided. Neither classifications nor risks, rules pertaining thereto, basis rates, nor system of merit or schedule rating shall take effect until the commissioner of banking and insurance shall have approved the classifications, rules, basis rates, and system of merit or schedule rating, as reasonable and adequate for the risks to which they respectively apply. The commissioner of banking and insurance may withdraw his approval of any classification, rule, basis rate, or system of merit or schedule rating if he shall find that such classification, rule, rate or system of merit or schedule rating is unreasonable or inadequate for the risk to which they respectively apply. To secure the impartial application of the approved classifications, rules, rates, or system of merit or schedule rating, the commissioner of banking and insurance is hereby authorized to create, organize, and supervise such rate, and inspection bureau or bureaus with such jurisdiction under his supervision as hereinafter provided. No insurance company or mutual association writing workmen's compensation or employer's liability insurance in this State under this act shall issue, renew, or carry any insurance for compensation under this act, except in accordance with the classifications, rules, basis rates, and system of merit or schedule rating approved

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by the commissioner of banking and insurance as aforesaid and applied by the rating and inspection bureau or bureaus: *Provided, however,* That any departure from the basis rate filed with and approved by the commissioner of banking and insurance on account of the application of a system of merit or schedule rating approved by the commissioner of banking and insurance shall be clearly set forth in the insurance contract or indorsements attached thereto.

ARTICLE II.

Rating and inspection bureau.

SECTION 1. There is hereby created under the supervision of the commissioner of banking and insurance, in order to carry out the purposes of this act, a bureau to be known as the Compensation Rating and Inspection Bureau of New Jersey, with the following objects, functions and sources of income:

(a) To maintain rules, regulations and premium rates for workmen's compensation insurance and equitably adjust the same, as far as practicable, to the hazard of individual risks, by inspection by the bureau.

(b) To adopt means for assuring uniform and accurate audit of pay rolls on policies by pay-roll auditors, appointed by the bureau under the supervision of the Compensation Rating and Inspection Bureau of New Jersey, with the approval of the commissioner of banking and insurance.

(c) To furnish upon request of any employer in the State of New Jersey or to any member of the Compensation Rating and Inspection Bureau of New Jersey, upon whose risk a compensation rate has been promulgated, information as to such rating, including the method of its computation, and to encourage employers to reduce the number and severity of accidents by offering reduced premium rates for improved working conditions under such uniform system of merit or schedule rating as may be approved by the commissioner of banking and insurance of the State of New Jersey.

Companies to become members.

SEC. 2. Before the commissioner of banking and insurance shall grant permission to any mutual association or stock company to write compensation or liability insurance in this State, it shall be a requisite that they shall become members of the Compensation Rating and Inspection Bureau of New Jersey.

(a) Each member of the compensation rating and inspection bureau writing the workmen's compensation or liability insurance in the State of New Jersey shall, as a requisite thereto, be represented in the aforesaid bureau and shall be entitled to one representative and one vote in the administration of the affairs of the bureau.

Rules.

(b) The bureau when created shall adopt such rules and regulations for its procedure and provide such income as may be necessary for its maintenance and operation.

Chairman.

(c) The commissioner of banking and insurance of the State of New Jersey shall appoint a special deputy to be ex officio chairman of the Compensation Rating and Inspection Bureau of New Jersey; in his absence or inability to serve, such further person as designated by the commissioner of banking and insurance shall preside in his stead.

Officers.

(d) All officers, members of committees and employees of the Compensation Rating and Inspection Bureau of New Jersey shall be subject to the approval and ratification of the commissioner of banking and insurance.

Actuary.

SEC. 3. In order to carry into effect the object of this act, the commissioner of banking and insurance is authorized to employ an actuary and such additional assistance in his department as is necessary, and fix their compensation, and the commissioner of banking and insurance is hereby authorized to compel the production of all books, data, papers, and records relating to, or bearing upon such data as is necessary for the actuary to compile statistics for the purpose of determining the pure cost of workmen's compensation insurance in New Jersey, and this information

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shall be available and [sic] for the use of the compensation rating and inspection bureau for the compilation and promulgation of rates for workmen's compensation insurance.

Excepted classes.

SEC. 4. If and when any class or classes of employers or employees shall be excepted from the provisions of section two of the workmen's compensation act by an act of the legislature, prepared for that purpose from the date when such acts shall become effective, such employers as may be thereby excepted shall thereupon and from thenceforward, by this provision of this act, be likewise excepted from the provisions hereof.

Farm and domestic labor.

SEC. 5. Nothing in this act contained shall apply to any employer of farm laborers or domestic servants.

Provisions severable.

SEC. 6. If any part of this act be adjudged unconstitutional, it shall not invalidate the remainder of this act.

Approved March 27, 1917.

CHAPTER 262.—*Workmen's compensation insurance—Application of law.*

Existing contracts.

SECTION 1. The provisions of a bill pending entitled "An act concerning the compulsory insurance of compensation payments arising under section two of the act entitled 'An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder,' approved April fourth, one thousand nine hundred and eleven," hereinafter referred to as the workmen's compensation act, are hereby extended to and shall be applicable to and control all contracts of employment existing or which shall hereafter exist under the provisions of section one of the said workmen's compensation act, provided said bill becomes a law.

Approved March 31, 1917.

ACTS OF 1918.

CHAPTER 149.—*Workmen's compensation bureau.*

Workmen's compensation bureau. Members.

SECTION 1. There is hereby created in the department of labor a bureau to be known as the Workmen's Compensation Bureau. Such bureau shall be composed of the commissioner of labor, who shall act as chairman thereof, for which service he shall receive the sum of fifteen hundred dollars per year; three deputy commissioners of compensation, one of whom shall be its secretary, and such referees and other employees as may, in the judgment of the commissioner of labor, be necessary.

Deputies and assistants.

SEC. 2. The deputy commissioners, secretary of said bureau, referees and other employees shall be appointed by the commissioner of labor in accordance with the provisions of an act entitled "An act regulating the employment, tenure, and discharge of certain officers and employees of this State, and of various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight: *Provided, however*, That the secretary and referees now holding office in the workmen's compensation aid bureau shall be appointed deputy commissioners of compensation, and the other employees of the workmen's compensation aid bureau shall be transferred to such positions in the bureau created by this act as the commissioner of labor shall direct, and shall continue as employees of said last-mentioned bureau, unless removed in accordance with the provisions of the act aforesaid. The salaries of the deputy commissioners, referees and other employees shall be fixed by the commissioner of labor.

Proviso.

Present employees.

Salaries.

Jurisdiction.

SEC. 3. The commissioner of labor, the deputy commissioners and the referees appointed under this act, either sitting indi-

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vidually or together, shall have exclusive original jurisdiction of all claims for compensation arising under the act to which this act is a supplement, and the acts amendatory thereof and supplemental thereto.

Copy of agreement filed.

SEC. 4. Whenever an employer or his insurance carrier and an injured employee, or the dependents of a deceased employee, shall, by agreement, duly signed, settle upon and determine the compensation due to the injured employee, or to the dependents of a deceased employee, as provided by law, the employer or the insurance carrier shall forthwith file with the bureau a true copy of such agreement. Such agreement shall not bind the employer or injured employee, or the dependents of a deceased employee, unless approved by the bureau. If an agreement for lawful and adequate compensation, approved by the bureau, is not filed within twenty-one days after the date of the happening of the injury, the bureau shall, so far as practicable, endeavor to bring about a settlement of the pending claim. If no petition is filed by the injured employee, or the dependents of a deceased employee, the bureau may institute an inquiry on its own motion, to determine the reasons for the failure to agree as to compensation, and may, either before or after the institution of such inquiry, with the consent of the injured employee, or the dependents of a deceased employee file a petition for compensation. When such petition is filed by said bureau, on its own initiative, the subsequent proceedings shall be the same as is hereinafter set forth in cases where the claimant files a petition.

Approval.

Procuring settlement.

Claim within a year.

SEC. 5. Every claimant for compensation under the act to which this act is a supplement [chapter 95, Acts of 1911], or its supplements or amendments, shall, unless a settlement is effected or an application made to the bureau, or a petition filed under the provisions of section four, file a petition in duplicate with the secretary of said bureau in his office, at the statehouse, in Trenton, within one year after the date on which the accident occurred, or in case an agreement for compensation has been made between such employer and such claimant, then within one year after the failure of the employer to make payment pursuant to the terms of such agreement; or in case compensation has been paid by such employer, then within one year after the last payment of compensation. A payment, or agreement to pay by the insurance carrier, shall for the purpose of this section be deemed a payment or agreement by the employer. The petition shall state the respective addresses of the petitioner and of the defendant, and shall be in the form now required by the act to which this act is a supplement. Said bureau shall prepare and print forms of petitions and shall furnish assistance to claimants in the preparation of such petitions, when requested so to do.

Petition to show what.

Service.

SEC. 6. Within five days after the filing of such petition, or as soon thereafter as is practicable, the secretary shall cause a copy of such petition to be served upon such employer by a process server of said bureau in the manner now provided by law for the service of summons. Annexed to said copy so served shall be a notice directing the employer to file his answer thereto with the secretary of said bureau within the time now or hereafter limited by the act to which this act is a supplement for the filing of answers. The answer shall state the address of the defendant and shall be in the form now required by the act to which this act is a supplement.

Answer.

Hearing.

SEC. 7. Within ten days after the filing of said answer, or in case no answer is filed, within ten days after the expiration of the time for filing an answer, the secretary of said bureau shall fix a time when and a place where he shall hear said petition, or shall send a transcript of the petition and answer to the commissioner of labor, a deputy commissioner or one of the referees, in which case such commissioner of labor, deputy commissioner, or such referee, within fifteen days after the filing of said answer, shall fix a time and place for the hearing of said petition. Such time shall be not less than four weeks nor more than six weeks

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after the filing of said petition. Such petition shall be heard either in the county in which the injury occurred or in which the petitioner or defendant resides, or in which the defendant's place of business is located, or in which such defendant may be served with process. When a time and place has been fixed for such hearing, the commissioner of labor, deputy commissioner, or the referee to whom the cause has been referred shall give at least ten days' notice to each party of the time and place for hearing. The commissioner of labor, deputy commissioner, or any referee to whom any cause has been referred, shall have power to adjourn the hearing thereof from time to time in his discretion. Notice of hearing.

SEC. 8. It shall be sufficient service of any paper, except the original notice to the defendant, if the same is sent by registered mail, addressed to the petitioner at the address contained in said petition, or to the defendant at the address contained in said answer. Service of papers.

SEC. 9. At such hearing evidence, exclusive of ex parte affidavits, may be produced by both parties, but the official conducting such hearing shall not be bound by the rules of evidence. Evidence.

SEC. 10. The procedure for the determination of claims by said bureau, except as herein otherwise provided, shall be conducted in the manner provided by the act to which this act is a supplement, and its supplements and amendments. The commissioner of labor, each deputy commissioner, and each referee shall have the same power as the court of common pleas under the act to which this act is a supplement, to modify any award of compensation and to provide for the commutation of any such award. Procedure. Power to modify award.

SEC. 11. A statement containing the date and place of hearing, the names of the witnesses summoned, and the substance of the testimony of each witness, together with the judgment of the commissioner, secretary, or referee, shall be legibly written in ink or typewritten and filed in the office of the secretary at Trenton, by the officer hearing said cause, within fifteen days after such judgment, which statement, together with the petition and answer, shall constitute the record of the cause. A copy of the judgment of the commissioner, deputy commissioner, or referee, if such judgment results in an award to the petitioner, shall, as soon as practicable after the same is rendered, be filed in the office of the clerk of the county in which the hearing was held, and when so filed shall have the same effect and may be collected and docketed in the same manner as judgments of the court of common pleas under the act to which this act is a supplemnet. The secretary shall, within fifteen days after the rendering of the judgment, mail to each of the parties a statement of the substance of such judgment. The judgment of the said bureau shall be final and conclusive between the parties and shall bar any subsequent action or proceeding, unless reopened by the said bureau or appealed as hereinafter provided. Statement. Judgment to be filed. Bar to other action.

SEC. 12. The secretary of said bureau shall keep a docket in which shall be entered the title of each cause, the date of the determination thereof, and the filing of the judgment with the county clerk, if such judgment is filed, the date of appeal, if any, and the date on which the record in case of appeal was transmitted to the clerk of the court of common pleas. The secretary shall also file the record of each case left with him by a referee or the commissioner, and shall keep a card index of such record in such manner as to afford ready reference thereto. Such records shall be open to the inspection of the public. Docket. Records.

SEC. 13. The commissioner of labor, each deputy commissioner, and each of the referees shall have the same power as the court of common pleas to issue subpœnas to compel the attendance of witnesses and the production of books and papers. The fees for the attendance of witnesses shall be such as are now provided for the attendance of witnesses in other civil cases, and shall be paid by the party arranging for the attendance of such witnesses. Such subpœnas shall be authenticated by the seal of the depart- Power of court. Witness fees. Subpœnas.

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ment of labor, and either party to any such proceeding may, without charge, secure subpœnas from the commissioner of labor, a deputy commissioner, or any referee. The failure of any witness, when duly subpœnaed, to attend or give testimony shall be punishable by the court of common pleas in the same manner as such failure is punishable by such court in a case therein pending.

Administering oaths. SEC. 14. The commissioner of labor, each deputy commissioner, and each referee shall have power to administer oaths. Any person who, having been sworn as a witness in any such proceeding, shall willfully give false testimony shall be guilty of perjury.

Public hearings. SEC. 15. All hearings conducted under this act shall be open to the public.

Filing fees. SEC. 16. Neither party shall pay any fees for filing any papers with the said bureau, or with the secretary thereof, and the clerk of any county shall file any papers required by this act to be filed with such clerk without the payment of any fee.

Rules for hearings. SEC. 17. The commissioner of labor and the deputy commissioners may make such rules and regulations for the conduct of such hearing not inconsistent with the provisions of this act or of the act to which this act is a supplement, as may, in his judgment, be necessary. The official conducting any hearing under this act may, in his discretion, allow to the party in whose favor judgment is entered, costs of witness fees and a reasonable attorney fee when, in his judgment, the services of an attorney were necessary for the proper presentation of the case.

Costs.

Deposition of absent witness. SEC. 18. The deposition of any witness whose attendance before said bureau cannot be secured by reason of his absence from the State, or by reason of his physical inability to attend such hearing may be taken upon order of the official to whom said cause has been referred. In any such case the procedure for taking such depositions shall conform as nearly as practicable with the procedure outlined in the act entitled "An act concerning evidence (Revision of 1900)," approved March twenty-third, one thousand nine hundred.

Appeals. SEC. 19. Either party may appeal from the judgment of said commissioner, deputy commissioner or referee, to the court of common pleas of the county in which such hearing was held, by filing with the secretary of said bureau, and with the clerk of the county where such hearing was held, a notice of appeal. Such notice shall be filed within thirty days after such judgment has been rendered and shall briefly describe such judgment and state the intention of the party to appeal therefrom. The filing of such notice shall stay the execution of the judgment until the determination or dismissal of said appeal. The appellant shall, within five days after the filing of a notice of appeal, send to the clerk of the court of common pleas of the county in which such hearing was held, a transcript of the record in said cause, which transcript shall be furnished the said appellant by the secretary of the bureau upon the payment of a fee to be fixed by the commissioner of labor, not to exceed the sum of ten cents per folio. Within five days after the filing of said transcript, the judge of the court of common pleas, upon the application of the appellant, shall fix a time and place for the hearing of said appeal, at least ten days' notice of which shall be served upon the respondent by the appellant. The trial of such appeal shall be a trial de novo, in which the court of common pleas shall in all things follow the procedure prescribed in the act to which this act is a supplement, and the judgment of said court of common pleas on any such appeal shall have the same effect and be collected and docketed in the same manner as judgments of said court under the act to which this act is a supplement. In case the respondent in said appeal is unable to pay counsel, the judge of the court of common pleas shall assign counsel to represent such respondent. Any such appeal may be dismissed by the judge of the court of common pleas if the transcript of the record is not transmitted, or if the appeal is not prosecuted in accordance with the provisions of this act.

Notice.

Notice a stay.

Transcript of record.

Hearing appeal.

Trial.

Counsel.

Dismissal of appeal.

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SEC. 20. The said court of common pleas may, in its discretion, allow a reasonable attorney fee to the party prevailing in the trial of such appeal, which fee may be taxed in the costs and recovered against the unsuccessful party. Attorney's fee.

SEC. 21. In case any portion whatsoever of this act shall be adjudged to be unconstitutional, it shall not invalidate the remaining portions of said act, but shall be regarded as severable therefrom. Validity of act.

SEC. 22. An act entitled "An act creating a workmen's compensation aid bureau in the department of labor," approved March fifteenth, one thousand nine hundred and sixteen [chapter 54], is hereby repealed. Act repealed.

Approved February 28, 1918.

CHAPTER 203.—*Workmen's compensation bureau—Employees leaving no dependents.*

SECTION 1. The employer of every person who shall die as a result of an accident arising out of and in the course of his employment, and who shall leave no dependents entitled to compensation under the provisions of chapter ninety-five of the Session Laws of one thousand nine hundred and eleven, shall, in case the dependents of such employee would have been entitled to compensation under said act had such employee left dependents, pay to the commissioner of labor the sum of four hundred dollars, which sum shall be paid by the commissioner of labor to the state treasurer. Such sum shall be recoverable by an action at law in the name of the State by the commissioner of labor against such employer in any court having jurisdiction of such action. All moneys collected under the provisions of this act shall be used by the commissioner of labor exclusively for the purposes mentioned in an act * * * [chapter 149, acts of 1918]. Payment to State if no dependents. Amount. Use of moneys.

Nothing in this section contained shall apply to any employer who shall not have accepted by agreement, either express or implied, the provisions of section two of chapter ninety-five of the Session Laws of one thousand nine hundred and eleven, as herein provided, and the acceptance of said section two, or the continuance thereunder after the taking effect of this act, shall be deemed an acceptance of all of the provisions of this section. Does not apply, when.

Nothing in this section contained shall relieve the employer from any payments which he is required to make under chapter ninety-five of the Session Laws of one thousand nine hundred and eleven, or any act amendatory thereof or supplemental thereto. Not to relieve employer from payments.

SEC. 2. Before any action for the recovery of such sum shall be commenced by the commissioner of labor, he shall advertise, at least once in each week for four weeks (four insertions), in at least one newspaper published in the county in which the deceased employee resided at the time of such accident, or, in case such deceased employee resided out of this State at said time, or his place of residence can not be ascertained, then either in the county in which the accident occurred or in which place of business of the employer is located, a notice in the following form: Publication of death.

"To the dependents of _____ (naming the deceased employee):

"Take notice that _____ (name of deceased employee) died on the _____ day of _____ (date of death), as the result of an injury received while employed by_____ _____ (name of employer). This notice is given in order that any dependents of said _____ (name of employee) may take advantage of the provisions of chapter ninety-five, P. L. one thousand nine hundred and eleven, within the time required by law. Notice.

_____,
"Commissioner of Labor,
"Statehouse, Trenton, N. J."

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Proof not required.

SEC. 3. No proof of the fact that said deceased employee left no dependent entitled to compensation under chapter ninety-five of the Session Laws of one thousand nine hundred and eleven, or its supplements or amendments, shall be required on the part of the commissioner of labor in any action brought to recover said sum of four hundred dollars, if proof of publication of the above notice under oath is annexed to the complaint filed in any such action.

Subsequent claims.

SEC. 4. In case any dependent of such deceased employee shall make any claim to compensation under chapter ninety-five of the Session Laws of one thousand nine hundred and eleven, or its supplements or amendments, after payment of said sum of four hundred dollars by the employer of any such deceased employee to the commissioner of labor, as aforesaid, such dependent shall

Recovery.

be entitled to recover from said employer as though this act had not been passed; but in any such event, the said employer, upon proving to the said commissioner of labor that he has made a valid agreement to make compensation to said defendent in the manner required by said chapter ninety-five of the Session Laws of one thousand nine hundred and eleven, or its supplements or amendments, or that judgment has been entered against

Repayment to employer.

him in a proceeding under said act to enforce such compensation, shall be entitled to receive repayment of such sum of four hundred dollars by the state treasurer from the said fund, which repayment shall be made upon the certificate of the commissioner of labor, indorsed with the approval of the attorney general.

Validity of act.

SEC. 5. In case any portion whatsoever of this act shall be adjudged to be unconstitutional, it shall not invalidate the remaining portions of said act, but shall be regarded as severable therefrom.

Exemptions.

SEC. 6. This act shall not apply to employers of domestic help or farm labor.

Approved March 4, 1918.

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NEW MEXICO.

ACTS OF 1917.

CHAPTER 83.—*Compensation of workmen for injuries.*

SECTION 1. This act shall be known as the workmen's compensation act. Title.

SEC. 2. Whenever any person, firm or corporation engaged in carrying on, for the purpose of business, trade or gain, within this State, either or any of the extra hazardous occupations or pursuits herein named or described and intended to be affected hereby, shall employ therein as many as four workmen, except as hereinafter provided, such employer shall become liable to, and shall pay to any such workman injured by accident arising out of and in the course of his employment in any such occupation and pursuit, and, in case of his death being occasioned thereby, to such person as may be appointed by the court to receive the same for the benefit of his dependents, compensation in the manner and amount, and at the times, herein required, in event previous to the occurrence of such injury, such employer and injured workman have by an agreement, either express or implied, accepted and agreed to be bound by this act: *Provided*, That if any such injury so occurs to any such workman in such service while at work upon any derrick, scaffolding, pole or other structure ten feet or more above the surface of the ground, this act shall apply without regard to the number of workmen employed at the time: *Provided*, That an employer engaged in any occupation or pursuit not included among the extra hazardous employments herein described, and the workmen employed by him may become subject to this act by written agreement filed in the office of the clerk of the district court of the county in which such occupation or pursuit is carried on. Act applies, when.

SEC. 3. Every such employer engaged in any such occupation shall file in the office of the clerk of the district court for the county in which such workman, is, or it is contemplated at the time of such agreement such workman is to be employed, previous to or within thirty days, after having made any such agreement, express or implied, with such workman (unless the judge of such district court shall, by order duly filed in the office of said clerk, extend the time therefor, in which event the same shall be so filed within the time as so extended) good and sufficient undertaking in the nature of insurance or security for the payment to any and all such injured workmen, or, in case of death, to the person appointed by the court to receive the same, for the benefit of the dependents, if any there be, entitled thereto hereunder; except, that in case any employer shall be able to show to the satisfaction of such judge that he, or it, is financially solvent, and that the giving of such security is unnecessary, such judge shall issue thereto a certificate to that effect, which shall also be filed with said clerk, and thereupon such employer shall be excused from filing such undertaking otherwise required until the further order of such judge, if any, directing otherwise. Public utility corporations doing business generally throughout the State may satisfy this requirement by filing such undertaking in the office of the clerk of the district court of the county wherein such corporation has its principal office in the State or by satisfying the judge of said court of its solvency, and filing the certificate to that effect in the office of such clerk. Such undertaking shall be either in the nature of a policy certificate of guarantee, or insur- Guaranty of payments. Self-insurers. Undertaking required.

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ance, or mutual insurance, issued by some guarantee, insurance or mutual insurance company duly authorized to enter into such character of contracts, or a bond, or other sufficient undertaking, executed by such employer and two or more good and sufficient sureties, owners of real estate in this State, or secured in such other way as the court may, in any special instance, direct. In any case such undertaking, or bond, shall be of sufficient form, and be, in legal effect, an obligation of all parties and sureties executing the same, so that judgment may issue thereupon in any proper case to any workman entitled thereto against both such employer and such insurer or guarantor or sureties or either thereof in event of legal proceedings being brought to recover the same as herein provided. The name and post-office address of each party to such undertaking shall be written or printed upon such undertaking in order that summons by notice, in event of suit against such party being brought by any claimant under such undertaking, may be served upon such party. Any certificate of the judge of said court above referred to shall show the post-office address of such employer. The clerk shall not accept or file any such undertaking or certificate unless and until such post-office addresses are so shown. Every such undertaking or bond signed by such sureties must be approved by said judge as to form, amount and sufficiency of surety, but not such undertakings executed by such insurance, or guarantee companies, in which the amount of the undertaking or liability is not limited to any specified amount, or amounts,[;] such amount shall be fixed by order of said judge at such sum as will in his opinion be sufficient to protect all claims which it reasonably appears might be presented for payment thereunder upon application of the employer showing the character of occupation he is, or is proposing to carry on, where he proposes to prosecute the same, the number of workmen he is, or is proposing, to employ, the average weekly earnings of such workmen approximately, and any other data in connection therewith such judge may require. Such application shall be ex parte and in writing, and the order of such judge in the premises shall be indorsed thereupon and the same shall also be filed with such clerk. Such court may, at any time, either increase or decrease the amount of any such undertaking, or require such security from any employer to whom it has previously executed any certificate above referred to under which such employer has been excused from giving such security. Every contract or policy insuring against liability for compensation, or contract or bond or guaranty or surety, filed as provided by this section or entered into with any employer subject to this act, shall provide that the insurance carrier, guarantor, or surety, as the case may be, shall be directly and primarily liable to the workman, and in event of his death his dependents, to pay the compensation for which the employer is liable.

Approval.

Direct liability.

Presumption as to contracts.

SEC. 4. Every contract of hiring, verbal or written, made subsequent to the time this act takes effect, and every such contract made previous thereto and continued thereafter, shall be presumed to have been so made, or so continued, as the case may be, with reference to the provisions of this act, and, unless there be as a part of such contract so made or continued an express statement in writing prior to any accident, either in the contract itself, or by written notice from either party to the other in substance that the provisions of this act are not intended to apply, then it shall be conclusively presumed that the parties have accepted the provisions hereof and have agreed to be bound thereby and were working thereunder at the time of any such injury. Minors of the age of fourteen years or over shall have the same contractual powers hereunder and shall be subject to the provisions of this act to the same extent as adult workmen.

Minors.

Remedy exclusive.

SEC. 5. This act shall be construed as creating a new right and special procedure for the enforcement of the same, and the rights and remedies provided in this act for workmen and their dependents coming under the terms hereof, on account of injuries suf-

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fered by accident arising out of and in the course of the employment of such workman, shall be exclusive of all other rights and remedies of such workman, his personal representative or dependent family, next of kin and all other persons, at common law or otherwise; and all other laws and parts of laws relating to, or providing, damages for injuries, or death from injuries, or under which the same are recoverable, otherwise than as herein provided, and which are in conflict herewith, shall not apply as to the employments, employers, and workmen in cases in which such employers and workmen are bound by this act.

Defenses abrogated.

SEC. 6. No employer in any case which would otherwise be governed by the provisions of this act who shall have elected not to be bound by this act, shall, in case of any suit against him for damages on account of injury suffered by accident or arising out of and in course of employment of such workman, be entitled to defend the same on account (a) of the negligence of such workman having contributed to the injury; (b) that the injury was caused by the negligence of a fellow servant; (c) that the workman had assumed the risk inherent in or incidental to such employment or business, or arising from the failure of the employer to provide safe premises and suitable appliances; which defenses are in all such cases abolished: *Provided*, That such defenses shall remain only in cases where the workman is not bound by the provisions of this act and the employer has filed the undertaking or certificate required by section three hereof.

Compensation reduced, when.

SEC. 7. In case an injury to, or death of, a workman results from his failure to observe a statutory regulation appertaining to the safe conduct of his employment, or from his failure to use a safety device provided by the employer, then the compensation otherwise payable under this act shall be reduced by fifty per cent. In case an injury to, or death of, a workman results from the failure of the employer to provide the safety devices required by law then the compensation otherwise payable under this act shall be increased by fifty per cent.

Injuries not compensable.

SEC. 8. No compensation shall become due or payable from any employer under the terms hereof in event such injury was occasioned by the intoxication of such workman, or willfully suffered by him, or intentionally inflicted by himself or another.

Termination of agreements.

SEC. 9. Any agreement made between such employer and any such workman to be bound by the provisions hereof may be terminated by either party upon giving thirty days' notice to the other in writing, prior to any accidental injury suffered by such workman.

Extra hazardous occupations.

SEC. 10. The extra hazardous occupations and pursuits to which this act is applicable are as follows: Factories, mills and workshops where machinery is used; foundries, blast furnaces; mines, oil wells; gas works; natural gas plants, water works; reduction works, breweries; elevators; dredges; smelters; powder works; laundries operated by power; quarries; engineering works; logging, lumbering and sawmill operations; street railways; buildings being constructed, repaired, moved, or demolished; telephone, telegraph, electric light or power plants or lines; steam heating or power plants; bridge building, railroad construction work, but shall not include railroad construction work of any character when done by the owner or operator of any railroad; and all employment wherein a process requiring the use of any dangerous explosive or inflammable material is carried on; and each of which employments above named is hereby determined to be extra hazardous, in which, from the nature, conditions or means of prosecution of the work therein required risks to the life and limb of the workman engaged therein are inherent, necessary or substantially unavoidable. This act shall not apply in any case where the injury occurred before this act takes effect, and all rights which have accrued by reason of any such injury prior to the taking effect of this act shall be saved the remedies now existing therefor.

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Interstate commerce.

SEC. 11. This act shall not be construed to apply to business or pursuits or employments which according to law are so engaged in interstate commerce as to be not subject to the legislative power of the State, nor to persons injured while they are so engaged.

Definitions.

SEC. 12. In this act unless the context otherwise requires:

(a) "Factories" means any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article, including expressly any brickyard, meat-packing house, foundry, smelter, ore-reduction works, lime-burning plant, stucco plant, steam heating plant, electric lighting or power plant including all work in or directly connected with the construction, installation, operation, alteration, removal or repair of wires, cables, switchboards or apparatus used for the transmission of electric current, and water-power plant, including towers and standpipes, power plant, blast furnace, paper mill, printing plant, flour mill, glass factory, cement plant, artificial gas plant, machine or machine repair shop, salt plant, oil-refinery plant, chemical-manufacturing plant, coke ovens and coal washeries.

(b) "Workshop" means any yard, plant, premises, room or place where power-driven machinery is employed and manual labor is exercised incidental to the process of making, altering, repairing, printing, or ornamenting, finishing or adapting for sale or otherwise any article or part of article, over which premises, room or place the employer of the person working therein has the right of access or control.

(c) "Mill" means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering, or repairing any article or commodity for sale or otherwise, together with the yards and premises which are part of the plant, including elevators, warehouses and bunkers, sawmill, sash factory or other work in the lumber industry.

(d) "Mine" means any opening in the earth for the purpose of extracting iron, oil, coal or other minerals, and all underground workings, slopes, drifts, shafts, galleries, wells and tunnels, and other ways, cuts and openings connected therewith, including those in the course of being opened, sunk or driven, and includes all the appurtenant structures or machinery at or about the openings of the mine, and any adjoining or adjacent work place where the material from a mine is prepared for use or shipment, including tramways, tracks, haulage-ways, loading bins and tipples.

(e) "Quarry" means any place, not a mine, where stone, slate, clay, sand, gravel or other solid material is extracted from the earth.

(f) Reference to any "building work" shall be understood to include any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenances, except residences and structures being built for the private use of the owner on farms, ranches or residence lots and not under contract.

(g) "Engineering work" means any work in the construction, alteration, extension, repair or demolition of a bridge, jetty, dike, dam reservoir, underground conduit, sewer, oil or gas well, oil tank, gas tank, water tank or tower, any caisson work or work in artificially compressed air, any work in dredging, work on log or lumber rafts or booms; pile driving, moving safes, or in laying, repairing or removing underground pipes and connections, the erection, installing, repairing, or removing underground pipes and connections, the erection, installing, repairing, or removing of boilers, furnaces, engines and power machinery (including belting and other connections) and any work in grading or excavating where shoring is necessary or power machinery or blasting powder, dynamite or other high explosives are in use.

(h) "Employer" includes any person, or body of persons, corporate or incorporate, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, asso-

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ciation or partnership engaged in or carrying on for the purpose of business, trade or gain any of the occupations or pursuits to which this act is applicable.

(i) "Workman" means any person who has entered into the employment of or works under contract of service or apprenticeship, with an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business. The term "workman" shall include "employee" and shall include the singular and plural of both sexes.

Dependents.

(j) The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of this act:

1. A child if under eighteen years of age, or incapable of self-support and unmarried, actually dependent upon the deceased.

2. The widow, only if living with the deceased, or legally entitled to be supported by him, and actually dependent, including a divorced wife entitled to alimony and actually dependent.

3. The widower only if incapable of self-support and actually dependent, wholly or partially, upon the deceased at the time of her injury.

4. A parent or grandparent only if actually dependent, wholly or partially, upon the deceased.

5. A grandchild, brother, or sister only if under eighteen years of age, or incapable of self-support, and wholly dependent upon the deceased.

The relation of dependency must exist at the time of the injury.

6. Questions as to who constitute dependents, and the extent of their dependency, shall be determined as of the date of the injury, and their right to any death benefit shall cease upon the happening of any one of the following contingencies:

I. Upon the marriage of the widow or widower.

II. Upon a child reaching the age of eighteen years, unless said child at such time is physically or mentally incapacitated from earning, or upon a dependent child becoming self-supporting prior to attaining said age.

III. Upon the adoption of any dependent.

IV. Upon the death of any dependent.

(k) As used in this section the term "child" includes stepchildren, adopted children, posthumous children, and acknowledged illegitimate children, but does not include married children unless dependent. The words "adopted" and "adoption" as used in this act shall include cases where persons are treated as adopted as well as those of legal adoption.

(l) The words "injuries sustained in extra hazardous occupations or pursuits," as used in this act shall include death resulting from injury, and injuries to workmen, as a result of their employment and while at work in or about the premises occupied, used or controlled by the employer, and injuries occurring elsewhere while at work in any place where their employer's business requires their presence and subjects them to extra hazardous duties incident to the business, but shall not include injuries to any workman occurring while on his way to assume the duties of his employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence.

Computation of earnings.

(m) Whenever in this act the term "earnings" is used it shall be construed to mean the average weekly earnings of the workman at or immediately prior to the date of the injury. Such average weekly earnings shall be computed by dividing the total earnings of such workman during the period not exceeding one year during which he has been employed in the same capacity by such employer, by the number of weeks in such period. However, if the injured workman shall have worked less than one week at the employment in which he was injured his earnings shall be determined by the average weekly earnings of other workmen engaged in like employment in the same locality during the preceding four weeks: *Provided*, That in case such earnings have been unusually large on account of the employer's necessity tempo-

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rarily requiring him to pay extraordinarily high wages such average weekly earnings shall be based upon the usual earnings in the same community for labor of the kind the workman was performing at the time of the injury. In any event the weekly compensation allowed shall not exceed the maximum nor be less than the minimum provided in section 17 hereof.

(n) The words "judge" and "court" wherever used in this act shall be considered interchangeable in meaning wherever required from the context thereof or necessary for the validity of the provisions concerning the same.

Contractors. (o) Where any employer procures any work to be done wholly or in part for him, by a contractor other than an independent contractor, and the work so procured to be done is a part or process in the trade or business of such employer, then such employer shall be liable to pay all compensation under this act to the same extent as if the work were done without the intervention of such contractor. And the work so procured to be done shall not be construed to be "casual employment."

(p) Where any employer procures any work to be done, wholly or in part for him, by a contractor, where the work so procured to be done is casual employment as to such employer, then such contractor shall become the employer for the purposes of this act.

Payment of compensation. SEC. 13. The compensation herein provided shall be paid by the employer to any injured workman entitled thereto in monthly installments as nearly equal as possible excepting the first installment which shall be paid not later than thirty-one days after the date of such injury. Any workman claiming to be entitled under this act to compensation from any employer on account of any injury suffered by accident arising out of and in

Notice. the course of his employment shall give notice in writing of such accident and of such injury to such employer within two weeks after the occurrence thereof, unless prevented by such injury or other causes beyond his control, and, if so prevented, as soon as the same may be reasonably done, and at all events not later than sixty days after such accident: *Provided*, That no such written notice shall be requisite where the employer or any superintendent or foreman or other agent in charge of the work in connection with which such injury occurred had actual knowledge of the occurrence thereof. Except in the case of such workman being prevented from giving notice by his injuries and in cases where no notice is required no workman failing to give such notice within said two weeks after such injuries occurred shall be allowed to recover any compensation on account of such injury under any circumstances whatever for the period he shall remain in default in giving such notice. In event such employer shall fail or refuse to pay the compensation herein provided to such workman after having received such notice, or, without such notice when no notice is required, it shall be the duty of

Claim. such workman, insisting upon the payment thereof, to file a claim therefor in the manner and within the time hereinafter provided. In event he shall either fail to give such notice within the time required, or fail to file such claim within the time hereinafter required, his claim for such compensation and all right to the recovery of the same and the bringing of any legal proceeding for the recovery thereof shall be, and hereby is, forever barred. In case of death of any workman who would, himself, have been entitled, had such death not occurred, to recover from such employer on account of any such injuries under the terms hereof, claim may be filed therefor on behalf of his dependents as provided in section 16 hereof. In event of the failure or refusal of any employer to pay any workman entitled thereto any installment of the compensation to which such workman may be entitled

Enforcement of payments. under the terms hereof, such workman shall be entitled to enforce the payment thereof by filing in the office of the clerk of the district court a claim which shall be signed and sworn to by the injured workman or someone on his behalf before any officer

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authorized to administer oaths, and filed not later than sixty days after such refusal or failure of the employer so to pay the same. Such claim shall be informal in character and shall set forth sufficient facts for the determination of the same, and if defective in any particular may be corrected by the court or by the claimant at any time before being heard. The following form shall be sufficient therefor:

To the District Court of _____ County, New Mexico, and _____ employer, whose post-office address is _____, and _____, insurer, guarantor, or surety, whose post-office address is_____.

The undersigned hereby asks judgment for compensation under the workmen's compensation act of New Mexico for an injury suffered by accident arising out of and in the course of his employment while working for such employer on the _____ day of _____, at or near _____ (here describe place where accident occurred as nearly as possible) as a _____ (here describe capacity in which he was laboring) in the following work: _____ (here describe character of work and structure or other thing which he was working upon), at which time his average weekly earnings were $_____.

Such injury has caused_____

_____

(here insert general description of injuries and extent of disability.)

(Sign) _____

Date _____.

Sworn to and subscribed before me this _____ day of _____ A. D. ____.

_____

_____

(Title.)

The clerk of such court shall furnish printed blanks in the form above described to any such injured workman or person acting in his behalf applying to him therefor, and upon request, shall fill out such form for him.

Procedure.

Upon the filing of such claims the clerk of such court shall docket the same, styling the workman filing same as plaintiff and the other parties named therein as defendants, and mail certified copy of such claim with a notice under his hand and official seal of the same having been so filed to the employer, insurance carrier, guarantor or surety named in such claim, who shall be allowed twenty days thereafter to answer the same or to settle and adjust the claim thereby made by such workman. In event, previous to the expiration of such time last named, the defendants, or any of them, shall file in the office of such clerk, a written final settlement, adjustment or release signed by such plaintiff and defendants then and in such event a judgment shall, under order of court, be entered of record in accordance with such settlement, and carrying the same into effect and providing for the execution or executions to be issued thereunder for any future payments therein provided, which judgment may, with the approval of the court, be satisfied of record if, by such instrument or instruments, it is shown that full payments have already been made. At the expiration of such period of twenty days, if no such instrument of release or satisfaction of such claim has been filed in his office, the clerk of said court shall immediately forward or deliver such claim to the judge of said court for hearing, together with any answer filed therein, unless one of the parties plaintiff or defendant thereto shall have demanded a jury trial of such cause in which event the same shall be tried at the first term thereafter of such court at which the same can be tried, and the hearing thereof expedited in every possible manner.

The trial of such cause, either by jury or by the court, shall be conducted in a summary manner as far as possible. In event no

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such answer is filed in the office of such clerk within the time above allowed, or if any such answer so filed contains no denial or substantial defense to such claim, or to some material part thereof, judgment shall immediately be rendered in favor of such claimant against such employer and also against any insurer, guarantor or surety who is liable to such workman or to such employer for the payment thereof under the terms of the undertaking provided for in section 3 hereof. Any such insurer, guarantor, or surety shall be entitled to file an answer, setting up any defense to the claim of such workman or showing that he is not liable therefor for any reason, in the office of such clerk within twenty days after the filing of such claim: *Provided*, That before the rendition of any such judgment, any such employer, insurer, guarantor or surety who has filed any answer to such claim as herein allowed, or such plaintiff, shall be allowed a hearing upon request therefor within a short day upon such claim and answer, at a time and place to be fixed by order of the court, in the county where the injury occurred or upon agreement of the parties at some other place in the district, informal notice of which shall be mailed to each of the parties thereto by such judge addressed to the post office address of each of said parties. Any proper amendment may be allowed by such court to either such claim or answer thereto previous to or upon any hearing upon such terms as may be fixed by the court. In event issue is joined upon the pleadings, such judge may either hear the witnesses or by proper order refer such cause to the clerk of said court, or other suitable person for the taking of the testimony therein, who shall cause all testimony of all witnesses offered in said cause by either of the parties to be reduced to writing and signed and sworn to by such witnesses, first having mailed notice to each of said parties addressed to the post-office address of each thereof, respectively, of the time and place for taking such testimony. Upon conclusion of such testimony the clerk shall forward or deliver the same to the judge of said court who shall consider the same as soon as may be, and upon such consideration shall cause judgment to be rendered in accordance with the merits of said cause, first having given the parties an opportunity to appear and be heard, if either thereof shall request the same in writing previous to the rendition of such judgment.

Subpœnas shall be issued by the clerk of said court upon demand of either party, requiring the appearance and testimony of witnesses before him or any person appointed by the court at the time and place fixed for the taking of such testimony, and the parties suing out the same may serve, or cause the same to be served upon said witnesses in the manner required for serving subpœnas in civil cases, and the attendance and testimony of such witnesses in answer to such subpœnas shall be required, and such witnesses punished for failure therein, as in other cases.

Costs.

No costs shall be charged, taxed or collected by the clerk, except fees for witnesses who shall attend upon such subpœnas, who shall be allowed the same fees for attendance and mileage as is fixed by law in civil actions, and such per diem to such clerks, or the person appointed by the court for the taking of such testimony, as may be allowed by such court, not to exceed five dollars per day, and the fees and per diem of any physician directed by the court to make an examination of the workman injured, not exceeding five dollars for such examination and the same fees and mileage as allowed other witnesses.

Where claims may be filed.

SEC. 14. In event an employer has failed or neglected to file in the office of the clerk of the district court the bond or other undertaking or certificate of court which, as provided, relieves him from the necessity of giving the same, such claim may be filed in the office of the clerk of any county where the injury occurred or where claimant or such employer resides, as the claimant may elect, the procedure had before such court, or the judge thereof, and notice thereof mailed by the clerk to the employer, at his last known post-office address, or notice may be given thereto in any other manner now provided by law for notice in civil actions.

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Judgments.

SEC. 15. All judgments shall be against such employer, insurer, guarantor, and sureties liable therefor, and each thereof, for the amount then due, and shall also contain therein an order upon such employer for the payment of such workmen of the further amounts at regular intervals on dates therein fixed as herein provided during the continuance of such disability as he may be entitled to hereunder, and such judgment shall be so framed as to accomplish the purpose and intent of this act in all particulars, and in addition to executions for any amount already due in such judgment, executions for amounts to become due in the future on account of such disability shall be issued by the clerk of said court at any time after the time provided in the judgment for the payment thereof in event the workman shall file his affidavit with the clerk that the same is unpaid and that his disability still continues, unless application shall have, previous to the issuance of such execution, been made and filed with said clerk by some one of the parties against whom said judgment has been rendered for the appointment of a physician, in accordance with section 19 hereof, for the purpose of examination of said workman, in which event the issuance of such execution shall await the further order of the court in the premises. Any and all such judgments rendered and executions issued hereunder shall have the same force and effect and be governed by the laws of this State as judgments or executions in civil cases. In case any such judgment or execution is paid or satisfied by, or collected from, any one of such defendants, whereby the terms of the agreement of insurance, guaranty or surety, or in pursuance of any understanding between the parties thereto the same should have been paid or satisfied by any other of the parties thereto, such party so paying the same shall have judgment over in the same case against the party, who, under such agreement, should have paid the same, upon application therefor made within ninety days after the payment or the collection from him of the same, upon notice given to such party against whom such judgment over is sought in the same way and upon the same time fixed for the hearing of motions by the laws of this State. In any case where the employer has failed to file the undertaking or certificate required by section 3 hereof, the court shall have power to enforce compliance with any judgment or order granted in such case, by proceedings in contempt against the party failing or refusing to comply therewith.

Orders and judgments reviewable.

Any final order made or judgment rendered by the court pursuant to the provisions of this act shall be reviewable by the supreme court of the State upon appeal or writ of error in the manner prescribed for other cases, except that said cause shall be advanced on the calendar and disposed of as promptly as possible. In case such cause is taken to the supreme court by the workman, or the person appointed by the court to act on behalf of the dependents, he shall be entitled to the record of the hearing and proceedings in said cause, and all papers on file in the office of the clerk of the district court, to be prepared, transcribed, certified and forwarded by said clerk to the clerk of the supreme court, without cost to the injured workman: *Provided*, That the depositions of witnesses testifying before the clerk or person appointed by the court may be used and so forwarded, where required, instead of the transcript thereof, but if so used the same shall be returned to the clerk of said court upon conclusion of consideration of such case by the supreme court. No docket fee or other costs shall be charged such workman or representative on any such appeal or writ of error, nor shall he be required to furnish printed briefs or records. The supreme court shall have power to make rules governing procedure on such appeals.

Claims in case of death.

SEC. 16. In event any injury from accident arising out of and in the course of the employment of a workman should result in and be the proximate cause of his death and he should leave surviving him any dependents, as herein defined, entitled to com-

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pensation under the terms hereof, payment thereof may be received or claim therefor filed by such person as the court may authorize or permit, on behalf of the beneficiaries entitled thereto, and such claim shall be filed and answer made thereto and other procedure had as in cases filed by injured workmen: *Provided*, That no claim shall be filed or suit brought to recover such compensation unless claim therefor be filed within one year after the date of such injury.

What injuries compensable.

SEC. 17. No compensation shall be due or payable under this act for any injury which does not result in either the temporary disability of the workman lasting for more than three weeks or in his permanent disability or permanent injury, as herein described, or death, but for any such injury for which compensation is payable under this act, the employer shall in all proper cases, as herein provided, pay to the injured workman or to some person authorized by the court to receive the same, for the use and benefit of the beneficiaries entitled thereto, compensation at regular intervals of not more than thirty-one days apart, in accordance with the following schedule, less proper deduction on account of default in failure to give notice of such injury as required in section thirteen hereof;

Payments.

Total disability.

(a) For total disability the workman shall receive fifty per cent of his earnings, not to exceed a maximum compensation of ten dollars per week, nor be less than a minimum of five dollars per week: *Provided*, That if at the time of injury the workman receives earnings of less than five dollars per week then he shall receive the full amount of such earnings per week, to be paid during the period of such disability, not, however, for more than five hundred and twenty weeks.

Death.

In case death proximately results from the injury within the period of one year, compensation shall be in the amounts, and to the persons following:

(1) If there be no dependents, the compensation shall be limited to the funeral expenses not to exceed fifty ($50) dollars and the expenses provided for medical and hospital services for deceased, together with such other sums as deceased may have been paid for disability.

(2) If there are dependents at the time of the death, the payment shall consist of not to exceed fifty ($50) dollars for funeral expenses and the percentage hereinafter specified of the average weekly earnings, subject to the limitations of this act, to continue for the period of three hundred weeks from the date of the injury of such workman.

If there be dependents entitled thereto, such compensation shall be paid to such dependents or to the person appointed by the court to receive the same for the benefit of such dependents in such portions and amounts as the court, bearing in mind the necessities of the case and the best interests of such dependents and of the public, may determine, to be computed on the following basis, and distributed to the following persons:

1. To the child or children, if there be no widow or widower entitled to compensation, twenty-five per cent of earnings of deceased, with ten per cent additional for each child in excess of two, with a maximum of sixty per cent, to be paid to their guardian.

2. To the widow or widower, if there be no children, forty per cent of earnings, not to exceed a maximum compensation of ten dollars ($10) per week.

3. To the widow or widower, if there be one child, forty-five per cent of earnings.

4. To the widow or widower, if there be two children, fifty per cent of earnings.

5. To the widow or widower, if there be three children, fifty-five per cent of earnings.

6. To the widow or widower, if there be four or more children, sixty per cent of earnings.

7. If there be neither widow, widower, nor children, then to the father and mother, or the survivor of them, if dependent to

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any extent upon the workman for support at the time of his death, twenty per cent of earnings.

8. If there be neither widow, widower, children, nor dependent parent, then to the brothers and sisters, if actually dependent to any extent upon the decedent for support at the time of his death, fifteen per cent of earnings for one brother or sister, and five per cent additional for each additional brother or sister, with a maximum of twenty-five per cent; such compensation to be paid to their guardian: *Provided*, That the maximum compensation to partial dependents shall not exceed the respective amounts theretofore contributed by the deceased workman.

The earnings upon which death compensation shall be based shall not, in any case, be taken to exceed thirty dollars per week, nor be less than ten dollars per week, except where the earnings are less than ten dollars per week, and in that case upon the amount of earnings.

(b) For disability partial in character but permanent in quality, such compensation shall be measured by the extent of such disability. In the following cases the compensation shall be fifty per cent of the earnings of such workman, subject to the limitations of this act, as to the maximum and minimum payments as provided in paragraph (a) of this section. **Partial disability.**

For the loss of— **Schedule.**

One arm at or near shoulder, dextrous member, 150 weeks.
One arm at elbow, dextrous member, 140 weeks.
One arm between wrist and elbow, dextrous member, 130 weeks.
One arm at or near shoulder, nondextrous member, 140 weeks.
One arm at elbow, nondextrous member, 130 weeks.
One arm between wrist and elbow, nondextrous member, 120 weeks.
One hand, dextrous member, 110 weeks.
One hand, nondextrous member, 100 weeks.
One thumb and the metacarpal bone thereof, 50 weeks.
One thumb at the proximal joint, 30 weeks.
One thumb at the second distal joint, 20 weeks.
One first finger and the metacarpal bone thereof, 25 weeks.
One first finger at the proximal joint, 20 weeks.
One first finger at the second joint, 15 weeks.
One first finger at the distal joint, 10 weeks.
One second finger and the metacarpal bone thereof, 20 weeks.
One second finger at the proximal joint, 15 weeks.
One second finger at the second joint, 10 weeks.
One second finger at the distal joint, 5 weeks.
One third finger and the metacarpal bone thereof, 15 weeks.
One third finger at the proximal joint, 10 weeks.
One third finger at the second joint, 8 weeks.
One third finger at the distal joint, 4 weeks.
One fourth finger and the metacarpal bone thereof, 12 weeks.
One fourth finger at the proximal joint, 9 weeks.
One fourth finger at the second joint, 6 weeks.
One fourth finger at the distal joint, 3 weeks.
Loss of all fingers on one hand where thumb and palm remains, 55 weeks.
One leg at or so near hip joint as to preclude the use of an artificial limb, 140 weeks.
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb, 120 weeks.
One leg between the knee and ankle, 110 weeks.
One foot at the ankle, 100 weeks.
One great toe with the metatarsal bone thereof, 30 weeks.
One great toe at the proximal joint, 15 weeks.
One great toe at the second joint, 10 weeks.
One toe other than the great toe with the metatarsal bone thereof, 12 weeks.
One toe other than the great toe at the proximal joint, 6 weeks.
One toe other than great toe at second or distal joint, 3 weeks.
Loss of all toes of one foot at proximal joint, 35 weeks.

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One eye by enucleation, 110 weeks.
Total blindness of one eye, 100 weeks.
Total deafness in one ear, 35 weeks.
Total deafness in both ears, 135 weeks.

If any workman is seriously permanently disfigured about the face or head, the court may allow such additional sum for compensation on account thereof as it may deem just, not exceeding five hundred ($500) dollars.

Infection. When by reason of infection or other cause not due to neglect or misconduct of the injured workman he is actually disabled longer than the time specified in the foregoing schedule from earning wages, compensation shall be paid such workman for such loss of wages within the limits otherwise provided.

Paralysis. For the purpose of this schedule, permanent and complete paralysis of any member as the proximate result of an accidental injury shall be deemed equivalent to the loss thereof.

What constitutes total disability. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof in the absence of conclusive proof to the contrary, shall constitute total disability, permanent in character: *Provided*, That the employer shall not be liable for compensation for total disability if the loss of one arm, foot, leg, or eye occurred prior to such accident, but in that event compensation shall be paid only in accordance with the schedule herein for partial disabilities, but the definitions of total disability contained in this paragraph shall not be exclusive of other cases of total disability.

Other injuries. In all other cases in this class, or where the usefulness of a member or any physical function is permanently impaired, the compensation shall bear such relation to the amounts stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule.

Hernia. A workman, in order to be entitled to compensation for a hernia, must clearly prove: (1) That the hernia is of recent origin, (2) that its appearance was accompanied by pain, (3) that it was immediately preceded by some accidental strain suffered in the course of the employment, and (4) that it did not exist prior to the date of the alleged injury. If a workman, after establishing his right to compensation for hernia as above provided, elects to be operated upon, a special operating fee of not to exceed fifty dollars shall be paid by the employer or his or its insurer. In case such workman elects not to be operated upon and the hernia becomes strangulated in the future, the results from such strangulation shall not be compensated.

Waiting time. SEC. 18. No compensation shall be allowed for the first three weeks after injury is received, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 13 hereof.

Medical, etc., aid. During the first three weeks after the injury the employer shall furnish reasonable surgical, medical and hospital services and medicine, as and when needed, not to exceed fifty dollars in value, unless the workman refused to allow them to be furnished by the employer. In case, however, the employer has made provisions for, and has at the service of the workman at the time of the accident or subsequent thereto during disability, adequate surgical, hospital and medical facilities and attention, whether such facilities and attention are provided by the employer gratis, or are in whole or in part provided under any plan in force between the employer and the workman, then the employer shall be under no obligation to furnish during said first three weeks after the injury any other or additional surgical, medical or hospital services or medicines than those so provided.

Order of awards. Compensation for all classes of injuries shall run consecutively and not concurrently as follows:

First three weeks, surgical, medical and hospital services and medicines, as provided in this paragraph. After the first three weeks, compensation during temporary disability. Following both, either or none of the above, compensation consecutively for

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each permanent injury. Following any or all or none of the above, if death results from the accident, funeral expenses as hereinbefore provided following which compensation to dependents, if any.

Medical examinations.

SEC. 19. Whenever, in the case of injury, the right to compensation under this act exists in favor of a workman, he shall, upon written request of his employer, or any insurer, guarantor or surety named in any undertaking filed in accordance with section 3 hereof, submit himself from time to time to examination by a physician or surgeon duly authorized to practice medicine under the laws of this State, who shall be provided and paid for by such person so making such request, and shall likewise submit to examination from time to time by any regular physician selected by the court. The workman shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the workman, after such written request of the employer or insurer, shall refuse to submit himself to such examination, or shall in any way obstruct the same, his right to collect, or to bring, or to maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination after direction by the court, or any examiner thereof, or shall in any way obstruct the same, his right to compensation which would otherwise accrue and become payable during the period of such refusal, or obstruction, shall be barred.

Refusing treatment, etc.

If any workman shall persist in insanitary or injurious practice which tends to imperil or retard his recovery or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the court may in its discretion reduce or suspend his compensation. Any physician who shall make, or be present at, any such examination, may be required to testify as to the result thereof. Any physician having attended any workman in a professional capacity may be required to testify before the court when it shall direct and any communication made by such workman to such physician at such examination shall not be considered privileged.

Payments exempt.

SEC. 20. Compensation shall be exempt from claims of creditors and from any attachment, garnishment or execution, and shall be paid only to such workman or his personal representative, or such other persons as the court may, under the terms hereof, appoint to receive or collect the same. No claim or judgment for compensation, under this act, shall accrue to or be recovered by relatives or dependents not residents of the United States at the time of the injury of such workman.

Alien dependents.

Safety laws.

SEC. 21. Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extra hazardous work.

Fees.

SEC. 22. It shall be unlawful for any person or any number of persons acting together or separately or in any way, including attorneys, agents, interpreters, and all other persons, to receive or agree to receive either directly or indirectly from any beneficiary or beneficiaries under this act, for services rendered or to be rendered, either jointly or separately, in relating [relation] to procuring any benefit or benefits under this act, any sum or sums aggregating more than five per cent of the whole amount received or to be received by such beneficiary or beneficiaries on account of injuries to any workman. Every person violating or concerned in the violation of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars, to which may be added imprisonment in the county jail for a term not exceeding ninety days.

Medical examination.

SEC. 23. It shall be the duty of the workman, at the time of his employment or thereafter at the request of the employer, to submit himself to examination by a physician or surgeon duly authorized to practice medicine in the State, who shall be paid by the employer, for the purpose of determining his physical condition.

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Names of dependents. It shall also be the duty of the workman, if required, to give the names, addresses, relationship, and degree of dependency of his dependents, if any, or any subsequent change thereof, to the employer, and when the employer or his insurance carrier shall require, the workman shall make a detailed verified statement relating to such dependents, matters of employment and other information incident thereto.

Medical examinations of beneficiaries. SEC. 24. Any workman awarded compensation for disability under this act shall, previous to the falling due of any installment of compensation provided for in the judgment therefor upon the order of the court, if requested by his employer, or any other person bound by judgment therefor, submit himself to medical examination by a physician licensed to practice medicine in this State, at a place within this State designated by the person so demanding and which shall be reasonably convenient for the workman, and said workman may have a licensed physician present of his own selection. The purpose of such examination shall be to determine whether the workman has recovered so that his earning power at any kind of work is restored, and the court shall be empowered to hear evidence upon such issue and hearing. If it be discovered by such examination and hearing that diminution or termination of disability has taken place the court shall order diminution or termination of payments of compensation as the facts may warrant. If the workman in such case refuses to submit to such examination or obstructs the same, his right to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during such period of refusal.

Power of courts. The district court in which the right to compensation provided herein is enforceable shall at all times have the right and power to authorize direct or approve any settlement or compromise of any claim for compensation hereunder by any injured workman or his personal representative or dependents, or any person appointed by the court to receive payment of the same, for such amount and payable in installments or lump sum or in such other way and manner as the court may approve.

Injuries caused by third persons. The right of any workman, or, in case of his death, of those entitled to receive payment or damages for injuries occasioned to him by the negligence or wrong of any person other than the employer as herein defined shall not be affected by this act, but he or they, as the case may be, shall not be allowed to receive payment or recover damages therefor and also claim compensation from such employer hereunder, and in such case the receipt of compensation from such employer hereunder shall operate as an assignment to the employer, his or its insurer, guarantor or surety, as the case may be, or any cause of action, to the extent of the liability of such employer to such workman occasioned by such injury which the workman or his legal representative or others may have against any other party for such injuries or death.

Failure to guarantee payments. Any employer who shall fail in any case covered by this act to file undertaking of insurance, guaranty or security for the payment of compensation which may become due to the injured workman from him hereunder, or in lieu thereof, the certificate of the judge as herein provided within the time herein required, shall be deemed guilty of a misdemeanor and shall be punishable by a fine [of] not more than one thousand dollars for any such offense.

Provisions severable. In case for any reason any section, paragraph, clause, or provision of this act shall be held to be unconstitutional or invalid, the same shall not be held to affect any other section, paragraph, clause or provision hereof, which can, without the same, be administered and enforced in substantial compliance with the general intent hereof; except that sections 2 and 6 hereof are hereby declared to be inseparable, and if either of the said two sections be declared void or inoperative in an essential part, then this act shall be and be held to be void and inoperative.

Approved, March 13, 1917.

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NEW YORK.

Compensation of workmen for injuries.

[The compensation law of this State, chapter 67 of the Compiled Laws, added by chapter 41, acts of 1914, is amended in various particulars by acts of 1917, 1918.

Section 2 is amended by chapter 249, acts of 1918, by the re-enactment of groups 8 and 10 (relating to the operation of vessels and longshore work), which were held to be beyond the power of the State to control, by the decision of the United States Supreme Court, and which were subsequently made subject to State legislation by an act of Congress. **Employments covered.**

Group 14 of the same section is amended by chapter 635, acts of 1918, so as to read as follows:]

GROUP 14. Lumbering, except operations solely for the production of firewood in which not more than four persons are engaged by a single employer; logging, river driving, rafting, booming, saw mills, bark mills; shingle mills, lath mills, lumber yards; manufacture of veneer and of excelsior; manufacture of barrels, kegs, vats, tubs, staves, spokes, or headings.

[Group 34 of the same section is amended by chapter 705, acts of 1917, so as to read as follows:]

GROUP 34. Hotels having fifty or more rooms; bakeries, including manufacture of crackers and biscuits, manufacture of confectionery, spices, or condiments.

[Group 42 of the same section is amended by chapter 634, acts of 1918, by adding thereto "theatrical stage managers, property men, electricians, stage hands, flymen, lamp operators, and moving picture machine operators."

Group 44 is added as a new group by chapter 705, acts of 1917, as follows:]

GROUP 44. Employment as a keeper, guard, nurse, or orderly in a prison, reformatory, insane asylum, or hospital maintained or operated by the State or municipal corporation or other subdivision thereof, notwithstanding the definitions of the terms "employment," "employer," or "employee" in subdivision five of section three of this chapter. **Hazardous employments.**

[A new group, numbered 45, is added by chapter 633, acts of 1918, as follows:]

GROUP 45. Employment as a district forest ranger, forest ranger, observer, chief railroad inspector, game protector, inspector, forester, land appraiser, surveyor, assistant on survey, engineer, or assistant on construction work, by the State, notwithstanding the definitions of the terms "employment," "employer" or "employee" in subdivision five of section three of this chapter.

[A second group bearing the same number was also added by chapter 634, acts of 1918, as follows:]

GROUP 45. All other employments not hereinbefore enumerated carried on by any person, firm, or corporation in which there are engaged or employed four or more workmen or operatives regularly, in the same business or in or about the same establishment, either upon the premises or at the plant or away from the plant of the employer, under any contract of hire, express or implied, oral or written, except farm laborers and domestic servants.

[Subsections 5 and 13 of section 3 are amended by chapter 705, acts of 1917, so as to read as follows:]

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Definitions.

5. "Employment" includes employment only in a trade, business, or occupation carried on by the employer for pecuniary gain, or in connection therewith, except where the employer and his employees have by their joint election elected to become subject to the provisions of this chapter as provided in section two.

13. "Manufacture," "construction," "operation," and "installation" shall include "repair," "demolition," and "alteration," and shall include all work done in connection with the repair of plants, buildings, grounds, and approaches of all places where any of the hazardous employments are being carried on, operated, or conducted.

[Section 12 is amended by chapter 705, acts of 1917, so as to read as follows:]

Waiting time.

SECTION 12. No compensation shall be allowed for the first fourteen days of disability, except the benefits provided for in section thirteen of this chapter: *Provided, however,* That in case the injury results in disability of more than forty-nine days the compensation shall be allowed from the date of the disability.

[Subsection 3 of section 15 is amended by chapter 705, acts of 1917, by inserting after the second sentence in the paragraph "Phalange of thumb or finger" the words: "Where the injury results in the loss of more than one finger, compensation therefor may be awarded for the proportionate loss of the use of the hand thereby occasioned;" also by adding after the paragraph "Loss of use" a new paragraph, as follows:]

Partial loss.

Partial loss and partial loss of use. For the partial loss or the partial loss of the use of a hand, arm, foot, leg, or eye, compensation therefor may be awarded for the proportionate loss or proportionate loss of the use of such hand, arm, foot, leg, or eye.

[Sections 13 and 18 are amended by chapter 634, acts of 1918, so as to read as follows:]

Medical, etc., treatment.

SEC. 13. The employer shall promptly provide for an injured employee such medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus as the nature of the injury may require during sixty days after the injury; but the commission may where the nature of the injury or the process of recovery requires a longer period of treatment require the same from the employer. If the employer fail to provide the same, after request by the injured employee, such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same. All fees and other charges for such treatment and services shall be subject to regulation by the commission as provided in section 24 of this chapter, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

Notice of injury or death.

SEC. 18. Notice of an injury for which compensation is payable under this chapter shall be given to the commission and to the employer within thirty days after the accident causing such injury, and also in case of the death of the employee resulting from such injury, within thirty days after such death. Such notice may be given by any person claiming to be entitled to compensation, or by some one in his behalf. The notice shall be in writing, and contain the name and address of the employee, and state in ordinary language the time, place, nature and cause of the injury, and be signed by him or by a person on his behalf or, in case of death, by any one or more of his dependents, or by a person on their behalf. It shall be given to the commission by sending it by mail, by registered letter, addressed to the commission at its office. It shall be given to the employer by delivering it to him or sending it by mail, by registered letter, addressed to the employer

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at his or its last known place of business: *Provided*, That, if the employer be a partnership then such notice may be so given to any one of the partners, and if the employer be a corporation, then such notice may be given to any agent or officer thereof upon whom legal process may be served, or any agent in charge of the business in the place where the injury occurred. The failure to give notice of injury or notice of death unless excused by the commission either on the ground that notice for some sufficient reason could not have been given, or on the ground that the employer, or his or its agents in charge of the business in the place where the accident occurred or having immediate supervision of the employee to whom the accident happened, had knowledge of the accident, or on the ground that the employer has not been prejudiced thereby, shall be a bar to any claim under this chapter, but the employer and the insurance carrier shall be deemed to have waived such notice unless the objection to the failure to give such notice or the insufficiency thereof, is raised before the commission on the hearing of a claim filed by such injured employee, or his or her dependents.

[Section 20 is amended by chapter 705, acts of 1917, by striking out at the end of the third sentence the words "together with a statement of its conclusions of fact and rulings of law."

Section 23 is amended by chapter 705, acts of 1917, so as to read as follows:]

Appeals. SEC. 23. An award or decision of the commission shall be final and conclusive upon all questions within its jurisdiction, as against the State fund or between the parties, unless reversed or modified on appeal therefrom as hereinafter provided. Within thirty days after notice of the filing of the award or the decision of the commission has been sent to the parties an appeal may be taken to the appellate division of the supreme court, third department, from such award or decision by any party in interest including an employer insured in the State fund. If notice of such appeal is served upon the commission, the commission shall within thirty days thereafter serve upon the parties in interest a statement of its conclusions of fact and rulings of law in such case. The commission may also, in its discretion, certify to such appellate division of the supreme court questions of law involved in its decision. Such appeals and the questions so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The commission shall be deemed a party to every such appeal, and the attorney general, without extra compensation, shall represent the commission thereon. An appeal may also be taken to the court of appeals in all cases where the decision of the appellate division is not unanimous and by the consent of the appellate division or a judge of the court of appeals where the decision of the appellate division is unanimous in the same manner and subject to the same limitations not inconsistent herewith as is now provided in civil actions. It shall not be necessary to file exceptions to the rulings of the commission. The commission shall not be required to file a bond upon an appeal by it to the court of appeals. Otherwise such appeals shall be subject to the law and practice applicable to appeals in civil actions. Upon final determination of such an appeal, the commission shall enter an order in accordance therewith.

[Section 24 is amended by chapter 705, acts of 1917, by adding thereto the following:]

Interest. In case an award is affirmed upon an appeal to the appellate division, the same shall be payable with interest thereon from the date when said award was made by the commission.

[Section 27 is amended by chapter 705, acts of 1917, so as to read as follows:]

Deposits. SEC. 27. If an award under this chapter requires payment of death benefits or other compensation by an insurance carrier or employer in periodical payments, the commission may, in its discretion, at any time, any provision of this chapter to the contrary notwithstanding, compute and permit or require to be paid

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into the State fund an amount equal to the present value of all unpaid death benefits or other compensation in cases in which awards are made for total permanent or permament partial disability for a period of one hundred and four weeks or more, for which liability exists, together with such additional sum as the commission may deem necessary for a proportionate payment of expenses of administering the fund so created. The moneys so paid in for all death benefits or other compensation to constitute one aggregate and indivisible fund; and thereupon such employer or insurance carrier shall be discharged from any further liability under such award and payment of the same as provided by this chapter shall be assumed by the special fund so created. All computations made by the commission shall be upon the basis of the survivorship annuitants' table of mortality, the remarriage tables of the Dutch Royal Insurance Institution and interest at three and one-half per cent per annum.

Such special fund shall be kept separate and apart from all other moneys of the State fund, and shall not be liable for any losses or expenses of administration of the State fund other than the expenses involved in the administration of such special fund, nor shall the State fund be charged with the losses or expenses of the aggregate special fund beyond the amount of such special fund.

The commission may in like manner, in its discretion, commute and permit or require to be paid, into said aggregate special fund, by one or more resolutions one or more awards computable under this section.

Any portion of such special fund may pursuant to a resolution of the commission approved by the superintendent of insurance be invested in any of the securities in which a life insurance corporation may invest its assets as provided in section one hundred of the insurance law.

[Section 28 is amended by chapter 634, acts of 1918, so as to read as follows:]

Limitation.

SEC. 28. The right to claim compensation under this chapter shall be forever barred unless within one year after the accident, or if death results therefrom, within one year after such death, a claim for compensation thereunder shall be filed with the commission, but the employer and insurance carrier shall be deemed to have waived the bar of the statute unless the objection to the failure to file the claim within one year is raised before the commission on the hearing of a claim for compensation filed by the injured employee, or his or her dependents.

[Section 29 is amended by chapter 705, acts of 1917, so as to read as follows:]

Subrogation of employer to employee's rights.

SEC. 29. If an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, shall, before any suit or any award under this chapter, elect whether to take compensation under this chapter or to pursue his remedy against such other. Such elections shall be evidenced in such manner as the commission may by rule or regulation prescribe. If such injured employee, or in case of death, his dependents, elect to take compensation under this chapter, the awarding of compensation shall operate as an assignment of the cause of action against such other to the State for the benefit of the State insurance fund, if compensation be payable therefrom, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation, and if he elect to proceed against such other, the State insurance fund, person, association, corporation, or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by this chapter for such case. Such a cause of action assigned to the State may be prosecuted or compromised by the commission. A compromise of any such cause of action by

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the employee or his dependents at an amount less than the compensation provided for by this chapter shall be made only with the written approval of the commission, if the deficiency of compensation would be payable from the State insurance fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same. Wherever an employee is killed by the negligence or wrong of another not in the same employ and the dependents of such employee entitled to compensation under this chapter are minors, such election to take compensation and the assignment of the cause of action against such other and such notice of election to pursue a remedy against such other shall be made by such minor, or shall be made on behalf of such minor by a parent of such minor, or by his or her duly appointed guardian, as the commission may determine by rule in each case.

[Section 50 is amended by chapter 705, acts of 1917, by inserting before the last sentence in subsection 3 thereof the following:]

Security for payments.

The commission may also require an agreement on the part of an employer to pay any awards commuted under section twenty-seven of this act, into the special fund of the State fund, as a condition of his being allowed to remain uninsured pursuant to this section.

[Section 97 is amended by chapter 705, acts of 1917, by changing the word "six" to "twelve" where it occurs in subsection 4.]

CONSOLIDATED LAWS.

CHAPTER 28.—*Employers' liability and workmen's compensation insurance.*

SECTION 109 (added by chapter 524, acts of 1917). On and after the first day of January, nineteen hundred and eighteen, no policy of insurance against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or, against loss or damage to property caused by horses or by any vehicle drawn, propelled or operated by any motive power, and for which loss or damage the person insured is liable, shall be issued or delivered to any person in this State by any corporation authorized under subdivision three of section seventy of this chapter [authorizing insurance against loss or damage resulting from accident to or injury suffered by an employee or other person, for which the person insured is liable], or, if a foreign corporation, authorized to do business in this State, unless there shall be contained within such policy a provision that the insolvency or bankruptcy of the person insured shall not release the insurance carrier from the payment of damages for injury sustained or loss occasioned during the life of such policy, and stating that in case of such insolvency or bankruptcy, an action may be maintained by the injured person against such corporation under the terms of the policy for an amount not exceeding the amount of the policy.

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OHIO.

Compensation of workmen for injuries—State insurance fund.

[Section 871-9 of the act, p. 95, acts of 1913, providing for the appointment of the Industrial Commission of Ohio, is amended by an act, p. 157, acts of 1917, so as to read as follows:]

Sessions.

SECTION 871-9. The Industrial Commission of Ohio shall be in continuous session and open for the transaction of business during all business hours of each and every day, excepting Sundays and legal holidays. The sessions of said commission shall be open to the public and shall stand and be adjourned without further notice thereof on its record. All of the proceedings of said commission shall be shown on its record, which shall be a public record, and all voting shall be had by calling each member's name by the secretary, and each member's vote shall be recorded on the record of proceedings as cast. Said commission shall keep a separate record of its proceedings relative to claims coming before it for compensation for injured and the dependents of killed employees which record shall contain its findings and the award in each such claim for compensation considered by it and in all such claims the reason or reasons for the allowance or rejection thereof shall be stated in said record. Said commission may hold sessions at or in any place in the State of Ohio.

Records.

[The compensation law of the State is amended in several particulars. Sections 1465-50, 1465-54 and 1465-56 are amended by an act, p. 157, so as to read as follows:]

Depositions.

SEC. 1465-50. In claims filed before the Industrial Commission of Ohio by injured and the dependents of killed employees on account of injury or death sustained by such employees in the course of their employment, said commission may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for the taking of depositions in civil actions in the court of common pleas.

Premium rates.

SEC. 1465-54. It shall be the duty of the Industrial Commission of Ohio, in the exercise of the powers and discretion conferred upon it in the preceding section, ultimately to fix and maintain, for each class of occupation, or industry, the lowest possible rates of premium consistent with the maintenance of a solvent State insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury and death that it may authorize to be paid from the State insurance fund for the benefit of injured and the dependents of killed employees; and, in order that said object may be accomplished, said commission shall observe the following requirements in classifying occupations or industries and fixing the rates of premium for the risks of the same:

Accounts.

1. It shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the losses on account of injuries and death of employees thereof, and it shall also keep an account of the money received from each individual employer and the amount of losses incurred against the State insurance fund on account of injuries and death of the employees of such employer.

Surplus fund.

2. Ten per cent of the money that has heretofore been paid into the State insurance fund and ten per cent of all that may hereafter be paid into such fund shall be set aside for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars ($100,000) after which time the sum

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of five per cent of all the money paid into the State insurance fund shall be credited to such surplus fund, until such time as, in the judgment of said commission, such surplus shall be sufficiently large to guarantee a solvent State insurance fund.

Revisions. 3. On the first day of July, 1917, and annually thereafter, a revision of rates shall be made in accordance with the experience of said commission in the administration of the law as shown by the accounts kept as provided herein; and said commission shall adopt rules governing said rate revisions, the object of which shall be to make an equitable distribution of losses among the several classes of occupation or industry, which rules shall be general in their application.

Custodian. SEC. 1465-56. The treasurer of State shall be the custodian of the State insurance fund and all disbursements therefrom shall be paid by him upon vouchers authorized by the Industrial Commission of Ohio and signed by any two members of said commission; or, such vouchers may bear the facsimile signatures of the members of said commission printed thereon, and the signature of the deputy or other employee of said commission charged with the duty of keeping the account of the State insurance fund and with the preparation of vouchers for the payment of compensation to injured and the dependents of killed employees.

[Section 1465-61 is amended by the same act by substituting the word "and" for the word "or," after the word "casual" in subsection 2; also by adding a new subsection to read as follows:]

Contractors' employees. 3. Every person in the service of any independent contractor or subcontractor who has failed to pay into the State insurance fund the amount of premium determined and fixed by the Industrial Commission of Ohio for his employment or occupation, or to elect to pay compensation direct to his injured and to the dependents of his killed employees, as provided in section 1465-69, General Code, shall be considered as the employee of the person who has entered into such contract, whether written or verbal, with such independent contractor unless such employees, or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.

[Section 1465-69 is amended by the same act so as to read as follows:]

Employers' contributions. SEC. 1465-69. Except as hereinafter provided, every employer mentioned in subdivision two or [of] section 1465-60, General Code, shall, in the month of January, 1914, and semi-annually thereafter, pay into the State insurance fund the amount of premium determined and fixed by the Industrial Commission of Ohio for the employment or occupation of such employer the amount of which premium to be so paid by each such employer to be determined by the classifications, rules and rates made and published by said commission; and such employer shall semiannually thereafter pay such further sum of money into the State insurance fund as may be ascertained to be due from him by applying the rules of said commission, and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the Industrial Commission of Ohio, which receipt or certificate, attested by the seal of said commission shall be prima facie evidence of the payment of such premium.

Existing subscribers. *Provided, however*, That as to all employers who were subscribers to the State insurance fund prior to January 1, 1914, or who may first become subscribers to said fund in any other months of January or July, the foregoing provisions for the payment of such premiums in the month of January, 1914, and semiannually thereafter shall not apply, but such semiannual premiums shall be paid by such employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them: *And provided further*, That such employers who

Self-insurers. will abide by the rules of the Industrial Commission of Ohio and as may be of sufficient financial ability to render certain the payment of compensation to injured employees or to the dependents of killed employees, and the furnishing of medical, surgical,

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nursing and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in section 1465–78 to 1465–89, General Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, may, upon a finding of such fact by the Industrial Commission of Ohio, elect to pay individually such compensation, and furnish such medical, surgical, nursing and hospital services and attention and funeral expenses directly to such injured or the dependents of such killed employees; and the Industrial Commission of Ohio may require such security or bond from said employers as it may deem proper, adequate and sufficient to compel, or secure to such injured employees, or to the dependents of such employees as may be killed, the payment of the compensation and expenses herein provided for, which shall in no event be less than that paid or furnished out of the State insurance fund, in similar cases, to injured employees or to dependents of killed employees, who[se] employers contribute to said fund; and should municipal or other bonds be accepted by said commission as security for said payments, such bonds shall be deposited with the treasurer of State whose duty it shall be to have custody thereof and to retain the same in his possession according to the conditions prescribed by the order of said commission accepting the same as security, and said treasurer shall retain possession of said bonds until such time as he may be directed by said commission as to the mode and manner of his disposition of the same; and said commission shall make and publish rules and regulations governing the mode and manner of making application and the nature and extent of the proof required to justify such finding of fact by said commission as to permit such election by such employers, which rules and regulations shall be general in their application, one of which rules shall provide that all employers, electing directly to compensate their injured and the dependents of their killed employees as hereinbefore provided, shall pay into the State insurance fund such amount or amounts as are required to be credited to the surplus in paragraph two of section 1465–54, General Code. The Industrial Commission of Ohio may at any time change or modify its findings of fact herein provided for, if in its judgment such action is necessary or desirable to secure or assure a strict compliance with all of the provisions of the law in reference to the payment of compensation and the furnishing of medical, nurse, and hospital services and medicines and funeral expenses to injured and the dependents of killed employees.

[Section 1465–80 is amended by the same act by adding to the first sentence the words, " and such compensation shall be in addition to the compensation allowed to the claimant for the period of temporary total disability resulting from such injury;" also by inserting before the words " to wit " in the second sentence the words, " and shall be in addition to the compensation allowed the claimant for the period of temporary total disability resulting from such injury."

Section 1465–82 is amended by an act, p. 450, by extending the period of death benefits from six years to eight, by fixing the minimum where there are persons wholly dependent at $2,000 instead of $1,500, by increasing the maximum in all cases from $3,750 to $5,000.

Section 1465–87 is amended by an act, p. 157, so as to read as follows:]

Lump sums.

SEC. 1465–87. The commission, under special circumstances, and when the same is deemed advisable may commute payments of compensation or benefits to one or more lump-sum payments.

[Section 1465–89 is amended by an act, p. 528, so as to read as follows:]

Medical, etc., expenses.

SEC. 1465–89. In addition to the compensation provided for herein, the Industrial Commission of Ohio shall disburse and pay from the State insurance fund, such amounts for medical, nurse and hospital services and medicine as it may deem proper, not,

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however, in any instance, to exceed the sum of two hundred dollars unless in unusual cases, wherein it is clearly shown that the actually necessary medical, nurse and hospital services and medicines exceed the amount of two hundred dollars, such commission shall have authority to pay such additional amounts upon a satisfactory finding of facts being made and upon unanimous approval by such commission, such finding of facts to be set forth upon the minutes; and, in case death ensues from the injury, reasonable funeral expenses shall be disbursed and paid from the fund in an amount not to exceed the sum of one hundred and fifty dollars, and such commission shall have full power to adopt rules and regulations with respect to furnishing medical, nurse and hospital service and medicine to injured employees entitled thereto, and for the payment therefor.

[Section 1465–90 is amended by an act, p. 157, so as to read as follows:]

Decisions final.

SEC. 1465–90. The commission shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final: *Provided, however,*

Appeals.

In case the final action of such commission denies the right of the claimant to participate at all or to continue to participate in such fund on the ground that the injury was self-inflicted or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant, within thirty (30) days after the notice of the final action of such commission, may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way,

Procedure.

and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the Industrial Commission of Ohio, and he shall be notified by the clerk forthwith of the filing of such appeal. Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such commission as defendant, and further pleadings shall be had in said cause, according to the rules of civil procedure, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claimant; and if they determine the right in his favor, shall fix his compensation within the limits under the rules prescribed in this act; and any final judgment so obtained shall be paid by the Industrial Commission of Ohio out of the State insurance fund in the same manner as such awards are paid by such commission. In claims for compensation, medical, hospital and nursing services and medicines and funeral expenses brought before said commission, by an injured employee or by his dependents in the event of his death as the result of injury sustained in the course of employment, in which said commission denies the right of claimant or claimants to receive or to continue to receive compensation from an employer who has duly elected to pay compensation, medical, hospital and nursing services, and medicines and funeral expenses direct to his injured and the dependents of his killed employees on the ground that the injury was self-inflicted, or, on the ground that the injury did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, the claimant or claimants shall have the right to appeal to the common pleas court of the county wherein the injury was inflicted, in the same manner as in claims against the State insurance fund and as heretofore prescribed in this section, except that the employer shall be the defendant in such proceedings; and if a verdict is rendered in favor of the claimant or claimants, compensation shall be fixed within the limits under the rules prescribed in this act; and any final judgment so obtained shall be paid by the employer. Such judgment shall have the same preference against the assets of the employer in favor of the claimant or claimants as is now, or may hereafter be, allowed by

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law on judgment rendered for claims for taxes. Any claims for compensation, medical, hospital and nursing services, and medicines and funeral expenses brought before said commission by an injured employee, or by his dependents in the event of his death as a result of injury sustained in the course of employment in which said commission denies the right of claimant or claimants to receive or to continue to receive compensation from an employer who has failed or neglected, either to contribute to the State insurance fund or to elect to pay compensation, medical, hospital or nursing services, and medicines and funeral expenses direct to his injured, or the dependents of his killed employees, on the ground that the injury was self-inflicted, or on the ground that the injury did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, the claimant or claimants have the right to appeal to the common pleas court of the county wherein the injury was inflicted, in the same manner as in claims against the State insurance fund and as heretofore prescribed in this section; except that the employer shall be the defendant in such proceedings; and if a verdict is rendered in favor of the claimant or claimants, compensation shall be fixed within the limits under the rules prescribed in this act; and any final judgment so obtained shall be paid by the employer. Such judgment shall have the same preference against the assets of the employer in favor of the claimant or claimants as is now, or may hereafter be, allowed by law on judgment rendered for taxes. The cost of such proceeding, including a reasonable attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the unsuccessful party. Either party shall have the right to prosecute error as in the ordinary civil cases.

Claims against employers.

Appeals.

[Section 1465–101 is amended by an act, p. 6, so as to read as follows:]

SEC. 1465–101. All contracts and agreements shall be absolutely void and of no effect which undertake to indemnify or insure an employer against loss or liability for the payment of compensation to workmen or their dependents, for death, injury or occupational disease occasioned in the course of such workmen's employment, or which provide that the insurer shall pay such compensation, or which indemnify the employer against damages when the injury, disease or death arises from the failure to comply with any lawful requirement for the protection of the lives, health and safety of employees, or when the same is occasioned by the willful act of the employer or any of his officers or agents, or by which it is agreed that the insurer shall pay any such damages. No license or authority to enter into any such agreements or issue any such policies of insurance shall be granted or issued by any public authority.

What agreements void.

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OKLAHOMA.

ACTS OF 1917.

CHAPTER 178.—*Industrial commission—Employees' salaries.*

Secretary.

SECTION 1. The salary of the secretary of the State industrial commission is hereby fixed at eighteen hundred dollars per annum.

Employees.

SEC. 2. The State industrial commission is hereby authorized to appoint:

One inspector, at an annual salary of $1,500.

One reporter, at an annual salary of $1,320.

One medical adviser, at an annual salary of $1,200 per annum: *Provided*, That being a member of the faculty of the medical department of the State university shall not be a disqualification to fill said position.

Same.

SEC. 3. The State industrial commission may employ not to exceed two stenographers and fix their compensation not to exceed the sum of ninety dollars per month for each stenographer, and not to exceed two stenographers and fix their compensation not to exceed the sum of eighty dollars per month for each stenographer, both the number and compensation of such employees to be subject to the written approval of the governor; such compensation may be paid out of any contingent fund available for such purpose.

Approved this 23d day of March, 1917.

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OREGON.

ACTS OF 1913.

CHAPTER 112.—*Compensation of workmen for injuries—State insurance fund.*

[This act is amended so extensively by chapter 288, acts of 1917, that it is reproduced in full, as amended.]

Grounds for law.

SECTION 1. The State of Oregon recognizes that the prosecution of the various industrial enterprises which must be relied upon to create and preserve the wealth and prosperity of the State involves the injury of large numbers of workmen, resulting in their partial or total incapacity or death, and that under the rules of the common law and the provisions of the statutes now in force an unequal burden is cast upon its citizens, and that in determining the responsibility of the employer on account of injuries sustained by his workmen, a great and unnecessary cost is now incurred in litigation, which cost is divided between the workmen, the employers and the taxpayers, who provide the public funds, without any corresponding benefit, to maintain courts and juries to determine the question of responsibility under the law as it now exists, and that the State and its taxpayers are subjected to a heavy burden in providing care and support for such injured workmen and their dependents, and that this burden should, in so far as may be consistent with the rights and obligations of the people of the State, be more fairly distributed as in this act provided.

Commission.

SEC. 2. A commission is hereby created which shall be known as the "State industrial accident commission," to be composed of three commissioners. Immediately upon the taking effect of this act, the governor shall appoint such commissioners, not more than two of whom shall belong to one political party. Each commissioner appointed hereunder shall hold office until his successor is appointed and qualified. Any vacancy shall be filled by appointment by the governor. Inasmuch as the duties to be performed by such commissioners vitally concern the employers, the employees, as well as the whole people, of the State, it is hereby declared to be the purpose of this act that persons be appointed as commissioners who shall fairly represent the interests of all concerned in its administration.

Removal of commissioners.

SEC. 3. The governor may at any time remove any commissioner appointed by him for inefficiency, neglect of duty, or malfeasance in office. Before such removal he shall give such commissioner a copy of the charges against him and shall fix the time when he can be heard in his own defense, which shall not be less than 10 days thereafter, and such hearing shall be open to the public. If such commissioner shall be removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner and his findings thereon, with a record of the proceedings. Such power of removal shall be absolute and there shall be no right of review in any court whatsoever.

Oath.

No commissioner shall hold any other office or position of profit or pursue any other business or vocation or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office.

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Before entering on the duties of his office, each commissioner shall take and subscribe to an oath or affirmation that he will support the Constitution of the United States and of this State and faithfully and honestly discharge the duties of such office of commissioner; that he holds no other office or position of profit, and that he pursues and will pursue while such commissioner no other calling or vocation, and that he holds, and while such commissioner will hold, no position under any political party, which oath or affirmation shall be filed in the office of the secretary of state.

Bond. Each of the commissioners shall also, before entering upon the duties of his office, execute a bond payable to the State of Oregon, in the penal sum of $10,000, with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of his office, which bond when so executed and approved shall be filed in the office of the secretary of state.

Salary. Each of the commissioners shall receive an annual salary of thirty-six hundred dollars ($3,600), payable from the fund hereinafter provided.

Organization. SEC. 4. The commissioners so appointed under this act shall, within twenty days after their appointment, meet at the State capitol and organize by electing one of their number chairman, who shall serve until the commissioner to be appointed for the term commencing in January, 1915, shall have qualified and taken office. Immediately after the qualification of the commissioner for the term commencing in January, 1915, and biennially thereafter, the commissioners shall meet at the office of the commission, which shall be maintained at the State capitol, and shall elect a chairman, who shall serve for two years and until his successor is chosen.

Quorum. SEC. 5. A majority of the commissioners shall constitute a quorum to transact business, and the act or decision of any two of the commissioners shall be deemed the act or decision of the commission. No vacancy shall impair the right of the remaining commissioners to exercise all the powers of the commission.

Employees. SEC. 6 (as amended by chapter 288, acts of 1917). The commission may employ and terminate the employment of such assistants, experts and clerks as may be required in the administration of this act. Each assistant employed in accordance with this provision shall qualify by taking the same oath as a commissioner, which shall be indorsed upon and filed with his certificate of appointment in the office of the secretary of state, and when so qualified he shall have power to perform such duties as may be prescribed by the commission, including the performance of any administrative functions of the commission. The total expense of administration of the commission for any fiscal year ending June 30 shall not exceed ten per cent of the receipts to the industrial accident fund for that period.

Powers. SEC. 7 (as amended by chapter 288, acts of 1917). The industrial accident commission in its name may sue and be sued, and shall have a seal which shall bear the name of the commission. The commission is hereby charged with the administration of the provisions of this act, and to that end any of its commissioners or assistants authorized thereto by the commission, shall have power (a) to hold sessions at any place within the State; (b) to administer oaths; (c) to issue and serve by the commission's representatives or by any sheriff, subpœnas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony; (d) generally to provide for the taking of testimony and for the recording of proceedings held in accordance with the provisions of this act.

Duty of courts. It shall be the duty of the Circuit Court of the State of Oregon for any county or the judge of said court, on applications of the industrial accident commission or any of its commissioners or assistants, to compel obedience to subpœnas issued and served pursuant to the provisions of this section and to punish disobedience of any such subpœna or any refusal to testify at any session

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herein authorized, or to answer any lawful inquiry of any of said commissioners or assistants, in the same manner as a refusal to testify in the circuit court or the disobedience of the requirements of a subpœna issued from said court is punished.

The records of the commission comprising information acquired by the commission from employers or employees pursuant to the provisions of this act shall not be open to public inspection.

Rules, etc.

SEC. 8 (as amended by chapter 288, acts of 1917). The commission is hereby authorized to make and declare all rules and regulations which shall reasonably be required in the administration of the provisions of this act, and shall require the making of reports of accidents, reports of amounts paid or agreed to be paid as wages by employers to workmen, and may prescribe and require the use of the pay roll form by employers which shall carry such specific information as may be deemed necessary by the commission, and may require the attendance and testimony of employers, their officers and representatives before any hearing of the commission, and the production by employers of books, records, papers and documents without the payment or tender of witness fees on account of such attendance, and such attendance and production of books, records, papers and documents may be enforced by subpœnas as provided in section 7 hereof, and the commission may incur such expenses as the commission may determine reasonably necessary in the administration of this act.

Reports.

SEC. 9. The commission is hereby required to render to the governor of the State, quarter yearly, a report with full statistical information covering the acts of the commission and the receipt and disbursement of moneys hereunder.

Application of law.

SEC. 10. All persons, firms and corporations engaged as employers in any of the hazardous occupations hereinafter specified shall be subject to the provisions of this act: *Provided, however,* That any such person, firm or corporation may be relieved of certain of the obligations hereby imposed, and shall lose the benefits hereby conferred by filing with the commission written notice of an election not to be subject thereto in the manner hereinafter specified: *Provided, however,* That where an employer is engaged in a hazardous occupation, as hereinafter defined, and is also engaged in another occupation or other occupations not so defined as hazardous, he shall not be subject to this act as to such nonhazardous occupations, nor shall his workmen wholly engaged in such nonhazardous occupations be subject thereto except by an election as authorized by section 31 thereof: *Provided, however,* That employers and employees who are engaged in an occupation partly hazardous and partly nonhazardous shall come within the terms of this act the same as if said occupation were wholly hazardous.

Employees subject. Proviso.

SEC. 11. All workmen in the employ of persons, firms or corporations who as employers are subject to this act shall also be subject thereto: *Provided, however,* That any such workman may be relieved of the obligations hereby imposed and shall lose the benefits hereby conferred by giving to his employer written notice of an election not to be subject thereto in the manner hereinafter specified. Any workman of the age of 16 years and upward shall himself exercise the election hereby authorized. The right of election hereby authorized shall be exercised on behalf of any workman under the age of 16 years by his parent or guardian. This act shall not apply to workmen of less than the minimum age prescribed by law for the employment of minors in the occupation in which such workmen shall be engaged.

Benefits payable, when.

SEC. 12. Every workman subject to this act while employed by an employer subject to this act who after June 30, next following the taking effect of this act, while so employed sustains personal injury by accident arising out of and in the course of his employment and resulting in his disability, or the beneficiaries as hereinafter defined, of such workman in case such injury results in death, shall be entitled to receive from the industrial accident fund hereby created the sum or sums hereinafter specified and the

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right to receive such sum or sums shall be in lieu of all claims against his employer on account of such injury or death except as hereinafter specially provided: *Provided, however,* That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit, and if he take under this act the cause of action against such other shall be assigned to the State for the benefit of the accident fund. If the other choice is made the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the State may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit which would leave a deficiency to be made good out of the accident fund may be made only with the written approval of the department.

Injuries due to act of third person.

Hazardous occupations.

SEC. 13 (as amended by chapter 288, acts of 1917). The hazardous occupations to which this act is applicable are as follows:

(a) Factories, mills and workshops where power-driven machinery is used;

(b) Printing, electrotyping, photo-engraving and stereotyping plants where power-driven machinery is used;

(c) Foundries, blast furnaces, mines, wells, gas works, waterworks, irrigation works, where power-driven machinery is used, reduction works, breweries, wharves, docks, dredges, smelter, powder works, laundries where power-driven machinery is used, quarries, engineering works;

(d) Logging, lumbering and shipbuilding operations;

(e) Logging, street and interurban railroads not engaged in interstate commerce;

(f) Buildings being constructed, repaired, moved or demolished;

(g) Telegraph, telephone, electric light or power plants or lines;

(h) Public or commercial steam heating or power plants;

(i) Railroads not engaged in interstate commerce, steamboats, tugs and ferries, motor boats operated for commercial or industrial purposes;

(j) Gravel, sand and coal bunkers;

(k) Flour, feed and chop mills;

(l) Grain elevators, grain warehouses where power-driven machinery is used, creosoting or wood-treating works, garbage works, wood saws, stevedoring, longshoring, stone crushing, stockyards and tanneries, and all occupations for which rates are expressly established by section 19 hereof.

Farming and all work incidental thereto except the construction of dwelling houses, hop dryers, fruit dryers, stock and hay barns, are nonhazardous occupations and are subject to the provisions of this act only through compliance with section 3 hereof.

Definitions.

SEC. 14 (as amended by chapter 288, acts of 1917). In the sense of this act words employed mean as here stated, to wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of any article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

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Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads not then engaged in interstate commerce, logging roads, interurban railroads not then engaged in interstate commerce, harbors, docks, canals, electric, steam or water power plants, telegraph and telephone plants and lines, electric light or power lines, and includes any other works for construction, alteration or repair, for which machinery driven by mechanical power is used.

The term "employer" used in this act shall be taken to mean any person, firm or corporation, including receiver, administrator, executor or trustee, that shall contract for and secure the right to direct and control the services of any person, and the term "workman" shall be taken to mean any person, male or female, who shall engage to furnish his or her services subject to the direction or control of an employer.

Farming means the cultivating of land, dairying, horticultural or viticultural labor, stock or poultry raising, and operations incidental thereto; also when incidental thereto, thrashing, clover hulling, hay baling, ensilage cutting, land clearing with or without blasting, wood sawing, woodcutting, operation of tractors, fruit dryers, feed mills and other work done with power-driven machinery, whether or not such operations are carried on by the owner of the farm or commercially, or under contract.

Insurance of employers, etc.

Any individual employer or any member of any firm subject to this act as employer in any of said hazardous occupations, may make written application to the commission to become entitled as a workman to the compensation benefits hereof, and thereupon it shall be the duty of the commission to fix a rate of contribution and a monthly wage at which such person shall be carried on the pay roll as a workman. When said rate and wage are fixed such person may file a notice in writing with the commission of his election to contribute to the industrial accident fund at the rate and upon the wage so fixed, and thereupon shall be subject to the provisions and entitled to the benefits of this act. Any individual employer or member of a firm becoming entitled to the benefits of this act as in this section provided with respect to injuries sustained upon work in which his workmen are engaged, shall contribute to the industrial accident fund at the rate and upon the wage so fixed and shall be entitled to a reduction of such contribution as provided by section 19 hereof, and shall also pay thirty cents per month as workman's contribution: *Provided, however,* That if said person is injured while in default for payments prescribed herein, he shall not be entitled to receive any compensation whatsoever under this act.

Any member or officer of any corporate employer who shall be carried upon the pay rolls at a salary or wage not less than the average salary or wage of such pay roll, but not otherwise, shall be deemed to be a workman.

Dependents.

Dependent means any of the following-named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower or child under the age of sixteen years, viz: Invalid child over the age of sixteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident, are de-

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pendent in whole or in part for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens other than father or mother, husband and wife or children, not residing within the United States at the time of the accident, are not included.

Beneficiary means a husband, wife, child, or dependent of a workman, in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child," as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

Election not to contribute.

SEC. 15 (as amended by chapter 288, acts of 1917). Any employer engaged in any of such hazardous occupations who would otherwise be subject to this act, may on or before June fifteenth next following the taking effect of this act, file with the commission a statement in writing declaring his election not to contribute to the industrial accident fund hereby created, and thereupon such employer shall be relieved from all obligations to contribute thereto, and such employer shall be entitled to none of the benefits of this act, and shall be liable for injuries to or death of his workmen, which shall be occasioned by his negligence, default or wrongful act as if this act had not been passed, and in any action brought against such an employer on account of an injury sustained after June thirtieth next following the taking effect of this act, it shall be no defense for such employer to show that such injury was caused in whole or in part by the negligence of a fellow servant of the injured workman, that the negligence of the injured workman, other than his willful act, committed for the purpose of sustaining the injury, contributed to the accident, or that the injured workman had knowledge of the danger or assumed the risk which resulted in his injury.

Defenses abolished.

New employers.

Any person, firm or corporation hereafter engaging as an employer in any of said hazardous occupations may file a like notice with said commission prior to or within three days of the time of becoming such employer and shall thereby and thereupon become relieved from making contributions to said fund, and shall be liable to his workmen as in the case of existing employers so electing, and shall as in the case of such employers, lose all benefit of the defenses above described.

Notices to be posted.

All employers engaged in said hazardous occupations shall display in a conspicuous manner about their works and in a sufficient number of places reasonably to inform their workmen of the fact, printed notices furnished by the commission stating that they are or are not, as the case may be, contributors to the industrial accident fund. The refusal or neglect of an employer to display such notice as herein provided shall be a misdemeanor, and upon conviction thereof the offending employer shall be punished by a fine of not less than $10 nor more than $100. The Circuit Court of the State of Oregon and any justice court of the State shall have concurrent jurisdiction of this offense.

Relation continuing.

SEC. 16 (as amended by chapter 288, acts of 1917). All such employers who shall not, as herein provided, give to the commission written notice of their election not to contribute to said fund shall be subject to all the provisions of this act until and including the next succeeding thirtieth day of June, and thereafter until and including June thirtieth of each succeeding year unless before May first in some year written notice shall be filed with the said commission of an election to cease contributing to such fund, whereupon from and after the succeeding first day of July the status of the employer giving such notice shall be that resulting from the giving of notice first above prescribed.

Recall of election.

SEC. 17 (as amended by chapter 288, acts of 1917). Any employer who has so elected not to contribute hereunder may at any time, by filing with said commission written notice, recall such election, whereupon he shall forthwith post in conspicuous places

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notices properly dated as provided by section 15 hereof, announcing his election to become subject to the provisions of the act, and fifteen days from the date of filing of said notice such employer shall become and continue in all respects subject to this act.

Election by employees.

SEC. 18 (as amended by chapter 288, acts of 1917. On or before June thirtieth next following the taking effect of this act any workman in the employ of an employer subject to this act may give notice in writing to his employer of his election not to become subject to this act, and any workman entering the employment of such an employer after such date may at such time give a like notice, and thereupon such workman shall be in no wise subject to the provisions or entitled to any of the benefits hereof.

Any workman in the employ of an employer who shall have elected not to contribute to the fund hereby created and who shall have recalled such election may, at any time before the recall of rejection of his employer becomes effective, give notice in writing to his employer of his election not to become subject to this act, and thereupon such workman shall be in no wise subject to the provisions or entitled to any of the benefits hereof: *Provided,* That in case his employer shall have failed to give legal notice to his workman by posting notices of his election to contribute as provided in section 15 hereof, his workman shall have five days after the posting of such notice in which to reject the act. But if such workman shall sustain an injury within such period of five days and before he shall have elected not to become subject to this act, he shall have the option, to be exercised before suit is brought, of taking the benefits herein provided, or of proceeding against the employer as if this act had not been passed.

Any workman who shall be in the employ of an employer who shall hereafter engage in any of said hazardous occupations and who shall have become subject to this act may give notice in writing to his employer within three days after his employer shall have engaged in such hazardous occupation of his election not to become subject to this act, and thereupon and thereafter such workman shall be in no wise subject to the provisions or entitled to any of the benefits hereof, but if such workman shall sustain an injury within such peroid of three days, and before he shall have elected not to become subject to this act, he shall have the option, to be exercised before suit is brought, of taking the benefits hereby provided, or of proceeding against his employer as if this act had not been passed.

Any workman who has so elected not to become subject to this act may at any time by giving to his employer who is then subject to this act ten days' notice in writing, recall such election, and after expiration of such ten days such workman shall become and continue in all respects subject to this act.

Any workman who has become subject to this act, shall, if he remain in the service of the same employer, continue subject to this act to and including the thirtieth day of June of each succeeding year, unless before June first in some year he shall give written notice to his employer of his election not to be longer subject to this act, whereupon from and including the first succeeding first day of July such workman shall be no longer subject to this act.

The employer shall upon receipt of a written notice of rejection or recall of rejection of a workman, file a duplicate thereof or a verified copy of the same with the commission. Failure on the part of the employer to transmit such notice to the commission within twenty-four hours of the receipt thereof shall be a misdemeanor.

Coercion of employees.

Any person, firm or corporation who directly or indirectly uses any force, violence, or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any manner intimidates or coerces any person in or about to enter into any contractual relation with him, or with any firm or corporation for service, work or labor, in order to induce or compel such person to elect not to

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become subject to this act, shall be guilty of a misdemeanor. The Circuit Court of the State of Oregon and any justice court of the State shall have concurrent jurisdiction of this offense.

Premium rates.

SEC. 19 (as amended by chapter 271, acts of 1915). Every employer engaged in any of the hazardous occupations enumerated in section 13 hereof who shall not have served notice of his election not to contribute hereunder, as in this act provided, shall, except as hereinafter provided, pay to the commission on or before the 15th day of each month a percentage of his total pay roll for the preceding calendar month of workmen subject to this act according to and at the rates hereinafter set forth, to wit:

CONSTRUCTION WORK.

Subaqueous work; fire escapes; house moving; house wrecking; steeples; metal smokestacks; metal chimneys; iron or steel frame structures or parts of structures	0.080
Tunnels; trestles; bridges; pile driving; jetties; breakwaters	.065
Sewers; shaft sinking; ditches and canals (other than irrigation without blasting); erection of tanks; towers, not metal framed; windmills, not metal framed; roof work; freight and passenger elevators	.060
Electric light or power plants or systems; telegraph or telephone systems; steam or electric railroads with rock work or blasting; waterworks or systems; roadwork with blasting; erecting fireproof doors or shutters; concrete buildings; galvanized iron or tin work, with scaffold; marble, stone or brick work with scaffold; gas works or systems; excavation not otherwise specified; ship or boat building or wrecking; painting of buildings or structures, outside work	.050
Steam heating plants; advertising signs; ornamental metal work or metal ceilings in buildings; carpenter work, not otherwise specified; ship or boat rigging; ship or mill wrighting; grain elevator, not metal framed	.040
Street railways without blasting; installation of steam boilers or engines; installation of dynamos; installation of automatic sprinklers; installation of machinery not otherwise specified; drilling wells	.035
Street or other grading; road making; concrete foundations; asphalt laying; covering steam pipes or boilers; construction work not otherwise specified; street paving	.030
Lathing; plastering	.025
Plumbing; house heating or ventilating systems; inside wiring, installation of electrical apparatus or fire-alarm systems in buildings; marble, stone or tile setting, inside work; mantle setting; glass setting; paper hanging, decorating or painting, inside work; concrete and composition walks	.020

OPERATION (INCLUDING REPAIR WORK) OF—

(All combinations of material take the higher rate when not otherwise provided.)

Logging railroads; railroads; wood saws; stevedoring; longshoring	.050
Electric light or power plants; interurban electric railroads; stone crushing; quarries; mines other than coal	.040
Logging, with or without machinery; coal mines	.035
Dry or floating docks; steamboats; tugs; ferries; dredges; smelters; creosoting and wood-treating works	.030
Telephone or telegraph systems	.025

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Street railways; garbage works; gas works; waterworks; steam heating or power plants; grain elevators or grain warehouses; flour, grain, chop and feed mills; gravel, sand and coal bunkers; operations not otherwise specified	.020

FACTORIES USING POWER-DRIVEN MACHINERY.

Stamping tin or metal	.050
Saw mills; shingle mills; lath mills	.035
Furniture, staves, veneer, box, packing cases, sash, door or blinds, keg, pail, barrel, basket, tub, wooden ware or fiber ware; work in wood not otherwise specified	.0275
Boiler works; paper or pulp mills	.025
Foundries	.0225
Canneries of fish or meat; cement manufacturing; soap, tallow and grease; briquettes; machine shops, not otherwise specified; iron, steel, copper, zinc, brass or lead articles or ware not otherwise specified; hardware; marble, stone or granite work (shop or monument erection); factories not otherwise specified	.020
Tile, brick, terra cotta, fire clay; pottery, charcoal, earthenware; porcelain; breweries; bottling works; paints, oils and varnishes	.015
Working in foodstuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified; cordage; jewelry; laundries	.010
Condensed milk; creameries	.0075
Printing; electrotyping; photo-engraving; engraving; lithographing	.0050

MISCELLANEOUS WORK.

Operations of powder works; manufacture of fireworks	.080
Clearing land with blasting	.050
Making artificial ice; operating refrigerating or cold-storage plants; operating tanneries; manufacture of fertilizer; operation of packing houses and stockyards	.020

Contributions by employees.

Every employer who is hereby required to make such payments to the commission is hereby authorized and required to retain from the moneys earned by each of his workmen subject to this act the sum of one (1) cent a day for each day or part of day such workman shall be employed and to pay the sum so retained to the commission at the time his own payment is due hereunder.

Two or more classes of employments.

If only a part of an employer's workmen are engaged in any of the hazardous employments above specified the workmen of such employer not so engaged shall not be subject to this act nor entitled to the benefits thereof. If an employer and his workmen are engaged in two or more of such hazardous employments for which different rates of contribution are prescribed the employer shall contribute according to the several rates applicable to the various employments in which his workmen are so engaged and according to his pay roll for each of such employments. Any workman engaged for the same employer in two or more of such hazardous employments shall for the purpose of determining the rate of contribution hereunder be deemed engaged solely in the employment taking the higher rate.

Adjustment of rates.

Whenever for a period of twelve months the total amount paid out of the industrial accident fund or set apart therefrom as hereinafter provided on account of injuries sustained by the workmen of any employer shall not exceed fifty per cent of the amount contributed to said fund by such employer during such period, not including, however, moneys retained from his workmen's wages, the rate of contribution of such employer shall thereafter be reduced by ten per cent of the amount hereinbefore prescribed and

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whenever for a further period of 12 months the total amount so paid out and set aside shall not exceed 50 per cent of the amount so contributed by such employer his rate of contribution shall be further reduced by a like amount: *Provided*, That such rate of contribution shall be immediately restored to the rate first above prescribed whenever the total amount paid out or set apart hereunder on account of injuries sustained by his workmen during the preceding 12 months shall exceed 50 per cent of his contributions to such fund during such period of 12 months: *And provided further*, That no employer shall be entitled to any such reduction if the commission shall find that during the preceding 12 months he has willfully failed to install or maintain any safety appliance, device or safeguard required by statute.

Whenever the commission shall determine that the industrial accident fund amounts to a sufficient sum to meet all payments which shall have then accrued, together with a surplus of 30 per cent thereon, and whenever there shall have been set apart by the State treasurer from said fund the amounts hereinafter required on account of injuries resulting in death or permanent disability, all employers who have contributed to said fund for the preceding six successive months shall be exempt from contributions hereunder for the current calendar month, and the workmen of such employers shall be likewise exempt from contributions hereunder.

Fund created.

SEC. 20. There is hereby created a fund to be known as the industrial accident fund, which fund shall be held by the State treasurer and by him deposited in such banks as are authorized to receive deposits of the general funds of the State. All moneys received by the commission hereunder shall be by it paid over forthwith to the State treasurer and shall become a part of the industrial accident fund, and there is hereby appropriated out of any moneys in the general fund in the State treasury not otherwise appropriated the sum of fifty thousand dollars ($50,000), which shall become a part of such fund. There is also appropriated annually out of any moneys in the State treasury not otherwise appropriated a sum equal to one-seventh of the total sum which shall be received by the State treasurer under the provisions of section 19 hereof, and the moneys so appropriated shall become a part of such fund. All payments authorized by this act, including all salaries, clerk hire and all other expenses, shall be made from the industrial accident fund.

Compensation for—

SEC. 21 (as amended by chapter 288, acts of 1917). If any workman while he is subject to this act and in the service of an employer who is thus bound to contribute to the industrial accident fund, shall sustain a personal injury by accident arising out of and in the course of his employment caused by violent or external means, he, or his beneficiaries or dependents, if the injury result in death, shall receive compensation according to the following schedule:

Death;

(a) Where death results from the injury the expenses of burial shall be paid in all cases not to exceed one hundred dollars ($100) in any case; and

(1) If the workman leaves a widow or invalid widower, a monthly payment of thirty dollars ($30) shall be paid throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive six dollars ($6) per month for each child of the deceased under the age of sixteen years at the time of the occurrence of the injury until such minor shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) shall not exceed fifty dollars ($50). Upon remarriage of a widow she shall receive once and for all a lump sum equal to ten times her monthly allowance, viz, the sum of three hundred dollars ($300), but the monthly payments for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but a child or children under the age of sixteen years, a monthly payment of fifteen dollars shall be made to each child until such child shall

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reach the age of sixteen years: *Provided, however,* That if any child is under the age of sixteen years and over the age of fifteen years, he shall be entitled to recover such payments for a period of one year, but the total monthly payment shall not exceed fifty dollars ($50), and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed thirty dollars ($30) per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of 16 years, excepting a daughter, the payment to whom shall cease when she shall have reached the age of eighteen years: *Provided, however,* That if any child is under the age of sixteen years and over the age of fifteen years, he shall be entitled to recover such payments for a period of one year. The payment to any dependent shall cease if, and when under the same circumstances the necessity creating the dependency would have ceased, if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive twenty-five dollars ($25) per month for each month after his death until the time at which he would have arrived at the age of twenty-one years: *Provided, however,* That such parents shall be entitled thereafter to compensation as dependents under the provisions of the first clause of this paragraph (3).

(4) In the event a surviving spouse receiving monthly payments shall die leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall thereafter until such child shall arrive at the age of sixteen years, be paid to the child increased to fifteen dollars per month: *Provided, however,* That if any such child is under the age of sixteen years and over the age of fifteen years he shall be entitled to recover such payments for a period of one year, but the total to all children shall not exceed the sum of fifty dollars ($50) per month.

Permanent total disability;

(b) Permanent total disability means the loss of both feet or both hands, or one foot and one hand, total loss of eyesight or such paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury the sum of thirty dollars ($30).

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of thirty-five dollars ($35). If the husband is not an invalid the monthly payment of thirty-five dollars ($35) shall be reduced to thirty dollars ($30).

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by six dollars ($6) for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed fifty dollars ($50).

(c) If the injured workman die during such period of total disability, whatever the cause of death, leaving a widow, invalid widower, or child under the age of sixteen years, the surviving widow, or invalid widower, shall receive thirty dollars ($30) per month until death or remarriage, to be increased six dollars ($6)

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per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is, or shall be, without father or mother, such child shall receive fifteen dollars ($15) per month until arriving at the age of sixteen years: *Provided, however*, That if any child is under the age of sixteen years and over the age of fifteen years, he shall be entitled to recover such payment for the period of one year. The total combined monthly payment under this paragraph shall in no case exceed fifty dollars ($50). Upon remarriage, the payments on account of a child or children shall continue as before to the child or children.

Temporary disability;

(d) When the total disability is only temporary the schedule of payments contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply so long as the total disability shall continue, increased fifty per cent for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent of the monthly wage (the daily wage multiplied by twenty-six, or in case the workman was customarily employed seven days a week, multiplied by thirty) the workman was receiving at the time of his injury.

Hernia;

A workman in order to be entitled to compensation for hernia must prove (1) that the hernia did not exist prior to the date of the alleged accident, and (2) that it was immediately preceded by an accident arising out of and in the course of employment. A workman, after establishing his right to compensation for hernia as above provided; when operated upon, shall be entitled to receive from the industrial accident fund, under the provisions of subdivision (d) of this section, payment for temporary total disability for a period of forty-two days. If such workman refuses forthwith to submit to an operation, neither he nor his beneficiaries shall be entitled to any benefits whatsoever under this act.

Partial disability.

(e) When the disability is or becomes partial only and is temporary in character, the workman shall receive for a period not exceeding two years that proportion of the payments provided for total disability which his earning power at any kind of work bears to that existing at the time of the occurrence of the injury.

(f) Permanent partial disability means the loss of either one arm, one hand, one leg, one foot, loss of hearing in one or both ears, loss of one eye, one or more fingers, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. Where permanent partial disability shall result from any injury, the workman shall receive the sum of twenty-five dollars ($25) a month for the period stated against such injury, respectively as follows:

Schedule.

In case of the loss by separation of one arm at or above the elbow joint, or the permanent and complete loss of the use of one arm, ninety-six (96) months.

The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, seventy-six (76) months.

The loss by separation of one leg, at or above the knee joint, or the permanent and complete loss of the use of one leg, eighty-eight (88) months.

The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, sixty-four (64) months.

The permanent and complete loss of hearing in both ears, ninety-six (96) months.

The permanent and complete loss of hearing in one ear, forty-eight (48) months, or, at the option of the workman, nine hundred dollars ($900) in a lump sum.

The permanent and complete loss of the sight of one eye, forty (40) months, or, at the option of the workman, eight hundred and fifty dollars ($850) in a lump sum.

The loss by separation of a thumb, twenty-four (24) months,

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or, at the option of the workman, six hundred dollars ($600) in a lump sum.

The loss by separation of a first finger, sixteen (16) months, or, at the option of the workman, three hundred fifty dollars ($350), in a lump sum; the second finger nine (9) months, or, at the option of the workman, two hundred dollars ($200) in a lump sum; a third finger, eight (8) months, or, at the option of the workman, one hundred and seventy-five dollars ($175) in a lump sum; a fourth finger six (6) months, or, at the option of the workman, one hundred and fifty dollars ($150) in a lump sum.

The loss of one phalange of the thumb shall be considered equal to the loss of one-half a thumb; the loss of one phalange of a finger, equal to the loss of one-third of a finger, and the loss of two phalanges of a finger, equal to the loss of one-half of a finger, and the compensation for the respective proportions of the above period or in the respective proportions of the above lump sum shall be payable. The loss of more than one phalange of a thumb, or more than two phalanges of a finger shall be considered as the loss of an entire thumb or finger.

The loss by separation of a great toe ten (10) months, or at the option of the workman, two hundred and fifty dollars ($250) in a lump sum; any other toe, four (4) months, or at the option of the workman, one hundred dollars ($100) in a lump sum.

Other cases of injury.

In all other cases of injury resulting in permanent partial disability, the compensation shall bear such relation to the periods stated in this clause as the disabilities bear to those produced by the injuries named in this schedule, and payments shall be made for proportionate periods, not exceeding, however, ninety-six (96) months, and in all such cases where the period of payment shall not exceed twelve (12) months, but in none other, shall the workman be entitled to a lump sum equal to the present value of such monthly payments computed at an interest rate of four per cent per annum.

Adjustments.

If any workman entitled to compensation on account of a permanent disability shall have received compensation for either temporary total disability or temporary partial disability by reason of the same injury which shall entitle him to compensation for permanent partial disability the number of months during which he shall be entitled to payments for such permanent partial disability shall be reduced by the number of monthly payments which he shall have received on account of such temporary total disability or temporary partial disability.

Death of workman receiving benefits.

In case of the death of a workman receiving monthly payments on account of permanent partial disability, such payments shall continue for the period during which such workman, if surviving, would have been entitled thereto, and such payments shall be made to the person or persons who would have been entitled to receive death benefits if the injury causing such disability had been fatal, but nothing herein contained shall be construed to entitle any person or persons to double payments on account of the death of a workman and a continuation of payments for permanent partial disability, or to a greater sum in the aggregate than if such injury had been fatal.

Segregated accident fund.

(g) For every case of injury resulting in death, or permanent total disability or permanent partial disability on account of which deferred payments are provided for a period exceeding twenty-four (24) months, it shall be the duty of the commission forthwith to notify the State treasurer in writing of the amount required to equal at four per cent interest per annum the present worth of the monthly installments payable on account of such injury, the number of such payments being computed in case of permanent total disability according to the age of the injured workman, and in the case of death according to the ages of the beneficiaries, both of such computation[s] being according to the American Mortality Table and the expectation of life thereunder, and in the case of permanent partial disability according to the schedule above prescribed. Thereupon the State treasurer shall

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transfer from the accident fund to a fund to be known as the segregated accident fund the amount so specified by the commission. All moneys comprised in the segregated accident fund shall be invested by the State treasurer in the class of securities authorized for the investment by banks of savings deposits under the laws of this State. The segregated accident fund and its earnings shall be charged with the payment of the installments on account of which such segregations shall be made. The State treasurer shall keep an accurate account of the earnings of and payments from the segregated accident fund and may borrow from the accident fund to meet monthly payments pending conversion into cash of any security and in such case shall repay such temporary loan out of the cash realized from the security. Any deficiency in the segregated accident fund shall be made good out of and any balance or overplus shall revert to the accident fund.

Subsequent injuries.

(h) Should a further accident occur to a workman already receiving a monthly payment under this section for a disability, or who has been previously the recipient of a lump-sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries and his past receipt of money under this act.

Readjustments.

(i) If aggravation, diminution or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case, the commission may, upon the application of the beneficiary, or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided, or, in a proper case, terminate the payments.

Spouses living apart.

(j) A husband or wife of an injured workman who has deserted said injured workman for more than one year prior to the time of the injury or subsequently shall not be a beneficiary under this act.

Nonresidents.

(k) If a beneficiary shall reside or remove out of the State and shall have been such nonresident for a period of one year, the commission may, in its discretion, convert any monthly payments thereafter to become due to such beneficiary into a lump-sum payment, not in any case exceeding four thousand dollars ($4,000), by paying a sum equal to three-fourths of the present value of such monthly payments, estimated as to duration by the life expectancy of the beneficiary in case of death or total permanent disability and computed according to the American Mortality Table and on the basis of interest at the rate of four per cent per annum, or with the consent of the beneficiary for a lesser sum, and in any case the commission may, in its discretion, pay over to any beneficiary in a lump sum an amount not exceeding one-fourth of the present value of the monthly installments payable to such beneficiary and computed as aforesaid, and thereupon all subsequent monthly installments shall be proportionately reduced.

Injuries willfully caused.

SEC. 22. If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act, and also have cause of action against the employer, as if this act had not been passed, for damages over the amount payable hereunder.

Minors.

A minor working at an age legally permitted under the laws of this State shall be deemed sui juris for the purposes of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided herein, but in the event of a lump-sum payment becoming due under this act to such minor workman, the

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control and management of any sum so paid shall be within the jurisdiction of the courts as in the case of other property of minors.

Medical, etc., expenses.

SEC. 23. The commission shall have authority to provide, under uniform rules and regulations, first aid to workmen who are entitled to benefits hereunder, together with transportation, medical and surgical attendance and hospital accommodations for injured workmen at an expense not exceeding two hundred and fifty dollars ($250) in any one case, and to contract therefor in its discretion. The commission may, in its discretion, authorize employers to furnish or provide, at the expense of the commission and upon terms fixed by it, such transportation, attendance and accommodations: *Provided, however,* That all such transportation, attendance and accommodations shall be at all times subject to the supervision and control of the commission.

Default in payments.

SEC. 24 (as amended by chapter 288, acts of 1917). When any payment of contribution required by this act to be made by an employer on his own account or on account of a workman in his employ becomes due, interest at the rate of one per cent per month or fraction thereof shall be added to the amount of such payment from and after the first day of the month following the date upon which such payment became due. If any employer shall default in any payment of contribution required hereunder after a written demand therefor shall have been made on such employer by the commission, such employer shall be subject to a penalty of ten per cent upon the amount of such contribution then due. The amount of such contribution at any time due, together with interest thereon, and penalty for nonpayment thereof, shall be collected in the same action, and an action may be maintained in the name of the commission as plaintiff, and such right of action shall be in addition to any other right of action, remedy or penalty for nonpayment.

Benefits preferred.

All contributions, interest charges, penalties or amounts due the industrial accident fund from any employer as provided in this act, and all judgments recovered by the commission against any employer under any of the provisions of this act, shall be deemed preferred claims in all bankruptcy proceedings, trustee proceedings, proceedings for the administration of estates and receiverships involving the employer liable therefor or the property of such employer.

Liens.

Every employer required to make payments hereunder to the industrial accident fund shall be primarily liable for such payments and for interest and penalties thereon which shall accrue as above provided, and a lien is hereby created in favor of the commission on all real property within this State upon which labor shall be performed by the workmen of any employer required to make such payments hereunder in a sum equal to the amount at any time due from such employer to the commission on account of labor performed by the workmen of such employer together with such interest and penalty upon such real property or any structure or improvement erected or made thereon, and the commission shall also have a lien on all saw logs, spars, piles, ties or other timber, and also a lien upon all lumber while the same remains at the yard wherein manufactured, in a sum equal to the amount at any time due from any employer required to make payments hereunder on account of labor performed by the workmen of such employer, together with such interest and penalty, upon such saw logs, spars, piles, ties, or other timber, and also upon such manufactured lumber. The lien hereby created shall attach from the date of the commencement of such labor upon such property and shall be prior to all other liens and incumbrances except labor liens. In order to avail itself of the lien hereby created the commission shall, within sixty days after the employer primarily liable for the payment on account of which such lien is hereby authorized shall make default in such payment, file with the county clerk of the county within which such property shall then be situated a statement in writing describing the property upon

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which a lien is claimed and stating the amount of the lien claimed by the commission. From and after the filing of such claim of lien and at any time within six months therefrom, the commission shall be entitled to commence suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property.

Actions. All actions and suits brought pursuant to the provisions of this act where the amount of the demand is $20 or more may be brought in the discretion of the commission in the Circuit Court of the State of Oregon in which the defendant resides, or in which the real or personal property against which a lien is hereby created shall be located. In all such suits and actions costs shall be allowed to the prevailing party regardless of the amount of the demand.

Employer liable, when. When any employer is in default in the payment of any contribution required hereunder and an injury occurs to any of his workmen during the period of such default, if such default be after demand for payment, such employer shall not be entitled to any of the benefits of this act, but shall be liable to the injured workman, or to those claiming under him in case of death, as he would have been prior to the passage of this act.

In case the recovery actually collected from the employer shall equal or exceed the compensation to which the claimant would be entitled under this act, the claimant shall be entitled to nothing out of the industrial accident fund. If such amount shall be less than the compensation herein provided, the commission shall contribute out of the industrial accident fund the amount of such deficiency. The person entitled to a right of action under this section shall have the choice, to be exercised before commencing suit against such defaulting employer, of proceeding by suit against such employer or of taking compensation under this act. If such person elect to take compensation under this act the cause of action shall be assigned to the commission for the benefit of the industrial accident fund. In any suit brought upon such cause of action the defenses withdrawn by section 15 hereof from employers electing not to contribute hereunder shall not be admissible. Any such cause of action assigned to the commission may be prosecuted or compromised by it in its discretion. Any compromise by an individual claimant under this section which would result in a deficiency to be made good out of the industrial accident fund may be made only upon the written approval of the commission.

Omission of safety appliances. SEC. 25. It shall be the duty of the industrial accident commission to investigate all cases where they have reason to believe that employers subject to this act have failed to install or maintain any safety appliance, device or safeguard required by statute and in all cases of failure on the part of any employer to comply with such safety statute to report the fact to the prosecuting attorney for the district in which such violation of law occurred and request the prosecution of the offending employer.

Payments exempt. SEC. 26 (as amended by chapter 288, acts of 1917). No moneys payable on account of injuries or death hereunder shall be subject to assignment prior to the receipt thereof by the beneficiary entitled thereto, nor shall the same pass by operation of law. All moneys paid or payable hereunder and the right to receive the same shall be exempt from seizure on execution, attachment or garnishment, or by the process of any court.

Aliens. Where the beneficiaries of a deceased who is entitled to the benefits of this act are aliens residing in an alien country, payment of the sums due the beneficiaries may, in the discretion of the commission, be made by the commission to the consul general of the alien Government on behalf of the beneficiaries, and the receipt of the said consul general of said alien Government to the commission for the amounts thus paid shall be a full and sufficient receipt for the payment of the funds thus due the beneficiaries.

Filing claims. SEC. 27 (as amended by chapter 288, acts of 1917). (a) Where a workman is entitled to compensation under this act he shall

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file with the commission his application for such compensation on blanks furnished by the commission. The physician who attended him shall send to the commission a certificate made out on blanks furnished by the commission.

(b) Where death results from injury, the persons entitled to compensation under this act shall make application therefor to the commission, which application must be accompanied by proof of death and proof of relationship showing the persons to be entitled to compensation under this act, certificate of attending physician if any, and such other proof as may be required by the rules of the commission.

(c) If change of circumstances warrant[s] an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable in nonfatal cases unless such claim is filed within three months after the date upon which the injury occurred, nor in fatal cases unless such claim is filed within one year after the date upon which the fatal injury occurred.

Review. (e) The power and jurisdiction of the commission shall be continuing and it may from time to time make such modification or change with respect to former findings or orders with respect thereto, as in its opinion may be justified.

Artificial limbs. (f) Upon application of a claimant, the commission may, in its discretion, advance the cost of artificial limbs and deduct the amount so advanced from the last installments of the period for which an award shall have been made.

False statements. (g) If any person shall willfully make a false statement or representation to the commission or to any of its assistants for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or any other person, the person making such false statement or representation shall be guilty of a misdemeanor.

Medical examinations and treatment. SEC. 28 (as amended by chapter 288, acts of 1917). Any workman entitled to receive compensation under this act is required, if requested by the commission, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the commission. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

For such period of time as any workman shall commit insanitary or injurious practices which in the judgment of the commission tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as the commission deems reasonably essential to promote his recovery, his right to compensation shall be suspended and no payment shall be made for such period, and the commission may reduce the period during which such workman would otherwise be entitled to compensation to such an extent as they shall determine his disability shall have been increased by such refusal.

Accidents to be reported. SEC. 29 (as amended by chapter 288, acts of 1917). Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the commission. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the commission may prescribe.

Duty of employers. Any employer within the State hereafter engaging in any hazardous occupation as herein defined, and who has not filed with the commission a notice of rejection of this act, shall, within

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ten days after engaging in such hazardous occupation, file a notice stating the kind of hazardous occupation in which he is engaged or about to engage, with the commission. Failure or neglect on the part of any employer to file such notice shall subject the offending employer to a penalty of $50 for each offense, to be collected by a civil action in the name of the commission and paid to the industrial accident fund. Justices of the peace and other courts having jurisdiction as justices of the peace shall have concurrent jurisdiction with the circuit court of action brought to recover said penalty.

Records to be open.

SEC. 30 (as amended by chapter 288, acts of 1917). The books, records and pay rolls of any employer pertinent to the administration of this act shall always be open to inspection by the commission or its agent for the purpose of ascertaining the correctness of the pay roll, the men employed, and such other information as may be necessary in the administration of this act.

Every employer subject to this act shall keep a true and accurate record of the number of his workmen and the wages paid by him, the occupations at which and the number of days or parts of days any of his workmen are employed, and shall furnish to the commission, upon request, a sworn statement of the same.

Misrepresentations.

Any employer who shall willfully misrepresent to the commission the amount of his pay roll upon which the amount of his contribution to the industrial accident fund is based shall be liable to the commission in a sum equal to ten times the amount of the difference between the amount of such contribution computed according to the representation thereof by such employer and the amount for which the employer is liable hereunder according to a correct computation of his pay roll, and such liability shall be enforced in a civil action in the name of the commission and any amount so collected shall become a part of such fund.

Violations.

Failure or neglect on the part of the employer to report accidents or to submit said books, records and pay rolls for inspection to any member of the commission or any of its representatives presenting written authority from the commission, or a refusal on the part of an employer to keep a pay roll in accordance with this section when demanded by the commission, shall subject the offending employer to a penalty of $100 for each offense, to be collected by a civil action in the name of the commission and paid into the industrial accident fund, and the individual giving such refusal shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $100 or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment in the discretion of the court. The Circuit Court of the State of Oregon and any justice court of the State shall have concurrent jurisdiction of this offense.

Employers' outside act.

SEC. 31 (as amended by chapter 288, acts of 1917). The State, State departments, school districts, irrigation districts, ports and port commissions or other agencies of the State, counties and any incorporated city or town within the State, engaged in any occupation whether hazardous or nonhazardous, and any employer engaged in any occupation other than those defined in section 13 hereof, may make written application to the commission to fix a rate of contribution for such occupation, and thereupon it shall be the duty of the commission to fix such rate, which shall be based on the hazard of such occupation in relation to the hazards of the occupations for which rates are prescribed by section 19 hereof. When such rate shall be so fixed such applicant may file notice in writing with the commission giving ten days' notice of his or its election to contribute under this act, and shall forthwith display in a conspicuous manner about its works and in a sufficient number of places to reasonably inform his or its workmen of the fact, printed notices furnished by the commission stating that he or it has elected to contribute to the fund and stating when said election will become effective. Any workman in the employ of such applicant shall be entitled at any time

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within five days after the posting of said notice by his employer, to give a written notice to such employer of his election not to become subject to this act. At the expiration of the time fixed by the notice of such employer the employer and such of his or its workmen as shall not have given such written notice of their election to the contrary shall be subject to all of the provisions of this act and entitled to all of the benefits thereof. Any employer, including the State, State departments, school districts, irrigation districts, ports, port commissions, or other agencies of the State, counties and cities, becoming subject to this act in the manner prescribed in this section, shall pay the rate so fixed by the commission and shall be entitled to a reduction of such rate in the manner provided by section 19 hereof, and shall retain and pay to the commission the proportion of his workmen's wages prescribed by section 19 hereof.

Decisions of commission.

SEC. 32 (as amended by chapter 288, acts of 1917). The commission shall have full power and authority to hear and determine all questions within its jurisdiction and its decision thereon shall be final: *Provided, however*, In case the final action of said commission denies the right of the claimant to participate at all in the industrial accident fund, on the ground that the injury was self-inflicted or on the ground that the accident did not arise out of and in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant may, within thirty days after notice of the final action of such commission, apply for an appeal to the Circuit Court of the State of Oregon for the county in which such claimant resides. In case a claimant shall file a petition for appeal in the circuit court against said commission as defendant, within said period of thirty days, the commission shall be notified by the clerk of said court forthwith of the filing of such petition for appeal and deliver a certified copy thereof, and the commission shall within ten days after the receipt of such petition by the commission, including the receipt of such notices, file with the clerk of said court the record of proceedings before the commission, including a transcript of the evidence. The court or any judge thereof may thereupon decide whether an appeal shall be granted or not. If granted, the commission and the claimant or the claimant's attorney shall be notified by mail. If an appeal is granted the case shall be tried by said court in the same manner as other cases before it, and if such appeal is granted prior to thirty days before the beginning of any term, it shall be on the docket for such term and shall have precedence over all other civil cases.

Appeals.

The circuit court on such appeal shall determine the right of the claimant and certify its decision to the commission, and if it determines the right in favor of the claimant the commission shall fix his compensation within the limits and under the provisions prescribed in this act. The costs of such proceedings, including a prevailing fee of $10, shall be taxed against the unsuccessful party. Appeals shall lie from the judgment of the circuit court as in other civil cases.

Legal adviser.

The attorney general shall be the legal adviser of the commission. Upon request of the commission, the attorney general or, under his direction, the prosecuting attorney of any county shall institute or prosecute actions or proceedings for the enforcement of any provisions of this act or for the recovery of any money to the industrial accident fund, or any penalty herein provided for, when such actions or proceedings are within the county in which such prosecuting attorney was elected, and shall defend in like manner all suits, actions and proceedings brought against the commission or the members thereof in their official capacity.

Warrants for disbursement.

SEC. 33. Disbursement out of the funds shall be made only upon warrants drawn by the secretary of state upon vouchers therefor transmitted to him by the commission and audited by him. The State treasurer shall, to such extent as shall appear to him to be advisable, keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities author-

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ized for the investment by banks of savings deposits under the laws of this State. The State treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund and the segregated accident fund.

Employers' liability law.

SEC. 34. Nothing in this act shall be deemed to abrogate the rights of the employee under the present employers' liability law, in all cases where the employee, under this act, is given the right to bring suit against his employer for an injury.

SENATE JOINT RESOLUTIONS—1917.

No. 19.—*Committee on workmen's compensation law.*

Questions to be studied.

A committee of five consisting of two senators and three representatives [shall] be appointed by the president of the senate and the speaker of the house to study the question of operating the State industrial accident commission without State aid, and also of making the workmen's compensation law compulsory.

Said committee shall, after said investigation, and at the next regular session of the legislature, recommend such legislation as in its opinion may be advisable.

Filed in the office of the secretary of state February 14, 1917.

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PENNSYLVANIA.

Bureau of workmen's compensation—Insurance board.

[Section 15 of act No. 339, acts of 1915, creating a bureau of workmen's compensation, is amended by act No. 57, acts of 1917, by allowing the salary of a referee's clerk to be $1,500 instead of $1,000 as formerly.

Section 21 of the same act is amended by increasing the salary of referees from $2,500 to $5,000.

Sections 8 and 11 of act No. 340, acts of 1915, creating a workmen's compensation insurance board and State fund, are amended by act No. 395, acts of 1917, effective January 1, 1918, so as to read as follows:]

Expenses of administration, etc.

SECTION 8. The expenses of the organization and administration of the fund shall, until the first day of July, one thousand nine hundred and nineteen, be paid out of the money appropriated by section twenty-eight of this act, and out of such money, paid in premiums by subscribers, as is made available for the expenses of the administration of the fund by section eleven of this act.

The expenses of the administration of the fund shall, after the first day of July, one thousand nine hundred and nineteen, be paid out of such money, paid in premiums by subscribers, as is made available for the expenses of the administration of the fund by section eleven of this act.

Use of premiums.

SEC. 11. The money paid in premiums by subscribers is hereby made available for the expenses of administering the fund. The board shall keep an accurate account of the money paid in premiums by the subscribers, and the disbursements on account of injuries to the employees thereof, and on account of administering the fund; and if, at the expiration of any year, there shall be a balance remaining, after deducting such disbursements, the unearned premiums on undertermined risks, and the percentage of premiums paid or payable to create or maintain the surplus provided in section nine of this act, and after setting aside an adequate reserve, so much of the balance as the board may determine to be safely distributable shall be distributed among the subscribers, in proportion to the premiums paid by them; and the proportionate share of such subscribers as shall remain subscribers to the fund shall be credited to the installment of premiums next due by them, and the proportionate share of such subscribers as shall have ceased to be subscribers in the fund shall be refunded to them, out of the fund, in the manner hereinafter provided.

Distribution of balances.

[Section 26 of the same act is amended by increasing the salary of the manager from $4,000 to $6,000 per annum.]

ACTS OF 1917.

No. 359.—*Contractors for public works—Acceptance of provisions of compensation law.*

Application of law.

SECTION 1. All contracts executed by the Commonwealth of Pennsylvania, or any officer or bureau or department thereof, on behalf of the said Commonwealth, or by any municipality, or any officer or bureau or board thereof, or by any municipal division or subdivision of the Commonwealth, which contracts shall involve the construction or doing of any work involving the employment of labor, shall contain a provision that the contractor shall accept, in so far as the work covered by any such contract is concerned,

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Provisions for compensation.

the provisions of the workingmen's compensation act of 1915, and any supplements or amendments thereto which may hereafter be passed, and that the said contractor will insure his liability thereunder, or file with the Commonwealth, or the municipal corporation or board with whom the contract is made, a certificate of exemption from insurance from the bureau of workingmen's compensation of the department of labor and industry.

Duty of officers, etc.

SEC. 2. Every officer of the Commonwealth of Pennsylvania, or any bureau or department thereof, or of any municipality, or any bureau or department thereof, or any municipal division or subdivision of this Commonwealth, who shall sign, on behalf of the said Commonwealth or any municipality thereof, or any municipal division or subdivision thereof, any contract requiring in its performance the employment of labor, shall require, before the said contract shall be signed, proof that the said contractor with whom the contract is made shall have accepted the workingmen's compensation act of 1915, and any supplements or amendments thereto which may be hereafter passed, and proof that the said contractor has insured his liability thereunder in accordance with the terms of the said act, or that the said contractor has had issued to him a certificate of exemption from insurance from the bureau of workmen's compensation of the department of labor and industry.

Contracts void.

SEC. 3. Any contract executed in violation of the provisions of this act shall be null and void.

Approved July 18, 1917.

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ACTS OF 1918.

ACT No. 10.—*Compensation of workmen for injuries—Insurance fund.*

Title.

SECTION 1. This act shall be known as the Workmen's Accident Compensation Act.

Scope.

SEC. 2. The provisions of this act shall apply to laborers injured, disabled or killed by accidents occurring while engaged in their work. Farm laborers not employed to work with machinery operated by steam, gas, electricity, animal or other mechanical power, domestic servants and employees engaged in clerical work, in offices and commercial establishments where machinery is not used, are excepted: *Provided, however,* That farm laborers employed in agricultural work where animal power is used shall be entitled to the benefits of this act.

This act shall not apply to any employer who regularly employs less than three laborers, or to any laborer whose wages exceed the sum of twelve hundred (1,200) dollars annually: *Provided,* That pursuant to the provisions of this act, compensation shall be paid to laborers injured, disabled or killed by accident caused by the employment and occurring while engaged in any public works that may be performed by administration.

Public works.

Payments.

The Workmen's Relief Commission is hereby authorized and directed to pay such compensation pursuant to the terms of this act, drawing from the trust fund belonging to the Government such sum or sums as may be necessary for the payment of said compensation. The sums so paid need not be reimbursed to the people of Porto Rico out of the fund created by this act.

Benefits for disability.

SEC. 3. Any laborer who may be injured within the provisions of this act shall be entitled to—

1. Medical attendance, medicines and sustenance as may be prescribed, including hospital service when necessary.

2. If the injury be of a temporary nature, to compensation equal to one-half of the wages received by him the day of the accident, which compensation shall run during such time as it may take to effect a cure. The period of such payments shall in no case exceed one hundred and four weeks: *Provided,* That in no case shall there be paid more than seven (7) no less than three (3) dollars per week.

3. If the laborer is partially disabled for permanent work he shall receive a compensation of thirteen hundred (1,300) dollars as minimum and twenty-five hundred (2,500) dollars as maximum. Compensation shall be graded in proportion to the rate of wages that the laborer was earning.

Any permanent injury which does not constitute permanent total disability, such as the loss of an eye, a hand, a foot, or any other injury of a permanent nature which does not wholly disable a laborer for any work in a remunerative occupation, shall be considered as partial permanent disability.

4. If the laborer is totally disabled for work, he shall receive a compensation of two thousand (2,000) dollars as minimum and four thousand (4,000) dollars as maximum. The compensation shall be graded in proportion to the rate of wages that the laborer was earning.

The preceding compensations shall be fixed between the maximum and minimum in view of the earning capacity of the injured laborer and his probabilities of life.

The total and permanent loss of sight of both eyes; the loss of both feet at or above the ankle; the loss of both hands at

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or above the wrist; the loss of one hand and one foot, and such injuries as may result in the permanent disability of the laborer for any work in a remunerative occupation shall be considered total disability.

Death. 5. If the laborer loses his life as a result of the injuries sustained, death occuring within one year from the time of the accident, as a consequence of such accident, the widower or widow and legitimate children and grandchildren, and, in the proper case, the illegitimate children and grandchildren, be they natural or not, of the deceased laborer all of whom were dependent exclusively on his earnings for their support, and, in default thereof, the parents of the deceased laborer who were dependent exclusively on his or her earnings for their support, and if there be no such parents, the nearest relative who was also exclusively dependent on the earnings of the decedent, shall receive a compensation of three to four thousand dollars as a maximum, which shall be graded according to the earning capacity of the laborer and of the number of persons entitled to compensation: *Provided, however*, That compensation where more than two persons are equally entitled thereto, as hereinbefore provided, shall be apportioned in the proper proportion, in accordance with the Civil Code: *Provided, further*, That an illegitimate child of a deceased laborer which child is not a natural child, shall have a share in the compensation equal to one-half of that accruing to an acknowledged natural child.

The laborer may, under will and testament, determine the apportionment to be made of the compensation so as not to be in conflict with this act or with the Civil Code.

Investment of benefits. In cases coming under paragraphs 3, 4, and 5, where a sum of money is to be paid to the laborer or to his heirs as compensation, pursuant to this act, the Workmen's Relief Commission hereinafter created shall exercise its good offices by reasonable suggestions so that the sum received shall be invested in a manner advantageous to the welfare of the laborer and his relatives, in such form as to produce the best possible means of subsistence: *Provided*, That no allowance for medicine and food shall be made after the date of the granting of such compensation and sums advanced therefor shall be deducted from the said compensation: *Provided, further*, That if the laborer or his heirs, pursuant to this act, are minors or incapacitated persons, or if, in the judgment of the said commission, there is a reasonable risk that such cash compensation may be squandered, the said commission shall deliver the amount of such compensation to the district court of the district where the beneficiary resides, for custody and investment in accordance with the provisions of the law regulating the application of amounts derived from the sale of the property of minors.

Injuries not compensable. SEC. 4. Accidents occurring under the following circumstances are not labor accidents and, therefore, shall not entitle the laborer or his heirs under this act, to compensation:

1. When the laborer attempts to commit a crime, or to injure his employer or any other person, or when he voluntarily causes himself injury.

2. When the laborer is intoxicated, provided such intoxication is the cause of the accident.

3. When the injury is caused to the laborer by the criminal act of a third person.

4. When gross negligence of the laborer is the sole cause of the injury.

Medical examinations. SEC. 5. During the period of disability the injured workman shall submit himself for examination, at reasonable times and places by a competent physician or surgeon, designated by the commission hereinafter created. The commission is hereby authorized to enter into contracts with insular, municipal, and private physicians and with hospitals and practicantes when deemed advisable by it.

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The workman and the employer shall also be entitled to designate and pay a physician and surgeon to witness such examination, but this right is established without prejudice to the right of the physician designated as aforesaid to visit the injured workman at all reasonable times and under all reasonable circumstances during his disability.

The refusal or objection of a workman, without just cause, to submit himself to such medical examination or professional treatment shall deprive him of his right to receive compensation under this act or to institute or prosecute proceedings under this act for the recovery of such compensation.

Workmen's relief commission.

SEC. 6. A commission to be known as "The Workmen's Relief Commission" is hereby created, which shall consist of five members, as follows:

The commissioner of agriculture and labor, who shall be chairman of the commission;

The treasurer of Porto Rico;

And three other commissioners who shall be appointed by the Governor of Porto Rico, with the approval of the senate, and one of whom, at least, shall be a person affiliated with one of the bona fide labor organizations, another of whom shall be a physician and the other an engineer, until the next general elections are held. At the next general elections and in each subsequet election there shall be elected three commissioners of the Workmen's Relief Commission and a candidate shall be nominated by each of the three political parties casting the highest number of votes at the previous elections.

Such commissioners as may not be employees of the insular government shall receive a per diem of seven (7) dollars each for attending each regular or special meeting of the commission, payable out of the workmen's relief trust fund; and, further, mileage from their places of residence to the place of meeting and return, at the rate of ten (10) cents per mile. In no case shall the amount for per diem for each commissioner exceed the sum of four hundred (400) dollars per annum. The said commission shall elect a secretary prior to the first day of June.

Rules and regulations.

The said commission shall have power to adopt such rules and regulations as may be necessary to carry out the provisions of this act not inconsistent therewith, which said rules and regulations shall have the force of law. Violation of any rule or regulation issued by the commission created by this act shall be deemed a misdemeanor punishable by fine of not to exceed fifty (50) dollars for each violation.

Accidents to be reported.

SEC. 7. Every employer subject to the provisions of this act, or the person representing him in business, shall report to the Workmen's Relief Commission as soon as possible, within a period of five days from the date of the accident, all injuries suffered by his employees in the course of their employment. Such reports shall be upon printed blanks furnished upon request by the commission, and shall contain the name and nature of the business of the employer, the location of the establishment or place of business, the name, age, sex, and occupation of each injured employee, and shall state the date and hour of the accident, the nature and cause of the injuries sustained, and such other information as may be required by the Workmen's Relief Commission.

The report made by the employer under the provisions of this section shall not be evidence against the employer in any proceeding under this or any other act.

The refusal or neglect of any employer to make the report required by this section shall be punished by a fine of not less than twenty-five (25) nor more than fifty (50) dollars for each offense.

Investigation.

The department of agriculture and labor, within forty-eight hours after receipt of notice from the commission of the occurrence of an accident to any workman subject to the provisions of this act, shall make a thorough investigation of the said accident, the cause or causes thereof, the character, nature and ex-

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tent of the injuries sustained, and shall file a full report of the said facts with the Workmen's Relief Commission, including in the said report such other facts and circumstances as in the opinion of the Workmen's Relief Commission shall enable it to pass judgment on the claim for the relief of the injured workman when the said claim shall be presented to the commission as herein provided.

The Workmen's Relief Commission shall have the power to make such further investigation as it may deem necessary for the purposes of this act.

The Workmen's Relief Commission, or some trustworthy person designated by said commission, is hereby expressly authorized to subpœna witnesses, under notice of punishment for contempt, to take oaths and declarations, to examine books and documentary evidence material to the case under investigation, and to visit and inspect the buildings, machinery and other property where any accident to a workman may have occurred.

Claims. SEC. 8. From and after the approval of this act, any workman subject to this act who has sustained injuries while engaged in his work and in case of the death of such workman as the result of said injuries, his legal heirs, as described in paragraph 5, section 3, of this act, dependent exclusively upon his wages for support, may present to the Workmen's Relief Commission, within ninety days counted from the date of the injuries or from the date of the death of the workman, as the case may be, an application in writing for the compensation provided for in this act: *Provided*, That when the ninety days allowed for filing the application shall have elapsed such application not having been made, it shall be the duty of the Workman's Relief Commission to investigate the reason why the person concerned did not make such application and when the commission deems that said application was not made because of ignorance of the party concerned or because of some other reason not under the control of such party concerned, said party shall be granted thirty days more: *And provided, further*, That no application shall be denied on account of prescription unless it is clearly shown that said party concerned was notified of his right.

Such application shall state the date, place, nature and cause of the injury or death, the name and address of the employer and the name and address of the injured workman.

Awards. Within the period of fifteen days after the receipt of the report of the department of agriculture and labor, provided for in the foregoing section, the Workmen's Relief Commission shall consider the petition for compensation and shall render a decision either denying or awarding the compensation applied for; and in case the commission is of the opinion that the petitioner is entitled to compensation the decision of the commission shall specify the amount to be paid, and the time and manner in which payment shall be made.

A certified copy of the decision of the Workmen's Relief Commission, denying or granting compensation under the provisions of this act, shall be served upon the applicant for compensation and upon the employer for whom the injured workman was working at the time of the accident, within ten days after the rendering of such decision.

A certified copy of the decision of the commission, signed by the president and secretary thereof, and sealed with such seal as the commission may adopt, shall be sufficient authority for the auditor of Porto Rico, in accordance with this act, to issue a warrant to be paid by the treasurer of Porto Rico out of the workmen's relief trust fund.

Limitation. No claim for the compensation provided for in this act shall be considered by the Workmen's Relief Commission unless the commission has received a written application on behalf of the person or persons entitled to compensation, within ninety days from the date of the accident.

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SEC. 9. Appeals from the decision of the Workmen's Relief Commission to the district court of the district where the accident occurred shall be allowed to the claimant only when the commission shall have decided that no accident has occurred for which compensation is provided by this act. Appeals.

Appeals from the decision of the Workmen's Relief Commission shall likewise be allowed to any employer who has been assessed for premiums under the provisions of this act only when the decisions of the Workmen's Relief Commission are to the effect that the accidents are such for which compensation should be allowed under the provisions of this act.

Such appeal must be taken by filing with the secretary of the district court a written petition setting forth the facts upon which the appeal is based and serving a copy thereof upon the Workmen's Relief Commission within thirty days after receipt of notice of the decision of the Workmen's Relief Commission.

After the appeal is perfected the district court shall proceed with the case in the same manner as provided by law for an appeal from a judgment of a municipal court in civil cases. The decision of the district court shall be final on questions of fact.

SEC. 10. Before June 1, 1918, and before June 1 of each following year, the Workmen's Relief Commission shall classify and group the occupations of workmen to whom this act applies in accordance with the probable risk or liability of injury under existing conditions and shall fix rates of insurance to be paid by the employers of workmen in these groups. All such rates or premiums shall be levied on the estimated pay roll of the employer of such workmen for the fiscal year covered by the insurance, on a basis that shall be fair, equitable and just as among such employers. Where the Workmen's Relief Commission is of the opinion that the pay roll for the fiscal year prior to the year for which insurance is to be collected constitutes a fair basis upon which to estimate the pay roll for the fiscal year during which the insurance is to be effective, the said pay roll for the fiscal year during which the insurance is to be effective shall be estimated thereby: *Provided*, That when, in the opinion of the Workmen's Relief Commission, such pay roll can not be taken as a fair basis upon which to estimate the pay roll for the year during which the insurance is to be effective, the Workmen's Relief Commission may require a deposit in advance as hereinafter provided. There shall not be more than five groups with rates not exceeding those here stated: Classification of occupations.

Group No. 1. Not over 4 per cent of the total annual pay roll of the employers employing workmen entitled to compensation in accordance with this act in such group.

Group No. 2. Not over 3 per cent of the total annual pay roll of the employers employing workmen entitled to compensation in accordance with this act in such group.

Group No. 3. Not over 2 per cent of the total annual pay roll of the employers employing workmen entitled to compensation in accordance with this act in such group.

Group No. 4. Not over 1 per cent of the total annual pay roll of the employers employing workmen entitled to compensation in accordance with this act in such group.

Group No. 5. Not over one-half of 1 per cent of the total annual pay roll of the employers employing workmen entitled to compensation in accordance with this act in such group.

The Workmen's Relief Commission may establish as many subgroups as it may deem necessary and may fix different rates for any group or subgroups of any group, provided such rates are within the limits previously prescribed herein for said group: *Provided*, That all public carriers operating railroads shall be included in this act while carrying on their business or traffic in Porto Rico. Subgroups. Railroads.

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Extrahazardous occupations.

In exceptional cases where the laborer's occupation is extraordinarily dangerous in the opinion of the commission, the commission may raise the rate of insurance to a maximum of 10 per cent.

If after this act has gone into effect it is shown by experience that because of poor or careless management, or because of lack of safety appliances, any establishment or work is extraordinarily dangerous in comparison with other like establisments or occupations, the Workmen's Relief Commission may at any time advance its classification of risk and premium rate in proportion to the extraordinary hazard.

Collection of premiums.

SEC. 11. The treasurer of Porto Rico is hereby empowered, authorized, and directed to levy, assess, and collect semiannually and in advance from every employer of workmen subject to this act, such annual premiums as the Workmen's Relief Commission shall determine in accordance with the preceding section, on the total amount of wages paid by said employer to workmen who were or would have been entitled to the benefits of this act during the year prior to the levying of the premiums, if the same had been in force.

Said premiums, and those determined in section 12 of this act, having been collected, shall be deposited by the treasurer of Porto Rico in the trust fund for compensation to workmen hereby created. The assessment shall be made prior to August 30th in each fiscal year beginning on the preceding July 1, taking as a basis therefor the total amount paid for wages of workmen employed by each employer during the previous year who were or would have been entitled to the benefits of this act if the same had been in force.

Should the employer fail to pay the semiannual premiums legally levied upon him, on or before September 15 and on or before February 15, the treasurer of Porto Rico may order the attachment of property of said employer and shall proceed to collect such premiums together with such charges thereon in accordance with the law and procedure which is at present or which may hereafter be in force for the collection of unpaid property taxes. Surcharges shall be collected for every month or fraction thereof during which said premium shall remain unpaid after September 15 and February 15, at the rate of one per cent a month.

Any employer who prior to the first of July or to the first of January of any year ceases to be subject to the provisions of this act may excuse himself from payment of premiums for the following semester or semesters by giving such notification and producing such evidence that he will not be subject to this act, as the Workmen's Relief Commission may require. Any employer subject to this act during any part of a semester shall pay the premiums for the whole semester, but he shall be entitled to such reimbursement, if any, as provided in the following section: *Provided*, That in such cases reimbursement may be made at the expiration of the semester for which said premiums were paid.

Annual adjustments.

SEC. 12. At the end of each fiscal year the treasurer shall compare the actual pay roll of each employer paying premiums in accordance with this act for such fiscal year with the pay roll of the preceding fiscal year on the basis of which premiums were levied, assessed, and collected by him, and if the pay roll for the year during which the insurance was effective is greater than that of the previous fiscal year for which premiums were levied, assessed, and collected, the treasurer shall levy, assess, and collect upon the difference additional premiums in the same manner and on the same basis as the original premiums were levied, assessed, and collected; and if the pay roll for the year during which insurance was effective is less than that of the previous fiscal year for which premiums were levied, assessed, and collected, the treasurer shall refund from the workmen's

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relief trust fund the proportion of the premiums corresponding to the difference between the actual pay roll for the year during which insurance was effective and the year for which they were levied, assessed, and collected: *Provided*, That in any case where the Workmen's Relief Commission believes that the pay roll for the present fiscal year is not a fair basis upon which to estimate the pay roll for the succeeding year, it may require in advance a deposit to cover the premiums during the year for which insurance is to be effective, and the balance of the said deposit, if any, shall be refunded at the end of the year, after deducting the premium due on the basis of the actual pay roll for the year during which such insurance was effective, and if the deposit is found at any time to be insufficient, the Workmen's Relief Commission is authorized to require a further deposit to meet such deficiency. The deposits required by the Workmen's Relief Commission shall be levied, assessed, and collected in the same manner hereinbefore provided for the levy, assessment, and collection of premiums.

Statements by employers.

SEC. 13. It shall be the duty of every employer of workmen entitled to the benefits of this act to file with the Workmen's Relief Commission, on or before the fifteenth day of July in each year, a duplicate statement under oath showing the number of workmen employed by the said employer and who were or would have been entitled to the benefits of this act if the same had been in force, and also the total amount of wages paid to said workmen during the previous fiscal year, and such other information in regard to the wages of the said workmen as may be required to be furnished by the commission.

The failure to file such statement on or before the date above specified shall constitute a misdemeanor, punishable by a fine of not less than fifty (50) nor more than five hundred (500) dollars, in the discretion of the court. Blanks for such statements shall be furnished upon request by the Workmen's Relief Commission.

It shall be the duty of every employer of laborers entitled to the benefits of this act to keep a complete register, in accordance with such regulations as may be prescribed by the Workmen's Relief Commission, showing the name of every such laborer, the age and sex of such laborer, the nature of the work performed by and the wages paid to every one of the said laborers.

The Workmen's Relief Commission may order an inspection to be made of all the pay rolls and other books or records of such employers relating to the payment of wages, by any representative duly authorized by it; and it shall be the duty of such employer to permit such an inspection.

False statements.

Any employer who knowingly falsifies the information required by this section shall be subject to the same penalty herein provided for a failure to file the statement required by this section, and shall also be liable to the Workmen's Relief Commission for three times the difference between the premium paid and the amount that should have been paid, which sum shall be collected in the same manner as provided for the collection of the regular premiums under this act.

No payments by employees.

SEC. 14. No agreement by an employee to pay any portion of the premium paid by his employer to the workmen's relief trust fund shall be valid; and any employer who makes a reduction for such purpose from the wages or salaries of any employee entitled to the benefits of this act shall be guilty of a misdemeanor.

Expenses of administration.

SEC. 15. If in the opinion of the Workmen's Relief Commission additional employees are absolutely necessary for the work of the department of agriculture and labor, the treasury department, the department of health, or of the commission, in connection with this act, such additional employees may be employed and their compensation fixed by the Workmen's Relief Commission with the approval of the governor. The expenses of the commission as well as any traveling expenses incurred in con-

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nection with the carrying out of this act, shall be charged to the workmen's relief trust fund.

Investment of funds.

SEC. 16. The Workmen's Relief Commission may invest any of the surplus or reserve funds belonging to the workmens' relief trust fund in bonds of the United States or of Porto Rico or bonds for which the credit of the people of Porto Rico has been pledged. All such securities or evidences of indebtedness shall be placed in the hands of the treasurer of Porto Rico, who shall be the custodian thereof. He shall collect the principal or interest thereof when due and pay the same into the workmen's relief trust fund. The treasurer shall pay all warrants or vouchers drawn on the workmen's relief trust fund for the making of such investments when signed by the president and secretary of the Workmen's Relief Commission, approved by the auditor of Porto Rico and countersigned by the governor. The Workmen's Relief Commission, with the consent of the governor of Porto Rico, may sell any such securities, the proceeds thereof to be paid over to the treasurer, who shall pay the same into the workmen's relief trust fund.

Accounts.

SEC. 17. The Workmen's Relief Commission shall report all matters relating to the receipts, disbursements, accounts and financial matters to the treasurer of Porto Rico who shall keep an accurate account of the money paid in premiums by each of the several groups of employments, and the expenses of administering the workmen's relief trust fund and the disbursements on account of injuries and deaths of employees in each of said groups, including the creation of reserves to meet anticipated and unexpected losses and to carry the claims to maturity; and also an account of the amounts received from each individual employer; and of the amount disbursed from the workmen's relief trust fund for expenses, and a statement of injuries and deaths of the employees of such employer, including the reserves so created, and all other necessary accounts of the Workmen's Relief Commission: *Provided*, That all such accounts shall be subject to examination and inspection by the auditor of Porto Rico.

Information confidential.

SEC. 18. Any information acquired in accordance with section 13 of this act by the Workmen's Relief Commission or by any officer or employee intrusted with the performance of any duty under this act shall be deemed to be confidential information, and any officer or employee who shall disclose the said information shall be guilty of a misdemeanor.

Assignment of insurance.

SEC. 19. If any employer, whether an individual, firm, partnership, association or corporation, insured under the provisions of this act, transfers his business during the period for which said employer is insured, to any other employer, whether an individual, firm, partnership, association or corporation, the Workmen's Relief Commission may, on written notice and with the consent of both parties (the employer originally insured and the employer to whom the business is transferred), assign to his successor all the rights, credits and obligations of the employer originally insured, and in such cases shall substitute the name of the assignee for the name of the employer originally insured in all accounts, records and other matters pertaining to the former, for the balance of the period for which the first employer was insured, notwithstanding the provisions of section 23 of this act.

Employers not complying with act.

SEC. 20. If any accident occurs to any workman employed by an employer subject to the provisions of this act, who has failed to comply with said provisions relative to the submission of reports and the payment of premiums, the Workmen's Relief Commission is hereby authorized to charge said employer with the amount of such compensation as the commission may authorize to be paid to the injured workmen and the treasurer of Porto Rico shall levy and collect said amount in the same manner prescribed for the collection of premiums. When a laborer or

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his heirs, in accordance with this act, and in the case specified in section 20 [21], and the Workmen's Relief Commission in the cases specified in section 21 [22], institute an action to recover damages from an employer, it shall not be a defense in favor of the employer— Suits for damages.

(*a*) That the employee was guilty of contributory negligence; Defenses abolished.

(*b*) That the injury was caused by the negligence of a fellow-employee;

(*c*) That the employee had assumed the risk of injury;

(*d*) That the injury was caused by the negligence of a subcontractor or of an independent contractor, unless the contractor or independent subcontractor shall have been insured in accordance with the provisions of this act.

No contract between employer and employee purporting to permit any of said defenses shall be valid.

SEC. 21. Nothing in this act contained shall be interpreted as depriving the injured workman, or his heirs, in accordance with this act, in case of death, of waiving the provisions of this act at any time prior to receiving compensation under this act and to claim and recover damages from his employer, in accordance with the provisions of the law before this act takes effect, when the injuries sustained by the said workman were caused by the illegal act or gross negligence of his employer: *Provided*, That only in case of waiver shall the workman comprised in this act, of their heirs in accordance with the same, have the right to institute an action for damages against the employer. Willful, etc., acts of employers.

SEC. 22. When the injury for which workmen are entitled to compensation under this act shall have been sustained under circumstances creating a liability against some other person or against the employer where the injury was caused by his illegal act or gross negligence or by defects in the machinery or implements and when the workman or his heirs receive compensation under this act, the Workmen's Relief Commission shall be subrogated to the rights of the injured workman or his heirs and may prosecute an action and recover damages from such third person or such employer liable for such injury, which damages when recovered shall be covered into the workmen's relief trust fund for the benefit of the particular group in which the injured workman's occupation was classified. Liability of third persons.

SEC. 23. Rights and actions accruing under this act shall not be assignable to other persons nor shall they be subject to attachment or to the claims of other persons. Assignments, attachments, etc.

SEC 24. All fines collected for violations of any of the provisions of this act shall be deposited in the workman's relief trust fund. Fines.

SEC. 25. Any contract, agreement or stipulation between the injured workman or his heirs in accordance with this act, and an attorney, for the payment to the said attorney of a fee contingent upon the result of the trial, shall be void and have no legal force or effect unless it be in writing and approved by the judge of the court where the suit is instituted. Attorneys' fees.

Any stipulation, contract or agreement for the payment to the attorney prosecuting the claim for damages against the employer, of an amount in excess of twenty-five (25) per centum of the amount recovered at the trial, shall be illegal and void, and the making of such contract or stipulation, or the actual receipt by the said attorney of an amount in excess of twenty-five (25) per centum of the amount recovered at the trial shall be illegal and void, and shall constitute misconduct on the part of the said attorney, punishable by suspension or disbarment after proper proceedings have been instituted against the offender in accordance with the existing laws.

SEC. 26. In reporting their annual pay rolls all employers shall include all workmen who are working either on piece work or under any independent contractor or subcontractor employed or contracted by such employer, and all premiums shall be based Contractors and subcontractors.

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upon the current pay roll of the employer so computed: *Provided*, That this section shall not apply to employers for whom work is done by an independent contractor, and if the latter is insured in accordance with the provisions of this act.

Workmen's relief trust fund.

SEC. 27. The amounts existing in the workmen's relief trust fund created by section 1 of an act entitled "An act providing for the relief of such workmen as may be injured, of the dependent families of those who may lose their lives while engaged in trades or occupations, and for other purposes," approved April 13, 1916, are hereby reappropriated to carry out the provisions of this act and shall constitute the workmen's relief trust fund hereby created together with such other sums as are hereinafter specified. The aforesaid sum, advanced as hereinbefore stated, shall be reimbursed to the treasury of Porto Rico, wholly or in part, provided that in the judgment of the commission the "Workmen's relief trust fund" is sufficient to cover safely such payments as shall be made in accordance herewith within the year following the date of such reimbursement after having deducted the amount of the same.

Employers to contribute.

SEC. 28. All employers accepting the benefits of this act and employing laborers under the conditions specified in this act shall contribute to the "Workmen's relief trust fund" in the form and manner provided herein.

Reduction of rates.

SEC. 29. If at the end of any fiscal year said trust fund shall have a considerable surplus after having paid all its obligations and liabilities, and after the commission has set aside such amount as it may deem advisable as a reserve fund, the Workmen's Relief Commission shall reduce the rates of contribution for part or all of the groups into which risks are divided.

Definitions.

SEC. 30. The words "laborer" or "employee," wherever used in this act, shall be construed to include any person employed by any employer, who is entitled to the benefits of this act, whether such person is man, woman, or child.

Who may not be attorneys.

SEC. 31. No member of the Workmen's Relief Commission nor any officer, employee, or agent thereof, nor any person in the service of the same, shall represent another person, nor shall he have any interest in any transaction, claim or matter in the jurisdiction of the said commission. Violations of this section shall be punished by removal and permanent disability to serve on said commission or under its jurisdiction, it being understood that this prohibition shall not include acts that are purely official realized by virtue of office or employment.

Repeal.

SEC. 32. All laws or parts of laws in conflict herewith are hereby repealed.

Act in effect.

SEC. 33. This act shall be applicable to accidents occurring subsequent to June 30, 1918.

Approved, February 25, 1918.

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RHODE ISLAND.

ACTS OF 1917.

CHAPTER 1534.—*Compensation of workmen for injuries.*

[This act amends several sections of the compensation law of the State (chapter 831, acts of 1912). Section 4 of Article I is amended so as to read as follows:]

Where employer elects.

SECTION 4. The provisions of section 1 of this article shall not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries, sustained by an employee of an employer who has elected to become subject to the provisions of this act, as provided in section 5 of this article, nor to any such action brought against a town or city by an employee thereof.

[Section 4 of Article II is amended by adding thereto the following:]

Pay for waiting time, when.

Provided, That if such incapacity extends beyond the period of four weeks, compensation shall begin from the date of the injury.

[Section 5 of Article II is amended so as to read as follows:]

Medical, etc., aid.

SEC. 5. During the first four weeks after the injury the employer shall furnish reasonable medical and hospital services and medicines when they are needed. The amount of the charge for such medical and hospital services shall be determined in case of the failure of the employer and employee or his physician to agree, by the superior court. The employee shall have the right to select the physician by whom, or the hospital in which, he desires to be treated, but the employer shall become liable to such physician or hospital for the reasonable fees for such treatment: *Provided, however,* That the physician or hospital shall give written notice to the employer within seven days after the beginning of their services that they have been so selected and shall present their claim to the employer for the payment of such services within three months after the conclusion thereof, but the failure of the employer to receive such notice shall not render the employee liable for such service.

[Clause (a) of section 7 is amended so as to read as follows:]

Dependents.

(a) A wife upon a husband with whom she lives or from whom she was living apart for a justifiable cause, or because he had deserted her, or upon whom she is dependent at the time of his death. The findings of the superior court upon the questions of such justifiable cause and desertion shall be final.

[A new section is added to Article II, as follows:]

Advanced payments.

SEC. 26. In fixing the amount of compensation under this act due allowance shall be made for any sum which the employer may have paid to any injured employee or to his dependents on account of the injury, except such sums as the employer may have expended or directed to be expended for medical, surgical, or hospital service.

[Article VII, as numbered by chapter 1268, acts of 1915, is renumbered as Article VIII, and section 1 thereof is amended so as to read as follows:]

Definitions.

SEC. 1. In this act, unless the context otherwise requires:

(a) The word "employer" shall include any person, copartnership, corporation or voluntary association, and the legal representative of a deceased employer; and on and after the first day of June, A. D. 1917, it shall include the State; and also each city and town therein that shall vote to accept the provisions of this act in the manner herein provided.

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(b) The word "employee" means any person who has entered into the employment of, or works under contract of service or apprenticeship with any employer, and whose remuneration does not exceed eighteen hundred dollars a year, except that in the case of a city or town it shall only mean such class or classes of employees as may be designated by a city or town in the manner herein provided to receive compensation under this act. It shall not include a person whose employment is of a casual nature, and who is employed otherwise than for the purpose of the employer's trade or business, nor shall it include the members of the regularly organized fire and police department of any town or city; and whenever a contractor has contracted with the State, a city or town, any person employed by such contractor in work under such contract shall not be deemed an employee of the State, city or town as the case may be. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents as hereinbefore defined, or to his legal representative, or, where he is a minor, or incompetent, to his conservator or guardian.

[A new Article VII is inserted as follows:]

ARTICLE VII.

OF STATE AND MUNICIPAL EMPLOYEES.

Towns to vote.

SECTION 1. The acceptance of the provisions of this act by a town shall be by vote of the electors of such town qualified to vote on a proposition to impose a tax or for the expenditure of money in town meeting assembled, or by vote of the town council of any town when authorized by such electors to accept the provisions of this act in behalf of such town. The acceptance of the provisions of this act by a city shall be by vote of the city council of such city. Said electors of a town, or the town council authorized as aforesaid, or the city council of a city, in accepting the provisions of this act in behalf of such town or city may also designate the class of employees or the nature of the employment to which the provisions of this act shall apply. Upon the passage of any such vote of acceptance the town or city clerk as the case may be, shall file a certified copy of such vote with the commissioner of industrial statistics, and such filing shall be deemed on the part of such town or city a sufficient compliance with the provisions of section 5 of Article I of this act requiring notice of the election of an employer to become subject to its provisions. If such vote does not designate the class of employees or the nature of the employment to which the provisions of this act are to apply, then such provisions shall apply to all employees of the town or city in behalf of which such vote is passed, except those employees who are excluded under the definition of employees set forth in section 1 of Article VIII of this act. The filing of a copy of such vote as herein provided shall render the town or city in behalf of which such vote is filed, subject to the provisions of this act in accordance with such vote for the term of one year from the date of such filing, and thereafter for successive terms of one year each, unless such vote of acceptance shall be rescinded by said electors or the town council of such town, or the city council of such city, and a certified copy of such rescindment shall be filed with the commissioner of industrial statistics at least sixty days prior to the expiration of such first or each succeeding year.

Cities.

Vote to be filed.

Notices.

SEC. 2. All notices required to be given by an employee to an employer under the provisions of section 6 of Article I and of sections 17 to 19, inclusive, of Article II of this act, and all other notices required to be given to an employer by an employee under this act, if the employer be the State shall be given to the attorney general, and if the employer be a city or town shall be filed with and given to the treasurer of such city or town.

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Physicians.

SEC. 3. The services required to be rendered by an employer to an injured employee under the provisions of section 5 of Article II of this act, if the employer be the State, shall be rendered under the direction of a physician appointed for that purpose by the attorney general and if the employer be a town or city, shall be rendered by a physician appointed for that purpose by the town council of the town or the city council of the city: *Provided*, That in an emergency it shall be the duty of the board, commission, officer or other person having direct charge of an injured employee to see that such services are promptly provided for the aid of such employee until the physician appointed as aforesaid has notice of and can take charge of the case; but nothing herein contained shall be construed to prohibit an employee from selecting the physician by whom, or the hospital in which he desires to be treated as provided in section 5 of Article II hereof. All expenses incurred under this section, not exceeding the sum required by law to be expended therefor, shall in the case of the State be certified to the State auditor by the attorney general and in the case of a city or town to the treasurer thereof by the physician appointed as aforesaid, and such expenses shall be paid as is provided for other payments required to be made by the State, a city or town under this act.

Expenses.

Agreements.

SEC. 4. The attorney general shall have full authority and power to enter into and execute an agreement for the settlement of any claim which an employee may have against the State under this act. When any town or city shall accept the provisions of this act, the town council of such town and the city council of such city shall appoint some person or persons not exceeding three in number, who shall have authority and power to enter into and execute an agreement for the settlement of any claim which an employee may have against such town or city under this act, and the names of the persons so appointed shall be recorded in the office of the town clerk or city clerk as the case may be, and such appointments shall continue in force until revoked by vote of the body by whom the appointments are made. All agreements made by the attorney general shall be certified to the State auditor, and all agreements made by the persons appointed hereunder to act for any town or city shall be certified to the treasurer of such town or city. Every such agreement entered into in behalf of the State or of a town or city shall be subject to the provisions of Article III of this act.

State expenses.

SEC. 5. The expenses incurred for and in behalf of the State under the provisions of section 5 of Article II of this act, and section 3 of this article, and the amount of compensation due to any employee of the State as determined by agreement with the attorney general as aforesaid, or by decree of the court, shall be paid out of any money in the State treasury not otherwise appropriated; and the State auditor shall draw his order or orders upon the general treasurer for the payment of the same upon the receipt by him of a certified copy of the agreement or decree under which such compensation is to be made. If more than one payment of money is required by any such agreement or decree the State auditor shall draw his order upon the general treasurer for the same as such payments become due.

Town and city expenses.

SEC. 6. The expenses incurred for and in behalf of any town or city under the provisions of section 5 of Article II, and section 3 of this article, and the amount of compensation due an employee of a town or city as determined by an agreement with such town or city as aforesaid, or by decree of court shall be paid by the treasurer of such town or city out of any money of such town or city in his hands. Such payments shall be made by said treasurer upon the receipt by him of a certificate of such expenses satisfactory to him, or of a certified copy of the agreement or decree under which the compensation is to be made: *Provided*, That he shall not make any such payment until the same has been approved by the auditor of such city or town if there be any such officer and if there is not any such officer, then such payment shall

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first be approved by the mayor of such city or the president of the town council of such town. If more than one payment of money is required by any such agreement or decree such payments shall be made in the manner aforesaid as the same become due. If any expenses or compensation required to be paid by a town or city under the provisions of this act, or any installment thereof, is not paid within twenty days after the aforesaid certificate or certified copy is filed with the treasurer of said town or city, the same may be collected in the manner in which a judgment against a town or city may be collected under the provisions of chapter 46 of the General Laws.

Legal proceedings.

SEC. 7. Legal proceedings under this act between the State, a city or town as an employer and any employee thereof shall be brought in the same manner and with the same force and effect as is prescribed herein for any other employer and employee: *Provided*, That if the State be a party to any such proceedings the same shall be brought for and in behalf of the State, in the name of, and by or against the attorney general and service therein shall be made on said officer, and if a town or city be a party to any such proceedings the same shall be brought for and in behalf of such town or city, in the name of, and by or against the treasurer of such town or city and service therein shall be made on such treasurer. The attorney general shall appear for and represent the State in any such proceedings in which the State is a party. The provisions of any other law relating to the filing of claims or demands against a town or city shall not apply to claims of compensation, or legal proceedings arising under this act, to which a town or city is a party.

Insurance.

SEC. 8. The provisions of this act, requiring employers to insure against liability to pay compensation arising under the provisions of this act and to report certain accidents of employees, shall not apply to the State or any town or city therein.

"City council."

SEC. 9. Wherever in this act the words "city council" are used they shall be construed in the case of the city of Newport to mean the representative council of said city.

Approved April 19, 1917.

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SOUTH DAKOTA.

ACTS OF 1917.

CHAPTER 376.—*Compensation of workmen for injuries.*

PART I—RIGHTS AND REMEDIES.

Title.

SECTION 1. This act shall be known as "The South Dakota workmen's compensation law."

Election presumed.

SEC. 2. From and after the taking effect of this act, every employer and every employee, except as herein stated, shall be presumed to have accepted the provisions of this act respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of employment, and shall be bound thereby, except as hereinafter provided, and every contract of service between any employer and employee covered by this act, written or implied, now in operation or made or implied prior to the taking effect of this act, shall after the act has taken effect, be presumed to continue.

Waiving rejections.

SEC. 3. Either an employer or an employee, who has excepted himself as hereinafter provided, from the operation of this act, may at any time waive such exemption and thereby accept the provisions of this act by giving notice as herein provided.

Notices made, how.

The notice of exemption and the notice of acceptance heretofore referred to shall be given thirty days prior to any accident resulting in injury or death: *Provided*, That if any such injury occurred less than thirty days after date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the industrial commissioner and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room or place where the employee is employed, or by serving it personally upon him; and shall be given by the employee by sending the same in registered letter, addressed to the employer at his last known residence or place of business, or by giving it personally to the employer, or any of his agents upon whom a summons in civil action may be served under the laws of the State.

A copy of the notice in prescribed form shall also be filed with the industrial commissioner.

Insurance.

SEC. 4. Every employer coming within the compensation provisions of this act shall insure the payment of compensation to his employees in the manner hereinafter provided, and while such insurance remains in force he, or those conducting his business, shall only be liable to any employee for personal injury or death by accident in the extent and in the manner hereinafter specified.

Remedy exclusive.

SEC. 5. The rights and remedies herein granted to an employee subject to this act on account of personal injury or death by accident arising out of and in the course of employment, shall exclude all other rights and remedies of such employee, his personal representatives, dependents, or next of kin, on account of such injury or death.

Statutory duties.

SEC. 6. Nothing in this act shall be construed to relieve any employer or employee from the penalty for failure or neglect to perform any statutory duty in connection with such employment.

Willful, etc., injuries.

SEC. 7. No compensation shall be allowed for an injury or death due to the employee's willful misconduct, including intentional

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self-inflicted injury, intoxication, and willful failure or refusal to use a safety appliance or perform a duty required by statute.

The burden of proof under this section shall be on the defendant employer.

Exemptions.

SEC. 8. This act shall not apply to casual laborers or to a laborer, not employed in the usual course of the trade, business, profession or occupation of the employer, to farm or agricultural laborers, to domestic servants, nor to employers of such person, unless such employees and their employers voluntarily elect in the manner hereinafter specified to be bound by this act.

Defenses abrogated, when;

SEC. 9. Every employer who elects not to operate under this act shall not in any suit at law by an employee electing to operate under this act to recover damages for personal injury or death by accident be permitted to defend any such suit at law upon any one or all of the following grounds:

(a) That the employee was negligent:

(b) That the injury was caused by the negligence of a fellow employee:

(c) That the employee had assumed the risk of the injury.

Available, when.

SEC. 10. In any action to recover damages for personal injury or death, brought by any employee who elects not to operate under this act, against any employer accepting the compensation provisions of this act, the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk, and such other defenses as would be available in such actions prior to the taking effect of this act.

Liability of third persons.

SEC. 11. Whenever an injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may at his option either claim compensation or proceed at law against such other person to recover damages or proceed against both the employer and such other person, but he shall not collect from both; and if compensation is awarded under this act, the employer having paid the compensation, or having become liable therefor, may collect in his own name or that of the injured employee from the other person in whom legal liability for damages exists, the indemnity paid or payable to the injured employee.

Employees of contractors.

SEC. 12. A principal, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one of his subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer.

Any principal, intermediate, or subcontractor who shall pay compensation under the foregoing provision may recover the amount paid from any person who, independently of this section, would have been liable to pay compensation to the injured employee.

Every claim for compensation under this section shall in the first instance be presented to and instituted against the immediate employer, but such proceeding shall not constitute a waiver of the employee's rights to recover compensation under this act from the principal or intermediate contractor, provided, that the collection of full compensation from one employer shall bar recovery by the employee against any others, nor shall he collect from all a total compensation in excess of the amount for which any of the said contractors is liable.

This section shall apply only in cases where the injury occurred on, in or about the premises on which the principal contractor has undertaken to execute work or which are otherwise under his control or management.

Waivers.

SEC. 13. No contract or agreement, written or implied, no rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this act except as herein provided.

Status of benefits.

SEC. 14. All rights of compensation granted by this act shall have the same preference or priority for the whole thereof against

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the assets of the employer as is allowed by the law for any unpaid wages for labor.

Assignments and exemptions.

SEC. 15. No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

Public employees.

SEC. 16. The provisions of this act except sections 3, 9 and 10 shall apply to the State, and any municipal corporation within the State or any political division thereof, and to the employees thereof.

Interstate and foreign commerce.

SEC. 17. This act, except section 43, shall not apply to employees engaged in interstate or foreign commerce, nor to their employers, in case the laws of the United States provide for compensation or for liability for injury or death by accident of such employees.

Extraterritoriality.

SEC. 18. Every employer and employee under this act, except as provided in section 17, shall be bound by the provisions of the act whether injury by accident or death resulting from such injury occurs within the State or in some other State or in a foreign country.

Prior injuries.

SEC. 19. The provisions of this act shall not apply to injuries or death nor to accidents which occurred prior to the taking effect of this act.

PART II.—COMPENSATION SCHEDULE.

Notice of injury.

SECTION 20. Every injured employee or his representative shall immediately upon the occurrence of an injury, or as soon thereafter as practicable, give or cause to be given to the employer written notice of the injury and the employee shall not be entitled to physician's fee nor to any compensation which may have accrued, under the terms of this act, prior to the giving of such notice, unless it can be shown that the employer, his agent or representative had knowledge of the injury or death, or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person, or for equally good reason; but no compensation shall be payable unless written notice is given within thirty days after the occurrence of the injury or death, unless reasonable excuse is made to the satisfaction of the industrial commissioner for not giving such notice.

Form.

SEC. 21. The notice provided in the foregoing section shall state in ordinary language the name and address of the employee, the time, place, nature and cause of the injury or death, and shall be signed by the employee or by a person in his behalf, or in the event of his death by any one or more of his dependents, or by a person in their behalf.

No defect or inaccuracy in the notice shall be a bar to compensation, unless the employer shall prove that his interest was prejudiced thereby, and then only to the extent of such prejudice.

Said notice shall be given personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the State, or may be sent by registered letter addressed by [to] the employer at his last known residence or place of business.

Claims.

SEC. 22. The right to compensation under this act shall be forever barred unless within one year after the injury or if death results therefrom, within one year after such death, a claim for compensation thereunder shall be filed with the industrial commissioner.

Compensation for death;

SEC. 23. The amount of compensation which shall be paid for an injury to the employee resulting in death shall be:

(a) If the employee leaves any widow, child, or children, whom he was under legal obligation to support at the time of his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred and fifty dollars, and not more in any event than three thousand dollars. Any compensation payments other than necessary

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medical, surgical, or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(b) If no amount is payable under paragraph (a) of this section, and the employee leaves any parent, grandparent, brothers or sisters who were dependent upon him for support at the time of the accident, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred and fifty dollars and not more in any event than three thousand dollars. Any compensation payments other than necessary medical, surgical, or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(c) If no amount is payable under paragraphs (a) or (b) of this section, and employee leaves collateral heirs dependent at the time of the injury to the employee upon his earnings, such a percentage of the sum provided in paragraph (a) of this section as the average annual contributions which the deceased made to the support of such collateral dependent heirs during two years preceding the injury bears to his earnings during such two years.

(d) If no amount is payable under paragraphs (a) or (b) or (c) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses.

(e) All compensation except for burial expenses, provided for in this section to be paid in case injury results in death, shall be paid in installments equal to one-half the average earnings, at the same intervals at which the wages or earnings of the employee were paid; or if this shall not be feasible, then the installments shall be paid weekly: *Provided,* Such compensation may be paid in a lump sum upon petition as provided in section 25 of this act.

(f) The compensation to be paid for injury which results in death, as provided in this section, shall be paid at the option of the employer either to the personal representative of the deceased employee or to his beneficiaries, and shall be distributed to the heirs who formed the basis for determining the amount of compensation to be paid by the employer, the distributees' shares to be in the proportion of their respective dependency at the time of the injury on the earnings of the deceased: *Provided,* That in the judgment of the court appointing the personal representative, a child's distributive share may be paid to the parent for the support of the child. The payment of compensation by the employer to the personal representative of the deceased employee shall relieve him of all obligation as to the distribution of such compensations so paid. The distribution by the personal representative of the compensation paid to him by the employer shall be made pursuant to the order of the court appointing him.

(g) No compensation shall be payable under this section to a widow unless she was living with her deceased husband at the time of his death or was then dependent upon him for support. Should any dependent of a deceased employee die or should the widow remarry, the right of such dependent or widow to compensation under this section ceases.

Nonfatal injuries.

SEC. 24. The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:

(a) The employer shall provide necessary first aid, medical, surgical and hospital services; also medical, surgical and hospital services for a period not longer than four weeks, not to exceed, however, the amount of $100. The employee may elect to secure his own physician, surgeon or hospital services at his own expense.

(b) No compensation shall be paid under this act for injury which does not incapacitate the employee for a period of at least two weeks from earning full wages, but if incapacity extends beyond the period of two weeks, compensation shall begin the fifteenth day after the injury: *Provided, however,* That if such disability continues for eight weeks or longer, such compensation shall be computed from the date of injury.

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(c) For any serious and permanent disfigurement to the hand, head or face, the employee shall be entitled to compensation for such disfigurement, the amount to be fixed by agreement or by arbitration in accordance with the provisions of this act, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph (a) of section 23, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a) of section 23: *Provided*, That no compensation shall be payable under this paragraph where compensation is payable under paragraphs (d), (e) or (f) of this section: *And, provided, further*, That when disfigurement is to the hand, head or face as a result of an injury for which compensation is not payable under paragraph (d), (e) or (f) of this section, compensation for such disfigurement may be had under this paragraph.

(d) If, after the injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall except in the cases covered by the specific schedule set forth in paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to one-half of the difference between the average amount which he earned before the accident, and the average amount which he is earning, or is able to earn in some suitable employment or business after the accident. In the event the employee returns to the employment of the employer in whose service he was injured, the employee shall not be barred from asserting a claim for compensation under this act, provided notice of such claim is filed with the industrial commissioner within eighteen months after he returns to such employment, and the said commissioner shall immediately send to the employer, by registered mail, a copy of such notice.

(e) For injuries in the following schedule, the employee shall receive in addition to compensation during the period of temporary total incapacity for work resulting from such injury, in accordance with the provisions of paragraphs (a) and (b) of this section, compensation for a further period, subject to the limitations as to time and amounts fixed in paragraphs (b) and (h) of this section, for the specific loss herein mentioned, as follows; but shall not receive any compensation under any other provision of this act. Schedule.

For the loss of a thumb, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during forty weeks;

For the loss of a first finger, commonly called the index finger, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during thirty weeks;

For the loss of a second finger, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during twenty-five weeks.

For the loss of a third finger or the permanent and complete loss of its use, fifty per cent of the average weekly wage during twenty weeks;

For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during fifteen weeks;

The loss of the first phalange of the thumb, or any finger, shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be one-half of the amounts above specified;

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb: *Provided, however*, That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

For the loss of a great toe, fifty per cent of the average weekly wage during thirty weeks;

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For the loss of one or more of the toes other than the great toe, fifty per cent of the average weekly wage during ten weeks, and for the additional loss of one or more toes other than the great toe, fifty per cent of the average weekly wage during an additional ten weeks;

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified;

The loss of more than one phalange shall be considered as the loss of the entire toe;

For the loss of a hand, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during one hundred and fifty weeks;

For the loss of an arm, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during two hundred weeks;

For the loss of a foot, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during one hundred and twenty-five weeks;

For the loss of a leg, or the permanent and complete loss of its use, fifty per cent of the average weekly wage during one hundred and fifty weeks;

For the loss of the sight of an eye, fifty per cent of the average weekly wage during one hundred weeks;

The loss of both hands or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this section: *Provided*, That these specific cases of total and permanent disability shall not be construed as excluding other cases.

Compensation for total disability.

(f) In case of complete disability which renders the employee wholly and permanently incapable of work compensation equal to fifty per cent of his earnings but not less than $6 nor more than $12 per week, commencing on the day after the injury and continuing until the amount paid equals the amount which would have been payable as a death benefit under paragraph (a) of section 23 hereof.

Death during benefit period.

(g) In case death occurs as a result of the injury before the total of the payments made equals the amount payable as a death benefit, then in case the employee leaves any widow, child or children, parents, grandparents, or other lineal heirs, entitled to compensation under section 23, the difference between the compensation for death and the sum of the payments made to the employee shall be paid at the option of the employer, either to the personal representative or the beneficiaries of the deceased employee and distributed as provided in paragraph (f) of section 23, but in no case shall the amount payable under this paragraph be less than $500.

Maximum benefits.

(h) In no event shall the compensation to be paid exceed fifty per cent of the average weekly wage or exceed twelve dollars per week in amount; nor, except in cases of complete disability, as defined above shall any payments extend over a period of more than six years from the date of the accident. In case an injured employee shall be incompetent at the time when any right or privilege accrues to him under the provisions of this act, a guardian may be appointed pursuant to law, and may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been competent and had claimed or exercised said right or privilege; and no limitations of time by this act provided shall run so long as said incompetent employee is without a guardian.

Payment.

(i) All compensation provided for in paragraph (b), (c), (d), (e) and (f) of this section, shall be paid in installments at the same intervals at which the wages or earnings of the employee were paid at the time of the injury, or if this shall not be feasible, then the installments shall be paid weekly.

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Lump sums.

SEC. 25. Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum may petition the industrial commissioner, asking that such compensation be so paid, and if upon proper notice to the interested parties and a proper showing made before such commissioner, it appears to the best interest of the parties that such compensation be so paid, the commissioner may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at five per cent per annum with annual rests:

Provided, That in cases indicating complete disability no petition for commutation to a lump-sum basis shall be entertained by the industrial commissioner until after the expiration of six months from the date of the injury, and where necessary upon proper application, being made, a guardian or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this act, and liable to pay such compensation may petition for the appointment of an administrator or guardian, where no legal representative has been appointed or is acting for such party or parties so under disability. Either party may reject an award of a lump-sum payment of compensation, except an award for compensation under section 23 or paragraph (e) of section 24 or for the injuries defined in the last paragraph of paragraph (e) of section 23 as constituting total and permanent disability, by filing his written rejection thereof with the said commissioner within ten days after notice to him of the award, in which event compensation shall be payable in installments as herein provided.

Basis of awards.

SEC. 26. The basis for computing the compensation provided for in sections 23 and 24, of this act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages, or earnings if in the employment of the same employer continuously during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If the injured person has not been engaged in the employment of the same employer for the full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same employment and same location (or if that be impracticable, of neighboring employments of the same kind) have earned during such period.

(d) As to employees in employments in which it is the custom to operate throughout the working days of the year, the annual earnings, if not otherwise determinable, shall be regarded as 300 times the average daily earnings in such computation.

(e) As to employees in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number, if the annual earnings are not otherwise determinable, shall be used instead of 300 as a basis for computing the annual earnings: *Provided,* The minimum number of days which shall be so used for the basis of the year's work shall not be less than 200.

(f) In the case of the injured employees who earn either no wage or less than the earnings of adult day laborers in the same line of employment in that locality, the yearly wage shall be reckoned according to the average annual earnings of adults of the same class in the same (or if that is impracticable, then of neighboring) employments.

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(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employee, who before the accident for which he claims compensation was disabled and drawing compensation under the terms of this act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

(i) To determine the amount of compensation for each installment period, the amount per annum shall be ascertained pursuant hereto, and such amount divided by the number of installment periods per annum.

Measure of liability.

SEC. 27. The compensation herein provided, together with the provisions of this act, shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employees in his employment subject to the provisions of this act.

Medical examinations.

SEC. 28. An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself at the expense of the employer for examination to a duly qualified medical practitioner or surgeon selected by the employer, at a time and place reasonably convenient for the employee, as soon as practicable after the injury, and also one week after the first examination, and thereafter at intervals not oftener than once every four weeks, which examination shall be for the purpose of determining the nature, extent, and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which may be due the employee from time to time for disability according to the provisions of this act: *Provided, however*, That such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires. In all cases where the examination is made by a surgeon engaged by the employer and the injured employee has no surgeon present at such examination, it shall be the duty of the surgeon making the examination at the instance of the employer to deliver to the injured employee, upon his request or that of his representative, a statement in writing of the condition and extent of the injury to the same extent that said surgeon reports to the employer. If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his rights to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this act for such a period.

It shall be the duty of surgeons treating an injured employee who is likely to die and treating him at the instance of the employer to call in another surgeon, to be designated and paid for by the injured employee or by the person or persons who would become his beneficiary or beneficiaries to make an examination before the death of such injured employee.

PART III—ADMINISTRATION.

Industrial commissioner.

SECTION 29. There is hereby created the office of South Dakota industrial commissioner, and the commissioner of immigration and his successor in office shall act as such commissioner until otherwise provided by law. Such industrial commissioner shall be charged with the duty and authority to carry out and enforce the provisions of this act. He shall also assist employers of labor to secure such laborers as needed, assist laborers to secure positions, and cooperate with the United States Department of Labor, and agencies of this State, in maintaining a free employment service for bringing employer and laborer together.

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Expenses, etc.

SEC. 30. The actual necessary expense of the commissioner shall be paid by the State, and he shall be provided with adequate and necessary office rooms, furniture, equipment, supplies and other necessaries in the transaction of the business. The commissioner, by and with the consent of the governor may fix the salary and appoint a deputy and other assistants and clerical help as may be required and needed: *Provided*, That the salary of the deputy shall not exceed fifteen hundred dollars ($1,500) per annum. The actual personal expense account of the commissioner shall be itemized and sworn to, and filed as other current bills as provided by statute, and warrant therefor shall be issued by the auditor upon the treasurer of the State for the payment thereof monthly. The commissioner shall provide himself with a seal, which shall be used to authenticate his orders, decisions and other proceedings deemed necessary, upon which shall be inscribed the words, "South Dakota industrial commissioner."

All other accounts made by, through or under the commissioner for salaries and expenditures, unless otherwise by this act provided, shall be itemized and sworn to by the parties entitled thereto, audited by the commissioner and duly filed and warrant shall issue therefor by the State auditor upon the treasurer, who shall pay the same out of the funds appropriated for the use of the commissioner. The salaries and expense accounts of all employees under the commissioner shall be audited, allowed and paid monthly. The commissioner shall have the power to remove at any time any person appointed or employed by him.

Before entering upon his duties the commissioner shall qualify by taking the constitutional oath of office.

Rules, etc.

SEC. 31. The commissioner may make rules and regulations not inconsistent with this act for carrying out its provisions: Process and procedure under this act shall be as summary as reasonably may be. The commissioner shall have the power to subpœna witnesses, administer oaths and to examine such books and records of the parties to a proceeding or investigation as relate to questions in dispute or under investigation. The fees and mileage for attending as a witness before the industrial commissioner or before an arbitration board shall be the same as allowed in circuit court. The circuit court is hereby empowered to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records. The commissioner shall make annual reports to the governor who shall transmit the same to the legislature.

Agreements.

SEC. 32. If the employer and employee reach an agreement in regard to the compensation under this act, a memorandum thereof shall be filed with the South Dakota industrial commissioner by the employer or employee, and unless the commissioner shall within twenty days, notify the employer and employee of his disapproval of the agreement, by registered letter sent to their addresses as given on the memorandum filed, the agreement shall stand as approved and be enforceable for all purposes under the provisions of this act.

Arbitration.

SEC. 33. If the employer and injured employee or representative or dependents fail to reach an agreement in regard to compensation under this act, either party may notify the industrial commissioner, who shall thereupon call for the formation of a board of arbitration, which shall consist of three persons, one of whom shall be the industrial commissioner, who shall act as chairman; the other two shall be named, respectively, by the two parties. If a vacancy occurs it shall be filled by the party whose representative is unable to act.

Oath.

SEC. 34. The arbitrators appointed by the parties shall be sworn by the chairman as follows: I _____ do solemnly swear (or affirm) that I will faithfully perform my duties as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party.

Signed_____

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Appointment. SEC. 35. It shall be the duty of the industrial commissioner, upon notification, that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the board of arbitration. If either party does not appoint its member on this board within seven days after notification as above provided, or after a vacancy has occurred, the commissioner shall fill the vacancy and notify the parties to that effect.

Procedure. SEC. 36. The board of arbitration shall make such inquiries and investigations as it shall deem necessary. The hearing of the board shall be in the city, town or place where the injury occurred and the decision of the board, together with the statement of evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising before it shall be filed with the industrial commissioner. Unless a claim for a review is filed by either party within ten days, the decision shall be enforceable under the provisions of this act.

Medical examination. SEC. 37. The industrial commissioner may appoint a duly qualified and impartial physician to examine the injured employee and make report. The fee for this service shall be five ($5) dollars, to be paid by the industrial commissioner together with traveling expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. Any physician so examining any injured employee shall not be prohibited from testifying before the South Dakota industrial commissioner or any other person, commission or court, as to the result of his examination or the condition of the injured employee.

Fees. SEC. 38. The arbitrators named by or for the parties to the dispute shall each receive five ($5) dollars as a fee for his services, but the industrial commissioner may allow additional reasonable

Payment. amounts in extraordinary cases. The fees shall be paid by the employer who may deduct an amount equal to one-half of the sum from any compensation found due the employee. All other costs incurred in the hearing before the board of arbitration shall be taxed to the losing party, or an equitable apportionment made thereof by the board according to the facts.

Review. SEC. 39. If a claim for review is filed, the industrial commissioner shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the board for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact.

Filing awards. SEC. 40. Any party in interest may present a certified copy of an order or decision of the commissioner or a decision of an arbitration board from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the circuit court of the county in which the injury occurred, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and in all proceedings in relation thereto be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact or where the decree is based upon an order or decision of the commissioner which has not been presented to the court within ten days after the notice of the filing thereof by the commissioner. Upon the presentation to the court of a certified copy of a decision of the industrial commissioner, ending, diminishing or increasing a weekly payment under the provisions of this act, the court shall revoke or modify the decree to conform to such decision.

Readjustments. SEC. 41. (a) Any payment to be made under this act may be reviewed by the industrial commissioner at the request of the employer or of the employee, and on such review it may be ended, diminished or increased subject to the maximum or minimum

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amounts provided for in this act if the commissioner finds the conditions of the employee warrants such action.

(b) Any notice given by the commissioner or court provided for in this act shall be in writing but service thereof shall be sufficient if registered and deposited in the mail, addressed to the last known address of the parties.

Attorneys', etc., fees.

SEC. 42. Fees of attorneys and physicians for service under this act shall be subject to the approval of the industrial commissioner unless otherwise provided in this act.

Reports by employers.

SEC. 43. Every employer coming under the provisions of this act shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. Within forty-eight hours, not counting Sundays and legal holidays, after the employer has knowledge of the occurrence of an accident resulting in personal injury, a report shall be made in writing by the employer to the industrial commissioner on blanks to be procured from the commissioner for that purpose.

Upon the termination of the disability of the injured employee, or if such disability extends beyond a period of sixty days, at the expiration of such period, the employer shall make a supplemental report on blanks to be procured from the commissioner for that purpose. The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex, wage and occupation of the injured employee, and shall state the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the commissioner. Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than twenty-five dollars ($25) for each offense.

Records to be open.

All books, records and pay rolls of the employers, coming under this act showing, and in any way referring to the amount of wage expenditure of such employer, shall always be open for inspection by the industrial commissioner, or any of his representatives presenting a certificate of authority from said commissioner for the purpose of ascertaining the correctness of the wage expenditure; and the number of men employed and such other information as may be necessary for the uses and purposes of the commissioner in the administration of this act. But information obtained within the contemplation of this act shall be used for no other purpose than for the information of the commissioner or insurance association with reference to the duties imposed upon such commissioner. A refusal on the part of the employer to submit his books, records or pay rolls for the inspection of the commissioner, or his authorized representative presenting written authority from the commissioner, shall subject the employer to a penalty of twenty-five dollars ($25) for each such offense to be collected by civil action in the name of the State, and paid into the State treasury.

Commissioner to give whole time.

SEC. 44. It shall be unlawful for the commissioner to be interested in any business enterprise coming under or affected by this act during his term of office and any violation of this section shall be sufficient grounds for his removal from office and in such case the governor shall at once declare the office vacant and appoint another to fill the vacancy.

Removal.

SEC. 45. Such commissioner may at any time be removed from office by the governor of this State for incompetency, inefficiency, neglect of duty, or malfeasance in office but before such removal he shall have an opportunity to be heard by the governor and within ten days after his removal from office by the governor he shall in case he so requests be furnished by the governor with a written statement of the cause of his removal from office.

PART IV.—INSURANCE.

Employers to insure.

SECTION 46. Every employer, subject to the provisions of this act, shall insure his liability thereunder in some corporation,

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association or organization approved by the State department of insurance. Every such employer shall within thirty (30) days after this act goes into effect exhibit on demand of the State insurance department or the industrial commissioner evidence of his compliance with this section. And if such employer refuses or neglects to comply with this section, he shall be liable in case of injury to any workman in his employ under part one (1) of this act.

Mutual companies.

SEC. 47. For the purpose of complying with the foregoing section, groups of employers in this State may exchange contracts of insurance among themselves or with employers of other States through a medium as specified and located in their agreements between each other and a certificate of authority issued by the insurance department of any State, together with a financial statement showing said association to be in solvent condition, shall be evidence of compliance with the preceding section.

Benefit schemes.

SEC. 48. Subject to the approval of the South Dakota industrial commissioner, any employer or group of employers may enter into or continue an agreement with his or their workmen to provide a plan of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act: *Provided, however,* That any agreement or plan of compensation, benefit or insurance existing at the time of taking effect of this act, between any employer and employee, or employees, shall upon the approval thereof by the South Dakota industrial commissioner continue in force, and be binding upon such employer and such employee, or employees, until such employer or such employee, or employees, shall have served upon the employee or employer, as the case may be, a written notice of his, or its, withdrawal from such agreement or plan, and such notice shall be served and a copy thereof filed in the manner provided by section 3 for service of notices therein provided for. Upon the service and filing of such notice, by either party, both such employer and employee shall thereupon be subject to the operation of this act.

Certificates.

SEC. 49. Whenever such plan is approved by the South Dakota industrial commissioner, he shall issue a certificate to that effect, whereupon it shall be legal for such employer, or group of employers, to contract with any or all of his or their workmen to substitute such plan for the provisions of this act during a period of time fixed by said commissioner.

Termination.

SEC. 50. Such plan may be terminated by the South Dakota industrial commissioner on reasonable notice to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this act; but from any such order of said South Dakota industrial commissioner the parties affected, whether employer or workman, may, upon the giving of proper bond to protect the interests involved appeal for relief to the circuit court of this State.

Commission.

SEC. 51. No insurer of any obligation under this act shall by himself or through another, either directly or indirectly, charge or accept or pay as a commission or compensation for placing or renewing any insurance under this act more than fifteen (15) per cent of the premium charged.

Provisions of policies.

SEC. 52. Every policy or contract of indemnity issued by any insurance corporation, association or organization to assure the payment of compensation under this act shall contain a clause providing that between any employer and the insurer, notice to, or knowledge of the occurrence of injury or death on the part of the insured shall be notice to and knowledge on the part of the insurer; and jurisdiction of the insured for the purposes of this act shall be jurisdiction of the insurer and the insurer shall be bound by every agreement, adjustment, award or judgment rendered against the insured.

Insolvency.

SEC. 53. No policy of insurance issued under this act shall contain any provision relieving the insurer from payment if the in-

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sured becomes insolvent or discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid. Every policy shall provide that the workmen shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability or disability of the insured to receive the amount due and pay it over to the insured workman, or to his dependents, said insurer shall pay the same directly to such workman, his agent, or to a trustee for him or his dependents, to the extent of discharging any obligation of the insured to said workman or his dependents.

Liens.

Direct liability.

Proof of solvency.

SEC. 54. When an employer coming under this act furnishes proofs to the insurance department satisfactory to the insurance department and South Dakota industrial commissioner, of such employer's solvency and financial ability to pay the compensation and benefits as by this act provided and to make such payments to the parties when entitled thereto, or when such employer deposits with such insurance department security satisfactory to such insurance department and the South Dakota industrial commissioner as will secure the payment of such compensation, such employer shall be relieved of the provisions of section forty-six (46) of this act: *Provided*, That it shall be considered satisfactory proof of the employer's solvency and financial ability to pay the compensation benefits as by this act provided and satisfactory security therefor when the employer shall show to the insurance department that he is a member of an association as provided for in section 47 hereof and submit a financial statement showing said association to be in a solvent condition: *Provided, further*, That any employer or employee may appeal to the circuit courts of the county or judicial subdivision in which the principal business of such employer is transacted, from any adverse decision of such insurance department, or industrial commissioner, such appeal to be taken and prosecuted under rules and regulations to be adopted and prescribed by the Supreme Court of South Dakota, and at the option of the employee the place of trial may be fixed or changed to the county or judicial subdivision where the injury occurred.

PART V—DEFINITIONS AND MISCELLANEOUS PROVISIONS.

Definitions.

SECTION 55. In this act unless the context otherwise requires:

(a) "Employer" shall include the State and any municipal corporation within the State or any political subdivision thereof, and any individual, firm, association or corporation or the receiver or trustee of the same or the legal representatives of a deceased employer, using the services of another for pay. If the employer is insured it shall include his insurer so far as applicable.

(b) "Employee" shall include every person, including a minor, in the service of another under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

(c) "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of

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weeks and parts thereof during which the employee earned wages shall be followed provided results just and fair to both parties will thereby be obtained.

Where by reasons of the shortness of the time during which the employee has been in the employment of his employer or the casual nature or terms of the employment, it is impracticable to compute average weekly wages as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

Wherever allowances of any character made to an employee in lieu of wages are specified as part of the wage contract, they shall be deemed a part of his earnings.

(d) "Injury" or "personal injury" shall mean only injury by accident arising out of and in the course of the employment and shall not include a disease in any form except as it shall result from the injury.

Construction of act.

SEC. 56. If any section or provision of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of this act as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Pending suits.

SEC. 57. The provisions of this act shall not affect pending litigation.

Approved March 10, 1917.

CHAPTER 278.—*Workmen's compensation and employers' liability insurance—Provisions of policies.*

Policies to be specific.

SECTION 1. Every policy of workmen's compensation insurance issued or delivered in this State by an authorized domestic or foreign insurance company or association, shall cover separately and for a separate consideration all the liabilities which are imposed upon an insurer by the provisions of the workmen's compensation act of this State and amendments thereof, whatever other contingencies may be insured by riders attached thereto or indorsements made thereon. On the face of every such policy there shall be printed conspicuously the words: "Insurance under this policy is in class ——— of the company's Workmen's Compensation Classification Manual," and in the blank thus provided the number or other designation in said manual under which the said policy is written shall be placed before the policy is issued.

Forms to be approved.

SEC. 2. No such policy of insurance or rider to be used in this State shall be issued or delivered until a copy thereof has been filed and approved by the insurance commissioner at least thirty days prior to such issue or delivery, unless before the expiration of the thirty days the said insurance commissioner shall have approved the form of the policy in writing; nor if the insurance commissioner notifies the company in writing that in his opinion the form of said policy or rider does not comply with the provisions of this act, specifying the reasons for his opinion: *Provided*, That upon petition of the company the opinion of the insurance commissioner shall be subject to review by any court of competent jurisdiction in this State.

To cover entire liability.

SEC. 3. Every policy of insurance issued by a stock company or by a mutual association authorized to transact workmen's compensation or employers' liability insurance in this State shall cover the entire liability of the employer to his employees covered by the policy or contract, and shall also contain a provision setting

Rights of employees.

forth the right of the employees to enforce in their own names either by at any time filing a separate claim or by at any time making the insurance carrier a party to the original claims, the liability of the insurance carrier in whole or in part for the payment of such compensation: *Provided, however*, That payment in

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whole or in part of such compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

Privity of parties.

SEC. 4. Every policy issued by any insurance corporation, association or organization to assure the payment of compensation under the provisions of the compensation act of this State shall contain a clause providing that between any employer and the insurer, notice to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer, and the insurer shall be bound by every agreement, adjudgment, award or judgment rendered against the insured.

Insolvency.

SEC. 5. No policy of insurance issued shall contain any provision relieving the insurer from payment if the insured becomes insolvent or discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid. Every policy shall provide that the workman shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability or disability of the insured to receive the amount due and pay it over to the insured workman, or his dependents, said insurer shall pay the same directly to such workman, his agent, or to a trustee for him or his dependents, to the extent of discharging any obligation of the insured to said workman or his dependents.

Liens.

Direct liability.

Same.

SEC. 6. No policy of insurance shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct obligation by the insurer to the person entitled to compensation, enforceable in his name.

Cancellation.

SEC. 7. No policy or contract of insurance issued by a stock company or mutual association against compensation as provided by the workmen's compensation act of this State, shall be canceled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in such notice, shall have been filed in the office of the State industrial commissioner or other official in charge of the administration of the workmen's compensation law, and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter addressed to the employer at his or its last known place of residence: *Provided*, That if the employer be a partnership, then such notice may be so given to any one of the partners; and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served.

Direct liability.

SEC. 8. Every policy hereafter written insuring against the liability of employers for personal injuries, other than payment of compensation under the provisions of the compensation act of this State, shall contain provisions to the effect that the insurer shall be directly liable to the injured party, and, in the event of his death, to the party entitled to sue therefor, to pay him the amount of damages for which such insured is liable. Such injured party, or, in the event of his death, the party entitled to sue therefor, in his suit against the insured, may join the insurer as a defendant, in which case judgment shall bind either or both the insured and the insurer; or said insured party, or, in the event of his death, the party entitled to sue therefor, after having obtained judgment against the insured alone, may proceed on said judgment in a separate claim against said insurer: *Provided, however*, That payment in whole or in part of such lia-

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bility by either the insured or the insurer shall, to the extent thereof, be a bar to recovery against the other of the amount so paid: *And provided further*, That in no case shall the insurer be liable for damages beyond the amount of the face of the policy.

Effect of law.

SEC. 9. All policies or contracts made for the insurance of the compensation provided by the workmen's compensation act of this State, or against employers' liability described in section 8 of this act, shall be deemed to be made subject to the provisions of this act, and all provisions of such policies inconsistent herewith shall be void.

Approved March 10, 1917.

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TEXAS.

ACTS OF 1917.

CHAPTER 103.—*Compensation of workmen for injuries.*

[This act amends the compensation law of the State throughout. It is reproduced below.]

PART I.

SECTION 1. In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense: Defenses abolished.

1. That the employee was guilty of contributory negligence.

2. That the injury was caused by the negligence of a fellow employee.

3. That the employee had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the willful intention of the employee to bring about the injury, or was so caused while the employee was in a state of intoxication.

4. *Provided, however,* That in all such actions against an employer who is not a subscriber, as defined hereafter in this act, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment. Proviso.

SEC. 2. The provisions of this act shall not apply to actions to recover damages for the personal injuries nor for death resulting from personal injuries sustained by domestic servants, farm laborers, nor to employees of any firm, person or corporation having in his or their employ less than three (3) employees, nor to the employees of any person, firm or corporation operating any steam, electric, street, or interurban railway as a common carrier: *Provided,* That any employer of three or more employees at the time of becoming a subscriber shall remain a subscriber subject to all the rights, liabilities, duties and exemptions of such, notwithstanding, after having become a subscriber, the number of employees may at times be less than three. Exemptions.

SEC. 3. The employees of a subscriber shall have no right of action against their employer for damages for personal injuries, and the representatives and beneficiaries of deceased employees shall have no right of action against such subscribing employer for damages for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for: *Provided,* That all compensation allowed under the succeeding sections herein shall be exempt from garnishment, attachment, judgment and all other suits or claims, and no such right of action and no such compensation and no part thereof or of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void. Provisions exclusive.

SEC. 3a. An employee of a subscriber shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed said Waiver presumed.

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right or if the contract of hire was made before the employer became a subscriber, if the employee shall not have given the said notice within five (5) days of notice of such subscription. An employee who has given notice to his employer that he claimed his right of action at common law or under any statute may thereafter waive such claim by notice in writing, which shall take effect five (5) days after its delivery to his employer or his agent: *Provided further*, That any employee of a subscriber who has not waived his right of action at common law or under any statute to recover damages for injury sustained in the course of his employment, as above provided in this section, shall, as well as his legal beneficiaries and representatives, have his or their cause of action for such injuries as now exist by the common law and statutes of this State, which action shall be subject to all defenses under the common law and statutes of this State.

Compensation to be paid, when.

SEC. 3b. If an employee who has not given notice of his claim of common law or statutory rights of action, as provided in section 3a, Part I, of this act, or who has given such notice and waived the same, sustains an injury in the course of his employment, he shall be paid compensation by the association as hereinafter provided, if his employer is a subscriber at the time of the injury.

Suits.

SEC. 4. Employees whose employers are not at the time of the injury subscribers to said association, and the representatives and beneficiaries of deceased employees who at the time of the injury were working for nonsubscribing employers can not participate in the benefits of said insurance association, but they shall be entitled to bring suit and may recover judgment against such employers, or any of them, for all damages sustained by reason of any personal injury received in the course of employment or by reason of death resulting from such injury, and the provisions of section 1 of this act shall be applied in all such actions.

Willful acts, etc.

SEC. 5. Nothing in this act shall be taken or held to prohibit the recovery of exemplary damages by the surviving husband, wife, heirs of his or her body, or such of them as there may be of any deceased employee whose death is occasioned by homicide from the willful act or omission or gross negligence of any person, firm or corporation from the employer of such employee at the time of the injury causing the death of the latter: *Provided*, That in any suit so brought for exemplary damages the trial shall be de novo, and no presumption shall exist that any award, ruling or finding of the industrial accident board was correct; and in such suit brought by the employee or his legal heirs or representatives against such association or employer, such award, ruling or finding shall neither be pleaded nor introduced in evidence.

Waiting time.

SEC. 6. No compensation shall be paid under this act for an injury which does not incapacitate the employee for a period of at least one week from earning full wages, but if incapacity extends beyond one week compensation shall begin to accrue on the eighth day after the injury: *Provided, however*, The medical aid, hospital services, and medicines, as provided for in section 7 hereof, shall be supplied as and when needed and according to the terms and provisions of said section 7: *And provided further*, That if incapacity does not follow at once after the infliction of the injury or within eight (8) days thereof, but does result subsequently that compensation shall begin to accrue with the eighth day after the date incapacity commenced. In any event the employee shall be entitled to the medical aid, hospital services and medicines as provided elsewhere in this act.

Medical, etc., aid.

SEC. 7. During the first two weeks of the injury, dating from the date of its infliction, the association shall furnish reasonable medical aid, hospital services and medicines. If the association fails to so furnish same as and when needed during the time specified, after notice of the injury to the association or subscriber, the injured employee may provide said medical aid, hospital services and medicines at the cost and expense of the association. The employee shall not be entitled to recover any amount expended or incurred by him for said medical aid, hospital serv-

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ices or medicines nor shall any person who supplied the same be entitled to recover of the association therefor, unless the association or subscriber shall have had notice of the injury and shall have refused, failed or neglected to furnish it or them within a reasonable time: *Provided, however,* That at the time of the injury or immediately thereafter, if necessary, the employee shall have the right to call in any available physician or surgeon to administer first-aid treatment as may be reasonably necessary at the expense of the association. During the second or any subsequent week of continuous total incapacity requiring the confinement to a hospital, the association shall, upon application of the attending physician or surgeon certifying the necessity therefor to the industrial accident board and to the association, furnish such additional hospital services as may be deemed necessary, not to exceed one week, unless at the end of such additional week the attending physicians shall certify to the necessity for another week of hospital services or so much thereof as may be needed: *Provided, however,* That such additional hospital services as are provided for in this paragraph shall not be held to include any obligation on the part of the association to pay for medical or surgical services not ordinarily provided by hospitals as a part of their services.

Change of physician.

SEC. 7a. If it be shown that the association is furnishing medical aid, hospital services and medicines provided for by section 7 hereof in such manner that there is reasonable ground for believing that the life, health or recovery of the employee is being endangered or impaired thereby, the board may order a change in the physician or other requirements of said section, and if the association fails promptly to comply with such order after receiving it, the board may permit the employee or some one for him to provide the same at the expense of the association under such reasonable regulations as may be provided by said board.

Fees.

SEC. 7b. All fees and charges under sections 7 and 7a hereof shall be fair and reasonable, shall be subject to regulation of the board and shall be limited to such charges as are reasonable for similar treatment of injured persons of a like standard of living where such treatment is paid for by the injured person himself or some one acting for him. In determining what fees are reasonable, the board may also consider the increased security of payment afforded by this act. Where such medical aid, hospital service or medicines are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting the same, and the amount so paid shall be promptly reported to the board.

Attorneys' fees.

SEC. 7c. All fees of attorneys for representing claimants before the board under the provisions of this act shall be subject to the approval of the board. No attorney's fees for representing claimants before the board shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to fifteen per cent of the amount of the first one thousand dollars or fraction thereof recovered, nor ten per cent of the excess of such recovery, if any, over one thousand dollars. And in addition to the reasonable expenses incurred by the attorney in the preparation and presentation of the said claim before the board, such expenses to be allowed by the board: *Further provided,* That where an attorney represents only a part of those interested in the allowance of a claim before the board and his services in prosecuting such claim and obtaining an award therein inures to the benefit of others jointly interested therein, then the board may take these facts into consideration and allow the attorney a reasonable charge, to be assessed against the interest of those receiving benefits of the service of such attorney. The attorney's fees herein provided for may be redeemed by the association by the payment of a lump sum or may be commuted by agreement of the parties subject to the approval of the board, but not until the claim represented by said attorney has been finally determined by the board and recognized and accepted by

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the association. After the approval, as first above provided for, if the association be notified in writing of such claim or agreement for legal services, the same shall be a lien against any amount thereafter to be paid as compensation: *Provided, however,* That where the employee's compensation is payable by the association in periodical installments, the board shall fix at the time of approval the proportion of each installment to be paid on account of said legal services.

Same. SEC. 7d. For representing the interest of any claimant in any manner carried from the board into the courts, it shall be lawful for the attorneys representing such interests to contract with any of the beneficiaries under this act for an attorney's fee for such representation, not to exceed one-third (⅓) of the amount recovered, such fee for services so rendered to be fixed and allowed by the trial court in which such matter may be heard and determined.

Death. SEC. 8. If death should result from the injury, the association hereinafter created shall pay the legal beneficiaries of the deceased employee a weekly payment equal to sixty per cent of his average weekly wages, but not more than $15 nor less than $5 a week, for a period of three hundred and sixty weeks from the date of the injury.

Beneficiaries. SEC. 8a. The compensation provided for in the foregoing section of this act shall be for the sole and exclusive benefit of the surviving husband who has not for good cause and for a period of three years prior thereto abandoned his wife at the time of the injury, the wife who has not at the time of the injury without good cause, and for a period of three years prior thereto abandoned her husband and the minor children, without regard to the question of dependency, dependent parents, and dependent grandparents and dependent stepmothers and dependent children or dependent brothers and sisters of the deceased employee, and the amount recovered thereunder shall not be liable for the debts of the deceased nor for the debts of the beneficiary or beneficiaries, and shall be distributed among such beneficiaries as may be entitled to same as hereinbefore provided according to the laws of descent and distribution of this State; and provided such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of the State, or to their guardian or next friend, in case of lunacy, infancy or other disqualifying cause of any beneficiary. And the compensation provided for in this act shall be paid weekly to the beneficiaries herein named and specified, subject to the other provisions of this act.

Death after disability. SEC. 8b. In case death occurs as a result of the injury after a period of total or partial incapacity, for which compensation has been paid, the period of incapacity shall be deducted from the total period of compensation and the benefits paid thereunder from the maximum allowed for the death, respectively, stated in this act.

If no dependents. SEC. 9. If the deceased employee leaves no legal beneficiaries, the association shall pay all expenses incident to his last sickness as a result of the injury and in addition a funeral benefit not to exceed $100: *Provided, however,* That where any deceased employee leaves legal beneficiaries, but who is buried at the expense of his employer or any other person, the expense of such burial, not to exceed $100, shall be payable out of the compensation due the beneficiary or beneficiaries of such deceased employee, subject to the approval of the board.

Total disability. SEC. 10. While the incapacity for work resulting from injury is total, the association shall pay the injured employee a weekly compensation equal to sixty per cent of his average weekly wages, but not more than $15 nor less than $5, and in no case shall the period covered by such compensation be greater than four hundred and one (401) weeks from the date of the injury.

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Partial disability.

SEC. 11. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to sixty per cent of the difference between his average weekly wages before the injury and his average weekly wage-earning capacity during the existence of such partial incapacity, but in no case more than $15 per week; and the period covered by such compensation to be in no case greater than three hundred weeks: *Provided*, That in no case shall the period of compensation for total and partial incapacity exceed four hundred and one (401) weeks from the date of the injury.

What constitutes total disability.

SEC. 11a. In cases of the following injuries, the incapacity shall conclusively be held to be total and permanent, to wit:

(1) The total and permanent loss of the sight in both eyes.

(2) The loss of both feet at or above the ankle.

(3) The loss of both hands at or above the wrist.

(4) A similar loss of one hand and one foot.

(5) An injury to the spine resulting in permanent and complete paralysis of both arms or both legs or of one arm and one leg.

(6) An injury to the skull resulting in incurable insanity or imbecility.

In any of the above enumerated cases it shall be considered that the total loss of the use of a member shall be equivalent to and draw the same compensation during the time of such total loss of the use thereof as for the total and permanent loss of such member.

The above enumeration is not to be taken as exclusive, but in all other cases the burden of proof shall be on the claimant to prove that his injuries have resulted in permanent total incapacity.

Partial disability schedule.

SEC. 12. For the injuries enumerated in the following schedule the employee shall receive in lieu of all other compensation except medical aid, hospital services and medicines, as elsewhere herein provided, a weekly compensation equal to sixty per cent of the average weekly wages of such employee, but not less than $5 per week nor exceeding $15 per week for the respective periods stated herein, to wit:

For the loss of a thumb, sixty per cent of the weekly wages during sixty weeks.

For the loss of a first finger, commonly called the index finger, sixty per cent of the average weekly wages during forty-five weeks.

For the loss of a second finger, sixty per cent of the average weekly wages during thirty weeks.

For the loss of a third finger, sixty per cent of the average weekly wages during twenty-one weeks.

For the loss of a fourth finger, commonly known as the little finger, sixty per cent of the average weekly wages during fifteen weeks.

The loss of the second or distal phalange of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third or distal phalange of any finger shall be considered to be equal to the loss of one-third of such finger.

The loss of the middle or second phalange of any finger shall be considered to be equal to the loss of two-thirds of such finger.

The loss of more than the middle or distal phalange of any finger shall be considered to be equal to the loss of the whole finger: *Provided, however*, That in no case shall the amount received for the loss of a thumb and more than one finger on the same hand exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bone of palm), for the corresponding thumb, finger, or fingers above, add ten weeks to the number of weeks as above, subject to the limitation that in no

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case shall the amount received for the loss or injury to any one hand be more than for the loss of the hand.

For ankylosis (total stiffness of) or contracture (due to sears or injuries) which make the fingers useless, the same number of weeks shall apply to such finger or fingers or parts of fingers (not thumb) as given above.

For the loss of a hand, sixty per cent of the average weekly wages during one hundred and fifty weeks.

For the loss of an arm, at or above the elbow, sixty per cent of the average weekly wages during two hundred weeks.

For the loss of one of the toes, other than the great toe; sixty per cent of the average weekly wages during ten weeks.

For the loss of the great toe, sixty per cent of the average weekly wages during thirty weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be equal to the loss of one-half of the toe.

For the loss of a foot, sixty per cent of the average weekly wages during one hundred and twenty-five weeks.

For the loss of a leg at or above the knee, sixty per cent of the average weekly wages during two hundred weeks.

For the total and permanent loss of the sight of one eye, sixty per cent of the average weekly wages during one hundred weeks.

In the foregoing enumerated cases of permanent partial incapacity, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member.

For the complete and permanent loss of the hearing in both ears, sixty per cent of the weekly wages during one hundred and fifty weeks.

For the loss of an eye and leg above the knee, sixty per cent of the average weekly wages during a period of three hundred and fifty weeks.

For the loss of an eye and an arm above the elbow, sixty per cent of the average weekly wages during a period of three hundred and fifty weeks.

For the loss of an eye and a hand, sixty per cent of the average weekly wages during a period of three hundred and twenty-five weeks.

For the loss of an eye and a foot, sixty per cent of the average weekly wages during a period of three hundred weeks.

Concurrent injuries. Where the employee sustains concurrent injuries resulting in concurrent incapacities, he shall receive compensation only for the injury which produces the longest period of incapacity; but this section shall not affect liability for the concurrent loss or the loss of the use thereof of more than one member, for which members compensation is provided in this schedule; compensation for specific injuries under this act shall be cumulative as to time and not concurrent.

Loss of use. In all cases of permanent partial incapacity, it shall be considered that the permanent loss of the use of the member be equivalent to and draw the same compensation as the loss of that member; but the compensation in and by said schedule provided shall be in lieu of all other compensation in such cases.

Other injuries. In all other cases, partial incapacity, including any disfigurement which will impair the future usefulness or occupational opportunities of the injured employee, compensation shall be determined according to the percentage of incapacity, taking into account, among other things, any previous incapacity, the nature of the physical injury or disfigurement, the occupation of the injured employee and the age at the time of the injury; the compensation paid therefor shall be sixty per cent of the average weekly wages of the employee, but not to exceed $15 per week, multiplied by the percentage of incapacity caused by the injury for such period as the board may determine not exceeding three hundred weeks. Whenever the weekly payments under this para-

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graph would be less than $3 per week, the period may be shortened, and the payments correspondingly increased by the board.

Refusing employment.

SEC. 12a. If the injured employee refuses employment reasonably suited to his incapacity and physical condition, procured for him in the locality where injured or at a place agreeable to him, he shall not be entitled to compensation during the period of such refusal, unless in the opinion of the board such refusal is justifiable. This section shall not apply in cases of specific injuries for which a schedule is fixed by this act.

Hernia.

SEC. 12b. In all claims for hernia resulting from injury sustained in the course of employment, it must be definitely proven to the satisfaction of the board:

First. That there was an injury resulting in hernia.

Second. That the hernia appeared suddenly and immediately following the injury.

Third. That the hernia did not exist in any degree prior to the injury for which compensation is claimed.

Fourth. That the injury was accompanied by pain.

In all such cases where liability for compensation exists, the association shall provide competent surgical treatment by radical operation. In case the injured employee refuses to submit to the operation, the board shall immediately order a medical examination of such employee by a physician or physicians of its own selection at a time and place to be by them named, at which examination the employee and the association, or either of them, shall have the right to have his or their physician present. The physician or physicians so selected shall make to the board a report in writing, signed and sworn to, setting forth the facts developed at such examination and giving his or their opinion as to the advisability or nonadvisability of an operation. If it be shown to the board by such examination and the written report thereof and the expert opinions thereon that the employee has any chronic disease or is otherwise in such physical condition as to render it more than ordinarily unsafe to submit to such operation, he shall, if unwilling to submit to the operation, be entitled to compensation for incapacity under the general provisions of this act. If the examination and the written report thereof and the expert opinions thereon then on file before the board do not show to the board the existence of disease or other physical condition rendering the operation more than ordinarily unsafe and the board shall unanimously so find and so reduce its findings to writing and file the same in the case and furnish the employee and the association with a copy of its findings, then if the employee with the knowledge of the result of such examination, such report, such opinions and such findings, thereafter refuses to submit within a reasonable time, which time shall be fixed in the findings of the board, to such operation, he shall be entitled to compensation for incapacity under the general provisions of this act for a period not exceeding one year.

If the employee submits to the operation and the same is successful, which shall be determined by the board, he shall in addition to the surgical benefits herein provided for be entitled to compensation for twenty-six weeks from the date of the operation. If such operation is not successful and does not result in death, he shall be paid compensation under the general provisions of this act the same as if such operation had not been had; other than in determining the quantum of compensation to be paid to the employee, the board may take into consideration any minor benefits that accrued to the employee by reason thereof or any aggravation or increased injury which accrued to him by reason thereof.

If the hernia results in death within one year after it is sustained, or the operation results in death, such death shall be held a result of the injury causing such hernia and compensated accordingly under the provisions of this act. This paragraph shall not apply where the employee has willfully refused to submit to

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an operation which has been found by the examination herein provided for not to be more than ordinarily unsafe.

Second injuries.

SEC. 12c. If an employee who has suffered a previous injury shall suffer a subsequent injury which results in a condition of incapacity to which both injuries or their effects have contributed, the association shall be liable because of such injury only for the compensation to which the subsequent injury would have entitled the injured employee had there been no previous injury.

Review.

SEC. 12d. Upon its own motion or upon the application of any person interested showing a change of conditions, mistake, or fraud, the board at any time within the compensation period may review any award or order, ending, diminishing or increasing compensation previously awarded within the maximum and minimum provided in this act, or change or revoke its previous order sending immediately to the parties a copy of its subsequent order or award. Review under this section shall be only upon notice to the parties interested.

Beneficial surgical operations.

SEC. 12e. In all cases where liability for compensation exists for an injury sustained by an employee in the course of his employment and a surgical operation for such injury will effect a cure of the employee or will materially and beneficially improve his condition, the association or the employee may demand that a surgical operation be had upon the employee as herein provided, and the association shall provide and pay for all necessary surgical treatment, medicines and hospital services incident to the performance of said operation, provided, the same is had. In case either of said parties demands in writing to the board such operation, the board shall immediately order a medical examination of the employee in the same manner as is provided for in the section of this act relating to hernia. If it be shown by the examination, report of facts and opinions of experts, all reduced to writing and filed with the board, that such operation is advisable and will relieve the condition of the injured employee or will materially benefit him, the board shall so state in writing, and upon unanimous order of said board, in writing, a copy of which shall be delivered to the employee and the association, shall direct the employee at a time and place therein stated to submit himself to an operation for said injury. If the board should find that said operation is not advisable, then the employee shall continue to be compensated for his incapacity under the general provisions of this act. If the board shall unanimously find and so state in writing that said operation is advisable, it shall make its order to that effect, stating the time and place when and where such operation is to be performed, naming the physicians therein who shall perform said operation, and if the employee refuses to submit to such operation, the board may order or direct the association to suspend the whole or any part of his compensation during the time of said period of refusal. The results of such operation, the question as to whether the injured employee shall be required to submit thereto and the benefits and liabilities arising therefrom, shall attach, be treated, handled and determined by the board in the same way as is provided in the case of hernia in this act.

Employers' physicians.

SEC. 12f. In all cases where a subscriber or the association has in his or its employ a physician or physicians regularly paid in any manner whatsoever by such subscriber or association to administer to or treat injured employees, the name or names of such physicians at the date of employment of the same shall be filed with the board together with a copy of the contract of such employment. If the contract of such physician or physicians is not in writing, then the same shall be reduced to writing and a copy thereof filed with the board. Such contract shall state fully the extent and scope of the employment and the compensation to be paid such physician or physicians. If the association or subscriber willfully fails or refuses to comply with this provision of this act, then an injured employee or any person acting for him shall have the right to provide hospital services, medical aid and

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medicine for said injured employee, at the expense of and the same shall be charged to the association, and the subscriber or association shall notify the employee at or before the time of injury what physician or physicians are contracted with to treat his or its employees.

Contributions by employees.

SEC. 12g. It shall be unlawful for any subscriber or any employer who seeks to comply with the provisions of this act to either directly or indirectly collect of or from his employees by any means or pretense whatever any premium under this act or part thereof paid or to be paid upon any policy of such insurance under this act which covers such employees, or any intended policy of such insurance designed to cover such employees, and if any subscriber or any employer of labor in this State violates this provision of this act, then any employee or the legal beneficiary of any employee of such employer or subscriber shall be entitled to all the benefits of this act and in addition thereto shall have a separate right of action to recover damages against such employer without regard to the compensation paid or to be paid to such employee or beneficiary under this act, and the association shall in nowise be responsible because of such separate action by such employee or beneficiary against such employer on such separate cause of action.

Agreements.

SEC. 12h. Every contract or agreement of an employer, the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it also covers liability for the payment of the compensation provided for by this act: *Provided*, That this section of this act shall not apply to employers of labor who are not eligible under the terms of this act to become subscribers thereto, nor to employers whose employees have elected to reject the provisions of this act, nor to employers eligible to come under the terms of this act who do not elect to do so, but who choose to carry insurance upon their employees independently of this law and without attempting in such insurance to provide compensation under the terms of this act: *But further provided*, That any evasion of this section whereby an insurance company shall undertake, under the guise of writing insurance against the risk of the employers who do not see proper to come under this act, to write insurance substantially or in any material respect similar to the insurance provided for by this act, that such insurance shall be void as provided for by the foregoing provisions of this section.

Minors.

SEC. 12i. If it be established that the injured employee was a minor when injured and that under normal conditions his wages would be expected to increase, that fact may be considered in arriving at his average weekly wages, and compensation may be fixed accordingly. This section shall not be considered as authorizing the employment of a minor in any hazardous employment which is prohibited by any statute of this State.

Incompetents.

SEC. 13. If an injured employee is mentally incompetent or is a minor or is under any other disqualifying cause at the time when any rights or privileges accrue to him or exist under this act, his guardian or next friend may in his behalf claim and exercise such rights and privileges except as otherwise herein provided.

In case of partial incapacity or temporary total incapacity, payment of compensation may be made direct to the minor and his receipts taken therefor, if the authority to so pay and receipt for said compensation is first obtained from the board.

Waivers.

SEC. 14. No agreement by any employee to waive his rights to compensation under this act shall be valid.

Lump sum.

SEC. 15. In cases where death or permanent total incapacity results from an injury, the liability of the association may be redeemed by payment of a lump sum by agreement of the parties thereto, subject to the approval of the industrial accident board hereinafter created. This section shall be construed as excluding

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any other character of lump-sum settlement save and except as herein specified: *Provided, however*, That in special cases where in the judgment of the board manifest hardship and injustice would otherwise result, the board may compel the association in the cases provided for in this section to redeem their liability by payment of a lump sum as may be determined by the board.

Readjustments. SEC. 15a. In any case where compensation is payable weekly at a definite sum and for a definite period, and it appears to the board that the amount of compensation being paid is inadequate to meet the necessities of the beneficiary, the board shall have the power to increase the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid, allowing such discount to the company increasing such payments as is applicable in cases of lump-sum settlement.

Survival of action. SEC. 16. In all cases of injury resulting in death, where such injury was sustained in the course of employment, cause of action shall survive.

Nonresident aliens. SEC. 17. Nonresident alien beneficiaries and resident alien beneficiaries shall be entitled to compensation under this act. Nonresident alien beneficiaries may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subject, and in such cases the consular officers shall have the right to receive for distribution for such nonresident alien beneficiaries all compensation awarded hereunder, and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them. The association may at any time, subject to the approval of the board, commute all future installments of compensation payable to alien beneficiaries, not resident of the United States, by paying to such alien beneficiaries the sum agreed upon and filing receipts therefor with the board.

Payments. SEC. 18. It is the purpose of this act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein, and, if the association willfully fails or refuses to pay compensation as and when the same matures and accrues, the board shall notify said association that such is the course it is pursuing, and if after such notice the association continues to willfully refuse and fail to meet these payments of compensation as provided for in this act, the board shall have the power to hold that such association is not complying with the provisions of this act. And shall certify such fact to the commissioner of insurance and banking, and said certificate shall be sufficient cause to justify said commissioner of insurance and banking to revoke or forfeit the license or permit of such association to do business in Texas: *Provided*, Said power of the board shall not be held to deny the association the right to bring suit or suits to set aside any ruling, order or decision of the board.

Extraterritoriality. SEC. 19. If an employee who has been hired in this State sustained injury in the course of his employment, he shall be entitled to compensation according to the law of this State, even though such injury was received outside of the State.

PART II.

Industrial accident board. SECTION 1. There shall be an industrial accident board consisting of three members, and the same is hereby created to be appointed by the governor, one of whom shall be chairman, and said board shall have the powers, duties and functions hereinafter conferred. Beginning with September 1, 1917, one member thereof shall be appointed for a term of two years, one for four years and one for six years; thereafter the term of office for members of the board shall be six years. Appointments to fill vacancies on the board shall be for the unexpired terms.

Personnel. SEC. 2. One member of the industrial accident board shall be at the time of his appointment an employer of labor in some

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industry or business covered by this act; one shall be at the time of his appointment employed in some business industry as a wage earner, and the third member shall be at the time of his appointment a practicing attorney of recognized ability, said member to act in the capacity of legal adviser to the board, in addition to his other duties as a member thereof, and to be chairman of said board.

Salaries. SEC. 3. The salaries and expenses of the industrial accident board shall be paid by the State. The salaries of the said members of the board shall be as follows: For the chairman of said board $3,000 per year, and for each of the other members thereof $2,500, payable in equal monthly installments. The board may appoint a secretary at a salary not to exceed $2,000 a year. And may appoint such other clerical and other assistants as may be necessary to properly administer this act. It shall also be allowed an annual sum, the amount to be determined by the legislature, for clerical and other services, office equipment, traveling and all other necessary expenses. The board shall be provided suitable offices in the capitol or some convenient building in the city of Austin where its records shall be kept.

Assistants.

Expenses.

Travel. The members of said board, or any employee thereof, shall have the right to travel upon free railroad transportation in the prosecution of the duties of their respective offices in the State of Texas without violating any provision of the antipass laws of this State, and any railroad company issuing such transportation shall not be deemed nor held to have violated any law of this State by reason thereof.

Rules. SEC. 4. The board may make rules not inconsistent with this act for carrying out and enforcing its provisions, and may require any employee claiming to have sustained injury to submit himself for examination before such board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the board to a physician or physicians authorized to practice under the laws of this State. If the employee or the association requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the board may in its discretion order or direct the association to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this section without reasonable notice to the employee and an opportunity to be heard.

Medical examination.

Refusing treatment, etc.

Subsequent examinations. The association shall have the privilege of having any injured employee examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to him: *Provided, however,* That the association shall pay for such examination and the reasonable expense incident to the injured employee in submitting thereto: *And provided further,* That the injured employee shall have the privilege to have a physician or physicians of his own selection, at the expense of such injured employee, present to participate in such examination.

Procedure. Process and procedure shall be as summary as may be under this act. The board or any member thereof shall have power to subpœna witnesses, administer oaths, inquire into matters of fact, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the board relating to disputed claims

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shall be upon questions of fact and in accord with the provisions of this act.

Notice.

SEC. 4a. Unless the association or subscriber have notice of the injury, no proceeding for compensation for injury under this act shall be maintained unless a notice of the injury shall have been given to the association or subscriber within thirty (30) days after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within six (6) months after the occurrence of same; or, in case of death of the employee or in the event of his physical or mental incapacity within six (6) months after the death or the removal of such physical or mental incapacity: *Provided*, That for good cause the board may in meritorious cases waive the strict compliance with the foregoing limitations as to notice and the filing of the claim before the board.

Disputes.

SEC. 5. All questions arising under this act, if not settled by agreement of the parties interested therein and within the terms and provisions of this act, shall, except as otherwise provided, be determined by the board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said board shall within twenty days after the rendition of said final ruling and decision by said board give notice to the adverse party and to the board that he will not abide by said final ruling and decision. And he shall within twenty days after giving such notice bring suit in some court of competent jurisdiction in the county where the injury occurred to set aside said final ruling and decision, and said board shall proceed no further toward the adjustment of such claim, other than as hereinafter provided: *Provided, however*, That whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this act, and the suit of the injured employee or person suing on account of the death of such employee shall be against the association if the employer of such injured or deceased employee at the time of such injury or death was a subscriber as defined in this act. If the final order of the board is against the association, then the association and not the employer shall bring suit to set aside said final ruling and decision of the board, if it so desires, and the court shall in either event determine the issues in such cause instead of the board upon trial de novo and the burden of proof shall be upon the party claiming compensation. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this act. If any party to any such final ruling and decision of the board, after having given notice as above provided, fails within said twenty days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the association, it shall at once comply with such final ruling and decision, and failing to do so the board shall certify that fact to the commissioner of insurance and banking, and such certificate shall be sufficient cause to justify said commissioner of insurance and banking to revoke or forfeit the license or permit of such association to do business in Texas.

Appeals to courts.

Enforcement of awards.

SEC. 5a. In all cases where the board shall make a final order, ruling or decision, as provided in the foregoing section 5 hereof, and against the association, and the association shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said section 5 is provided, then in that event the claimant in addition to the rights and remedies given him and the board in said section 5 may bring suit in some court of competent jurisdiction where the injury occurred, upon said order, ruling or decision, and if he secures a judgment in said court sustaining such order, ruling or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent as damages upon the amount of compensation so recovered in said judgment, together with a reason-

Penalty.

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able attorney's fee for the prosecution and collection of such claim.

It is further provided that where the board has made an award against an association requiring the payment to an injured employee or his beneficiaries of any weekly or monthly payments, under the terms of this act, and such association should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employee or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon in any court of competent jurisdiction where the injury occurred to collect the full amount thereof, together with twelve per cent penalties and attorney's fees, as provided for in the foregoing paragraph of this section. Suit may be brought under the provisions of this section of the act, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

Contractors.

SEC. 6. If any subscriber to this act with the purpose and intention of avoiding any liability imposed by the terms of the act sublets the whole or any part of the work to be performed or done by said subscriber to any subcontractor, then in the event any employee of such subcontractor sustains an injury in the course of his employment he shall be deemed to be and taken for all purposes of this act to be the employee of the subscriber, and in addition thereto such employee shall have an independent right of action against such subcontractor, which shall in no way be affected by any compensation to be received by him under the terms and provisions of this act.

Third persons.

SEC. 6a. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employee may at his option proceed either at law against that person to recover damages or against the association for compensation under this act, but not against both, and if he elects to proceed at law against the person other than the subscriber, then he shall not be entitled to compensation under the provisions of this act; if compensation be claimed under this act by the injured employee or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employee in so far as may be necessary and may enforce in the name of the injured employee or of his legal beneficiaries or in its own name and for the joint use and benefit of said employee or beneficiaries and the association the liability of said other person, and in case the association recovers a sum greater than that paid or assumed by the association to the employee or his legal beneficiaries, together with a reasonable cost of enforcing such liability, which shall be determined by the court trying the case, then out of the sum so recovered the association shall reimburse itself and pay said cost and the excess so recovered shall be paid to the injured employee or his beneficiaries. The association shall not have the right to adjust or compromise such liability against such third person without notice to the injured employee or his beneficiaries. The association shall not have the right to adjust or compromise such liability against such third person without notice to the injured employee or his beneficiaries and the approval of the board, upon a hearing thereof.

Accidents to be reported.

SEC. 7. Every subscriber shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. Within eight days after the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one day, a report thereof shall be made in writing to the board on blanks to be procured from the board for that purpose. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose.

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The said report shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employee and the character of work in which he was engaged at the time of the injury, and shall state the date and hour of receiving such injury and the nature and cause of the injury, and such other information as the board may require. Any employer willfully failing or refusing to make any such report within the time herein provided, or willfully failing or refusing to give said board any information demanded by said board relating to any injury to any employee, which information is in the possession of or can be ascertained by the employer by the use of reasonable diligence, shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the attorney general or by the district or county attorney under his direction in a district court thereof.

Quorum.

SEC. 8. A majority of the board shall constitute a quorum to transact business, and the act or decision of any two members of the board shall be held the act or decision of the board, except as otherwise herein specifically provided. No vacancy shall impair the right of the remaining member or members of the board to exercise all the powers of the board. The board shall

Seal.

provide itself with a seal for the authentication of its orders, awards or proceedings on which shall be inscribed the words "Industrial accident board, State of Texas, official seal." And any order, award or proceeding of said board when duly attested and sealed by the board or its secretary shall be admissible as evidence of the act of said board in any court in this State.

Copies of awards.

SEC. 9. Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the board shall furnish to any person entitled thereto a certified copy of any order, award, decision or paper on file in the office of said board, and the fees so received for such copies shall be covered into the treasury of the State of Texas into the fund for assistant clerical hire in the department of the industrial accident board, and so much thereof as may be necessary may be used by said department upon proper voucher therefor to pay the necessary clerks to make such copies, and any excess that may exist at the end of any fiscal year in such fund shall lapse into the general revenue fund of this State, and no fee or salary shall be paid to any clerk or other person in said department for making such copies in excess of the fees charged for such copies.

Investigations.

SEC. 10. Said board or any member thereof may hold hearings or take testimony or make investigations at any point within the State of Texas, reporting the result thereof, if the same is made by one member to the board, or it can employ or use the assistance of an inspector or adjuster for the purpose of adjusting and settling claims for compensation or developing the facts relating to any claim for compensation.

Suspension of payments.

SEC. 11. When the association suspends or stops payment of compensation, it shall immediately notify the board of that fact, giving to said board the name, number and style of the claim, the amount paid thereon, the date of the suspension or stopping of payment thereon and the reason for such suspension or stopping of payment of compensation.

Payments.

SEC. 12. The board upon application of either party may in its discretion, having regard to the welfare of the employee and the convenience of the association, authorize compensation to be paid monthly or quarterly.

Compromises, etc.

In any case where the liability of the association or the extent of the injury of the employee is uncertain, indefinite or incapable of being satisfactorily established the board may approve any compromise, adjustment, settlement or commutation thereof made between the parties.

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PART III.

Insurance association.

SECTION 1. The "Texas Employers' Insurance Association" is hereby created, a body corporate with the powers provided in this act and with all the general corporate powers incident thereto.

Directors.

SEC. 2. The governor shall appoint a board of directors of the association consisting of twelve members, who shall serve for a term of one year or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide: *Provided*, That at any annual meeting of subscribers the number of directors may be increased or decreased by resolution duly recorded in the minutes of such meeting.

By-laws.

SEC. 3. Until the first meeting of the subscribers the board of directors shall have and exercise all the powers of the subscribers and may adopt by-laws, not inconsistent with the provisions of this act, which shall be in effect until amended or repealed by the subscribers.

Officers.

SEC. 4. The board of directors shall immediately choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officials as the by-laws may provide.

Quorum.

SEC. 5. Seven or more of the directors shall constitute a quorum for the transaction of business. Vacancies in any office may be filled in such manner as the by-laws shall provide.

Executive committee.

SEC. 5a. The board of directors may appoint an executive committee, which may have and exercise all of the powers of the board of directors, except when the board is in session.

Subscribers.

SEC. 6. Any employer of labor in this State may become a subscriber except as provided in section 2, Part I, of this act.

First meeting.

SEC. 7. The board of directors shall, within thirty days of the subscription of twenty-five employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his residence or place of business, not less than ten days before the date fixed for the meeting.

Votes.

SEC. 8. In any meeting of the subscribers each subscriber shall have one vote, and if a subscriber has 500 employees to whom the association is bound to pay compensation he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional 500 employees to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by right of proxy, more than 20 votes.

When policies issue.

SEC. 9. No policies shall be issued by the association until not less than 50 members have subscribed, who have not less than 2,000 employees to whom the association may be bound to pay compensation.

Same.

SEC. 10. No policies shall be issued by the association until a list of the subscribers with the number of employees of each, together with such information as the commissioner of insurance and banking may require, shall have been filed with the department of insurance and banking, nor until the president and secretary of the association shall have certified under oath that every subscription on the list so filed is genuine and made with an agreement with each subscriber that he will take the policy so subscribed for by him within thirty days of the granting of a license to the association by the commissioner of insurance and banking to issue policies.

Suspension.

SEC. 11. If the number of subscribers falls below 50, or the number of employees to whom the association may be bound to pay compensation falls below 2,000, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than 50, who have not less than 2,000 employees to whom the association may be bound to pay compensation, said subscriptions to be subject to the provisions of the preceding section.

License.

SEC. 12. Upon the filing of the certificates provided for in the two preceding sections, the commissioner of insurance and banking shall make such investigations as he may deem proper and,

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if his findings warrant it, grant a license to the association to issue policies.

Classes. SEC. 13. The board of directors may distribute the subscribers into groups for the purpose of segregating the experience of each such group as to premiums and losses, and for the purpose of determining dividends payable to and assessments payable by the subscribers within each group, but for the purpose of determining the solvency of the association the funds of the association shall be deemed one and indivisible. The board of directors shall have power to rearrange any of the groups by withdrawing any subscriber and transferring him wholly or in part to any group and to set up new groups at its discretion.

Liability. SEC. 14. The association may, in its by-laws and policies, fix the limit of liability of the subscribers for the payment of assessments hereinafter provided for, but such limit of liability of the subscribers shall not, except by special agreement in writing between the association and subscriber, be fixed at an amount greater than an amount equal to and in addition to an annual premium.

Assessments. SEC. 15. If the association, at the end of any calendar year, is not possessed of admitted assets in excess of unearned premiums sufficient for the payment of its incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses, first upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses shows a deficiency for the group, and, second, only upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses shows a surplus, and in no event shall it make an assessment for any aggregate amount more than is needed to pay losses and expenses. Every subscriber shall, in accordance with the law and his contract, pay his proportionate part of any assessment which may be levied by the association on account of losses and expenses incurred during any calendar year while he is a subscriber.

Dividends. SEC. 16. The board of directors may by vote from time to time fix the amount to be paid as dividends on the policies in force during each calendar year after retaining sums sufficient to pay all compensation which may be payable on account of injuries sustained and expenses incurred during the calendar year. Dividends and assessments shall be fixed by and for groups, but the entire assets of the association, including the liability of the subscriber to assessment within the limits fixed by the by-laws or by special agreement in writing as authorized, shall be subject to the payment of any approved claim for compensation against the association.

Surplus. SEC. 16a. Whenever the association shall have accumulated at the end of any calendar year an admitted surplus in excess of incurred losses, expenses and unearned premiums amounting to the sum of two hundred thousand dollars, the liability of its members to assessment shall be suspended during the ensuing calendar year, or for such further period as the association shall maintain unimpaired such surplus of two hundred thousand dollars or more, and the certificate of the commissioner of insurance and banking, after an examination and report, shall be conclusive evidence as to the fact in any proceeding in which the fact may be an issue.

Nonparticipating policies. SEC. 16b. Whenever by reason of having qualified under section 16a, Part III, to issue policies which are not subject to assessment, the association may issue policies which will not entitle the holder to participate in any distribution of surplus.

Premiums. SEC. 16c. The board of directors shall determine hazards by classes, and fix the rates of premium which shall be applicable to the pay roll in each of such classes at the lowest possible rate consistent with the maintenance of solvency and the creation of adequate reserves and a reasonable surplus, and for such purpose may adopt a system of schedule and experience rating in

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such a manner as to take account of the peculiar hazard of each individual risk.

Rates to be approved.

SEC. 17. Any proposed rate of premium, assessment or dividend or any distribution of subscribers shall not take effect until approved by the commissioner of insurance and banking after such investigation as he may deem necessary.

Rules for safety.

SEC. 18. The association shall make and enforce reasonable rules for the prevention of injuries on the premises of subscribers, and for this purpose the inspector of the association or of the board shall have free access to all such premises during regular working hours. Any subscriber aggrieved by such rule or regulation may petition the board for a review, and it may affirm, amend or annul the rule or regulation.

Statements by employers, etc.

SEC. 18a. Whenever any employer of labor in this State becomes a subscriber to this act, he shall immediately notify the board of such fact, stating in such notice his name, place of business, character of the business, approximate number of employees, estimated amount of his pay roll and the name of the insurance company carrying his insurance, the date of issuing the policy and the date when the same will expire, and whenever any policy is renewed that fact shall be made known to the board, and the notice thereof shall contain the above facts. The association shall also report the same to the board, giving the name of the employer, place of business, character of the business, approximate number of employees, estimated amount of pay roll, date of issuance and date of expiration of said policy. Any employer or association willfully failing or refusing to make any such report shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars ($1,000) for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the attorney general or by the district or county attorney under his direction in the district court thereof.

Notice to employees.

SEC. 19. Every subscriber shall, as soon as he secures a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the board to all persons under contract of hire with him that he has provided for payment of compensation for injuries with the association.

Same.

SEC. 20. Every subscriber shall, after receiving a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the board, to all persons with whom he is about to enter into a contract of hire that he has provided for payment of compensation for injuries by the association. If any employer ceases to be a subscriber, he shall, on or before the date on which his policy expires, give notice to that effect in writing or print, or in such other manner or way as the board may direct or approve to all persons under contract of hire with him. In case of the renewal of his policy, no notice shall be required under this act. He shall file a copy of said notice with the board.

Payments of judgments.

SEC. 21. If a subscriber who has complied with all the rules, regulations and demands of the association is required by any judgment of a court at law to pay any employee any damages, actual or exemplary, on account of any personal injury sustained by such employee in the course of his employment during the period of subscription, the association shall pay to the subscriber the full amount of the judgment and the cost assessed therewith, if the subscriber shall have given the association notice of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend same in his or its name.

SEC. 22. The corporate powers of the association shall not expire because of failure to issue policies or to make insurance.

Powers continue.

SEC. 23. The association shall set up and maintain reserves adequate to meet anticipated losses and carry all claims to maturity and policies to termination, which reserves shall be computed in accordance with such rules as shall be approved by the commissioner of insurance and banking.

Reserves.

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PART IV.

Definitions.

SECTION 1. The following words and phrases as used in this act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

"Employer" shall mean any person, firm, partnership, association of persons or corporations or their legal representatives that makes contracts of hire.

"Employee" shall mean every person in the service of another under any contract of hire, express or implied, oral or written, except masters of or seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of the trade, business, profession or occupation of his employer.

The words "legal beneficiaries" as used in this act, shall mean the relatives named in section 8a, Part I, of this act. "Association" shall mean the "Texas Employers' Insurance Association" or any other insurance company authorized under this act to insure the payment of compensation to injured employees or to the beneficiaries of deceased employees.

"Subscriber" shall mean any employer who has become a member of the association by paying the required premium: *Provided*, That the association holds a license issued by the commissioner of insurance and banking, as provided for in section 12, Part III, of this act.

"Average weekly wages" shall mean:

1. If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, substantially the whole of the year immediately preceding the injury, his average annual wages shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

2. If the injured employee shall not have worked in such employment during substantially the whole of the year, his average annual wages shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

3. When by reason of the shortness of the time of the employment of the employee, or other employee engaged in the same class of work in the manner and for the length of time specified in the above subsections 1 and 2, or other good and sufficient reasons, it is impracticable to compute the average weekly wages as above defined, it shall be computed by the board in any manner which may seem just and fair to both parties.

4. Said wages shall include the market value of board, lodging, laundry, fuel, and other advantages which can be estimated in money, which the employee receives from the employer as part of his remuneration. Any sums, however, which the employer has paid to the employee to cover any special expenses entailed on him by the act of his employment shall not be included.

5. The average weekly wages of an employee shall be one-fifty-second (1–52) part of the average annual wages.

The terms "injury" or "personal injury" as used in this act, shall be construed to mean damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom.

The term "injury sustained in the course of employment," as used in this act, shall not include:

1. An injury caused by the act of God, unless the employee is at the time engaged in the performance of duties that subject him to a greater hazard from the act of God responsible for the injury than ordinarily applies to the general public.

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2. An injury caused by an act of a third person intended to injure the employee because of reasons personal to him and not directed against him as an employee, or because of his employment.

3. An injury received while in a state of intoxication.

4. An injury caused by the employee's willful intention and attempt to injure himself, or to unlawfully injure some other person, but shall include all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employee while engaged in or about the furtherance of the affairs or business of his employer whether upon the employer's premises or elsewhere.

Officers.

SEC. 1a. The president, vice president or vice presidents, secretary or other officers thereof provided in its charter or by-laws and the directors of any corporation which is a subscriber to this act shall not be deemed or held to be an employee within the meaning of that term as defined in the preceding section hereof.

Insurance companies.

SEC. 2. Any insurance company, which term shall include mutual and reciprocal companies, lawfully transacting a liability or accident business in this State, shall have the same right to insure the liability and pay the compensation provided for in Part I of this act, and when such company issues a policy conditioned to pay such compensation, the holder of such said policy shall be regarded as a subscriber so far as applicable under this act, and when such company insures such payment of compensation it shall be subject to the provisions of Parts I, II and IV and of sections 10, 17, 18a, and 21 of Part III of this act, and shall file with the commissioner of insurance and banking its classification of hazards with the rates of premium respectively applicable to each, none of which shall take effect until the commissioner of insurance and banking has approved same as adequate to the risks to which they respectively apply and not less than charged by the association, and such company may have and exercise all of the rights and powers conferred by this act on the association created hereby, but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least 50 subscribers who have not less than 2,000 employees.

Withdrawal.

SEC. 3. Any subscriber who has paid a premium as provided in section 1, Part IV, of this act, may, upon application to the board and to the association and after a showing satisfactory to the board, that he has notified all of his employees in such manner as may be required by the board, cease to be a subscriber and be entitled to a refund of the unearned portion of his premium, subject, however, to any rule approved by the commissioner of insurance and banking as to the minimum premiums or short rate cancellation.

Misrepresentations.

SEC. 3a. Any subscriber who shall willfully misrepresent the amount of his pay roll to the association writing his insurance upon which any premium under this act is to be based shall be liable to the association insuring the compensation of his employees in an amount not to exceed ten times the amount of the difference between the premium which he paid and the amount which said subscriber should have paid had his pay roll been correctly computed; and the liability to said association for such misrepresentation, if it was deceived thereby, may be enforced in a civil action in any court of competent jurisdiction in this State.

Rights survive.

SEC. 3b. No inchoate, vested, matured, existing or other rights, remedies, powers, duties or authority, either of any employee or legal beneficiary, or of the board, or of the association or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made, and to that end it is hereby declared that said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties and authority; and further, this act, in

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so far as it adopts the law of which it is an amendment, is a continuation thereof, and only in other respects a new enactment.

Construction of terms.

SEC. 3c. Any reference to any employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever the word "board" is used in this act, it shall be construed to mean industrial accident board created by this act. Whenever in this act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Provisions severable.

SEC. 4. Should any part of this act for any reason be held to be invalid, unconstitutional or inoperative, no other part or parts thereof shall be held affected thereby, and if any exception to or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid or ineffective the general provisions shall, nevertheless, stand effective and valid as if it has been enacted without limitation or exceptions.

Advance payments.

SEC. 5. In cases of emergency or impending necessity the association may make advanced payments of compensation to any employee during the period of his incapacity or to his beneficiaries within the terms of this act, and when the same is either directed or approved by the board it shall be credited as against any unaccrued compensation due said employee or beneficiaries.

Reports not evidence.

SEC. 6. The reports of accidents required by this act to be made by subscribers shall not be deemed and considered as admissions and evidence against the association or the subscriber in any proceedings before the board or elsewhere in a contested case where the facts set out therein or in any one of them is [are] sought to be contradicted by the association or subscriber.

Act in effect.

SEC. 7. The law as it now stands being wholly inadequate to protect the rights of industrial employees who may be injured in industrial accidents and the beneficiaries of such employees who may be killed in such accidents creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and the same is hereby suspended, and this act shall take effect from and after its passage, and it is so enacted.

Approved March 28, 1917.

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UTAH.

ACTS OF 1917.

CHAPTER 100.—*Compensation of workmen for injuries.*

Industrial commission.

SECTION 1. There is hereby created the Industrial Commission of Utah, to be composed of three members, who shall be appointed by the governor, within thirty days after this act goes into effect. Two of the members of such commission shall be appointed for the term of two years and one for four years, and thereafter each member shall be appointed with the advice and consent of the senate, for the term of four years. Not more than two of the members of said commission shall belong to the same political party.

Removal of members.

SEC. 2. The governor at any time may remove any member of the commission for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

No other employment.

SEC. 3. No commissioner shall hold any office of trust or profit, or engage in any occupation or business, interfering or inconsistent with his duties as such commissioner, and no commissioner shall serve on any committee of any political party.

Salary.

SEC. 4. Each of said commissioners shall receive an annual salary of $4,000, payable in the same manner as the salaries of other officers of the State are paid. Before entering upon the duties of his office, each commissioner shall take and subscribe to the constitutional oath of office, which oath shall be filed in the office of the secretary of State. Each member of the commission shall give a corporate surety bond in the sum of ten thousand dollars, which bond shall be approved by the governor and filed with the State treasurer. All employees or deputies of the commission receiving or disbursing funds of the State shall give corporate surety bonds to the State in amounts and with surety to be approved by the commission. The premiums of all bonds provided for in this section shall be paid out of the State treasury.

Bonds.

Organization.

SEC. 5. Within thirty days after this act goes into effect, the commission shall meet at the seat of government and organize by choosing one of its members as chairman. A majority of the commission shall constitute a quorum to transact business. No vacancy shall impair the rights of the remaining commissioners to exercise all the powers of the commission; and in case a vacancy exists, the remaining members of the commission shall exercise all of the powers and authorities of the commission until such vacancy is filled.

Offices.

SEC. 6. The commission shall keep and maintain its offices at the State capitol, and suitable room or rooms. Necessary office furniture shall be furnished to the commission in the State capitol. The commission may hold sessions in any place within the State of Utah.

Seal.

SEC. 7. The commission shall have an official seal for the authentication of its orders and proceedings, upon which seal shall be engraved the words, "The Industrial Commission of Utah," and such other design as the commission may prescribe; and the courts in this State shall take judicial notice of the seal of the commission, and in all cases copies of orders, proceedings or records in the office of the Industrial Commission of Utah, certified by the secretary of the said commission under its seal, shall be equal to the original as evidence.

Transactions.

SEC. 8. The commission shall be open for the transaction of business during all business hours of each and every day except Sun-

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day and legal holidays. The sessions of the commission shall be open to the public. All proceedings of the commission shall be shown on its records, which shall be a public record, and all voting shall be had by calling each member's name by the secretary, and each member's vote shall be recorded on the proceedings as cast.

Rules. SEC. 9. Subject to the provisions of this act, the commission may adopt its own rules of procedure and may change the same from time to time in its discretion.

Employees. SEC. 10. The commission may employ a secretary, deputies, actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants, and fix their compensation. Such employment and compensation shall be first approved by the governor, and shall be paid out of the State treasury. The members of the commission, deputies, secretary, actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers, and other assistants that may be employed shall be entitled to receive from the State treasury their salaries or compensation and also their actual and necessary expenses while traveling on the business of the commission, and the members of the commission may confer and meet with officers of other States and officers of the United States on any matters pertaining to their official duties. Such expenses shall be itemized and sworn to by the person who incurred the expense and allowed by the commission.

[Sections 11 to 34, inclusive, relate to safety provisions and inspection, and the powers and duties of the commission with reference thereto, and are reproduced in Bulletin No. 244, Labor legislation of 1917.]

State insurance fund. SEC. 35. There is hereby created a fund, to be known as "The State insurance fund," for the purpose of insuring employers against liability for compensation under this act, and of assuring to the persons entitled thereto the compensation provided by this act. Such fund shall consist of all premiums and penalties received and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon money belonging to the fund and deposited or invested as herein provided.

Such fund shall be administered by the commission without liability on the part of the State beyond the amount of such fund. Such fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of compensation and of expenses in the manner provided in this act.

Administration. SEC. 36. It shall be the duty of the commission to conduct the business of the State insurance fund, and it is hereby vested with full authority over the said fund, and may do any and all things which are necessary or convenient in the administration thereof, or in connection with the insurance business to be carried on by it under the provisions of this act.

Classes of employments. SEC. 37. Employments insured in the State insurance fund shall be divided by the commission for the purpose of the said fund, into classes. Separate accounts shall be kept of the amounts collected and expended in respect to each such class for convenience in determining equitable rates; but for the purpose of paying compensation the State insurance fund shall be deemed one and indivisible. The commission shall have power to rearrange any of the classes by withdrawing any employment embraced in it and transferring it wholly or in part to any other class, and from such employments to set up new classes in its discretion. The commission shall determine the hazards of the

Premium rates. different classes and fix the rates of premium therefor based upon the total pay roll and number of employees in each of such classes of employment, at the lowest possible rate consistent with the maintenance of a solvent State insurance fund and the creation of a surplus and reserve; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of such individual risk.

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Status of commission.

SEC. 38. The commission may in its official name sue and be sued in all the courts of the State, in all actions or proceedings arising out of anything done or suffered in connection with the State insurance fund or business relating thereto. Service of summons on any member of the commission or the secretary thereof shall be deemed service on the commission.

Contracts.

SEC. 39. The commission may in its official name make contracts of insurance as herein provided and such other contracts relating to the State insurance fund as are authorized or permitted under the provisions of this act.

Deputies.

SEC. 40. The commission may act through proper deputies and may delegate to such deputies such powers as it deems necessary or convenient.

Among the powers which may be so delegated shall be the power to enter into contracts of insurance, insuring employers against liability for compensation as herein provided and insuring to employees the compensation fixed by this act; also the power to make agreements for the settlement of claims against said fund for compensation for injuries in accordance with the provisions of this act; also the power to determine to whom and through whom payments of such compensation shall be made; and also the power to contract with physicians, surgeons, and hospitals for medical and surgical treatment and care and nursing of injured persons entitled to compensation from said fund.

Policies.

SEC. 41. (1) Every employer insuring in the State insurance fund shall receive from the commission a contract or policy of insurance in a form to be approved by the State commission.

Payment of premiums.

(2) Except as otherwise provided in this act all premiums shall be paid by every employer who elects to insure with the State insurance fund to the commission on or before July 1, 1917, and semiannually thereafter, or at such other times as may be prescribed by the commission. Receipts shall be given for such payments and the money shall be paid over to the State treasurer to the credit of the State insurance fund.

Withdrawal.

SEC. 42. Any employer may, upon complying with subdivisions two or three of section 53 of this act, withdraw from the fund by turning in his insurance contract or policy for cancellation, provided he is not in arrears for premiums due to the fund and has given to the commission written notice of his intention to withdraw before the expiration of the period for which he has elected to insure in said fund.

Reinsurance.

SEC. 43. The commission may reinsure any risk, or any part thereof, and may enter into agreements of reinsurance in the same way and to the same extent as other insurance carriers.

Fixing rates.

SEC. 44. The commission shall observe the following requirements in classifying and fixing the rates of premiums for the risks of the same:

(1) It shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the expenses of administering the State insurance fund, and the disbursements on account of injuries and death of employees in each of said classes, including the setting up of reserves adequate to meet anticipated and unexpected losses and to carry the claims to maturity; and it shall also keep an account of the money received from each individual employer and the amount disbursed from the State insurance fund for expenses and on account of injuries and death of the employees of such employer, including the reserves so set up.

Surplus.

(2) Ten per cent of the money paid into the State insurance fund shall be set aside for the creation of a surplus until such fund shall amount to the sum of one hundred thousand dollars, and thereafter five per cent of all the money paid into the State insurance fund shall be credited to such surplus fund until in the judgment of the commission, such surplus shall be sufficiently large to cover the catastrophe hazard and all other unanticipated losses. The commission shall also set up and maintain a reserve adequate to meet the anticipated losses and carry all claims and

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policies to maturity. The amount of such surplus and reserve shall be subject to the approval of the State commission.

Readjustments. (3) At the end of every year, and at such other times as the commission in its discretion may determine, a readjustment of the rate shall be made for each of the several classes of employments or industries. If at any time there is an aggregate balance remaining to the credit of any class of employment or industry, which the commission deems may safely and properly be divided, it may in its discretion credit to each individual member of such class who shall have been a subscriber to the State insurance fund for a period of six months or more prior to the time of such readjustment such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums since the last readjustment of rates.

Credits. (4) Should any such accounting show a balance remaining to the credit of any class of occupation or industry, after the above-mentioned amounts have been credited to the surplus and reserve fund and after the payment of expense of administering said fund and the payment of all awards for all injury or death lawfully chargeable against the same, the premium rate for such class shall be reduced; and, each individual of such class, who has been a subscriber to the State insurance fund for a period of six months or longer prior to the time of such readjustment, and whose premium or premiums so paid to the fund exceeds the amount of the disbursements from the fund on account of injuries or death of his employees during such period, shall be entitled to a credit on the installment or installments of premiums next due from him, the amount of which credit shall be such proportion of said balance as the amount of his prior paid premiums sustains to the whole amount of said premiums paid by the class to which he belongs since the last readjustment of rates.

Rules. SEC. 45. The commission shall adopt rules and regulations with respect to the collection, maintenance and disbursement of the State insurance fund; one of which rules shall provide that in the event the amount of premiums collected from any employer at the beginning of any period of six months is ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payments as a basis, that an adjustment of the amount of such premium shall be made at the end of such period, and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for said period; and, in the event such wage expenditure for said period is less than the amount on which such estimated premium was collected, then such employer shall be entitled to receive a refund from the State insurance fund of the difference between the amount so paid by him and the amount so found to be actually due, or have the amount of such difference credited on succeeding premium payments at his option, and should such actual premium, when ascertained as aforesaid exceed in amount the premium so paid by such employer at the beginning of such period, such employer shall immediately upon being advised of the true amount of such premium due, forthwith pay to the State treasurer an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of said six months' period.

Custodian. SEC. 46. The State treasurer shall be the custodian of the State insurance fund, and all disbursements therefrom shall be paid by him upon vouchers authorized by the Industrial Commission of Utah and signed by a member of the commission and the secretary thereof.

Deposits. SEC. 47. The State treasurer shall deposit any portion of the fund not needed for immediate use, in the same manner and subject to all the provisions of the law with respect to the deposit of State funds by such treasurer: *Provided*, That the best interest obtainable shall be collected upon such deposits, and all interest earned by such portion of the State insurance fund as may be deposited by the State treasurer in pursuance of the authority

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herein given, shall be collected by him and placed to the credit of such fund.

Investment of surplus.

SEC. 48. The commission shall have power to invest any of the surplus or reserve belonging to the State insurance fund in bonds of the United States or Federal land banks, of the State of Utah, or of any county, city, town or school district of the State of Utah, at current market prices for such bonds; or in first mortgages on real estate at not to exceed forty per cent of the cash value thereof: *Provided*, That such purchase or investment be authorized by a resolution adopted by the commission and approved by the State board of examiners; and it shall be the duty of the boards or officers of the several taxing districts of the State in the issuance and sale of bonds of their respective taxing districts to offer in writing to the commission, prior to advertising the same for sale, all such issues of the taxing districts so issuing such bonds; and said commission shall within ten days after the receipt of such written offer, either accept the same and purchase such bonds or any portion thereof at par and accrued interest, or reject such offer in writing; and all such bonds so purchased forthwith shall be placed in the hands of the State treasurer, who is hereby designated as custodian thereof, and it shall be his duty to collect the interest thereon as the same becomes due and payable, and also the principal thereof, and to pay the same, when so collected, into the State insurance fund. The State treasurer shall honor and pay all vouchers drawn on the State insurance fund for the purchase of such bonds when signed by any two members of the commission upon delivery of said bonds to him when there is attached to such voucher a certified copy of such resolution of the commission authorizing the purchase of such bonds; and the commission may sell any of said bonds upon like resolution, and the proceeds thereof shall be paid by the purchaser to the State treasurer upon delivery to him of said bonds by the treasurer.

Payments.

Bond.

SEC. 49. The State treasurer shall give a separate and additional corporate surety bond in such amount as may be fixed by the governor, conditioned upon the faithful performance of his duties as custodian of the State insurance fund. The premium of said bond shall be paid out of the State insurance fund.

Employers covered.

SEC. 50. The following shall constitute employers subject to the provisions of this act:

(1) The State and each county, city, town and school district therein.

(2) Every person, firm and private corporation, including every public utility, that has in service four or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, except agricultural laborers and domestic servants: *Provided*, That employers who have in service less than four employees shall have the right to come under the terms of this act by complying with the provisions thereof, and all the rules and regulations of the commission. The term "regularly" as herein used shall include all employments, whether continuous throughout the year or for only a portion of the year. It means all employments in the usual course of the trade, business, profession or occupation of an employer.

Employees.

SEC. 51. The terms "employee," "workman," and "operative," as used in this act, shall be construed to mean:

(1) Every person in the service of the State, or of any county, city, town, or school district therein, including regular members of lawfully constituted police and fire departments of cities and towns under any appointment or contract of hire, express or implied, oral or written, except any elective official of the State, or of any county, city, town, or school district therein, or other official receiving more than $2,400 per year salary.

(2) Every person except agricultural laborers and domestic servants in the service of any person, firm or corporation, employing four or more workmen or operatives regularly in the same busi-

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ness, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work for hire under the laws of the State, but not including any person whose employment is but casual, or not in the usual course of trade, business, profession or occupation of his employer.

Terms construed.

SEC. 52. The following terms as used in this act shall be construed as follows:

* * * * *

(5) The words "personal injury by accident arising out of and in the course of employment" shall include an injury caused by the willful act of a third person directed against an employee because of his employment.

They shall not include a disease except as it shall result from the injury.

(6) The term "compensation" shall mean the compensation and benefits provided for in this act.

Payments.

SEC. 52a. If a workman receives personal injury by accident arising out of and in the course of his employment, his employer, or the insurance carrier shall pay compensation in the amounts and to the person or persons hereinafter specified.

Securing payments.

SEC. 53. Employers, but not including municipal bodies, shall secure compensation to their employees in one of the following ways:

(1) By insuring and keeping insured the payment of such compensation with the State insurance fund, or

(2) By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized to transact the business of workmen's compensation insurance in the State, or

(3) By furnishing to the commission satisfactory proof of financial ability to pay direct the compensation in the amount and manner and when due as provided for in this act. In the latter case the commission may in its discretion require the deposit of acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

All stock corporations or mutual associations transacting the business of workmen's compensation insurance in this State under the terms of subdivision (2) of this section shall be subject to the rules and regulations of the commission with respect to rates to be charged, and methods of compensation to be used.

Notice.

SEC. 54. If the insurance so effected is not with the State insurance fund the employer shall forthwith file with the commission in form prescribed by it a notice of his insurance, together with a copy of the contract or policy of insurance.

Provisions of policies.

SEC. 55. Every policy of insurance covering the liability of the employer for compensation, whether issued by the commission or by a stock company, or by a mutual association authorized to transact workmen's compensation insurance in this State, shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by at any time filing a separate claim or by at any time making the insurance carrier a party to the original claim, the liability of the insurance carrier in whole or in part for the payment of such compensation: *Provided, however,* That payment in whole or in part of such compensation by either the employer or the insurance carrier, shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

Privity of parties.

SEC. 56. Every such policy and contract shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings,

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decisions, and awards rendered against the employer for the payment of compensation under the provisions of this act.

Insolvency.

SEC. 57. Every such policy and contract shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy or contract.

Municipalities.

SEC. 58. Each county, city, town or school district which is liable to its employees for compensation may insure in the State insurance fund or pay compensation direct.

State contributions.

SEC. 59. The State shall contribute to the State insurance fund in proportion to the annual expenditure of money by it for the service of persons in the employ of the State described in subdivision one of section 51 hereof, the amount of such payments and the method of making the same to be determined as hereinafter provided.

Payments.

SEC. 60. In the month of January in the year 1918, the State auditor shall draw his warrant on the State treasurer, in favor of said treasurer as custodian of the State insurance fund, and for deposit to the credit of said fund, for a sum equal to one per cent of the amount of money expended by the State during the last preceding fiscal year, for the service of persons in the employ of the State, which said sums are hereby appropriated and made available for such payments; and thereafter in the month of January of each year, such sums of money shall in like manner be paid into the State insurance fund as may be due according to the rate for and insurance as fixed by the commission; and it shall be the duty of the commission to communicate to the governor three months before the convening of each regular session of the legislature, an estimate of the aggregate amount of money necessary to be contributed by the State during the ensuing biennium as its proper portion of the State insurance fund.

Payment of benefits.

SEC. 61. Every employee covered by insurance in the State insurance fund, who is injured, by accident arising out of and in the course of his employment, and the dependents of such as are killed, provided the same was not purposely self-inflicted, on or after July 1, 1917, shall be paid such compensation out of the State insurance fund for loss sustained on account of such injury or death as is provided in this act, and shall be entitled to receive such medical, nurse and hospital services and medicines, and such amount of funeral expenses in case of death as are provided by this act.

Contributions by employers.

SEC. 62. Except as hereinafter provided, every employer (except the State) who shall have insured in the State insurance fund, shall, in the month of July, 1917, and semiannually thereafter, pay into the State insurance fund the amount of premium determined and fixed by the commission for the employment or occupation of such employer, the amount of which premium to be so paid by each such employer to be determined by the classifications, rules and rates made and published by the commission; and such employer shall semiannually thereafter pay such further sum of money into the State insurance fund as may be ascertained to be due from him by applying the rules of the commission, and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the commission, which receipt or certificate, attested by the seal of the commission, shall be prima facie evidence of the payment of such premium.

Substitute schemes.

SEC. 63. Subject to the approval of the commission, any employer may enter into or continue any agreement with his employees to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act. No such substitute system shall be approved unless it confers benefits upon injured employees and their dependents, at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees unless it confers benefits in

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addition to those provided under this act at least commensurate with such contributions.

Such substitute system may be terminated by the commission on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered or if its operation shall disclose defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act; and in this case the commission shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal as in other cases of appeal from the orders of the commission. Any employer who makes a deduction for such purposes from the wages or salary of any employee entitled to the benefits of this act shall be guilty of a misdemeanor: *Provided,* That subject to the supervision of the commission nothing in this act shall be construed as preventing the employer and his employees entering, and it shall be lawful for them to enter, into mutual contracts and agreements respecting hospital benefits and accommodations and medical and surgical services, nursing and medicines to be furnished the employees as in this act provided; but no profit, directly or indirectly, shall be made by any employer as a result of such contract or agreement, the purpose and intent of this act in such respect being that where hospitals are maintained and medical and surgical services and medicines furnished, by the employer from payments by or assessments of his employees, such payments or assessments shall be no more or greater than necessary to make such hospital benefits and accommodations, including surgical and medical services and medicines, self-supporting for the care and treatment of his employees, and all sums received or retained by the employer from the employees for such purpose shall be paid and applied thereto: *And provided further,* That such hospitals so maintained in whole or in part by payments or assessments of employees, shall be subject to the inspection and under the supervision of the commission as to services and treatment rendered such employees.

Employers not insured.

SEC. 64. Employers who do not insure either in the State insurance fund or with any stock corporation or mutual association shall pay a tax of the same per cent as required by law to be paid by insurance companies upon their premiums, based upon an amount equivalent to premiums which would be paid by such employer if insured in the State insurance fund; said tax to be computed and collected by the State commission and paid into the State treasury.

Extraterritoriality.

SEC. 65. If a workman who has been hired in this State receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this State as provided for in this act even though such injury was received outside of this State.

If a workman who has been hired outside of this State is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the State where he was hired, he shall be entitled to enforce against his employer his rights in this State if his rights are such that they can reasonably be determined and dealt with by the commission and the court in this State.

Nonfatal injuries.

SEC. 66. Employers who comply with the provisions of section 53 of this act shall not be liable to respond in damages for injuries sustained by their employees not resulting in death. For

Fatal injuries.

injuries, however, resulting in death, the dependents of the deceased employee are given the right, within such time as the commission by rule shall prescribe, to elect (a) between bringing suit at law against such employer to recover damages for such death and in the event of suit said dependents must prove negligence on the employer's part before they can recover, or (b) to accept the benefits allowed to dependents of deceased employees by this act in the event of death. If they elect (b) they shall not be entitled to sue such employer at law to recover damages. If

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they elect (a) they thereby forfeit any rights to compensation under this act and in a suit at law shall not be entitled to recover damages from such employer if the deceased employee was himself guilty of contributory negligence, or if he assumed the risk, or if his death was due in whole or part to the negligence of a fellow servant. If the dependents of the deceased elect to sue as herein provided, and in such suit recover judgment against the employer, then the commission shall determine the amount to which the plaintiffs in such suit would be entitled by accepting the provisions of this act, and pay the same toward the satisfaction of the judgment so recovered, if the employer against whom the judgment is recovered was, at the time the injuries causing the death were received, insured in the State insurance fund; otherwise such judgment shall be paid by the employer or his insurance carrier.

Any deficiency shall be paid by the employer against whom the judgment is recovered.

Notices to be posted.

SEC. 67. Each employer providing insurance or electing directly to pay compensation to his injured or the dependents of his killed employees as herein provided, other than the employers mentioned in subdivision 1 of section 50 hereof, shall post in conspicuous places about his place of business typewritten or printed notices stating the fact that he has complied with the provisions of this act and all of the rules and regulations of the commission made in pursuance thereof, and has been authorized by the commission directly to compensate such employees or dependents, and the same, when so posted, shall constitute sufficient notice to his employees of the fact that he has complied with the law as to securing compensation to his employees and their dependents.

What employers may be sued.

SEC. 68. Employers who shall fail to comply with the provisions of section 53 hereof, shall not be entitled to the benefits of this act during the period of noncompliance but shall be liable to their employees or the dependents of their employees in case of death or damage suffered by reason of personal injuries arising out of and in the course of employment caused by the wrongful act, neglect or default of the employer or any of the employer's officers, agents, or employees, and also to the personal representatives of such employees where death results from such injuries. And in such action, the defendant shall not avail himself or itself of either of the following defenses: The defense of the fellow-servant rule, the defense of the assumption of risk, or the defense of contributory negligence. And in all such cases proof of the injury shall constitute prima facie evidence of negligence on the part of the employer and the burden shall be upon the employer to show freedom from negligence resulting in such injury.

Defenses abrogated.

And such employers shall also be subject to the provisions of the two sections next succeeding.

Employee may claim compensation.

SEC. 69. Any employee whose employer has failed to comply with the provisions of section 53 hereof, who has been injured by accident arising out of and in the course of his employment, wheresoever such injury has occurred, and which was not purposely self-inflicted, or his dependents in case death has ensued, may, in lieu of proceeding against his employer by civil action in the courts, as provided in the last preceding section, file his application with the commission for compensation in accordance with the terms of this act, and the commission shall hear and determine such application for compensation in like manner as in other claims before the commission; and the amount of the compensation which said commission may ascertain and determine to be due to such injured employee, or to his dependents in case death has ensued, shall be paid by such employer to the person entitled thereto within ten days after receiving notice of the amount thereof as fixed and determined by the commission; and in the event of the failure, neglect, or refusal of the employer to pay such compensation to the person entitled thereto, within said period of ten days, the same shall constitute a liquidated claim for damages against such employer in the amount so ascertained

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and fixed by the commission, which, with an added penalty of fifty per cent, may be recovered in an action in the name of the State for the benefit of the person or persons entitled to the same.

Procedure.

The commission shall adopt and publish rules and regulations governing the procedure before the commission provided in this section, and shall prescribe forms of notices and the mode and manner of serving the same in all claims for compensation arising under this section. Any suit, action or proceeding brought against any employer under the provisions of this section, may be compromised by the commission, or such suit, action or proceeding may be prosecuted to final judgment as in the discretion of the commission may best subserve the interests of the persons entitled to receive such compensation.

Defaulting employers.

SEC. 70. If any employer shall default in any payment required to be made by him to the State insurance fund, the amount due from him with interest thereon [at] the rate of twelve per cent per annum shall be collected by civil action against him in the name of the State as plaintiff; and it shall be the duty of the commission on the first Monday in August, 1917, and on the first Monday of each month thereafter, to certify to the attorney general of the State the names and residences of all employers known to the commission to be in default for such payments for a longer period than five days, and the amount due from each such employer, and it shall then be the duty of the attorney general forthwith to bring or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due, and the same when collected, shall be paid into the State insurance fund, and each employer's compliance with the provisions of this act requiring payments to be made to the State insurance fund shall date from the time of the payment of said money so collected as aforesaid to the State treasurer for credit to the State insurance fund.

Remedy exclusive.

SEC. 71. The right to recover compensation pursuant to the provisions of this act for injuries sustained by an employee shall be the exclusive remedy against the employer, except that where the injury is caused by the employer's willful misconduct and such act causing such injury is the personal act of the employer himself, or if the employer be a partnership, on the part of one of the partners, or if a corporation, on the part of an elective officer or officers thereof, and such act indicates a willful disregard of the life, limb or bodily safety of employees, such injured employee may, at his option, either claim compensation under this act or maintain an action at law for damages. The term "willful misconduct," as employed in this section shall be construed to mean an act done knowingly and purposely with the direct object of injuring another.

Willful misconduct.

Acts of third persons.

SEC. 72. If an employee entitled to compensation under this act be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, shall, before any suit or claim under this act, elect whether to take compensation under this act or to pursue his remedy against such other. Such election shall be evidenced in such manner as the commission may by rule or regulation prescribe. If he elect to take compensation under this act, the cause of action against such other shall be assigned to the State for the benefit of the State insurance fund, if compensation be payable therefrom, and otherwise to the person or association or corporation liable for the payment of such compensation, and if he elect to proceed against such other, the State insurance fund, person or association or corporation, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by this act for such case. Such a cause of action assigned to the State may be prosecuted or compromised by the commission. A compromise of any such cause of action by the employee or his dependents at an amount

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less than the compensation provided for by this act, shall be made only with the written approval of the commission, if the deficiency of compensation would be payable from the State insurance fund, and otherwise with the written approval of the person, association or corporation liable to pay the same.

Remedies alternative.

SEC. 73. Every employee, or his legal representative in case death results, who makes application for an award, or accepts compensation from an employer, waives his right to exercise his option to institute proceedings in any court. Every employee, or his legal representative in case death results, who exercises his option to institute proceedings in court, as provided in this act, waives his right to any award, or direct payment of compensation from his employer.

Judgments preferred.

SEC. 74. All judgments obtained in any action prosecuted by the commission or by the State under the authority of this act shall have the same preference against the assets of the employer as claims for taxes now have.

Waiting time.

SEC. 75. No compensation shall be allowed for the first ten days after the injury is received, except the disbursement hereinafter authorized for medical, nurse, and hospital services and medicines, and for funeral expenses.

Total disability.

SEC. 76. In case of temporary disability, the employee shall receive fifty-five per cent of his average weekly wages so long as such disability is total, not to exceed a maximum of twelve dollars per week, and not less than a minimum of seven dollars per week; but in no case to continue for more than six years from the date of the injury, or to exceed four thousand five hundred dollars.

Partial disability.

SEC. 77. Where the injury causes partial disability for work, the employee shall receive, during such disability and for a period of not to exceed six years beginning on the eleventh day of disability, a weekly compensation equal to fifty-five per cent of the difference between his average weekly wages before the accident and the weekly wages he is able to earn thereafter, but not more than twelve dollars a week. In no case shall the weekly payments continue after the disability ends, and in case the partial disability begins after a period of total disability the period of total disability shall be deducted from such total period of compensation.

In the case of the following injuries the compensation shall be fifty-five per cent of the average weekly wages, but not more than twelve dollars to be paid weekly for the periods stated against such injuries respectively, to wit:

Schedule.

For loss of—

One arm at or near shoulder, 200 weeks.
One arm at the elbow, 180 weeks.
One arm between the wrist and the elbow, 160 weeks.
One hand, 150 weeks.
One thumb and the metacarpal bone thereof, 60 weeks.
One thumb at the proximal joint, 30 weeks.
One thumb at the second distal joint, 20 weeks.
One first finger and the metacarpal bone thereof, 30 weeks.
One first finger at the proximal joint, 20 weeks.
One first finger at the second joint, 15 weeks.
One first finger at the distal joint, 10 weeks.
One second finger and the metacarpal bone thereof, 30 weeks.
One second finger at the proximal joint, 15 weeks.
One second finger at the second joint, 10 weeks.
One second finger at the distal joint, 5 weeks.
One third finger and the metacarpal bone thereof, 20 weeks.
One third finger at the proximal joint, 12 weeks.
One third finger at the second joint, 8 weeks.
One third finger at the distal joint, 4 weeks.
One fourth finger and the metacarpal bone thereof, 12 weeks.
One fourth finger at the proximal joint, 9 weeks.
One fourth finger at the second joint, 6 weeks.
One fourth finger at the distal joint, 3 weeks.

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One leg at or so near the hip joint as to preclude the use of an artificial limb, 180 weeks.

One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb, 150 weeks.

One leg between the knee and ankle, 140 weeks.

One foot at the ankle, 125 weeks.

One great toe with the metatarsal bone thereof, 30 weeks.

One great toe at the proximal joint, 15 weeks.

One great toe at the second joint, 10 weeks.

One toe other than the great toe with the metatarsal bone thereof, 12 weeks.

One toe other than the great toe at proximal joint, 6 weeks.

One toe other than the great toe at second or distal joint, 3 weeks.

One eye by enucleation, 120 weeks.

Total blindness of one eye, 100 weeks.

The amounts specified in this section are all subject to the limitation as to the maximum weekly amount payable as hereinbefore specified in this section, and in no event shall more than a total of $4,500 be required to be paid.

Permanent total disability.

SEC. 78. In cases of permanent total disability, the award shall be 55 per cent of the average weekly wages for five years from date of injury, and thereafter 40 per cent of such average weekly wages until the death of such person so totally disabled, but not to exceed a maximum of fifteen dollars per week and not less than a minimum of five dollars per week.

The loss of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of this section.

Death.

SEC. 79. In case the injury causes death within the period of three years, the benefits shall be in the amounts and to the persons following:

(1) If there be no dependents, the employer or insurance carrier shall pay the burial expenses of the deceased, as provided herein, and shall pay into the State insurance fund the sum of $750, unless the employer is insured in said State insurance fund.

(2) If there are wholly dependent persons at the time of the death, the payment shall be 55 per cent of the average weekly wages, but not to exceed a maximum of $15 per week, and to continue for the remainder of the period between the date of the death, and six years after the date of the injury, and not to amount to more than a maximum of $4,500, nor less than a minimum of $2,000.

(3) If there are partly dependent persons at the time of the death, the payment shall be 55 per cent of the average weekly wages, but not to exceed the maximum of $15 per week, and to continue for all or such portion of the period of six years after the date of the injury, as the commission in each case may determine, and not to amount to more than a maximum of $4,500.

Dependents.

(4) The following persons shall be presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives at the time of his death.

(b) A female child or female children under the age of eighteen years and a male child or male children under the age of sixteen years (or over such ages if physically or mentally incapacitated from earning) upon the parent with whom he is living at the time of the death of such parent.

In all other cases, the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employee, but no person shall be considered as dependent unless a member of the family of the deceased employee, or bears to him the relation of husband or widow, lineal descendant, ancestor or brother or sister. The word "child"

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as used in this act, shall include a posthumous child, and a child legally adopted prior to the injury.

Payment of benefits.

SEC. 80. The benefits in case of death, shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents as may be determined by the commission, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the commission deems it proper, and shall operate to discharge all other claims therefor. The dependents or persons to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the commission.

In all cases of death where the dependents are a widow and one or more minor children, it shall be sufficient for the widow to make application to the commission on behalf of herself and minor children; and in cases where all of the dependents are minors, the application shall be made by the guardian or next friend of such minor dependents.

Should any dependent of a deceased employee die or marry during the period covered by such weekly payments, the right of such dependent to compensation under this act shall cease.

Wage basis.

SEC. 81. The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits.

Wages of minors, etc.

SEC. 82. If it is established that the injured employee was of such age and experience when injured as that under natural conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wage.

Revision of awards.

SEC. 83. The powers and jurisdiction of the commission over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion may be justified.

Lump sums.

SEC. 84. The commission, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump-sum payments.

Attachments, etc.

SEC. 85. Compensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to such employees or their dependents.

Additional benefits.

SEC. 86. In addition to the compensation provided for herein, the employer or insurance carrier, or State insurance fund shall pay such amounts for medical, nurse and hospital services and medicines as it may deem proper, not, however, in any instance, to exceed the sum of two hundred dollars; and, in case death ensues from the injury, reasonable funeral expenses shall be disbursed and paid in an amount not to exceed the sum of one hundred and fifty dollars, and the commission shall have full power to adopt rules and regulations with respect to furnishing medical, nurse and hospital service and medicine to injured employees entitled thereto, and for the payment therefor.

Decisions final.

SEC. 87. The commission shall have full power and authority to hear and determine all questions within its jurisdiction, pertaining to the payment of compensation and benefits, and its decision thereon shall be final: *Provided, however*, In case the final action of such commission denies the right of the claimant to participate at all in such fund on the ground that the injury was self-inflicted or on the ground that the accident did not arise out of and in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant, within thirty days after the notice of the final action of such commission, may, by filing his appeal in the district court in any county of the district where the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the district attorney, without additional compensation, shall represent the commission, and he shall be notified by the clerk forthwith of the filing of such appeal.

Appeals to courts.

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Within thirty days after filing his appeal, the appellant shall file a complaint in the ordinary form against such commission as defendant, and further pleadings shall be had in said cause, according to the rules of civil procedure, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claimant; and if they determine the right in his favor, shall fix his compensation within the limits and under the rules prescribed in this act; and any final judgment so obtained shall be paid by the commission out of the State insurance fund in the same manner as such awards are paid by such commission.

The cost of such proceeding, including a reasonable attorney's fee to be fixed by the trial judge, shall be taxed against the unsuccessful party.

Either party shall have the right to prosecute appeals to the supreme court as in civil cases.

Procedure.

SEC. 88. The commission shall not be bounded by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided; but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

Minors.

SEC. 89. A minor working at an age legally permitted under the laws of this State, shall be deemed sui juris for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman, but in the event of the award of a lump sum of compensation to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor.

Waivers.

SEC. 90. No agreement by an employee to waive his rights to compensation under this act shall be valid. No agreement by an employee to pay any portion of the premium paid by his employer shall be valid, and any employer who deducts any portion of such premium from the wages or salary of any employee entitled to the benefits of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars for each such offense.

Medical examinations.

SEC. 91. Any employee claiming the right to receive compensation under this act may be required by the commission, or its medical examiner, to submit himself for medical examination at any time and from time to time at a place reasonably convenient for such employee, and as may be provided by the rules of the commission. If such employee refuses to submit to any such examination or obstructs the same, his right to have his claim for compensation considered, if his claim be pending before the commission, or to receive any payments for compensation theretofore granted shall be suspended during the period of such refusal or obstruction.

Employers' records.

SEC. 92. All books, records and pay rolls of the employers of the State, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the commission or any of its traveling auditors, inspectors or assistants, for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed, and such other information as may be necessary for the uses and purposes of the commission in its administration of the law. Refusal on the part of any employer to submit his books, records and pay rolls for the inspection of any member of the commission or traveling auditor, inspector or assistant presenting written authority from the commission, shall subject such employer to a penalty of one hundred dollars for each such offense, to be collected by civil action in the name of the State, and paid into the State insurance fund to become a part thereof.

Misrepresentation.

SEC. 93. Any employer who misrepresents to the commission the amount of pay roll upon which the premium under this act is based, shall be liable to the State in ten times the amount of the difference in premium paid and the amount the employer should

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have paid. The liability to the State under this section shall be enforced in a civil action in the name of the State, and all sums collected under this section shall be paid into the State insurance fund.

Scope of law.

SEC. 94. The provisions of this act shall apply to employers and their employees engaged in intrastate and also in interstate and foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, and then only when such employer and any of his workmen working only in this State, with the approval of the commission, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances, which, when filed with and approved by the commission, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms, during the period or periods for which the premiums herein provided have been paid. Payment of premium shall be on the basis of the pay roll of the workmen who accept as aforesaid.

Accidents to be reported.

SEC. 95. Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees arising out of and in the course of their employment. Within a week after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing to the commission upon blanks to be procured from the commission for that purpose. Such report shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, and shall state the time, the nature and cause of injury and such other information as may be required by the commission. Any employer who refuses or neglects to make any report required by this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars for such offense.

Enforcement of act.

SEC. 96. Upon the request of the commission, the attorney general or, under his direction, any district attorney or the county attorney of any county shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this act, or for the recovery of any money due the State insurance fund, or any penalty herein provided for, arising within the county in which he was elected, and shall defend in like manner all suits, actions or proceedings brought against the commission or the members thereof in their official capacity.

Expenditures.

SEC. 97. The commission may make necessary expenditures to obtain statistical and other information provided for herein.

Reports.

SEC. 98. Annually on or before the fifteenth day of December, the commission, under the oath of at least two of its members, shall make a report to the governor for the preceding fiscal year, which shall include a statement of the number of awards made by it, and a general statement of the causes of accidents leading to the injuries for which the awards were made, a detailed statement of the disbursements from the expense fund, and the condition of its respective funds, together with any other matters which the commission deems proper to call to the attention of the governor, including any recommendations it may have to make; and it shall be the duty of the commission from time to time to publish and distribute among employers and employees, such general information as to the business transacted by the department as in its judgment may be useful.

Classifications, etc.

SEC. 99. The commission shall cause to be printed in proper form for distribution to the public its classifications, rates, rules, regulations and rules of procedure, and shall furnish the same to any person upon application therefor.

Injunctions.

SEC. 100. No injunction shall issue suspending or restraining any order, classification or rate adopted by the commission, or

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any action of the State auditor, State treasurer, attorney general, or the auditor or treasurer of any county, required to be taken by them or any of them by any of the provisions of this act; but nothing herein shall affect any right or defense in any action brought by the commission or the State in pursuance of authority contained in this act.

Provisions severable.

SEC. 101. Should any section or provision of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole or any part thereof other than the part so decided to be unconstitutional.

Appropriation.

SEC. 102. The sum of $40,000 is hereby appropriated out of any money in the State treasury not otherwise appropriated, and the same is hereby set aside for the State insurance fund, to be administered by the commission as provided in this act; and the further sum of $50,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the State treasury not otherwise appropriated, for the payment of salaries and expenses of the commission and the employees of said commission, during the years 1917 and 1918.

Act in effect.

SEC. 103. This act shall take effect on the 1st day of July, 1917, except sections 1 to 11, inclusive, which shall take effect upon approval.

Approved March 15, 1917.

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VERMONT.

ACTS OF 1917.

ACT No. 171.—*Compensation of workmen for injuries—Administration of law.*

SECTION 3. All the powers, duties and liabilities of the industrial accident board and members thereof, as provided in No. 164 of the acts of 1915, are hereby imposed upon the commissioner of industries and the words "commissioner of industries" are hereby inserted in lieu of the words "industrial accident board" and in lieu of the words "board" and "member" as used in referring to said board or member thereof, as used in such act and chapter. Transfer of powers.

SEC. 7. Said commissioner may, subject to the approval of the governor, appoint one or more deputy commissioners for whose official acts he shall be responsible. Said deputy or deputies shall hold office during the pleasure of said commissioner, and their compensation shall be fixed by said commissioner subject to the approval of the governor. Deputies.

Approved, February 28, 1917.

[The compensation law of the State (No. 164, acts of 1915) is amended by other acts, section 10 being amended by act No. 173, so as to read as follows:]

SEC. 10. If death results from the injury within two years, the employer or the insurance carrier shall pay to the persons entitled to compensation or, if there are none, then to the personal representative of the deceased employee, burial expenses not to exceed one hundred dollars; and shall also pay to or for the following persons for the following periods a weekly compensation equal to the following percentages of the deceased employee's average weekly wages as defined in section 17: *Provided*, That the total amounts payable on account of a single death shall not exceed the sum of thirty-five hundred dollars and the amounts herein allowed shall be ratably reduced, if necessary, to conform to this limitation: Compensation for death.

(a) To the dependent widow or widower, if there be no dependent children, thirty-three and one-third per cent.

(b) To the dependent widow or widower, if there be one or two dependent children, forty per cent; or if there be three or more dependent children, forty-five per cent. Such compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children.

(c) If there be no dependent widow or widower, but a dependent child or children, then to such child or children, twenty-five per cent, with ten per cent additional for each child in excess of two, with a maximum of forty per cent, to be divided equally among such children, if more than one.

(d) If there be neither dependent widow or widower, nor child, but there be a dependent father or mother, then to such parent, if wholly dependent, twenty-five per cent, or if partially dependent, fifteen per cent, or if both parents be dependent, then one-half of the foregoing compensation to each of them, or if there be no such parents, but a dependent grandparent, then to every such grandparent the same compensation as to a parent.

(e) If there be neither dependent widow, widower, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, or two or more of them, then to such dependents

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fifteen per cent for one such dependent and five per cent additional for each additional such dependent, with a maximum of twenty-five per cent, to be divided equally between such dependents, if more than one.

(f) The commissioner of industries shall, from time to time, apportion such compensation between any and all dependents in such manner as he deems best, and in making such apportionment said commissioner of industries shall, in so far as it is possible, apportion said sum so that each dependent shall be self-supporting.

[Section 11 is amended by the same act by changing the clause as to widows so as to read as follows:]

Dependents. The widow if living with the deceased, or living apart from him for justifiable cause, or actually dependent, wholly or partially, upon him.

[Section 13 is amended by act No. 175, by changing the first sentence so as to read as follows:]

Minimum basis. In computing death benefits the average weekly wages of the deceased employee shall be considered not to be less than five dollars.

[Section 14 is amended by act No. 174 by fixing the amount that may be expended for surgical, etc., services at $100 instead of $75.

The first two paragraphs of section 15 are consolidated into one, and amended by act No. 175 so as to read as follows:]

Total disability. SEC. 15. Where the injury causes total disability for work the employer during such disability but prior to the first day of July, 1918, not including the first fourteen days and after the first day of July, 1918, not including the first seven days thereof shall pay the injured employee a weekly compensation equal to fifty per cent of his average weekly wages but not more than twelve dollars and fifty cents nor less than three dollars a week. In no case shall the weekly payments continue after the disability ends nor longer than two hundred sixty weeks. In case of an employee whose average weekly wages are less than three dollars a week, the weekly compensation shall be the full amount of such average weekly wage. In case the total disability begins after a period of partial disability, the period of partial disability shall be deducted from such total period of two hundred sixty weeks.

[The first two paragraphs of section 16 are amended by act No. 175 so as to read as follows:]

Partial disability. SEC. 16. Where the disability for work resulting from the injury is partial the employer shall pay the injured employee a weekly compensation equal to one-half the difference between his average weekly wage before the injury and the average weekly wage which he is able to earn thereafter, but not more than ten dollars a week, and in no case shall the period covered by such compensation be greater than two hundred sixty weeks.

In case of the following injuries, the compensation shall be fifty per cent of the average weekly wage of the injured employee during total disability, to be computed as provided in section 17, and at the termination of the total disability occasioned by said injuries, shall pay to said injured employee fifty per cent of the average weekly wages, computed as above, for the period stated against such injuries respectively, but in no case to exceed the period of two hundred and sixty weeks, which compensation shall be in lieu of all other benefits except those provided in section 14.

[Subsection 4 of section 16 is amended by adding thereto the following:]

Equivalent loss. The loss of the thumb and all four fingers of the hand shall be considered equal to the loss of the entire hand.

[New subsections are also added, as follows:]

Concurrent injuries. (18) In all cases where the employee sustains any of the injuries enumerated in the preceding seventeen subdivisions and at the same time receives injuries to other parts of his person which in themselves totally disable him for work, then said employee shall be first compensated for such other injuries and on the

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termination of the total disability occasioned by such other injuries, compensation shall be paid for the specific injuries as above specified but in no case shall the total period for which compensation is paid exceed two hundred sixty weeks.

Other injuries.

(19) In all other cases in this class, or where the usefulness of a member or any physical function is permanently impaired, the compensation shall bear such relation to the amounts stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule.

Additions to schedule.

(20) In case of the following injuries, the compensation shall be fifty per cent of the average weekly wages, which compensation shall be in lieu of all other benefits except those provided in section 14:

1. The permanent and complete loss of hearing in one ear, forty-two and one-half weeks.
2. Simple hernia, four weeks.
3. Strangulated hernia, eight weeks.

[Sections 20 and 21 are amended by act No. 173 so as to read as follows:]

Lump sums.

SEC. 20. The compensation herein provided may be commuted by the commissioner of industries at its present value when discounted at four per cent, simple interest, upon application of either party, with due notice to the other, if it appear that such commutation will be for the best interest of the employee or the dependents of the deceased employee or that it will avoid undue expense or undue hardship to either party. Commutation shall not be allowed for the purpose of enabling the injured employee or the dependents of an employee to satisfy a debt.

Payment to trustees.

SEC. 21. Whenever, for any reason, said commissioner of industries deems it expedient, any lump sum which is to be paid as provided in the preceding section, shall be paid by the employer to some bank, banking institution or trust company to be appointed by said commissioner of industries as trustee to administer or apply the same for the benefit of the person or persons entitled thereto in the manner provided by said commissioner of industries. The payment of such money by the employer, evidenced by the receipt of the trustee, shall operate as a satisfaction of said compensation. In the appointment of such trustee, preference shall be given, in the discretion of the commissioner of industries, to the choice of the employee or the dependents of the deceased employee. The expense of the administration of such trust shall be fixed by the commissioner of industries, and shall be a charge upon the compensation so deposited.

[Sections 28 and 29 are amended by act No. 171 so as to read as follows:]

Commissioner of industries.

SEC. 28. The governor shall biennially, in the month of January, with the advice and consent of the Senate, appoint a commissioner of industries.

Salary.

SEC. 29. The annual salary of said commissioner shall be three thousand dollars, and he shall be paid his necessary expenses when away from home on official business. Said commissioner

Office, etc.

shall maintain such office and employ such assistance, clerical or otherwise, as the governor deems necessary for the proper performance of the duties of said commissioner. Said commissioner shall be furnished with office supplies and stationery necessary for official use and the payment of postage, freight, telephone and telephone rental, telegraphic and express charges necessarily made in connection with his official duties shall be allowed in the settlement of his account. Said commissioner shall be provided with an office in the capitol or in some other State building at Montpelier in which his records shall be kept. Said commissioner shall have a seal for the authentication of his orders, awards and proceedings upon which shall be inscribed the words "Commissioner of industries—Seal—Vermont."

[Section 34 is amended by act No. 173 so as to read as follows:]

Review.

SEC. 34. Upon his own motion or upon the application of any party in interest upon the ground of a change in the conditions,

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the commissioner of industries may at any time review any award, and on such review, may make an order ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter and shall state his conclusions of fact and rulings of law and immediately send to the parties a copy of the award. No such review shall affect such award as regards any money already paid.

[Section 45 is amended by act No. 173 by adding a new subsection, as follows:]

Modes of securing payments.

(5) By depositing in such bank or trust company in the State of Vermont as the commissioner of industries may designate such sum of money as said commissioner of industries may require to the joint credit of the commissioner of industries and the employer, which said sum shall be held as security for such compensation as may be awarded the injured employees of said employer, and shall be free from attachment, or trustee process, so long as any liability for such compensation exists.

[Section 55 is amended by act No. 173 so as to read as follows:]

Accidents to be reported.

SEC. 55. Every employer liable to pay compensation under the provisions of this chapter, shall keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment, and shall report such an injury causing an absence of one day or more, or necessitating medical attendance, to said commissioner in writing upon blanks to be procured from said commissioner for such purpose, within seventy-two hours, Sundays and legal holidays excluded, after the occurrence of such an injury. At the termination of the disability of such injured employee, such employer shall make a final report upon blanks to be procured as herein provided; if such disability extends beyond a period of sixty days, such employer shall, at the expiration of each sixty days' period, make a supplemental report to said commissioner that such injured employee is still disabled, and, at the termination of such disability, shall file a final report as above provided. Such reports shall state the name and nature of the business of such employee, the location of the place where the accident occurred, the name, age, sex, wages and occupation causing such injury, the nature and cause thereof and such other information as may be required by said commissioner. An employer who refuses or neglects to make a report required by this section shall be fined not more than twenty-five dollars. Within sixty days after disability, such employer or other party liable to pay the compensation provided for by this chapter shall file with said commissioner a statement showing the total payments made or to be made for compensation and for medical services for such injured employee.

[Section 57 is repealed by act No. 171.

Section 58 is amended by act No. 175 by substituting $2,000 for $1,500 where it occurs in paragraphs (b) and (e); also by inserting at the end of the second sentence in paragraph (b) the following:]

Optional acceptance of law.

Provided, however, That in all cases where the employee's wage exceeds the sum of two thousand dollars the employer and employee may enter into an agreement setting forth that each desires to be bound by the provisions of this act and upon the filing of said agreement with the commissioner of industries, the provisions of this act shall apply.

[Other sections of act No. 173 are as follows:]

Death during compensation period.

SEC. 9. In case of the death of a person from any cause other than the accident during the period of payments for permanent injury, the remaining payments shall be made to his dependents according to the provisions of section 12, or if no dependents, the remaining amount due, but not exceeding one hundred dollars, shall be paid in a lump sum to the proper person for funeral expenses.

Procedure.

SEC. 10. The commissioner of industries or, in case of an appeal, the court to which such appeal is taken, shall not be bound by common law or statutory rules of evidence or by technical

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or formal rules of procedure except as provided by this act, but may make such investigation or inquiry or conduct such hearing or trial in such manner as to ascertain the substantial rights of the parties.

Notices.

SEC. 11. All notices of hearings under the provisions of this act shall be given to the employee, employer, and to the insurance carrier. Such notice shall be given by delivering it or by sending it by mail, addressed to the employee, employer and to said insurance company at his or its last known residence or place of business. The foregoing provisions shall apply alike to individuals, partnerships and corporations.

Statements by employers.

SEC. 12. Every employer doing business in this State, employing five men or more, and every employer hereafter engaging in business in this State, who employs five men or more, and every employer accepting the provisions of the workmen's compensation act, shall, during the month of June of each year, file with the commissioner of industries a certificate stating the number of persons in his employ, together with such other statistical information as said commissioner of industries may require. Any employer who refuses or neglects to file the certificate required by this section shall be fined not more than one hundred dollars.

Sheriffs', etc., fees.

SEC. 13. Sheriffs and witnesses shall receive the same fees for the service of process and attendance before the commissioner of industries as are paid sheriffs and witnesses in county court. Costs shall not be taxed or allowed either party except as provided in section 39.

New hearings.

SEC. 14. The commissioner of industries may grant a new hearing in a cause determined by him on the ground of newly discovered evidence when a petition setting forth the substance of such evidence, verified by the oath of the petitioner, is presented. The decision of the commissioner of industries in granting or denying said hearing shall be final and conclusive. If a party petitions the commissioner of industries for a new hearing, he shall give the adverse party notice of such petition by a citation signed by said commissioner, served like a writ of summons, at least twelve days before the date of said hearing. A new hearing shall not be granted on a petition unless the citation to the adverse party is served within six months after the date of the order of said commissioner.

Approved April 11, 1917.

ACT No. 176.—*Compensation of workmen for injuries—Time of taking effect of acts.*

Act in effect.

SECTION 1. All acts of the general assembly of 1917 in amendment of and in addition to the workmen's compensation act shall not affect accidents covered by the provisions of such act occurring prior to July 1, 1917, but as to such accidents the law now in force shall apply.

Approved April 11, 1917.

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VIRGINIA.

ACTS OF 1918.

CHAPTER 400.—*Compensation of workmen for injuries—Industrial commission—Insurance fund.*

Title. SECTION 1. This act shall be known as "The Virginia Workmen's Compensation Act."

Definitions. Employers. SEC. 2. In this act unless the context otherwise requires:

(a) "Employers" shall include the State and any municipal corporation within the State or any political division thereof, and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay. If the employer is insured it shall include his insurer so far as applicable.

Employees. (b) "Employee" shall include every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is not in the usual course of the trade, business, occupation, or profession of the employer. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representatives, dependents, and other persons to whom compensation may be payable.

Wages. (c) "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided by fifty-two; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employees earned wages shall be followed; provided, results fair and just to both parties will be thereby obtained. Where by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But where for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage-contract, they shall be deemed a part of his earnings.

Injury. (d) "Injury" and "Personal Injury" shall mean only injury by accident arising out of and in the course of the employment and shall not include a disease in any form, except where it results directly from the accident.

Hernia. (e) In all claims for compensation for hernia resulting from injury by accident arising out of and in the course of the em-

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ployee's employment, it must be definitely proven to the satisfaction of the "Industrial Commission."

First: That there was an injury resulting in hernia;

Second: That the hernia appeared suddenly;

Third: That it was accompanied by pain;

Fourth: That the hernia immediately followed an accident;

Fifth: That the hernia did not exist prior to the accident for which compensation is claimed.

All hernia, inguinal, femoral, or otherwise, so proven to be the result of an injury by accident arising out of and in course of the employment, shall be treated in a surgical manner by radical operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of section 39. In nonfatal cases, time loss only shall be paid, unless it is shown by special examination, as provided in section twenty-eight, that the injured employee has a permanent partial disability resulting after the operation. If so, compensation shall be paid in accordance with the provisions of section thirty-one with reference to partial disability.

In case the injured employee refuses to undergo the radical operation for the cure of said hernia, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the commission considers it unsafe for the employee to undergo said operation, the employee shall be paid as provided in section thirty-one.

Pending litigation.

SEC. 3. The provisions of this act shall not affect pending litigation.

Election presumed.

SEC. 4. From and after the taking effect of this act, every employer and employee, except as herein stated, shall be presumed to have accepted the provisions of this act respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be sulting in injury or death: *Provided,* That if any such accident resulting in injury or death notice to the contrary in the manner herein provided.

Waiver of exemption.

SEC. 5. Either an employer or an employee, who has exempted himself, by proper notice, from the operation of this act, may at any time waive such exemption and thereby accept the provisions of this act by giving notice as herein provided.

The notice of waiver and the notice of acceptance heretofore referred to shall be given thirty days prior to any accident resulting in injury or death, provided that if any such accident occurred less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in substantially the form prescribed by the industrial commission and shall be given by the employer by posting the same in a conspicuous place in the shop, plant, office, room or place where the employee is employed, or by serving it personally upon him; and shall be given by the employee by sending the same in registered letter, addressed to the employer at his last known residence or place of business, or by giving it personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the State.

A copy of the notice in prescribed form shall also be filed with the industrial commission.

Presumption as to contracts.

SEC. 6. Every contract of service between any employer and employee covered by this act, written or implied, now in operation or made or implied prior to the taking effect of this act, shall, after the act has taken effect, be presumed to continue, subject to the provisions of this act; and every such contract made subsequent to the taking effect of this act shall be presumed to have been made subject to the provisions of this act; unless either party shall give notice, as provided in section five, to the other party to such contract, that the provisions of this act other

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than sections sixteen, seventeen, eighteen, and sixty-seven are not intended to apply.

A like presumption shall exist equally in the case of all minors, unless notice of the same character be given by or to the parent or guardian of the minor.

Waivers. SEC. 7. No contract or agreement, written or implied, no rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this act, except as herein otherwise expressly provided.

Public employees. SEC. 8. Neither the State, nor any municipal corporation within the State nor any political subdivision thereof, nor any employee of the State or of any such corporation or subdivision shall have the right to reject the provisions of this act relative to payment and acceptance of compensation; and the provisions of sections 5, 6, 16, 17, and 18 shall not apply to them.

Interstate commerce. SEC. 9. This act shall not apply to any common carrier by railroad engaging in commerce between any of the several States or Territories, or between the District of Columbia and any of the States or Territories and any foreign nation or nations, nor to any person suffering injury or death while he is employed by such carrier in such commerce, nor shall this act be construed to lessen the liability of such common carrier or to diminish or take away in any respect any right that any person so employed or the personal representative or kindred or relation or dependent of such person may have under the act of Congress relating to the liability of common carriers by railroad to their employees in certain cases, approved April twenty-two, one thousand nine hundred and eight, or under the act of the General Assembly of Virginia relating to liability of common carriers whose motive power is steam and engaged in intrastate commerce for injury to or death of the employees and providing for pleading thereof, approved March twenty-one, one thousand nine hundred and sixteen, or under the act of the General Assembly of Virginia to amend and reenact an act entitled an act imposing upon railroad corporations liability for injury to their employees in certain cases, approved March fourteen, one thousand nine hundred and twelve.

Prior injuries. SEC. 10. The provisions of this act shall not apply to injuries or death, nor to accidents which occurred prior to the taking effect of this act.

Insurance. SEC. 11. Every employer who accepts the compensation provisions of this act shall insure the payment of compensation to his employees in the manner hereinafter provided, and while such insurance remains in force he or those conducting his business shall only be liable to any employee for personal injury or death by accident to the extent and in the manner herein specified.

Remedy exclusive. SEC. 12. The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this act respectively to pay and accept compensation on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise on account of such injury, loss of service or death.

Violation of statutes. SEC. 13. Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

Injuries exempt. SEC. 14. No compensation shall be allowed for an injury or death due to the employee's willful misconduct, including intentional self-inflicted injury, or growing out of his attempt to injure another, or due to intoxication or willful failure or refusal to use a safety appliance or perform a duty required by statute, or the willful breach of any rule or regulation adopted by the employer and approved by the industrial commission, and brought prior to the accident to the knowledge of the employee. The burden of proof shall be upon him who claims an exemption or forfeiture under this section.

Intrastate railroads. SEC. 15. This act shall not apply to common carriers whose motive power is steam and engaged in intrastate trade or com-

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merce, nor shall this act be construed to lessen the liability of such common carriers or to take away or diminish any right that any employee, or in case of his death, the personal representative of such employee, of such common carrier may have, under the act of the General Assembly of Virginia, relating to liability of common carriers whose motive power is steam and engaged in intrastate commerce for injury to or death of their employees, and providing for pleading thereof, approved March twenty-one, one thousand nine hundred and sixteen, or under the act of the General Assembly of Virginia, to amend and reenact an act entitled an act imposing upon railroad corporations liability for injury to their employees in certain cases, approved March fourteen, one thousand nine hundred and twelve, nor to casual employees, farm laborers, and domestic servants, nor to employees of such persons, nor to any persons, firm, or private corporation, including any public service corporation, that has regularly in service less than eleven operatives in the same business within this State; unless such employees and their employers voluntarily elect in the manner hereinafter specified to be bound by this act.

Defenses abrogated.

SEC. 16. An employer who elects not to operate under this act shall not in any suit at law instituted by an employee subject to this act to recover damages for personal injury or death by accident, be permitted to defend any such suit at law upon any or all of the following grounds:

(a) That the employee was negligent.

(b) That the injury was caused by the negligence of a fellow employee.

(c) That the employee had assumed the risk of the injury.

Suits by employees.

SEC. 17. An employee who elects not to operate under this act shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this act, proceed at common law, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk, as such defenses exist at common law.

Where both parties reject act.

SEC. 18. When both the employer and employee elect not to operate under this act, the liability of the employer shall be the same as though he alone rejected the terms of this act, and in any suit brought against him by such employee the employer shall not be permitted to avail himself of any of the common law defenses cited in section seventeen.

Voluntary settlements.

SEC. 19. Nothing herein contained shall be construed so as to prevent settlements made by and between the employee and employer, but rather to encourage them, so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this act. A copy of such settlement agreement shall be filed, by employer, with the commission.

Employees of contractors.

SEC. 20. (a) Where any person (in this section referred to as principal contractor) undertakes to execute any work, which is a part of his trade, business, or occupation or which he has contracted to perform, and contracts with any other person (in this section referred to as subcontractor) for the execution by or under the subcontractor of the whole or any part of the work undertaken by such principal contractor, the principal contractor shall be liable to pay to any workman employed in the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal contractor, then, in the application of this act, reference to the principal contractor shall be substituted for reference to the subcontractor, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the subcontractor by whom he is immediately employed.

(b) Where the principal contractor is liable to pay compensation under this section, he shall be entitled to indemnity from any person who would have been liable to pay compensation to

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the workman independently of this section or from an intermediate contractor, and shall have a cause of action therefor.

(c) Nothing in this section shall be construed as preventing a workman from recovering compensation under this act from a subcontractor instead of from the principal contractor, but he shall not collect from both.

(d) A principal contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or co-defendant.

Preference of claims.

SEC. 21. All rights of compensation granted by this act shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Exemptions.

SEC. 22. No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

Notice.

SEC. 23. Every injured employee or his representative shall immediately on the occurrence of an accident or as soon thereafter as practicable, give or cause to be given to the employer a written notice of the accident, and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this act, prior to the giving of such notice; unless it can be shown that the employer, his agent or representative, had knowledge of the accident, or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person; but no compensation shall be payable unless such written notice is given within thirty days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the industrial commission for not giving such notice, and the commission is satisfied that the employer has not been prejudiced thereby.

Form.

SEC. 24. The notice provided in the foregoing section shall state in ordinary language the name and address of the employee, the time, place, nature and cause of the accident, and of the resulting injury or death, and shall be signed by the employee or by a person on his behalf, or in the event of his death by any one or more of his dependents or by a person in their behalf.

No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby, and then only to such extent as the prejudice.

Service.

Said notice shall be given personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the State, or may be sent by registered letter addressed to the employer at his last known residence or place of business.

Claim.

SEC. 25. The right to compensation under this act shall be forever barred, unless a claim be filed with the industrial commission within one year after the accident, and, if death results from the accident, unless a claim therefor be also filed with the commission within one year thereafter.

Medical, etc., service.

SEC. 26. For a period not exceeding thirty days after an injury the employer shall furnish or cause to be furnished free of charge to the injured employee such necessary medical attention as the nature of the accident may require, and the employee shall accept, and during the whole or any part of the remainder of his disability resulting from the injury, the employer may, at his own option, continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician, unless otherwise ordered by the industrial commission, and in addition such surgical and hospital service and supplies as may be deemed necessary by said attending physicians or the industrial commission.

Rejecting service.

The refusal of the employee to accept such service when provided by the employer shall bar said employee from further compensation until such refusal ceases, and no compensation shall

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at any time be paid for the period of suspension unless in the opinion of the industrial commission the circumstances justified the refusal, in which case the industrial commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical care during the first thirty days, as herein specified, or for other good reasons, a physician other than that provided by the employer is called to treat the injured employee, during the first thirty days, the reasonable cost of such service shall be paid by the employer if ordered so to do by the industrial commission.

Costs of service.

SEC. 27. The pecuniary liability of the employer for medical, surgical and hospital service herein required when ordered by the commission shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person, and the employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deeemed part of the injury resulting from the accident and shall be compensated for as such.

Medical examinations.

SEC. 28. After an injury and so long as he claims compensation, the employee, if so requested by his employer, or ordered by the industrial commission, shall submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the industrial commission. The employee shall have the right to have present at such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to, or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this act, or any action at law brought to recover damages against any employer who has accepted the compensation provisions of this act. If the employee refuses to submit himself to or in any way obstructs such examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute any proceedings under this act shall be suspended until such refusal or objection ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the industrial commission the circumstances justify the refusal or obstruction. The employer, or the industrial commission, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same.

Waiting time.

SEC. 29. No compensation shall be allowed for the first fourteen calendar days of incapacity resulting from an injury except the benefits provided for in section twenty-six; but if incapacity extends beyond that period compensation shall commence with the fifteenth day of disability.

Total disability.

SEC. 30. Where the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such total incapacity a weekly compensation equal to one-half his average weekly wages, but not more than ten dollars, nor less than five dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor shall the total amount of all compensation exceed four thousand dollars.

Partial disability.

SEC. 31. Except as otherwise provided in the next section hereafter, where the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such incapacity a weekly compensation equal to one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than ten dollars a week, and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the

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injury. In case the partial incapacity begins after a period of total incapacity, the latter period shall be deducted from the maximum period herein allowed for partial incapacity.

Schedule.

SEC. 32. In cases included by the following schedule, the incapacity in each case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be as specified therein, and shall be in lieu of all other compensation, to-wit:

(a) For the loss of a thumb, fifty per centum of the average weekly wages during sixty weeks.

(b) For the loss of a first finger, commonly called the index finger, fifty per centum of the average weekly wages during thirty-five weeks.

(c) For the loss of a second finger, fifty per centum of average weekly wages during thirty weeks.

(d) For the loss of a third finger, fifty per centum of average weekly wages during twenty weeks.

(e) For the loss of a fourth finger, commonly called the little finger, fifty per centum of average weekly wages during fifteen weeks.

(f) The loss of the first phalange of the thumb or any finger shall be considered to be equal to the loss of one-half of such thumb or finger, and the compensation shall be for one-half of the periods of time above specified.

(g) The loss of more than one phalange shall be considered the loss of the entire finger or thumb: *Provided, however,* That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(h) For the loss of a great toe, fifty per centum of the average weekly wages during thirty weeks.

(j) For the loss of one of the toes other than a great toe, fifty per centum of average weekly wages during ten weeks.

(k) The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and the compensation shall be for one-half of the periods of time above specified.

(l) The loss of more than one phalange shall be considered as the loss of the entire toe.

(m) For the loss of a hand, fifty per centum of the average weekly wages during one hundred and fifty weeks.

(n) For the loss of an arm, fifty per centum of average weekly wages during two hundred weeks.

(o) For the loss of a foot, fifty per centum of average weekly wages during one hundred and twenty-five weeks.

(p) For the loss of a leg, fifty per centum of average weekly wages during one hundred and seventy-five weeks.

(q) For the loss of an eye, fifty per centum of the average weekly wages during one hundred weeks.

(r) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, shall constitute total and permanent incapacity, to be compensated according to the provisions of section thirty.

The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maximum and minimum as set out in section thirty.

Refusing employment.

SEC. 33. If an injured employee refuses employment procured for him suitable to his capacity he shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified.

Second injuries.

SEC. 34. If an employee has a permanent disability or has sustained a permanent injury in service in the Army or Navy of the United States or in another employment than that in which he received a subsequent permanent injury by accident, such as specified in section thirty-two, he shall be entitled to compensation only for the degree of incapacity that would have resulted

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from the later accident if the earlier disability or injury had not existed.

No double benefits.

SEC. 35. If an employee received an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries, unless the later injury be a permanent injury, such as specified in section thirty-two; but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this act.

Second maimings.

SEC. 36. If an employee receives a permanent injury as specified in section thirty-two, after having sustained another permanent injury in the same employment, he shall be entitled to compensation for both injuries, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation, and in no case exceeding five hundred weeks.

When the previous and subsequent permanent injuries received in the same employment result in total disability compensation shall be payable for permanent total disability, but payments made for the previous injury shall be deducted from the total payment of compensation due.

Injuries outside State.

SEC. 37. (a) Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State; if the employer's place of business is in this State; and if the residence of the employee is in this State: *Provided,* his contract of employment was not expressly for service exclusively outside of the State.

(b) *Provided, however,* If an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this act.

Death from other cause.

SEC. 38. When an employee receives or is entitled to compensation under this act, for an injury covered by section thirty-two, and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next kin dependent upon him for support, in lieu of the compensation the employee would have been entitled to had he lived.

Death from injury.

SEC. 39. If the death results from the accident within six years, the employer shall pay or cause to be paid, subject, however, to the provisions of the other sections of this act, in one of the methods hereinafter provided, to the dependents of the employee, wholly dependent upon his earnings for support at the time of accident, a weekly payment equal to one-half his average weekly wages, but not more than ten dollars nor less than five dollars a week for a period of three hundred weeks from the date of the injury, and burial expenses not exceeding one hundred dollars. If the employee leaves dependents only partly dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall equal the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury. If the employee does not leave dependents, citizens of and residing at the time of the accident in the United States or the Dominion of Canada, the amount of compensation shall not in any case exceed $1,000.

Alien beneficiaries.

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Dependents.

SEC. 40. The following persons shall be conclusively presumed to be the next of kin wholly dependent for support upon the deceased employee:

(a) A wife upon a husband whom she had not voluntarily deserted or abandoned at the time of the accident.

(b) A husband upon a wife with whom he lived at the time of her accident if he is then incapable of self-support and actually dependent upon her.

(c) A boy under the age of eighteen, or a girl under the age of eighteen, upon a parent. If a child is over the ages specified above, but physically or mentally incapacitated from earning a livelihood, he or she shall be presumed to be totally dependent.

As used in this section, the term "boy," "girl," or "child" shall include stepchild, legally adopted children, posthumous children, acknowledged illegitimate children, but shall not include married children; the term "parent" shall include stepparents and parents by adoption. In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the facts as the facts may be at the time of the accident; but no allowance shall be made for any payment made in lieu of board and lodging or services, and no compensation shall be allowed, unless the dependency existed for a period of three months or more prior to the accident; if there is more than one person wholly dependent, the death benefit shall be divided 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 partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

Remarriage.

For the purpose of this act, the dependence of a widow or widower of a deceased employee shall terminate with legal or common law remarriage, and the amount to be received by him or her shall be divided among the children or other dependents in the proportion in which they are receiving compensation, and the dependence of a child, except a child physically or mentally incapacitated from earning a livelihood, shall terminate with the attainment of eighteen years of age.

No dependents.

SEC. 41. If the deceased employee leaves no dependents, the employer shall pay the burial expenses of the deceased, not to exceed one hundred dollars ($100).

Maximum benefits.

SEC. 42. The total compensation payable under this act shall in no case exceed four thousand dollars ($4,000).

Advance payments.

SEC. 43. Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this act were not due and payable when made, may, subject to the approval of the industrial commission, be deducted from the amount to be paid as compensation: *Provided*, that in the case of disability such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment.

Times of payment.

SEC. 44. The industrial commission, upon application of either party, may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

Lump-sum payments.

SEC. 45. Whenever any weekly payment has been continued for not less than twenty-six weeks the liability therefor may in unusual cases, where the parties agree and the industrial commission deems it to be to the best interests of the employee or his dependents, or where it will prevent undue hardships on the employer, or his insurance carrier, without prejudicing the interests of the employee or his dependents, be redeemed, in whole or in part, by the payment, by the employer, of a lump sum which shall be fixed by the commission, but in no case to exceed the commutable value of the future installments which may be due under this act. The commission, however, in its discretion, may at any time in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be

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compensated in whole or in part by the payment of a lump sum, the amount of which shall be fixed by the commission, but in no case to exceed the commutable value of the future installments which may be due under this act.

Payments in trust. SEC. 46. Whenever the industrial commission deems it expedient any lump sum subject to the provisions of the foregoing section shall be paid by the employer to some suitable person or corporation appointed by the circuit or corporation court in the county or city wherein the accident occurred, as trustee, to administer the same for the benefit of the person entitled thereto in the manner provided by the commission. The receipt of such trustee for the amount as paid shall discharge the employer or any one else who is liable therefor.

Review of awards. SEC. 47. Upon its own motion before judicial determination or upon the application of any party in interest on the ground of a change in condition, the industrial commission may at any time review any award and on such review may make an award ending, diminishing, or increasing the compensation previously awarded, subject to the maximum or minimum provided in this act, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys paid.

Receipts. SEC. 48. (a) Whenever payment of compensation is made to a widow or widower for her or his use, or for her or his use and the use of the child or children, the written receipt thereof of such widow or widower shall acquit the employer.

(b) Whenever payment is made of any person eighteen years of age or over, the written receipt of such person shall acquit the employer. In case where an infant or minor under the age of eighteen years shall be entitled to receive a sum or sums amounting in the aggregate to not more than three hundred dollars as compensation for injuries, or as a distributive share by virtue of this act, the father, mother, or natural guardian upon whom such infant or minor shall be dependent for support, shall be authorized and empowered to receive and receipt for such moneys to the same extent as a guardian of the person and property of such infant or minor duly appointed by proper court, and the release or discharge of such father, mother, or natural guardian shall be full and complete discharge of all claims or demands of such infant or minor thereunder.

Payments to minors. (c) Whenever payment of over three hundred dollars is made to a minor under eighteen years of age, or to a dependent child over the age of eighteen years of age, the same shall be made to some suitable person or corporation appointed by the circuit or corporation court as a trustee, and the receipt of such trustee shall acquit the employer.

Subsequent dependents. (d) Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants, he may apply to the industrial commission to decide between them.

Incompetents. SEC. 49. If an injured employee is mentally incompetent or is under eighteen years of age at the time when any right or privilege accrues to him under this act, his guardian, trustee or committee may in his behalf claim and exercise such right or privilege.

Limitations. SEC. 50. No limitation of time provided in this act for the giving of notice or making claim under this act shall run against any person who is mentally incompetent, or a minor dependent, so long as he has no guardian, trustee, or committee.

Joint employment. SEC. 51. Whenever any employee for whose injury or death compensation is payable under this act shall at the time of the injury be in the joint service of two or more employers subject to this act, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such

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employee: *Provided, however,* That nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

Industrial commission.

SEC. 52. There is hereby created a commission which shall be known as the Industrial Commission of Virginia, which shall consist of three members to be appointed by the governor. One of the members of this commission shall be appointed for a term of two years, one member for a term of four years, and one member for a term of six years, and thereafter each member shall be appointed for a term of six years. Not more than one member of said commission shall be a person who on account of his previous vocation, employment, or affiliation shall be classified as a representative of employers, and not more than one such appointee shall be a person who, on account of his previous vocation, employment, or affiliation shall be classed as a representative of employees. The commission thus composed shall elect one of its number chairman. Each member of said commission shall devote his entire time to the duties of his office, and shall not hold any position of trust or profit, or engage in any occupation or business interfering or inconsistent with his duties as such member.

Salary.

SEC. 53. (a) The salary of each member of the commission shall be thirty-six hundred dollars a year, payable in the same manner as the salaries of other State officers are paid. The commission may appoint a secretary at a salary of not more than two thousand dollars a year, and may remove him.

Assistants.

(b) The commission may also, subject to the approval of the governor, employ such clerical or other assistants as it may deem necessary, and fix the compensation of all persons so employed.

Traveling expenses.

(c) The members of the commission and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the commission, but such expenses shall be sworn to by the persons who incurred the same and shall be approved by the chairman of the commission before payment is made.

Expenditures.

(d) All salaries and expenses of the commission shall be audited and paid out of the State treasury in the manner prescribed for similar expenses in other departments or branches of the State service.

Offices.

SEC. 54. (a) The commission shall be provided with adequate offices in the capitol or some other suitable building in the city of Richmond, in which the records shall be kept and its official business transacted during regular business hours; it shall also be provided with necessary office furniture, stationery, and other supplies.

Deputies.

(b) The commission may appoint deputies who shall have the power to subpoena witnesses and administer oaths, and who may take testimony in such cases as the commission may deem proper. Such testimony shall be transmitted in writing to the commission, and the commission shall fix the compensation of such deputies.

Sessions.

(c) The commission or any member thereof may hold sessions at any place within the State as may be deemed necessary by the commission.

Rules, procedure, etc.

SEC. 55. (a) The commission may make rules, not inconsistent with this act, for carrying out the provisions of this act. Processes and procedure under this act shall be as summary and simple as reasonably may be. The commission or any member thereof or any person deputized by it shall have the power for the purpose of this act to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to be examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

(b) The county sheriff, or city or town sergeant or sheriff, and their respective deputies, shall serve all subpœnas of the commission or its deputies and shall receive the same fees as are now provided by law for like civil actions; each witness who appears

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in obedience to such subpœna of the commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts.

(c) The circuit or corporation court shall, on application of the commission or any member or deputy thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

Blanks, etc. SEC. 56. The commission shall prepare and cause to be printed, and upon request furnish free of charge to any employee or employer such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this act.

Accident reports. The commission shall tabulate the accident reports received from employers in accordance with section sixty-seven, and shall publish the same in the annual report of the commission and as often as it may deem advisable, in such detailed or aggregate form as it may deem best. The name of the employer or employee shall not appear in such publications and the employer's reports themselves shall be private records of the commission, and shall not be open for public inspection except for the inspection of the parties directly involved, and only to the extent of such interest. These reports shall not be used as evidence against any employer in any suit at law brought by any employee for the recovery of damages.

Agreements. SEC. 57. If after fourteen days from the date of the injury or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this act, a memorandum of the agreement in the form prescribed by the industrial commission shall be filed with the commission; otherwise such agreement shall be voidable by the employee or his dependents.

If approved by the commission, thereupon the memorandum shall for all purposes be enforceable by the court's decree as hereinafter specified.

Disputes. SEC. 58. If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this act, or if they have reached such an agreement which has been signed and filed with the commission and compensation has been paid or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the industrial commission for a hearing in regard to the matters at issue and for a ruling thereon.

Immediately after such application has been received the commission shall set the date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the city or county where the injury occurred, unless otherwise agreed to by the parties and authorized by the industrial commission.

Hearings. SEC. 59. The commission or any of its members shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law and other matters pertinent to the questions at issue shall be filed with the record of the proceedings, and a copy of the award shall immediately be sent to the parties in dispute. The parties may be heard by a deputy, in which event he shall swear or cause the witnesses to be sworn and shall transmit all testimony to the commission for its determination and award.

Review. SEC. 60. If an application for review is made to the commission within seven days from the date of the award, the full commission, if the first hearing was not held before the full commission, shall review the evidence, or, if deemed advisable, as soon as practicable, hear the parties at issue, their representatives and witnesses and shall make an award and file the same in like manner as specified in the foregoing section.

Appeals. SEC. 61. The award of the commission, as provided in section fifty-nine, if not reviewed in due time, or an award of the com-

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mission upon such review, as provided in section sixty, shall be conclusive and binding as to all questions of fact; but either party to the dispute may within thirty days from the date of such award, or within thirty days after receipt of notice to be sent by registered mail, of such award but not thereafter, appeal from the decision of said commission to the circuit court of the county or corporation court of the city in which the alleged accident happened or in which the employer resides or has his principal office; or if the cause be in the city of Richmond, then to the circuit or law and equity court of said city; the form and manner of said appeal shall be prescribed by the Supreme Court of Appeals of Virginia within thirty days after this act takes effect. The judge shall hear and determine the case within thirty days after the granting of the appeal if court be in session, and if court be not in session the judge granting such appeal shall hear and determine the case within thirty days after the beginning of the ensuing term. The commission, of its own motion, may certify questions of law to the supreme court of appeals for decision and determination by the said court. In case of an appeal from the decision of the commission, or of a certification by said commission of questions of law, to the supreme court of appeals, said appeal or certification shall operate as a supersedeas, and no employer shall be required to make payment of the award involved in said appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this act.

Enforcement.

SEC. 62. Any party in interest may file in the circuit or corporation court of the county or city in which the injury occurred, or if it be in the city of Richmond, then in the circuit or law and equity court of said city, a certified copy of a memorandum of agreement approved by the commission, or of an order or decision of the commission, or of an award of the commission unappealed from, or of an award of the commission affirmed upon appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by said court.

Costs.

SEC. 63. If the industrial commission or any court before whom any proceedings are brought under this act shall determine that such proceedings have been brought, prosecuted, or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who has brought or defended them.

Medical examinations.

SEC. 64. The commission or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reasonable fee to be fixed by the commission, not exceeding ten dollars for each examination and report, but the commission may allow additional reasonable amounts in extraordinary cases.

The fees and expenses of such physician or surgeon shall be paid by the State.

Fees.

SEC. 65. Fees of attorneys and physicians and charges of hospitals for services under this act shall be subject to the approval of the commission.

Powers of commission.

SEC. 66. All questions arising under this act, if not settled by agreements of the parties interested therein, with the approval of the commission, shall be determined by the commission, except as otherwise herein provided.

Records of injuries.

SEC. 67. (a) Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment, on blanks approved by the commission. Within ten days after the occurrence and knowledge thereof, as provided in section twenty-three, of an injury to an employee

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Reports.

causing his absence from work for more than seven days, a report thereof shall be made in writing and mailed to the industrial commission on blanks to be procured from the commission for this purpose.

(b) The records of the commission, in so far as they refer to accidents, injuries, and settlements, shall not be open to the public, but only to the parties satisfying the commission of their interest in such records and the right to inspect them.

(c) Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of sixty days, then also at the expiration of such period, the employer shall make a supplementary report to the commission on blanks to be procured from the commission for the purpose.

(d) The said report shall contain the name, nature, and location of the business of the employer, and name, age, sex, and wages and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and such other information as may be required by the commission.

(e) Any employer who refuses or neglects to make the report required by this section shall be liable for a penalty of not more than twenty-five dollars for each refusal or neglect, to be recoverable in any court of competent jurisdiction in a suit by the commission.

Insurance.

SEC. 68. Every employer who accepts the provisions of this act relative to the payment of compensation shall insure and keep insured his liability thereunder in some corporation, association, organization, or State insurance fund authorized to transact the business of workmen's compensation insurance in this State, or in some mutual insurance association formed by a group of employers so authorized, or shall furnish to the industrial commission satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this act. In the latter case the commission may in its discretion require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred: *Provided*, That it shall be satisfactory proof of the employer's financial ability to pay direct the compensation in the amount and manner when due, as provided for in this act, and acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred, if the employer shall show to the industrial commission that he is a member of an association or group of employers and as such is exchanging contracts of insurance with the employers of this and other States, through a medium as specified and located in their agreements between each other, and shall further file with said industrial commission a certificate of authority issued by the insurance department of any State to said group of employers or association, together with a sworn financial statement showing said group of employers or association to be in solvent condition, but this proviso shall in no wise restrict or qualify the right of self-insurance as hereinbefore authorized.

Evidence to be filed.

SEC. 69. (a) Every employer accepting the compensation provisions of this act shall within thirty days after this act takes effect file with the commission in form prescribed by it, and thereafter annually or as often as may be necessary, evidence of his compliance with the provisions of section sixty-eight and all others relating thereto.

(b) If such employer refuses and neglects to comply with these provisions he shall be punished by a fine of ten cents for each employee at the time of the insurance becoming due, but not less than one dollar nor more than fifty dollars for each day of such refusal or neglect, and until same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this act or at law in the same manner as provided in section sixteen.

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Certificate as to self-insurance.

SEC. 70. Whenever an employer has complied with the provisions of section sixty-eight, relating to self-insurance, the industrial commission shall issue to such employer a certificate which shall remain in force for a period fixed by the commission, but the commission may upon at least sixty days' notice and hearing to the employer revoke the certificate upon satisfactory evidence of such revocation having been presented. At any time after such revocation the commission may grant a new certificate to the employer upon his petition.

Substitute systems.

SEC. 71. (a) Subject to the approval of the industrial commission any employer may enter into or continue any agreement with his employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this act. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees unless it confers benefits in addition to those provided under this act at least commensurate with such contribution.

(b) Such substitute system may be terminated by the industrial commission on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered or if its operation shall disclose defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this act; and in this case the commission shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party at interest to take an appeal to the circuit or corporation court of the county or city wherein the principal office or chief place of business of the employer is located.

Provisions of policies.

SEC. 72. All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employer and the insurer the notice to or knowledge of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purposes of this act shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, judgments, or decrees rendered against such insured employer.

Notice.

Jurisdiction.

Direct liability.

SEC. 73. No policy of insurance against liability arising under this act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same all benefits conferred by this act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury or by any default in giving notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

Policies subject to act.

SEC. 74. (a) Every policy for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No corporation, association, or organization shall enter into any such policy of insurance unless its form shall have been approved by the industrial commission.

(b) This act shall not apply to policies of insurance against loss from explosion of boilers or fly wheels or other similar single catastrophe hazards.

Rates.

SEC. 75. (a) The rates charged by all carriers of insurance, including the parties to any mutual, reciprocal, or other plan or scheme, writing insurance against the liability for compensation under this act, shall be fair, reasonable, and adequate, with due allowance for merit rating, and all risks of the same kind and degree of hazard, shall be written at the same rate by the same carrier. No policy of insurance against liability for compensation under this act shall be valid until the rate thereof has been approved by the commissioner of insurance, nor shall any such

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carrier of insurance write any such policy or contract until its basic and merit rating schedules have been filed with, approved and not subsequently disapproved by the commissioner of insurance.

(b) Each such insurance carrier shall report to the commissioner of insurance in accordance with such reasonable rules as the commissioner of insurance may at any time prescribe, for the purpose of determining the solvency of the carrier, and the adequacy of its rates; for such purpose the commissioner of insurance may inspect the books and records of such insurance carrier, and examine its agents, officers, and directors under oath.

Administrative fund.

(c) For the purpose of paying the salaries and necessary expenses of the commission and its assistants and employees in administering and carrying out the provisions of this act an administrative fund shall be created and maintained in the following manner:

Every person, partnership, association, corporation, whether organized under the laws of this or any other State or country, company, mutual company or association, the parties to any interindemnity contract or reciprocal plan or scheme, and every other insurance carrier, insuring employers in this State against liability for personal injuries to their employees, or death caused thereby, under the provisions of this act, shall, as hereinafter provided, pay a tax upon the premiums received, whether in cash or notes, in this State or on account of business done in this State, for such insurance in this State, at the rate of four per cent of the amount of such premium, which tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and collected as hereinafter provided: *Provided, however,* That such insurance carriers shall be credited with all canceled or returned premiums, actually refunded during the year on such insurance, and with premiums on reinsurance with companies authorized and licensed to transact business in Virginia, which reinsurance shall be reported by the reinsurer; but no credit shall be allowed for reinsurance in companies not licensed to transact business in Virginia.

Returns by insurance carriers.

(d) Every such insurance carrier shall, for the six months ending June thirtieth, one thousand nine hundred and nineteen, for the twelve months ending December thirty-first, one thousand nine hundred and nineteen, and annually thereafter, make a return verified by the affidavit of its president and secretary, or other chief officers or agents, to the commissioner of insurance, stating the amount of all such premiums and credits during the period covered by such return. Every insurance carrier required to make such return shall file the same with the commissioner of insurance within thirty days after the close of the period covered thereby and shall at the same time pay into the State treasury a tax of four dollars on each one hundred dollars of such premium ascertained as provided in subsection (c) hereof, less returned premiums on canceled policies and reinsurance with other companies licensed to transact business in this State. Upon receiving such payments the State treasurer shall place the whole thereof to the credit of the fund for the administration of this act, and shall pay same out in the manner provided by section seventy-eight hereof.

(e) If any such insurance carrier shall fail or refuse to make the return required by this act, the said commissioner of insurance shall assess the tax against such insurance carrier at the rate herein provided for, on such amount of premiums as he may deem just, and the proceedings thereon shall be the same as if the return had been made.

Withdrawing companies.

(f) If any such insurance carrier shall withdraw from business in this State before the tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the commissioner of insurance shall at once proceed to collect the same, and he is hereby empowered and authorized to employ such legal process as may be necessary for that purpose, and when so collected he shall pay the same into the State treasury. The suit may be brought by the

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commissioner of insurance, in his official capacity, in any court of this State having jurisdiction; reasonable attorneys' fees may be taxed as costs therein, and process may issue to any county of the State, and may be served as in civil actions, or in case of unincorporated associations, partnerships, interindemnity, contracts [sic] or other plan or scheme, upon any agent of the parties thereto upon whom process may be served under the laws of this State.

Offenses of agents.

(g) Any person or persons who shall in this State act or assume to act as agent for any such insurance carrier whose authority to do business in this State has been suspended, while such suspension remains in force, or shall neglect or refuse to comply with any of the provisions of this section obligatory upon such persons or party, or who shall willfully make a false or fradulent statement of the business or condition of any such insurance carrier or false or fraudulent return as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the jury.

Notice.

(h) Whenever by this act or the terms of any policy contract any officer is required to give any notice to an insurance carrier, the same may be given by delivery, or by mailing by registered letter properly addressed and stamped, to the principal office or chief agent of such insurance carrier within this State, or to its home office, or to the secretary, general agent, or chief officer thereof in the United States.

Single tax.

(i) Any insurance carrier liable to pay a tax upon premiums under this act shall not be liable to pay any other or further tax upon such premiums, or on account thereof, under any other law of this State.

Reports of self-insurers.

(j) Every employer carrying his own risk under the provisions of section sixty-eight shall, under oath, report to the board his pay roll, subject to the provisions of this act. Such report shall be made in form prescribed by the commission and at the times herein provided for premium reports by insurer. The commissioner shall assess against such pay roll a maintenance fund tax computed by taking four per cent of the basic premiums chargeable against the same or most similar industry or business, taken from the manual insurance rate for compensation then in force in this State.

Overdrafts.

(k) The commission shall not be authorized to incur expenses or indebtedness during any period, chargeable against the maintenance fund, in excess of the premium tax payable to such fund for the same period. If it be ascertained that the tax collected for a given period exceeds the total chargeable against the maintenance fund under the provisions of this act, the commission may authorize a corresponding credit upon collections for the succeeding period.

Provisions severable.

SEC. 76. If any section of the provisions of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of this act as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Appropriation.

SEC. 77. For the purpose of paying salaries and expenses of the commission and its necessary employees in making preparations and putting this act into operation the sum of ten thousand dollars is hereby appropriated, payable out of any funds in the State treasury, not otherwise appropriated. All claims for salaries or expenses, when approved by resolution of the board, and countersigned by the chairman thereof, shall be presented to the auditor of public accounts, who shall issue his warrant in payment thereof. All such claims shall show to whom and for what service, material, or other things or reason such amounts are to be paid and shall be accompanied by voucher, checks, or receipts covering the same, except as to items of less than one dollar.

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The ten thousand dollars appropriated above herein shall be repaid to the State out of the special funds raised under this act when and as a sum sufficient therefor is available hereunder.

Act in effect.

SEC. 78. This act, except as prescribed in section fifty-two, shall become effective January the first, nineteen hundred and nineteen, and section fifty-two shall become effective October first, nineteen hundred and eighteen.

Repeal.

SEC. 79. All acts and parts of acts inconsistent with any provisions of this act are hereby repealed.

Became a law March 21, 1918, over the governor's veto.

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WASHINGTON.

Compensation of Workmen for Injuries.

[The compensation law of the State (chapter 74, acts of 1911) is amended in various particulars by chapters 28 and 120, acts of 1917. Section 3 is amended by chapter 120 by adding to the paragraph beginning "Any individual employer" the following:]

When employees may be compensated.

Provided, That no such employee or the beneficiaries or dependents of such employee shall be entitled to benefits under this act unless the commission prior to the date of the injury has received notice in writing of the fact that such employee is being carried upon the pay roll prior to the date of the injury as the result of which claims for compensation are made.

[Section 4 as amended by chapter 188, acts of 1915, is further amended by making the premium rate for construction in the item, "Iron, or steel frame structures or parts of structures," .080 instead of .065; also by inserting in the paragraph following the table, after the sentence "An adjustment upon such pay roll shall be made as in other cases," the following:]

Monthly statement.

Every employer within the provisions of this act shall on or before the fifteenth day of each month furnish the department with a true and accurate pay roll showing the aggregate number of workdays, that is men-days, during which workmen were employed by him during preceding month, the total amount paid to such workmen during said month, and a segregation of employment in the different classes provided in this act. The sufficiency of such statement shall be subject to the approval of the industrial insurance commission.

[The paragraph relating to deductions from wages is amended so as to read as follows:]

Deductions for premiums forbidden.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempting to make any such deduction shall be a gross misdemeanor. The industrial insurance commission shall on or before the 30th day of September, 1917, and semiannually thereafter make corrections of classifications as between classes of industries if and as experience shall show error or inaccuracy therein, and, under and conformably to the foregoing rule of classification and premium rating, shall at the same time lower the premium rate of any establishment or plant if and as experience shall show it to maintain such a high standard of safety or accident prevention as to differentiate it to that extent from other like establishments or plants, or shall raise the premium rate of any establishment or plant if and as experience shall show it to maintain so low a standard of safety or accident prevention as to justly warrant its being subjected to that extent to a greater contribution to the accident fund. From the original classification or premium rating or any change made therein any employer claiming to be aggrieved may upon application, have a hearing before the industrial insurance commission upon notice to the interested parties and in the manner provided in section 20 a review by the courts. If, at the end of any year, it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the 1st day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

Adjustment of rates.

[Section 5 is amended by chapter 28, by adding to subsection (b) a new paragraph, as follows:]

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If attendant is required.

(4) In case of total permanent disability, if the character of the injury is such as to render the workman so physically helpless as to require the services of a constant attendant, the monthly payment to such workman shall be increased twenty dollars ($20) per month so long as such requirement shall continue, but such increase shall not obtain or be operative while the workman is receiving care under or pursuant to any of the provisions of sections 33 to 46, inclusive.

[Subsections (e) and (f) of this section are amended so as to read as follows:]

Class reserve funds.

(e) There is hereby created in the office of the State treasurer a fund for each of the classes specified in section 4, to be known and designated as the reserve fund for that class, out of which shall be made the payments specified in this section for all cases of death or permanent total disability arising in that class, including future payments to be made for cases of that character which have heretofore arisen. Into the reserve fund for each class there shall be forthwith placed all unexpended funds, in cash or invested, heretofore set aside for cases in that class. For every case resulting in death or permanent total disability hereafter arising it shall be the duty of the department to forthwith notify the State treasurer and he shall transfer from the accident fund of the proper class to the reserve fund of that class a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this section provided to be made for the case. Such annuities shall be based upon tables to be prepared for that purpose by the State insurance commissioner and by him furnished to the State treasurer, calculated upon standard mortality tables with an interest assumption of four (4) per cent per annum. The State treasurer shall invest the reserve for each class in either State capitol building bonds issued to take up capitol building warrants now outstanding, or in the class of securities provided by law for the investment of the permanent school fund, and the interest or other earnings of the reserve fund of each class shall become a part of the reserve fund itself. As soon as possible after October 1, of each year beginning in the year 1918, the State insurance commissioner shall expert the reserve fund of each class to ascertain its standing as of October 1, of that year, and the relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to that fund. He shall promptly report the result of his examination to the State treasurer. If the report show that there was on said October 1, in the reserve fund of any class in cash or at interest a greater sum than the then annuity value of the outstanding pension obligations of that class, the surplus shall be forthwith turned over to the accident fund of that class, but if the report show the contrary condition of any class reserve, the deficiency shall be forthwith made good out of the accident fund of that class. The State treasurer shall keep accurate account of each class reserve fund and the investment and earnings thereof, and to meet current demands for pension or lump-sum payments may, if necessary, make temporary loans to any class reserve fund out of the accident fund for that class, repaying same from the earnings of that reserve fund or from collections of its investments or, if necessary, sales of the same.

Annuities.

Investment, etc., of funds.

Permanent partial disability.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known to surgery to be permanent partial disability. For the permanent partial disabilities here specifically described, the injured workman shall receive compensation as follows:

Schedule.

Loss of one leg amputated so near the hip that an artificial limb can not be worn, $2,000.

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Loss of one leg at or above the knee so that an artificial limb can be worn, $1,900.
Loss of one leg below the knee, $1,300.
Loss of the major arm at or above the elbow, $1,900.
Loss of the major hand at wrist, $1,600.
Loss of one eye by enucleation, $1,200.
Loss of sight of one eye, $900.
Complete loss of hearing in both ears, $1,900.
Complete loss of hearing in one ear, $500.

Other injuries.

Compensation for any other permanent partial disability shall be in the proportion which the extent of such other disability shall bear to that permanent partial disability above specified which most closely resembles and approximates in degree of disability such other disability, but not in any case to exceed the sum of two thousand dollars ($2,000). If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump-sum payment equal to ten per cent of the amount awarded the minor workman.

[A new subsection is also added, as follows:]

Waiting time.

(1) No workman injured after June 30, 1917, shall receive or be entitled to receive compensation out of the accident fund for or during the day on which his injury was received or the seven days following the same, but if at the end of thirty days following the day of the receipt of his injury his incapacity shall still exist, there shall be included in the next payment to him out of the accident fund compensation for said omitted period.

[Section 7 is amended by chapter 28, so as to read as follows:]

Lump sums.

SEC. 7 In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump-sum payment (not in any case to exceed $4.000) equal or proportionate as the case may be to the value of the annuity then remaining, to be fixed and certified by the State insurance commissioner, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversions may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump-sum payment may be agreed upon between the department and the beneficiary.

[Section 8 is amended by chapter 120, so as to read as follows:]

Defaulted payments.

SEC. 8. If any employer shall default in any payment to the accident fund or the medical aid fund, the sum due shall be collected by action at law in the name of the State as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default be after demand, there shall also be collected a penalty equal to twenty-five per cent of the amount of the defaulted payment or payments, and the commission may require from the defaulting employer a bond to the State for the benefit of the accident and medical aid funds, with surety to their satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, conditioned for the prompt and punctual making of all payments into said funds required during said year period, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the State in an action brought by the attorney general in its name shall be entitled to an injunction restraining such delinquent from prosecuting an extra hazardous occupation or work until such bond shall be furnished, and any sale, transfer or lease attempted to be made by such delinquent during the period of such default, of his works, plant or lease thereto shall be invalid until all past delinquencies are made good and such bond furnished. All actions for the recovery of such payments shall be brought in the superior court and in all cases of insolvency, as-

Recovery.

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signment for the benefit of creditors, or bankruptcy, the claim of the State for payments due herein shall be a claim prior to all other claims, except taxes, and it shall be the duty of all receivers or assignees for the benefit of creditors to notify the industrial insurance department of such receivership or assignment within thirty (30) days from the date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the pay roll of an employer, the certificate of the industrial insurance department that an audit has been made of the pay roll of such employer pursuant to the direction of the department and of the amount of such pay roll for the period stated in the certificate shall be prima facie evidence of such fact.

[Section 13 is amended by chapter 28, by adding thereto the following:]

Traveling expenses. If the workman necessarily incurs traveling expenses in attending for examination pursuant to the request of the department, such traveling expenses shall be repaid to him out of the accident fund upon proper voucher and audit.

[Section 18 is amended by chapter 28, so as to read as follows:]

Interstate commerce. SEC. 18. Inasmuch as it has proved impossible in the case of employees engaged in maintenance and operation of railways doing interstate, foreign and intrastate commerce, and in maintenance and construction of their equipment, to separate and distinguish the connection of such employees with interests [interstate] or foreign commerce from their connection with intrastate commerce, and such employees have, in fact, received no compensation under this act, the provisions of this act shall not apply to work performed in the maintenance and operation of such railroads or performed in the maintenance or construction of their equipment, or to the employees engaged therein, but nothing herein shall be construed as excluding from the operation of this act railroad construction work, or the employees engaged thereon: *Provided, however,* That common carriers by railroad engaged in such interstate or foreign commerce and in intrastate commerce shall, in all cases where liability does not exist under the laws of the United States, be liable in damages to any person suffering injury while employed by such carrier, or in case of the death of such employee to his surviving wife and child, or children, and if no surviving wife or child or children, then to the parents, sisters, or minor brothers, residents of the United States at the time of such death and who were dependent upon such deceased for support, to the same extent and subject to the same limitations as the liability now existing, or hereafter created, by the laws of the United States governing recoveries by railroad employees injured while engaged in interstate commerce.

Federal law.

[Section 22 is amended by chapter 120 by adding thereto the following:]

Bond. Each commissioner shall give a surety company bond in the sum of twenty-five thousand dollars ($25,000) payable to the State of Washington, conditioned upon the faithful performance of his duties, and the person designated by the said commission as claim agent shall give a surety company bond in the sum of twenty thousand dollars ($20,000) payable to the State of Washington, conditioned upon the faithful performance of his duties.

[New sections were added by chapter 28, as follows:]

Medical, etc., aid. SEC. 33. It is the intent to require the industries of the State to furnish medical, surgical and hospital care to their injured workmen and to place the expense thereof upon each industry and upon each establishment in each industry as near as may be in the proportion in which it produces injury and creates expense. To this end the State medical aid board hereinafter created shall divide the industries of the State into five classes representing five degrees in the causation of injury and consequent expense for the medical, surgical and hospital care thereof, the said classes to be designated respectively, class A, class B, class C, class D, class E. The industries shall be distributed into these classes as fol-

Classes of industries.

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lows: In class C those industries which produce nearest the average degree of causation and expense, in class A, those which produce nearest one-half of such average, in class B those which produce nearest three-fourths of such average, in class D those which produce nearest one and one-fourth times such average, in class E those which produce nearest one and one-half times such average. The State medical aid board shall have the power to make corrections of classifications as between classes of industries if and as experience shall show error or inaccuracy therein, and, under and conformably to the foregoing rule of classification, to lower the classification of any establishment or plant if and as experience shall show it to maintain such a high standard of safety or accident prevention as to differentiate it from other like establishments or plants, or to raise the classification of any establishment or plant if and as experience shall show it to maintain so low a standard of safety or accident prevention as to justly warrant its being subjected to a greater contribution to the medical aid fund. From the original classification or any change made therein any employer or workman claiming to be aggrieved may upon application, have a hearing before the State medical aid board upon notice to the interested parties and in the manner provided in section 20, a review by the courts. The body of interested workmen may designate in writing in duplicate, one of them to be the recipient of service upon all of them, one copy to be posted for local convenience, and the other to be filed with the secretary of the State medical aid board. In default of any such designation, service upon any one workman other than the one instituting a complaint shall be service upon all.

Medical aid fund.

SEC. 34. A fund is hereby created in the State treasury to be known as the medical aid fund. Into it shall be paid by each employer on or before the fifteenth day of June, 1917, and on or before the fifteenth day of each month thereafter for each day's work or fraction thereof done for him in extra hazardous employment in or during the preceding calendar month the following amount, to wit: In class A one cent, in class B one and one-half cents, in class C two cents, in class D two and one-half cents and in class E three cents. Such monthly payments may be omitted for and during any month or months if the State medical aid board shall certify that the accumulated fund is sufficient to permit such omission. Any monthly payment may be increased by the State medical aid board if they find, and to the extent to which they find the fund on hand, together with the current payments, will be insufficient to meet the anticipated demands thereon for the ensuing month. Notice of any such increase shall be mailed to each employer at least twenty days prior to the due date of payment, and shall be communicated by the employer to his employees. The employer shall deduct from the pay of each of his workmen engaged in extra hazardous work one-half of the amount the employer is required by the foregoing provision of this section to pay into said fund for or on account of the employment of such workman. The collection of the payments in this section provided for, and the keeping of accounts of collection and disbursement, and the machinery of disbursement, shall be in the hands and within the powers and duties of the State industrial insurance commission, and the expense of such bookkeeping, collection, necessary auditing and investigation of pay rolls, and of the machinery of actual disbursement of money out of said medical aid fund, including the printing expenses of the State medical aid board, shall be paid out of the administration fund of said commission. The files and records of the industrial insurance department and those of the State medical aid board shall be subject to the reasonable use thereof by the other body, and the industrial insurance department shall furnish the State medical aid board all data available to the department required by the State board.

Contributions by workmen.

Handling of funds.

Medical aid to be furnished.

SEC. 35. Upon the occurrence, after June 30, 1917, of any injury to a workman entitled to compensation under the provisions of

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said * * * [compensation act] other than section 19, thereof, he shall receive in addition to such compensation, and out of the medical aid fund, proper and necessary medical and surgical services, at the hands of a physician of his own choice if conveniently located and proper and necessary hospital care and services during the period of his disability from such injury, but the same shall be limited in point of duration as follows: In case of permanent partial disability not to extend beyond the date when compensation shall be awarded him out of the accident fund, in case of temporary disability not to extend beyond the time when the monthly allowances to him out of the accident fund shall cease, in case of a permanent total disability not to extend beyond the date on which a lump-sum settlement is made with him or he is placed upon the permanent pension roll. When the injury to any workman is so serious as to require his being taken from the place of injury to a place of treatment, his employer shall at his own expense and without charge against the medical aid fund, furnish transportation to the nearest place of proper treatment. A workman whose injury is of such short duration as to bring him within the provisions of subdivision 1 of section 5 shall nevertheless receive during the omitted period medical, surgical and hospital care and service and transportation under the provisions of this section.

Choice of physician.

Amount of aid.

Medical aid board.

SEC. 36. A board is hereby created to be known as the State medical aid board, hereinafter designated as the State board, which shall have power and whose duty it shall be to from time to time establish and promulgate printed forms, rules, regulations and practices for the furnishing of such care, treatment and services to workmen. Such rules, regulations and practices may vary between the different localities and industries, but shall be in accordance with the rule established in section 33, and with the principle that the injured workman shall have the most prompt and efficient care and treatment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit.

Fees, etc.

The State board shall make and from time to time change as may be, and shall promulgate a fee bill of the maximum charges to be made by any physician, surgeon, hospital, druggist or other agency or person rendering services to injured workmen. No service covered by such fee bill shall be charged for or paid out of the medical aid fund at a rate or rates exceeding those specified in such fee bill, and no contract providing for greater fees shall be valid as to the excess. Any interested employer or workman may complain to the State board against any such rule or regulation. A hearing shall be had on such complaint upon notice to the employer, and upon the employees in the manner provided in section 33, and from the decision an appeal will lie to the courts in the manner provided in section 20.

Board not administrative.

SEC. 37. It shall not be the duty of the State board to administer said rules, regulations or practices, or the details thereof, and it shall have no supervisory power over such administration or details except as provided in section 41. It shall be the duty of the chairman to certify all bills payable out of the medical aid fund, and he shall have power, subject to appeal to the courts in the manner provided in section 20, to reject any bill or item incurred in violation of the principle laid down in section 36, or of section 39 relating to compensation and traveling expenses of members of local boards.

Membership of board.

SEC. 38. The State board shall consist of three members as follows: The chief medical adviser of the State industrial insurance commission shall be ex officio a member and chairman thereof. He shall be paid out of the medical aid fund a salary of one hundred and fifty dollars ($150) per month and also his traveling expenses necessarily incurred in the performance of his duties. The other two members shall be appointed by the governor. Any State-wide association of workmen whose organization

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purposes shall first include or be made to include the making of such nominations and whose membership is open to all classes of workmen engaged in extra hazardous work, may nominate to the governor two of its members, and one of said nominees shall be appointed by the governor, and his term of office shall be six years. Any association of employers, whose organization purposes shall include or be made to include the making of such nominations, and whose membership is open to employers of all classes engaged in extra hazardous work, or if there be more than one such association, a combination of them may nominate to the governor two of their members, and one of said nominees shall be appointed by the governor and his term of office shall be three years. After the expiration of said terms, and to fill vacancies, the same method of nomination and appointment shall obtain. After the expiration of said terms the term of office of each of the members, other than the ex officio member, shall be six years. The governor shall notify the proper organizations in advance of any appointment. If nominations are not made within thirty days following such notification, the governor shall be free to make his own selection for the office, except that if there is a member other than the ex officio member, who was appointed without precedent nomination, the new appointee must be of a political party other than that of the governor. Every member shall serve until his successor is appointed and qualified. Each member, other than the ex officio member, shall receive as compensation the sum of ten dollars ($10) for each day or part thereof not to exceed one hundred days in any calendar year on which he shall attend a meeting of the State board, and shall also receive his traveling expenses, all to be paid out of the medical aid fund upon voucher and audit, as required for other payments out of said fund. The action of a majority of the members shall be the action of the State board. The State board shall execute its powers in sessions to be held at the State capitol or at such other place or places as it may select and so often as it shall determine. Meetings may be called by any member upon not less than five days' notice given in writing to the other members, but previous notice of any meeting attended by all three members may be dispensed with.

Nominations.

Pay for services.

The State board may employ and at will discharge, a secretary at a monthly salary to be fixed by them not exceeding two hundred ($200) dollars, to be paid from the medical aid fund on voucher and audit. It shall be his duty to attend their meetings, keep a record of the proceedings thereat, keep on separate file all reports made to the board, and perform such other services as may be required by the rules or regulations or by directions given him. He shall keep his office in the office of the State industrial insurance commission. The absence of any member of the State board from any three consecutive regularly called meetings shall forthwith terminate his term of office and create a vacancy therein, unless such absence shall be due to his illness or shall be excused by a resolution of the State board passed and entered of record at one of said three meetings.

Secretary.

The State board may employ and at will discharge an assistant to the chairman who shall be a physician qualified to practice under the laws of the State. His duties shall be prescribed by the State board, and in addition to the duties so prescribed, he shall perform such other duties not inconsistent therewith as may be prescribed by the chairman of the State board. He shall devote to the performance of his said duties all of his time and attention each day during the office hours of the State industrial insurance department. He shall be paid out of the medical aid fund a monthly salary of two hundred and fifty dollars ($250), together with his traveling expenses necessarily incurred in the performance of his duties. The State board shall have power to incur such expense, payable out of the medical aid fund for clerical assistance as they shall deem necessary, not to exceed the sum of three hundred and fifty dollars ($350) a month.

Physician.

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Local aid boards.

SEC. 39. Subject always to the rules and regulations established and promulgated by the State board the administration of, care, treatment and services to injured workmen shall be in the hands of local boards to be designated by the name "local aid boards," and by consecutive numbers, each to have two members, one to be selected and removed at pleasure by a majority of the workmen coming under its jurisdiction, and one by a majority of the employers coming under its jurisdiction. In case of disagreement between the two the decision shall be made by the chairman of the State board or his assistant. The several local aid boards shall be distributed throughout the State by reference to such localities or industries as may be determined from time to time by the State board, such distribution to be made in conformity with the principles set forth in section 36, and there shall be as many of them as experience shall show to be necessary or advisable for the proper and economical administration of the service. The third member shall act without added compensation. The other members shall serve without compensation out of any public fund so long as their pay continues from their employer. Otherwise each shall be paid out of the medical aid fund the sum of three dollars ($3) per day or the fraction thereof spent by him in the performance of his duties under this section, and in addition thereto and in any event shall receive his traveling expenses, to be paid out of the medical aid fund upon voucher and audit. Any vacancy in any local board may be filled by the chairman of the State board, and such appointee shall hold office until his successor shall be elected in the manner provided in this section.

Duties of local boards.

SEC. 40. It shall be the duty of each local aid board to provide care and treatment for each workman injured after June 30, 1917, in extra hazardous employment, to report to the secretary of the State board the commencement of every disability, the termination of the same, the cause of the same, with recommendations for the improvement of the service and of the administration, and also, subject to the provisions of section 37, certify to the State board all bills rendered for care or treatment of injured workmen, with power to reject any bill or item thereof incurred in violation of the principle laid down in section 36.

Appeals.

SEC. 41. The injured workman, or anyone connected with his treatment, or any interested employer, may appeal from any contract made by, and decision rendered by or any practice or act of the local aid board to the State board. Any such appeal may be effected by written or telegraphic notice to the secretary of the State board. Except in cases of medical or surgical emergency, the hearing of such appeal shall be upon notice given by the secretary or any member of the State board to the workman under treatment, if there be one, or to some member of his family, to the employer or employers and employees interested. The notice to the employees may be given in the manner provided in section 33. From a decision of the State board an appeal will lie to the courts as provided in section 20, except that if the appellant prevails, the fees and costs allowed him in his favor shall be payable out of the medical aid fund. The question for decision by the State board or the courts shall be whether or not the matter complained of is violative of the principle laid down in section 36.

Misrepresentation.

SEC. 42. Any employer who shall knowingly misrepresent the amount of contribution due from him to, or collected by him for the medical aid fund shall be liable to the State in civil action for the benefit of said fund in ten times the amount attempted to be concealed or withheld by such misrepresentation, and shall also be guilty of a misdemeanor.

New undertakings.

Any person, firm or corporation who not having previously reported to the secretary of the State board, shall establish any new plant, or works, or enter upon the performance of any new building contract or construction contract and who shall fail to

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send written notice thereof to said secretary within five days after such establishing or entering shall be guilty of a misdemeanor.

Collection of dues.

SEC. 43. Where the State, county or municipality is employer or contractor for work, and in all cases of work done by private contract or subcontract, the amounts due the medical aid fund shall so far as practicable be collectible by the method provided in section 17.

Custody.

SEC. 44. The State treasurer shall be liable on his official bond for the safe custody of the moneys of the medical aid fund. All the provisions of the act referred to in section 26 shall be applied to said moneys and the handling thereof by the State treasurer.

Contracts for medical, etc., aid.

SEC. 45. Any contract made in violation of this act shall be invalid, except that any employer engaged in extra hazardous work may with the consent of a majority of his workmen, enter into written contracts for medical, surgical and hospital care to workmen injured in such employment by and under the control and administration of and at the direct expense of the employer and his workmen. Before any such contract shall go into effect it shall be submitted to the State board, and may be disapproved by the State board when found not to provide for such care of injured workmen as is contemplated by the provisions of section 36. If so disapproved it shall not be valid. Otherwise it shall be approved and take and continue in effect for any period of time specified therein, not exceeding three years from the date of such approval. Every such contract to be valid must provide that the expenses incident to it shall be borne one-half by the employer and one-half by such employees, and that it shall be administered by the two interests jointly and equally. So long as such contract shall be in effect the subject matter of the contract shall (except as in this section otherwise provided) be outside of and not affected by the provisions of sections 33 to 44, inclusive, and 46, and the employer shall not be required to make the payments specified in section 34, except that the employer shall pay monthly into the medical aid fund ten per cent of the amount he would have been required to pay in that month if such contract had not been made, and of that ten per cent he shall collect one-half from his said workmen by proper deduction from the daily wage of each. During the operation of any such contract any interested workman may complain to the State board that the service and care actually rendered thereunder are not up to the standard provided in section 36, and if upon a hearing had upon notice to the employer and workmen interested thereunder, the State board shall sustain the complaint, it may make an order that the contract shall terminate unless the defect or deficiency complained of shall be remedied to its satisfaction within a period of time to be fixed in such order. Notice to the workmen may be effected in the manner provided in section 33. The employer or any interested workman may appeal from such decision to the courts in the manner provided in section 20. During the appeal the contract shall remain in force and operation, but the costs of the appeal shall be paid out of the medical aid fund only in case the decision of the State board is reversed by the court. The acceptance of employment by any workman shall be and be held to be an acceptance of any existing contract made under this section to which his employer is a party, or to the choice of any member of the local board having jurisdiction of the workmen in such employment, and of any contract then existing entered into by such local board.

Application of law.

SEC. 46. The provisions of sections 1 to 32, inclusive, shall be applicable to the collection and disbursement of the medical aid fund, to the powers and duties of the State and local boards, and to the medical, surgical and hospital care of injured workmen only so far as they are not inconsistent with the provisions of the foregoing sections 33 to 45, inclusive.

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What demands forbidden.

SEC. 47. It shall be unlawful for any employer to directly or indirectly demand or collect from any of his workmen any sum of money whatsoever for or on account of medical, surgical, hospital, or other treatment or transportation of injured workmen other than as specified in sections 34 and 45, and any employer who shall directly or indirectly violate the foregoing provisions of this section shall be liable to the State in civil action for the benefit of the medical aid fund in ten times the amount so demanded or collected, and such employer and every officer, agent, or servant of such employer knowingly participating therein shall also be guilty of a misdemeanor.

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WISCONSIN.

ACTS OF 1917.

CHAPTER 624.—*Liability of employers for injuries—Workmen's compensation.*

[This act amends chapter 599, acts of 1913, codified as sections 2394–1 to 2394–31 of the Wisconsin Statutes. The act is as follows:]

SECTION 1. Sections 2394–1 to 2394–31, inclusive, are codified and amended to read:

Defenses abolished, when.

SEC. 2394–1. 1. In any action to recover damages for a personal injury sustained within this State by an employee while engaged in the line of his duty as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of any officer, agent, or servant of the employer, it shall not be a defense:

(1) That the employee either expressly or impliedly assumed the risk of the hazard complained of.

(2) When such employer has at the time of the accident in a common employment three or more employees, that the injury or death was caused in whole or in part by the want of ordinary care of a fellow servant.

(3) When such employer has at the time of the accident, in a common employment three or more employees, that the injury or death was caused in whole or in part by the want of ordinary care of the injured employee where such want of ordinary care was not willful.

Who exempt.

2. Any employer who has elected to pay compensation as hereinafter provided shall not be subject to the provisions of this section 2394–1.

3. Subdivisions (1), (2), and (3) of subsection 1 of section 2394–1 of the statutes shall not apply to farm labor.

Waivers.

SEC. 2394–2. No contract, rule, or regulation shall exempt the employer from any of the provisions of section 2394–1.

Compensation payable, when.

SEC. 2394–3. Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall exist against an employer for any personal injury accidentally sustained by his employee, and for his death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the accident, both the employer and employee are subject to the provisions of sections 2394–3 to 2394–31, inclusive.

(2) Where, at the time of the accident, the employee is performing service growing out of and incidental to his employment.

Every employee going to and from his employment in the ordinary and usual way, while on the premises of his employer, shall be deemed to be performing service growing out of and incidental to his employment.

(3) Where the injury is proximately caused by accident, and is not intentionally self-inflicted.

Remedy exclusive.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of sections 2394–3 to 2394–31, inclusive, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death; in all other cases, the liability of the employer shall be the same as if

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this and the succeeding sections of sections 2394–3 to 2394–31, inclusive, had not been passed, but shall be subject to the provisions of sections 2394–1 and 2394–2.

Who are employers.

SEC. 2394–4. The following shall constitute employers subject to the provisions of sections 2394–3 to 2394–31, inclusive, within the meaning of section 2394–3:

(1) The State, and each county, city, town, village, and school district therein.

(2) Every person, firm, and private corporation (including any public-service corporation), who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under sections 2394–3 to 2394–31, inclusive, may be claimed, shall, in the manner provided in section 2394–5, have elected to become subject to the provisions of sections 2394–3 to 2394–31, inclusive, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in subsection 1 of section 2394–5.

SEC. 2394–5. 1. Such election on the part of the employer shall be made by filing with the industrial commission, a written statement to the effect that he accepts the provisions of sections 2394–3 to 2394–31, inclusive, the filing of which statement shall operate, within the meaning of section 2394–4, to subject such employer to the provisions of sections 2394–3 to 2394–31, inclusive, for the term of one year from the date of filing such statement and until the first day of July following, and thereafter, without further act on his part, for successive terms of one year each, beginning July first of each year, unless such employer shall, at least thirty days prior to the first day of July of any year, file in the office of said commission a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of sections 2394–3 to 2394–31, inclusive.

Election presumed.

2. If an employer shall at any time after August 31, 1917, have three or more employees in a common employment, he shall be deemed to have elected to accept the provisions of sections 2394–3 to 2394–31, inclusive, unless prior to that date such employer shall have filed with the industrial commission a notice in writing to the effect that he elects not to accept the provisions hereof: *Provided*, That any employer commencing business subsequent to August 31, 1917, may make his election not to become subject to sections 2394–3 to 2394–31, inclusive, at any time prior to becoming an employer of three or more employees in a common employment. Such employer may withdraw from the provisions of sections 2394–3 to 2394–31, inclusive, in the manner provided in subsection 1 of section 2394–5. The provisions of this subsection shall not apply to farmers or to farm labor.

Contractors' employees.

SEC. 2394–6. An employer subject to the provisions of sections 2394–3 to 2394–31, inclusive, shall be liable for compensation to an employee of a contractor or subcontractor under him who is not subject to sections 2394–3 to 2394–31, inclusive, or who has not complied with the conditions of subsection 2 of section 2394–24 in any case where such employer would have been liable for compensation if such employee had been working directly for such employer. The contractor or subcontractor shall also be liable for such compensation, but the employee shall not recover compensation for the same injury from more than one party. The employer who shall become liable for and pay such compensation may recover the same from such contractor or subcontractor for whom the employee was working at the time of the accident. Section 2394–6 shall be in force as to all contracts made subsequent to August 13 [31], 1913.

Who are employees.

SEC. 2394–7. The term "employee" as used in sections 2394–1 to 2394–31, inclusive, shall be construed to mean:

Public employment.

(1) Every person in the service of the State, or of any county, city, town, village, or school district therein under any appointment, or contract of hire, express or implied, oral or written, ex-

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cept any official of the State, or of any county, city, town, village, or school district therein. No officer of the State who is subject to the direction and control of any superior officer or officers of the State, and no officer of any county, city, town, village, or school district in the State, who is subject to the direction and control of a superior officer or officers of such county, city, town, village or school district, while engaged in the performance of duties for which no remuneration is received from any other source than the State, or from such county, city, town, village, or school district, shall for the purposes of sections 2394–3 to 2394–31, inclusive, be deemed an official. The State and any county or municipality may require a bond from a contractor to protect the State, county or municipality against compensation to employees of such contractor or employees of a subcontractor under him.

Policemen and firemen.

(2) Policemen and firemen shall be deemed employees within the meaning of subdivision (1) of section 2394–7: *Provided*, That any policeman or fireman claiming compensation under sections 2394–3 to 2394–31, inclusive, shall have deducted from such compensation any sum which such policeman or fireman may receive from any pension or other benefit fund to which the municipality may contribute.

Same.

(3) Nothing herein contained shall be construed to prevent municipalities from paying policemen, firemen and other employees full salaries during disability, nor to interfere in any manner with any pension funds now or hereafter established, nor to prevent payment to policemen or firemen therefrom.

Private employment.

(4) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, all helpers and assistants of employees, whether paid by the employers or employee, if employed with the knowledge, actual or constructive, of the employer, and also including minors of permit age or over (who, for the purposes of section 2394–8, shall be considered the same and shall have the same power of contracting as adult employees), but not including any person whose employment is not in the usual course of the trade, business, profession, or occupation of his employer.

Public employees covered.

SEC. 2394–8. Any employee, except policemen and firemen, as defined in subdivision (1) of section 2394–7 shall be subject to the provisions of sections 2394–3 to 2394–31, inclusive. Policemen and firemen and any employee as defined in subdivision (4) of section 2394–7 shall be deemed to have accepted and shall, within the meaning of section 2394–3, be subject to the provisions of sections 2394–3 to 2394–31, inclusive, if, at the time of the accident upon which liability is claimed:

Private employees.

(1) The employer charged with such liability is subject to the provisions of sections 2394–3 to 2394–31, inclusive, whether the employee has actual notice thereof or not; and

(2) Such employee shall not have given to his employer notice in writing that he elects not to be subject to the provisions of sections 2394–3 to 2394–31, inclusive. The employer shall immediately file with the industrial commission a copy of any such notice received.

(3) Any employee who has heretofore given or may hereafter give notice to his employer that he elects not to be subject to the provisions of sections 2394–3 to 2394–31, inclusive, may elect to become subject to the provisions of sections 2394–3 to 2394–31, inclusive, by giving to his employer notice in writing. The employer shall immediately file with the industrial commission a copy of any such notice received.

Railroads.

(4) The provisions of sections 2394–3 to 2394–31, inclusive, shall not apply to employees operating, running or riding upon, or switching freight or other trains, engines or cars for a railroad company operating a steam railroad as a common carrier, unless both employer and employee shall specifically, in writing, have voluntarily accepted the provisions of said sections, and have filed notice thereof with the industrial commission, and shall not apply to employees of such common carriers injured or killed

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while the common carrier and the employee are engaged in interstate commerce.

Compensation.

SEC. 2394–9. Where liability for compensation under sections 2394–3 to 2394–31, inclusive, exists, the same shall be as provided in the following schedule:

Medical, etc., aid.

(1) Such medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches, and apparatus, as may be reasonably required for ninety days immediately following the accident, to cure and relieve from the effects of the injury, and for such additional period of time as in the judgment of the commission will tend to lessen the period of compensation disability, and, in addition thereto, such artificial members as may be reasonably necessary at the end of the healing period, the same to be provided by the employer; and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or in behalf of the employee in providing the same. Where the employer has knowledge of the injury and the necessity for treatment, his failure to tender the same shall constitute such neglect or refusal. Artificial members furnished at the end of the healing period need not be duplicated.

Waiting time.

(2) If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employee leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

Total disability.

(a) If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability.

Partial disability.

(b) If the accident causes partial disability, sixty-five per cent of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subdivisions (a) and (b), respectively.

(d) Said subdivisions (a), (b) and (c) shall be subject to the following limitations:

Maximum benefits.

In case of temporary or partial disability aggregate indemnity for injury to an employee caused by a single accident shall not exceed four times the average annual earnings of such employee, except a larger recovery results under the provisions of subsection 5 of this section. In case of permanent total disability aggregate indemnity for injury to an employee caused by a single accident shall be weekly indemnity for the period that he may live, not to exceed, however, these named limitations, to wit:

Fifteen years for all persons under thirty-two years of age;

For each successive yearly group, beginning with thirty-two years, the maximum limitation shall be reduced by three months, until a minimum limit of nine years shall be reached.

No lump-sum settlement shall be allowed in any case of permanent total disability upon an estimated life expectancy, except upon consent of all parties, after hearing and finding by the commission that the interests of the injured employee will be conserved thereby.

Permanent total disability.

Total blindness of both eyes, or the loss of both arms at or near the shoulder, or of both legs at or near the hip, or of one arm at the shoulder and one leg at the hip, shall constitute permanent total disability. This enumeration shall not be exclusive but in other cases the commission shall find the facts.

The aggregate disability period shall not, in any event, extend beyond fifteen years from the date of the accident.

Pay for first week.

The weekly indemnity due on the eighth day after the employee leaves work as the result of the injury may be withheld until the twenty-ninth day after he so leaves work; if recovery from the disability shall then have occurred, such first weekly indemnity shall not be recoverable; if the disability still continues, it shall be added to the weekly indemnity due on said twenty-ninth day and be paid therewith.

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If the period of disability does not last more than one week from the day the employee leaves work as a result of the injury, no indemnity whatever shall be recoverable.

Compensation for death.

(3) Where death proximately results from the injury and the deceased leaves a person or persons wholly dependent upon him for support, the death benefit shall be as follows:

(a) In case the injured employee was permanently totally disabled, a sum equal to four times his average annual earnings, but which, when added to the disability indemnity paid and due at the time of death, shall not exceed six times his average annual earnings.

(b) In case the injured employee was not permanently totally disabled, such sum which, when added to the disability indemnity paid and due at the time of his death, shall equal four times his average annual earnings.

(4) If death occurs to an injured employee other than as proximate result of the accident, before disability indemnity ceases, death benefit shall be as follows:

Permanent total disability.

(a) Where the accident proximately causes permanent total disability, it shall be the same as if the accident had caused death.

Permanent partial disability.

(b) Where the accident proximately causes permanent partial disability, liability shall exist for such benefit as shall fairly represent the proportionate extent of the impairment of earning capacity in the employment in which the deceased was working at the time of the accident or other suitable employment, caused by such disability.

Partial dependents.

(c) In case the deceased employee leaves no one wholly dependent upon him for support, but one or more persons partially dependent therefor, the death benefit shall not exceed four times the amount devoted by deceased, during the year immediately preceding his death, to the support of such dependents and shall be apportioned according to the percentage that the amount devoted by the deceased to the support of such person or persons, for the year immediately prior to the accident, bears to the average annual earnings of the deceased. Where, by reason of minority, sickness, or other causes during such year, the foregoing basis is unfair or inadequate, the death benefit shall be such sum as the commission may determine to be fair and just, considering the death benefits allowed in other cases where such untoward causes do not exist.

Burial expenses.

(d) In all cases the death benefit shall include reasonable expense of burial, not exceeding one hundred dollars.

(e) Death benefit, other than burial expenses, shall be paid in weekly installments corresponding in amount to sixty-five per cent of the weekly earnings of the employee, until otherwise ordered by the commission.

Schedule of awards.

(5) (a) In cases included by the following schedule, the compensation to be paid for healing period and permanent disability, computed from the date of amputation or enucleation, as the case may be, subject to the provisions of this act for maximum and minimum payments, shall be sixty-five per cent of the average weekly earnings of the employee for the periods named in the following schedule, to wit:

(1) The loss of one arm at or near the shoulder, three hundred twenty weeks;

(2) The loss of an arm at the elbow, two hundred eighty weeks;

(3) The loss of a forearm at the lower half thereof, two hundred forty weeks;

(4) The loss of a hand, two hundred forty weeks;

(5) The loss of a palm where the thumb remains, one hundred forty weeks;

(6) The loss of a thumb and the metacarpal bone thereof, eighty-six weeks;

(7) The loss of a thumb at the proximal joint, seventy weeks;

(8) The loss of a thumb at the second or distal joint, thirty weeks;

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(9) The loss of an index finger and the metacarpal bone thereof, forty-five weeks;
(10) The loss of an index finger at the proximal joint, thirty-two weeks;
(11) The loss of an index finger at the second joint, twenty weeks;
(12) The loss of an index finger at the distal joint, twelve weeks;
(13) The loss of a middle finger and the metacarpal bone thereof, thirty weeks;
(14) The loss of a middle finger at the proximal joint, twenty weeks;
(15) The loss of a middle finger at the second joint, twelve weeks;
(16) The loss of a middle finger at the distal joint, eight weeks;
(17) The loss of a ring finger and the metacarpal bone thereof, twenty-two weeks;
(18) The loss of a ring finger at the proximal joint, twelve weeks;
(19) The loss of a ring finger at the second joint, eight weeks;
(20) The loss of a ring finger at the distal joint, six weeks;
(21) The loss of a little finger and the metacarpal bone thereof, twenty-four weeks;
(22) The loss of a little finger at the proximal joint, fourteen weeks;
(23) The loss of a little finger at the second joint, ten weeks;
(24) The loss of a little finger at the distal joint, six weeks;
(25) The loss of all the fingers of one hand where the thumb and palm remain, ninety weeks;
(26) The loss of a leg at the hip joint, or so near thereto as to preclude the use of an artificial limb, three hundred weeks;
(27) The loss of a leg at or above the knee, where stump remains sufficient to permit the use of an artificial limb, two hundred twenty weeks;
(28) The loss of a foot at the ankle, one hundred eighty weeks;
(29) The loss of a great toe with the metatarsal bone thereof, sixty weeks;
(30) The loss of a great toe at the proximal joint, twenty-five weeks;
(31) The loss of a great toe at the second joint, fifteen weeks;
(32) The loss of the second toe with the metatarsal bone thereof, twenty-five weeks;
(33) The loss of the second toe at the proximal joint, ten weeks;
(34) The loss of the second toe at the distal joint, five weeks;
(35) The loss of the third, fourth or little toe with the metatarsal bone thereof, twenty weeks;
(36) The loss of the third, fourth or little toe at the proximal joint, eight weeks;
(37) The loss of the third, fourth or little toe at the second or distal joint, five weeks;
(38) The loss of all the toes of one foot, seventy weeks;
(39) The loss of an eye by enucleation, one hundred sixty weeks;
(40) The loss of the second eye, by enucleation, three hundred twenty weeks;
(41) Total blindness of one eye, one hundred forty weeks;
(42) Total blindness of the second eye, two hundred eighty weeks;
(43) Total deafness of both ears, one hundred sixty weeks;
(44) Total deafness of one ear, forty weeks;
(45) Total deafness of the second ear, one hundred twenty weeks;
(46) For an amputation of a finger tip, thumb tip or toe tip, involving a bone amputation, compensation to be paid as if amputation was made at the distal joint; all other finger tip, thumb

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tip and toe tip amputations to be compensated as provided in paragraph (e) of subdivision (5) of section 2394–9.

Protracted cases.

(b) When by reason of infection or other cause not due to the neglect or misconduct of the injured employee, he is actually disabled longer than the time specified in the foregoing schedule from earning a wage, compensation shall be paid such employee for such loss of wage within the limits otherwise provided.

Paralysis.

(c) For the purposes of this schedule permanent and complete paralysis of any member shall be deemed equivalent to the loss thereof.

Amputations.

(d) Whenever an amputation is made between any two joints mentioned in this schedule (except amputations between the knee and hip joint) the resultant loss shall be estimated as if the amputation had been made at the joint nearest thereto.

Other injuries.

(e) For all other injuries to the members of the body or its faculties which are specified in the foregoing schedule resulting in permanent disability, though the member be not actually severed or the faculty totally lost, compensation shall bear such relation to that named in the schedule as the disabilities bear to those produced by the injuries named in the schedule. Indemnity in such cases shall be determined by allowing weekly indemnity during the healing period resulting from the injury and the percentage of permanent disability resulting thereafter as found by the commission, based upon eighty per cent of the specific schedule allowance.

Concurrent injuries.

(em) In case an accident causes more than one permanent injury specified in this subsection to the hands or feet, the disability allowance for each additional injury, in the order of the severity of such injuries from minimum to maximum, shall be increased as follows: For the first additional injury the allowance specified in this subsection plus ten per cent, for the second additional injury, and for each other additional injury, the allowance specified in this subsection plus twenty per cent. In no event shall the compensation for more than one permanent injury to members of a hand or foot, resulting from one accident, exceed the allowance for the amputation of the entire hand or foot, as the case may be.

Disfigurement.

(f) If an employee is so permanently disfigured about the face, head, neck, hand or arm as to occasion loss of wage, the commission may allow such sum for compensation on account thereof, as it may deem just, not exceeding seven hundred fifty dollars.

Aged employees.

(g) In case of permanent injury to an employee who is over fifty-five years of age, the compensation herein shall be reduced by five per cent; in case he is over sixty years of age, by ten per cent; in case he is over sixty-five years of age, by fifteen per cent.

Awards increased, when; Reduced, when.

(h) Where injury is caused by the failure of the employer to comply with any statute of the State or any lawful order of the industrial commission, compensation and death benefits as provided in sections 2394–3 to 2394–31, inclusive, shall be increased fifteen per cent.

(i) Where injury is caused by the willful failure of the employee to use safety devices where provided by the employer, or

(j) Where injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee, or

(k) Where injury results from the intoxication of the employee, the compensation provided herein shall be reduced fifteen per cent.

Lump sums.

(l) Any time after six months have elapsed from the date of the injury, the commission may order payment in gross or in such manner as it may determine to the best interest of the parties. When payment in gross is ordered, the commission shall fix the gross amount to be paid based on the present worth of partial payments, considering interest at three per cent per annum.

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Measure of allowances.

(m) Aggregate allowances for injuries shall in no case exceed six times the average annual earnings, except in cases of permanent total disability.

Treble recovery.

(6) Compensation and death benefits, as provided in sections 2394–3 to 2394–31, inclusive, shall, in the following cases, be treble the amount otherwise recoverable:

(a) If the injured employee be a minor of permit age and at the time of the accident is employed, required, suffered or permitted to work without a written permit issued pursuant to section 1728a.

(b) If the injured employee be a minor of permit age, or over, and at the time of the accident is employed, required, suffered or permitted to work at prohibited employment.

A permit unlawfully issued by an officer specified in section 1728a, or unlawfully altered after issuance, without fraud on the part of the employer, shall be deemed a permit within the provisions of this subsection.

Who liable.

(7) In case of liability for the increased compensation or increased death benefits provided for by subdivision (h) of subsection (5) of this section, or included in subsection (6) of this section, the liability of the employer shall be primary and the liability of the insurance carrier shall be secondary. In case proceedings are had before the commission for the recovery of such increased compensation or increased death benefits the commission shall set forth in its award the amount and order of liability as herein provided. Execution shall not be issued against the insurance carrier to satisfy any judgment covering such increased compensation or increased death benefits until execution has first been issued against the employer and has been returned unsatisfied as to any part thereof. Any provision in any insurance policy undertaking to guarantee primary liability or to avoid secondary liability for such increased compensation or increased death benefits shall be void.

Computation of earnings.

SEC. 2394–10. 1. The average weekly earnings referred to in section 2394–9 shall be one-fiftieth of the average annual earnings of the employee.

The average annual earnings for employees operating, running, riding upon, or switching passenger, freight or other trains, engines or cars for a railroad company operating a steam railroad as a common carrier, shall be taken at not less than five hundred dollars nor more than one thousand two hundred fifty dollars per annum; and for all other employees such average annual earnings shall be taken at not less than three hundred seventy-five dollars nor more than seven hundred fifty dollars. Between said limits such average annual earnings shall be determined as follows:

(a) If the injured employee has worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employee can not reasonably and fairly be applied, such average annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment, in the same or a neighboring locality, shall reasonably

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represent the average annual earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

(d) In determining average daily wage, no day during which an employee has worked less than eight hours shall be taken into consideration unless by agreement or custom a lesser number of hours' work constitutes the full day's service for such day. Subject to the maximum limitation the average annual earnings shall in no case be taken at less than the actual annual earnings.

Minors.

(e) If an employee is a minor and is permanently disabled, his weekly earnings shall be determined on the basis of the earnings that such minor, if not disabled, probably would earn after attaining the age of twenty-one years.

Subsequent injuries.

(f) The fact that an employee has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his average annual earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to the limitations of the previous provisions of this section.

Wage loss.

2. The weekly loss in wages referred to in section 2394–9 shall consist of such percentage of the average weekly earnings of the injured employee, computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, and other suitable employments, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

Dependents.

3. The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she is living at the time of his death.

(b) A husband upon a wife with whom he is living at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent, there being no surviving dependent parent. In case of divorce the charging of the full support and maintenance of a child upon one of the divorced parents shall be held to constitute a living with the parent so charged. In case there is more than one child thus dependent, the death benefit shall be divided between such dependents in such proportion as may be determined by the commission after considering the ages of such dependents and other facts bearing on such dependency.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the accident to the employee; 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 partially dependent, if any, shall receive no part thereof; and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

4. No person shall be considered a dependent unless a member of the family of the deceased employee, or a divorced spouse who has not remarried, or one who bears to him the relation of husband or widow, or lineal descendent, or ancestor, or brother, or sister.

5. 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 their right to any death benefit shall become fixed as of such time, irrespective of any subse-

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quent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees: *Provided*, That in case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the same as is then unpaid shall be recoverable by and payable to his personal representatives in gross. No person shall be excluded as a dependent who is a nonresident alien.

Nonresident aliens.

Dependents not parties, when.

6. No dependent of an 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.

Notice.

SEC. 2394–11. No claim to recover compensation under sections 2394–3 to 2394–31, inclusive, shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured or by some one on his behalf, or in case of his death, by a dependent or some one on his behalf, shall be served upon the employer, either by delivering to and leaving with him a copy of such notice, or by mailing to him by registered mail a copy thereof in a sealed and postpaid envelope addressed to him at his last known place of business or residence. Such mailing shall constitute completed service: *Provided, however*, That any payment of compensation under sections 2394–3 to 2394–31, inclusive, in whole or in part, made by the employer before the expiration of said thirty days, shall be equivalent to the notice herein required: *And provided, further*, That the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under sections 2394–3 to 2394–31, inclusive, if it is found as a fact in the proceedings for collection of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby: *And provided, further*, That if no such notice is given and no payment of compensation made, within two years from the date of the accident, the right to compensation therefor shall be wholly barred.

Limitation.

Medical examination.

SEC. 2394–12. Wherever in case of injury the right to compensation under sections 2394–3 to 2394–31, inclusive, would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial commission, or a member or examiner thereof. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination after direction by the commission, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof. Any physician having attended an employee in a professional capacity may be required to testify before the commission when it shall so direct.

Administration of act.

SEC. 2394–13. Sections 2394–3 to 2394–31, inclusive, shall be administered by the industrial commission. A majority of the commission shall constitute a quorum for the exercise of any of the powers of authority conferred by sections 2394–3 to 2394–31, inclusive, and an order or award made by a majority shall be valid.

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In case of a vacancy, the remaining two members of the commission shall exercise all the powers and authority of the commission until such vacancy is filled.

Powers of commission.

SEC. 2394–14. 1. Subject to the provisions of sections 2394–3 to 2394–31, inclusive, the commission may adopt its own rules of procedure and may change the same from time to time in its discretion. The commission, when it shall deem it necessary to expedite its business, may, from time to time, employ one or more expert examiners for such length of time as may be required, such examiners to be exempt from the operation of sections 990–1 to 990–32, inclusive, of the statutes. It may employ such deputies, inspectors, clerks, stenographers and other employees as it may deem necessary. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, upon which shall be inscribed the words "Industrial commission—Wisconsin—Seal."

2. The commission may provide by rule the terms and conditions under which transcripts of testimony and proceedings shall be furnished. Any fees received by the commission for such transcripts shall be paid into the State treasury and such funds are hereby appropriated to the commission to be used for reporter and stenographic services.

Disputes.

SEC. 2394–15. 1. Any dispute or controversy concerning compensation under sections 2394–3 to 2394–31, inclusive, including any in which the State may be a party, shall be submitted to said industrial commission in the manner and with the effect provided in sections 2394–3 to 2394–31, inclusive. Every compromise of any claim for compensation under sections 2394–3 to 2394–31, inclusive, shall be subject to be reviewed by, and set aside, modified or confirmed by the commission upon application made within one year from the time of such compromise.

Medical, etc., bills.

2. The industrial commission shall have jurisdiction to pass upon the reasonableness of medical and hospital bills in all cases of dispute where compensation is paid, in the same manner and to the same effect as it passes upon compensation.

Deductions from wages.

3. No employer subject to the provisions of sections 2394–3 to 2394–31, inclusive, shall solicit, receive or collect any money from his employees or make any deduction from their wages, either directly or indirectly, for the purpose of discharging any liability under the provisions of said sections; nor shall any such employer sell to an employee, or solicit or require him to purchase medical or hospital tickets or contracts for medical, surgical, or hospital treatment required to be furnished by such employer under the provisions of said sections.

4. Any employer violating the provisions of subsection 3 of this section shall be subject to the penalties provided in subsection 3 of section 2394–24, and, in addition thereto, shall be liable to an injured employee for the reasonable value of the necessary services rendered to such employee pursuant to any arrangement made in violation of subsection 3 of this section without regard to said employee's actual disbursements for the same.

Hearings.

SEC. 2394–16. Upon the filing with the commission by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, it shall mail a copy of such application to all other parties in interest and the insurance carrier shall be deemed a party in interest. The commission may bring in additional parties by service of a copy of the application. The commission shall fix a time for the hearing on such application which shall not be more than forty days after the filing of such application. The commission shall cause notice of such hearing to be given to each party interested by service of such notice on him personally or by mailing a copy thereof to him at his last known post-office address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the commission, and hearings may be held at such places as the commission shall designate. Either party shall have the right to be

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present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the commission; but the commission, may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the time books and pay roll of the employer to be examined by any member of the commission or any examiner appointed by it, and may from time to time direct any employee claiming compensation to be examined by a regular physician; the testimony so taken, and the results of any such inspection or examination, to be reported to the commission for its consideration upon final hearing. All ex parte testimony taken by the commission shall be reduced to writing and either party shall have opportunity to rebut the same on final hearing. The commission, or any member thereof, or any examiner appointed thereby, shall have power and authority to issue subpœnas, to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths, hold hearings and take testimony.

Any person who shall willfully fail or neglect to appear and testify or to produce books, papers and records as required by such subpœna duly served upon him, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail not longer than thirty days for each such offense. Each day such person shall so refuse or neglect shall constitute a separate offense.

The circuit court of the county wherein such person resides, upon application of the commission or any member thereof or any such examiner, may issue an order compelling the attendance and testimony of witnesses and the production of books, papers and records before such commission or any member thereof or any such examiner.

Findings and award.

SEC. 2394–17. After final hearing by said commission, it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the commission shall have power after any hearing, to make interlocutory findings, orders and awards which may be enforced in the same manner as final awards. The commission shall have the power to include in its final award, as a penalty for noncompliance with any such interlocutory order or award, if it shall find that noncompliance was not in good faith, not exceeding twenty-five per cent of each amount which shall not have been paid as directed thereby.

The commission may on its own motion, modify or change its order, findings or award at any time within twenty days from the date thereof if it shall discover any mistake therein.

Representation of aliens.

SEC. 2394–17m. In case a deceased employee, for whose injury or death compensation is payable, leaves surviving him an alien dependent or dependents residing outside of the United States, the duly accredited consular officer of the country of which such dependents are citizens, or his designated representatives residing within the State, shall, except as otherwise determined by the industrial commission, be the sole legal representative of such deceased employee and of such dependents in all matters pertaining to their claims for compensation. The receipt by such officer or agent of all compensation funds, and the distribution thereof, shall be made only upon order of the industrial commission, and payment to such officer or agent pursuant to any such order, any power of attorney to receive and receipt for the same to the contrary nothwithstanding, shall be as full a discharge of the benefits or compensation payable under the provisions of sections 2394–3 to 2394–31, both inclusive, as if payments were made directly to the beneficiaries. Such consular officer or his representative shall furnish, if required by the industrial commission, a good and sufficient bond, to be approved by the commission, con-

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ditioned upon the proper application of all moneys received by him. Before such bond is discharged, such consular officer or representative shall file with the commission a verified account of the items of his receipts and disbursements of such compensation. Such consular officer or representative shall make interim reports to the industrial commission from time to time as it may require.

Judgment by court.

SEC. 2394–18. Either party may present a certified copy of the award to the circuit court for any county, whereupon said court shall, without notice, render a judgment in accordance therewith; which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

Awards against cities, etc.

SEC. 2394–18a. Whenever an award is made by the commission against any county, city, village or town, the person in whose favor it is made shall file a certified copy thereof with the county, city, village or town clerk, as the case may be. Within twenty days thereafter, unless an appeal is taken, such clerk shall draw an order on the county, city, village or town treasurer against which the award was made for the payment of the amount specified in the award. If upon appeal such award is affirmed in whole or in part the order for payment shall be drawn within ten days after a certified copy of such judgment is filed with the proper clerk. If more than one payment is provided for in the award or judgment, orders shall be drawn as the payments become due. The provisions of any statute relating to the filing of claims against, and the auditing, allowing and payment of claims by counties, cities, villages and towns shall not apply to the payment of an award or judgment under the provisions of this section.

Delayed payments.

SEC. 2394–18m. If the sum awarded or ordered by the commission to be paid shall not be paid when due, such sum shall bear interest at the rate of six per cent per annum. Where the employer or his insurer is guilty of inexcusable delay in the making of compensation payments, the payments as to which such delay is found shall be increased by ten per cent.

Findings conclusive.

SEC. 2394–19. 1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive; and the order or award, either interlocutory or final, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: Within twenty days from the date of the order or award, any party aggrieved thereby may commence, in the circuit court for Dane County, an action against the commission for the review of such order or award, in which action the adverse party shall also be made defendant. In such action a complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the commission, or any member of the commission, shall be deemed completed service. The commission shall serve its answer within twenty days after the service of the complaint, and, within the like time, such adverse party shall, if he so desires, serve his answer to said complaint. With its answer, the commission shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its order, findings and award. Such return of the commission when filed in the office of the clerk of the circuit court shall, with the papers mentioned in section 2898 of the statutes, constitute a judgment roll in such action; and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered

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thereon; but the same shall be set aside only upon the following grounds:

(1) That the commission acted without or in excess of its powers.

(2) That the order or award was procured by fraud.

(3) That the findings of fact by the commission do not support the order or award.

Time for trial.

2. Any action commenced in court under section 2394–19 to set aside or modify any order or award of the commission must be brought to trial within thirty days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than thirty days at one time, and further continuance may be had only upon order of the court for cause.

3. Upon the trial of any such action the court shall disregard any irregularity or error of the commission unless it be made to affirmatively appear that the plaintiff was damaged thereby.

4. The record in any case shall be transmitted to the commission within twenty days after the order or judgment of the court, unless appeal shall be taken from such order or judgment.

If order set aside, what.

SEC. 2394–20. Upon the setting aside of any order or award the court may recommit the controversy and remand the record in the case to the commission, for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any order or award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such order or award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties.

Appeals.

SEC. 2394–21. 1. Said commission, or any party aggrieved by a judgment entered upon the review of any order or award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the circuit court, except that it shall not be necessary for said commission or any party to said action to execute, serve or file the undertaking required by section 3052 of the statutes in order to perfect such appeal; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as State causes on such calendar.

Remanding to commission.

2. After the commencement of an action to review any award of the commission the parties may have the record remanded by the court for such time and under such condition as they may provide, for the purpose of having the commission act upon the question of approving or disapproving any settlement or compromise that the parties may desire to have so approved. If approved the action shall be at an end and judgment may be entered upon the approval as upon an award. If not approved the record shall forthwith be returned to the circuit court and the action shall proceed as if no remand had been made.

Fees.

SEC. 2394–22. 1. No fees shall be charged by the clerk of any court for the performance of any official service required by sections 2394–3 to 2394–31, inclusive, except for the docketing of judgments and for certified copies of transcripts thereof. In proceedings to review an order or award, costs as between the parties shall be allowed or not in the discretion of the court, but no costs shall be taxed against said commission. In any action for the review of an order or award, and upon any appeal therein to the supreme court, it shall be the duty of the attorney general, personally, or by an assistant, to appear on behalf of the commission, whether any other party defendant shall have appeared or be represented in the action or not.

(2) Unless previously authorized by the commission, no contingent fee shall be charged or received for the enforcement or collection of any claim for compensation, nor shall any contract therefor be enforceable, where such fee, inclusive of all taxable

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attorney's fees paid or agreed to be paid for such enforcement or collection, exceeds ten per cent of the amount at which such claim shall be compromised, or of the amount awarded, adjudged or collected, or where such fee computed upon such percentage basis shall exceed in gross the sum of one hundred dollars. The limitation as to contingent fees shall apply to the combined charges of attorneys, solicitors, representatives and adjusters who knowingly combine their efforts toward the enforcement or collection of any compensation claim.

Payments.

3. All awards of compensation in favor of any claimant, which equals or exceeds one hundred dollars, shall be made payable to such claimant in person: *Provided, however,* That in any award the commission shall upon application of any interested party and subject to the provisions of subsection 2 of this section fix the amount of the fees of his attorney or representative and provide in the award for payment of such fee direct to the person or persons entitled thereto. Payment according to the directions of the award shall protect the employer and his insurer from any claim of attorney's lien.

Unlawful fees.

(4) The charging, taking or receiving of any fee in violation of subsections 2 and 3 of this section shall be deemed unlawful practice, and the attorney or other person guilty thereof shall forfeit double the entire amount retained by him, the same to be collected by the State in an action in debt, upon complaint of the commission. Out of the sum recovered the court shall direct payment to the injured party of the amount of the overcharge.

Claims not assignable.

SEC. 2394–23. No claim for compensation under sections 2394–3 to 2394–31, inclusive, shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled thereto.

Preference.

SEC. 2394–24. 1. The whole claim for compensation for the injury or death of any employee or any award or judgment thereon, shall be entitled to the same preference as is given by any law of this State to claims for labor, but this section shall not impair the lien of any judgment entered upon any award.

Security of payments.

2. An employer liable under this act to pay compensation shall insure payment of such compensation in some company authorized to insure such liability in this State unless such employer shall be exempted from such insurance by the industrial commission. An employer desiring to be exempt from insuring his liability for compensation shall make application to the industrial commission showing his financial ability to pay such compensation, whereupon the commission by written order may make such exemption. The commission may from time to time require further statement of financial ability of such employer to pay compensation and may upon ten days' notice in writing, revoke its order granting such exemption, in which case such employer shall immediately insure his liability.

3. An employer who shall fail to comply with the provisions of subsection 2 of section 2394–24 shall be guilty of a misdemeanor and upon conviction thereof shall forfeit twenty-five dollars for each offense. Each day's failure shall be a separate offense. Upon complaint of the commission, such forfeitures may be collected by the State in an action in debt.

Claims against third parties.

SEC. 2394–25. 1. The making of a lawful claim against an employer for compensation under sections 2394–3 to 2394–31, inclusive, for the injury or death of his employee shall operate as an assignment of any cause of action in tort which the employee or his personal representative may have against any other party for such injury or death; and such employer may enforce in his own name the liability of such other party.

2. The making of a claim by an employee against a third party for damages by reason of an accident covered by sections 2394–3 to 2394–31, inclusive, shall operate as a waiver of any claim for compensation against the employer.

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Malpractice.

3. Nothing in sections 2394–3 to 2394–31, inclusive, shall prevent an employee from taking the compensation he may be entitled to under said sections and also maintaining a civil action against any physician or surgeon for malpractice. The measure of damages, if any be recovered in such action, shall be the amount of damages found by the jury less the compensation paid to the employee under said sections, due to such malpractice.

Insurance.

SEC. 2394–26. Nothing in sections 2394–3 to 2394–31, inclusive, shall affect the organization of any mutual or other insurance company, or any existing contract for insurance of employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by sections 2394–3 to 2394–31, inclusive, or to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents or representatives, of sick, accident or death benefits in addition to the compensation provided for by sections 2394–3 to 2394–31, inclusive. But liability for compensation under sections 2394–3 to 2394–31, inclusive, shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name, in the manner provided in sections 2394–3 to 2394–31, inclusive, the liability of any insurance company which may, in whole or in part, have insured the liability for such compensation, and the appearance, whether general or special, of any such insurance carrier by agent or attorney shall be a waiver of the service of copy of application and of notice of hearing required by section 2394–16: *Provided, however*, That payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid: *And provided, further*, That as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

Liability not to be reduced.

2. The failure of the assured to do or refrain from doing any act required by the policy shall not be available to the insurance carrier as a defense against the claim of the injured employee or his dependents.

Insurance governed by act.

SEC. 2394–27. 1. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of sections 2394–3 to 2394–31, inclusive, and provisions thereof inconsistent with sections 2394–3 to 2394–31, inclusive, shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law. For the purposes of sections 2394–3 to 2394–31, inclusive, each employee shall constitute a separate risk within the meaning of section 1898d of the statutes: *Provided*, That at least five employers shall join in the organization of a mutual company under subdivision (5) of section 1897 and no such company organized by employers shall be licensed or authorized to effect such insurance unless such company shall have in force or put in force simultaneously, insurance on at least one thousand five hundred separate risks.

Inspection of companies.

2. The industrial commission, by itself or its employees, may examine from time to time the books and records of any liability insurance company insuring liability or compensation for an employer in this State. Any such company that shall refuse or fail to allow the industrial commission to examine its books and records or to file the report required by subsection 3 of sec-

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tion 2394–27, shall have its license to do business in the State revoked.

Companies to report.

3. Every company transacting the business of compensation insurance, in addition to all other reports required by law to be made, shall, on or before the first day of March in each year, on blanks furnished for such purpose, make and file with the industrial commission an annual statement of its business and accident experience covering the year ending on the preceding thirty-first day of December.

How payments may be secured.

SEC. 2394–28. In any case in which compensation payments have extended or will extend over a period of six months or more from the date of the injury (or at any time in death benefit cases), any party in interest may, in the discretion of the industrial commission, be discharged from, or compelled to guarantee, future compensation payments as follows:

(1) By depositing the present value of the total unpaid compensation upon a three per cent interest discount basis with such bank or trust company as may be designated by the commission; or

(2) By purchasing an annuity within the limitations provided by law, in such insurance company granting annuities and licensed in this State, as may be designated by the commission; or

(3) By payment in gross upon a three per cent interest discount basis to be approved by the commission; and

(4) In cases where the time for making payments or the amounts thereof can not be definitely determined, by furnishing a bond, or other security, satisfactory to the industrial commission for the payment of such compensation as may be due or become due. The acceptance of such bond, or other security, and the form and sufficiency thereof, shall be subject to the approval of the industrial commission. If the employer or insurer is unable or fails to immediately procure such bond, then, in lieu thereof, deposit shall be made with such bank or trust company, as may be designated by the commission, of the maximum amount that may reasonably become payable in such cases. Such maximums are to be determined by the commission at amounts consistent with the extent of the injuries and the provisions of the law. Such bonds and deposits are to be reduced only to satisfy such claims and withdrawn only after the claims which they are to guarantee are fully satisfied or liquidated under the provisions of subsections (1), (2) or (3) of this section; and

(5) Any insured employer may, within the discretion of the industrial commission, compel the insurer to discharge, or to guarantee payment of its liabilities in any such case under the provisions of this section and thereby release himself from compensation liability therein, but if for any reason a bond furnished or deposit made under subsection (4) of this section does not fully protect, the compensation insurer or uninsured employer, as the case may be, shall still be liable to the beneficiary thereof.

Blanks, etc., to be furnished.

SEC. 2394–29. The commission shall cause to be printed and furnished free of charge to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of sections 2394–3 to 2394–31, inclusive; it shall provide such proper record books or records as it shall deem required for the proper and efficient administration of sections 2394–3 to 2394–31, inclusive; all such records to be kept in the office of the commission. The commission shall cause notice of employers subject to this act to be given to employees, in such manner as the commission shall deem most effective; and the commission shall likewise cause notice to be given of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of the fact shall conclusively be imputed to all employees.

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Provisions severable.

SEC. 2394–31. The legislature intends the contingency in subdivision (3) of section 2394–1 to be a separable part thereof, and the subdivision likewise separable from the rest of sections 2394–1 to 2394–31, inclusive, and that part of said section 2394–1 that follows subdivision (3) likewise separable from the rest of sections 2394–1 to 2394–31, inclusive; so that any part of said subdivision, or the whole, or that part which follows said subdivision (3), may fail without affecting any other part of sections 2394–1 to 2394–31, inclusive.

Act in effect.

SEC. 2. This act shall take effect on September 1, 1917.

Approved, July 10, 1917.

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WYOMING.

ACTS OF 1917.

CHAPTER 69.—*Compensation of workmen for injuries.*

[This act amends several sections of the compensation law of the State (chapter 124, acts of 1915). Section 4 is amended by adding to the list of extra hazardous occupations garages, printing plants, oil refineries, excavations, and transfer companies, inserting the terms as follows:]

Occupations covered.

The extra hazardous occupations to which this act is applicable are as follows: Factories, garages, mills, printing plants and workshops where machinery is used; foundries, blast furnaces; mines, oil wells, oil refineries; gas works; natural gas plants; waterworks; reduction works; breweries; elevators; dredges; excavations; transfer companies;

[The remainder of the section is unchanged except that three is substituted for five as the number of workmen to be employed to bring employers within the scope of the act.

Clause (k) of section 6 is amended by substituting 33⅓ for 25 as the percentage of normal benefits which will be allowed nonresident aliens.

Section 16 is amended by substituting 1½ per cent for 2 per cent where it occurs.

Sections 17 and 18 are amended so as to read as follows:]

Copy of pay roll.

SECTION 17. It shall be the duty of each employer to forward to the State treasurer, on a blank form provided by said State treasurer, a true copy of his pay roll of persons in his employ engaged in extra hazardous employment during the current calendar month, on the tenth day of the next succeeding calendar month, sworn to either by himself or the person having knowledge of said pay roll. Each employer, unless otherwise supplied with the last above blank form, shall seasonably apply to said treasurer for the same. Any failure of any such employer to file with said State treasurer a copy of his pay roll as herein provided, shall be a misdemeanor, and any willfully false statement in any affidavit made as herein provided shall likewise constitute a misdemeanor, and any misdemeanor committed as in this act provided shall be punishable by a fine of not more than five hundred ($500) dollars.

County assessors.

SEC. 18. It shall be the duty of the county assessor in each of the counties of the State to make a list of all employers within his county who are engaged in extra hazardous industries as defined by this act, and to forward such list of extra hazardous employments and industries to the State treasurer within thirty (30) days after the passage and approval of this act. It shall further be the duty of the county assessor in each county of the State to make monthly reports to the State treasurer showing what, if any, extra hazardous industries have suspended business permanently, and what, if any, new extra hazardous industries have been established and commenced in his county during the preceding month, and also showing each extra hazardous industry of his county not theretofore reported by him, and it shall be the duty of the State treasurer to immediately proceed in the collection of assessments from such extrahazardous industries in the manner provided in section 16 of this act, and in case any county assessor shall fail to make the report required by this act, or shall negligently fail to include in such report any employer engaged in extra hazardous business or industry and

State treasurer.

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not theretofore reported, he shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred ($500) dollars. And in case any employer engaged in an extra hazardous business or industry, as defined by this act, shall fail or refuse to pay the assessment upon his current monthly pay roll, as is required by this act, he shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred ($500) dollars, and in addition to the said fine it shall be the duty of the attorney general of this State to immediately bring suit in the name of the State for the benefit of the industrial accident fund against such employer for the collection of such assessment, and if a judgment for the recovery of said assessment be given in favor of the State for the use and benefit of the industrial accident fund said judgment shall be for double the amount of the pay-roll assessment provided by section 16 hereof, together with costs.

Attorney general.

[Section 19 is amended by making the benefit for the loss of a fourth finger $100 instead of $75; for the loss of a great toe $150 instead of $100; for the loss of any other toe $75 instead of $50; and for the loss of an eye $900 instead of $700.

The benefits in case of permanent total disability are fixed as follows:]

Permanent total disability.

(1) If unmarried at the time of injury a lump sum of $1,400.

(2) If the workman had a wife or invalid husband, but no child under the age of sixteen (16) years, a lump sum of $1,600.

(3) If the workman have a child or children under the age of sixteen (16) years, for any such child or children the lump sum provided in the preceding paragraph shall be increased by adding thereto sixty ($60) dollars per year for each child for each year until such child shall be of the age of sixteen (16) years, but the total amount of such increased sum allowed for children under sixteen (16) years shall not exceed in the aggregate a sum equal to one and one-half the sum allowed to the injured workman in any such case.

[Clauses (c) and (d) (1) are amended so as to read as follows:]

Temporary total disability.

(c) "Temporary total disability" means an injury which temporarily incapacitates the injured person from performing any work at any gainful occupation for the time, but from which injury such person may recover by medical or surgical treatment and be able to resume work. In such cases, if the workman be unmarried at the time of the injury, he shall receive the sum of eighteen ($18) dollars per month, so long as the total disability shall continue. If he have a wife with whom he is living at the time of the injury, he shall receive twenty-four ($24) dollars per month, and if he have children under sixteen (16) years of age, he shall receive five ($5) dollars per month for each child under sixteen (16) years of age, but the total monthly payment shall not exceed forty ($40) per month. No compensation shall be allowed for the first ten days of disability unless the incapacity extends beyond the period of thirty days, in which case the compensation shall run from the time of the injury. As soon as recovery is so complete that the earning power of the workman at any kind of work is restored, the payments shall cease; but in no case shall the total payments made in such cases exceed in the aggregate the lump-sum amount herein specified to be paid an injured workman for injuries causing permanent total disability.

Burial expenses.

(d) Where death results from an injury, the expense of burial shall be paid not to exceed fifty ($50) dollars in any case; unless other arrangements exist between employer and employee, under agreement.

Death benefits.

(1) But if the workman leaves a widow or invalid widower, such surviving spouse shall receive a lump-sum payment of $1,200 to which shall be added a lump sum of sixty ($60) dollars per year for each surviving child under sixteen (16) years of age until the time when each of said surviving children shall become sixteen (16) years of age: *Provided*, That the aggregate sum so added on account of children under sixteen (16) years of age

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shall in no case exceed an amount equal to one and one-half times the lump sum provided to be paid the surviving spouse: *And provided further,* That if it be shown that the surviving spouse willfully deserted deceased without fault upon the part of the deceased, such surviving spouse shall not be regarded as a dependent in any degree, but in such cases the right of children under sixteen (16) years of age to compensation shall not be defeated, but the aggregate sum allowed them shall not exceed in the aggregate a sum equal to one and one-half the sum allowed the surviving spouse if there had been no desertion of the deceased. In all death cases where an order of compensation is made on account of children under sixteen (16) years of age or to persons incompetent, said fund shall be disbursed under a proper guardianship to be created by the court or judge making such an order.

[Section 28 is amended by directing the report to be made "to the governor on or before the 31st day of December in each year," instead of to the legislature at its biennial sessions.]

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UNITED STATES.

SIXTY-THIRD CONGRESS, SECOND SESSION.

CHAPTER 293.—*Compensation in the merchant marine, military and naval service—Bureau of War Risk Insurance.*

ARTICLE I.

Bureau created.

SECTION 1 (as amended by Act No. 90, Sixty-fifth Congress). There is established in the Treasury Department a bureau to be known as the Bureau of War Risk Insurance, the director of which shall receive a salary at the rate of $5,000 per annum.

There [shall] be in such bureau a division of marine and seamen's insurance and a division of military and naval insurance in charge of a commissioner of marine and seamen's insurance and a commissioner of military and naval insurance, respectively, each of whom shall receive a salary of $4,000 per annum.

SEC. 2 (as amended by Act No. 20, Sixty-fifth Congress).

* * * * *

Merchant marine.

The Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States, as further provided in section three a, of masters, officers, and crews of American merchant vessels against loss of life or personal injury by the risks of war, and for compensation during detention following capture by enemies of the United States whenever it shall appear to the Secretary that in any trade the need for such insurance exists.

Owners to insure.

SEC. 3a (added by Act No. 20, Sixty-fifth Congress). Whenever it shall appear to the Secretary of the Treasury that the effecting of such insurance is desirable in the national interest in the case of vessels engaged in any trade, the owner of every American merchant vessel engaged in such trade shall insure the master, officers, and crew of such vessel against loss of life or personal injury from war risks as well as for compensation during detention by an enemy of the United States following capture.

Such insurance shall be effected either with the Bureau of War Risk Insurance or insurance companies, and on terms satisfactory to the Secretary of the Treasury.

Such insurance shall provide, and the Bureau of War Risk Insurance is authorized to write policies so providing—

Benefits for death or disability;

(a) In case of death, permanent disability which prevents the person insured from performing any and every kind of duty pertaining to his occupation, or the loss of both hands, both arms, both feet, both legs, or both eyes, or any two thereof, for the payment of an amount equivalent to one year's earnings, or to twelve times the monthly earnings of the insured, as fixed in the articles for the voyage (hereinafter referred to as the principal sum), but in no case shall such amount be more than $5,000 or less than $1,500;

(b) In case of any of the following losses, for the payment of the percentage of the principal sum indicated in the following tables:

Maimings, etc.;

One hand, fifty per cent;
One arm, sixty-five per cent;
One foot, fifty per cent;
One leg, sixty-five per cent;
One eye, forty-five per cent;
Total destruction of hearing, fifty per cent;

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That the Bureau of War Risk Insurance may include in its policy undertakings to pay specified percentages of the principal sum for other losses or disabilities; and

Detention by capture.

(c) In case of detention by an enemy of the United States, following capture, for the payment during the continuance of such detention of compensation at the same rate as the earnings of the insured immediately preceding such detention, to be determined in substantially the same manner as provided in subdivision (a) of this section.

The aggregate payments under this section in respect to any one person shall not exceed the amount of the principal sum.

Payments.

Payments provided for in this section shall be made only to the master, officer, or member of the crew concerned, except that a payment for loss of life shall be made to the estate of the insured for distribution to his family free from liability of debt, and payment on account of detention by an enemy following capture shall be made to dependents of the person detained, if designated by him.

Claims.

No claim under this section shall be valid unless made by the master, officer, or member of the crew concerned, or his estate, or a person designated under this section, within two years after the date on which the President suspends the operations of this act in so far as it authorizes insurance by the United States.

Secretary to insure, when.

SEC. 3b (added by Act No. 20, Sixty-fifth Congress). In the event of failure of the owner of any vessel to effect insurance of the master, officers, and crew of such vessel prior to sailing, in accordance with section three a of this act, the Secretary of the Treasury is hereby authorized to effect such insurance with the Bureau of War Risk Insurance at the expense of the owner of such vessel, and the latter shall be liable for such expense and, in addition, to a penalty of not exceeding $1,000. The amount of such premium, with interest and of the penalty and of all costs, shall be a lien on the vessel.

Appropriation.

SEC. 19 (added by Act No. 90, Sixty-fifth Congress). There is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of $12,150,000, to be known as the military and naval compensation appropriation, for the payment of the compensation, funeral expenses, services, and supplies provided by Article III. Payments out of this appropriation shall be made upon and in accordance with awards by the director.

Marriage.

SEC. 22. (added by Act No. 90, Sixty-fifth Congress). For the purpose of this amendatory act the marriage of the claimant to the person on account of whom the claim is made shall be shown—

(1) By a duly verified copy of a public or church record; or

(2) By the affidavit of the clergyman or magistrate who officiated; or

(3) By the testimony of two or more eyewitnesses to the ceremony; or

(4) By a duly verified copy of the church record of baptism of the children; or

(5) By the testimony of two or more witnesses who know that the parties lived together as husband and wife, and were recognized as such, and who shall state how long, within their knowledge, such relation continued: *Provided*, That marriages, except such as are mentioned in section forty-seven hundred and five of the Revised Statutes, shall be proven in compensation or insurance cases to be legal marriages according to the law of the place where the parties resided at the time of marriage or at the time when the right to compensation or insurance accrued; and the open and notorious illicit cohabitation of a widow who is a claimant shall operate to terminate her right to compensation or insurance from the commencement of such cohabitation: *Provided further*, That for the purpose of the administration of Article II of this act marriage shall be conclusively presumed, in the absence of proof, that there is a legal spouse living, if the man and woman have lived together in the openly acknowledged relation of husband and wife during the two years imme-

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diately preceding the date of the declaration of war, or the date of enlistment or of entrance into or employment in active service in the military or naval forces of the United States if subsequent to such declaration.

Definitions.

In Articles II, III, and IV of this act unless the context otherwise requires—

(1) The term "child" includes—

(a) A legitimate child.

(b) A child legally adopted more than six months before the enactment of this amendatory act or before enlistment or entrance into or employment in active service in the military or naval forces of the United States, whichever of these dates is the later.

(c) A stepchild, if a member of the man's household.

(d) An illegitimate child, but, as to the father, only, if acknowledged by instrument in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support, and if such child, if born after December thirty-first, nineteen hundred and seventeen, shall have been born in the United States, or in its insular possessions.

(2) The term "grandchild" means a child as above defined of a child as above defined.

(3) Except as used in section four hundred and one and in section four hundred and two the terms "child" and "grandchild" are limited to unmarried persons either (a) under eighteen years of age, or (b) of any age, if insane, idiotic, or otherwise permanently helpless.

(4) The term "parent" includes a father, mother, grandfather, grandmother, stepfather, and stepmother, either of the person in the service or of the spouse.

(5) The terms "brother" and "sister" include brothers and sisters of the half blood as well as those of the whole blood, stepbrothers and stepsisters, and brothers and sisters through adoption.

(6) The term "commissioned officer" includes a warrant officer, but includes only an officer in active service in the military or naval forces of the United States.

(7) The terms "man" and "enlisted man" mean a person, whether male or female, and whether enlisted, enrolled, or drafted into active service in the military or naval forces of the United States, and include noncommissioned and petty officers, and members of training camps authorized by law.

(8) The term "enlistment" includes voluntary enlistment, draft, and enrollment in active service in the military or naval forces of the United States.

(9) The term "commissioner" means the Commissioner of Military and Naval Insurance.

(10) The term "injury" includes disease.

(11) The term "pay" means the pay for service in the United States according to grade and length of service, excluding all allowances.

(12) The term "military or naval forces" means the Army, the Navy, the Marine Corps, the Coast Guard, the Naval Reserves, the National Naval Volunteers, and any other branch of the United States service while serving pursuant to law with the Army or the Navy.

ARTICLE III.

(Added by Act No. 90, Sixty-fifth Congress.)

COMPENSATION FOR DEATH OR DISABILITY.

Scope of law.

SECTION 300. For death or disability resulting from personal injury suffered or disease contracted in the line of duty, by any commissioned officer or enlisted man or by any member of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) when employed in the active service under the War Department

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or Navy Department, the United States shall pay compensation as hereinafter provided; but no compensation shall be paid if the injury or disease has been caused by his own willful misconduct.

Benefits for death;

SEC. 301. If death results from injury—

If the deceased leaves a widow or child, or if he leaves a widowed mother dependent upon him for support, the monthly compensation shall be the following amounts:

(a) For a widow alone, $25.

(b) For a widow and one child, $35.

(c) For a widow and two children, $47.50, with $5 for each additional child up to two.

(d) If there be no widow, then for one child, $20.

(e) For two children, $30.

(f) For three children, $40, with $5 for each additional child up to two.

(g) For a widowed mother, $20. The amount payable under this subdivision shall not be greater than a sum which, when added to the total amount payable to the widow and children, does not exceed $75. This compensation shall be payable for the death of but one child, and no compensation for the death of a child shall be payable if such widowed mother is in receipt of compensation under the provisions of this article for the death of her husband. Such compensation shall be payable whether her widowhood arises before or after the death of the person and whenever her condition is such that if the person were living the widowed mother would have been dependent upon him for support.

If the death occur before discharge or resignation from service, the United States shall pay for burial expenses and the return of the body to his home a sum not to exceed $100, as may be fixed by regulations.

The payment of compensation to a widow or widowed mother shall continue until her death or remarriage.

The payment of compensation to or for a child shall continue until such child reaches the age of eighteen years or marries, or if such child be incapable, because of insanity, idocy, or being otherwise permanently helpless, then during such incapacity.

Whenever the compensation payable to or for the benefit of any person under the provisions of this section is terminated by the happening of the contingency upon which it is limited, the compensation thereafter for the remaining beneficiary or beneficiaries, if any, shall be the amount which would have been payable to them if they had been the sole original beneficiaries.

As between the widow and the children not in her custody, and as between children, the amount of the compensation shall be apportioned as may be prescribed by regulations. The word "widow" as used in this section shall not include one who shall have married the deceased later than ten years after the time of injury.

For disability.

SEC. 302. If disability results from the injury—

(1) If and while the disability is total, the monthly compensation shall be the following amounts:

(a) If he has neither wife nor child living, $30.

(b) If he has a wife but no child living, $45.

(c) If he has a wife and one child living, $55.

(d) If he has a wife and two children living, $65.

(e) If he has a wife and three or more children living, $75.

(f) If he has no wife but one child living, $40, with $10 for each additional child up to two.

(g) If he has a widowed mother dependent on him for support, then, in addition to the above amounts, $10.

To an injured person who is totally disabled and in addition so helpless as to be in constant need of a nurse or attendant, such additional sum shall be paid, but not exceeding $20 per month, as the director may deem reasonable: *Provided, however,* That for the loss of both feet or both hands or both eyes, or for becoming totally blind or helpless and permanently bedridden from causes occurring in the line of duty in the service of the United States,

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the rate of compensation shall be $100 per month: *Provided further*, That no allowance shall be made for nurse or attendant.

(2) If and while the disability is partial, the monthly compensation shall be a percentage of the compensation that would be payable for his total disability, equal to the degree of the reduction in earning capacity resulting from the disability, but no compensation shall be payable for a reduction in earning capacity rated at less than ten per cent.

A schedule of ratings of reductions in earning capacity from specific injuries or combinations of injuries of a permanent nature shall be adopted and applied by the bureau. Ratings may be as high as one hundred per cent. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations and not upon the impairment in earning capacity in each individual case, so that there shall be no reducton in the rate of compensation for individual success in overcoming the handicap of permanent injury. The bureau shall from time to time readjust this schedule of ratings in accordance with actual experience.

(3) In addition to the compensation above provided, the injured person shall be furnished by the United States such reasonable governmental medical, surgical, and hospital services and with such supplies, including artificial limbs, trusses, and similar appliances, as the director may determine to be useful and reasonably necessary: *Provided*, That nothing in this act shall be construed to affect the necessary military control over any member of the military or naval establishments before he shall have been discharged from the military or naval service. Medical, etc., aid.

(4) The amount of each monthly payment shall be determined according to the family conditions then existing. Status.

SEC. 303. Every person applying for or in receipt of compensation for disability under the provisions of this article shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a medical officer of the United States or by a duly qualified physician designated or approved by the director. He may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations he shall, in the discretion of the director, be paid his reasonable traveling and other expenses and also loss of wages incurred in order to submit to such examination. If he refuses to submit himself for, or in any way obstructs, any examination, his right to claim compensation under this article shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and no compensation shall be payable for the intervening period. Medical examinations.

Every person in receipt of compensation for disability shall submit to any reasonable medical or surgical treatment furnished by the bureau whenever requested by the bureau; and the consequences of unreasonable refusal to submit to any such treatment shall not be deemed to result from the injury compensated for.

SEC. 304. In cases of dismemberment, of injuries to sight or hearing, and of other injuries commonly causing permanent disability, the injured person shall follow such course or courses of rehabilitation, reeducation, and vocational training as the United States may provide or procure to be provided. Should such course prevent the injured person from following a substantially gainful occupation while taking same, a form of enlistment may be required which shall bring the injured person into the military or naval service. Such enlistment shall entitle the person to full pay as during the last month of his active service, and his family to family allowances and allotment as hereinbefore provided, in lieu of all other compensation for the time being. Rehabilitation.

In case of his willful failure properly to follow such course or so to enlist, payment of compensation shall be suspended until

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such willful failure ceases and no compensation shall be payable for the intervening period.

Review of awards. SEC. 305. Upon its own motion or upon application the bureau may at any time review an award, and, in accordance with the facts found upon such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation.

Death within one year. SEC. 306. No compensation shall be payable for death or disability which does not occur prior to or within one year after discharge or resignation from the service, except that where, after a medical examination made pursuant to regulations, at the time of discharge or resignation from the service, or within such reasonable time thereafter, not exceeding one year, as may be allowed by regulations, a certificate has been obtained from the director to the effect that the injured person at the time of his discharge or resignation was suffering from injury likely to result in death or disability, compensation shall be payable for death or disability, whenever occurring, proximately resulting from such injury.

Death to be recorded. SEC. 307. Compensation shall not be payable for death in the course of the service until the death be officially recorded in the department under which he may be serving. No compensation shall be payable for a period during which the man has been reported "missing" and a family allowance has been paid for him under the provisions of Article II.

Compensation barred, when. SEC. 308. No compensation shall be payable for death inflicted as a lawful punishment for a crime or military offense except when inflicted by the enemy. A dismissal or dishonorable or bad conduct discharge from the service shall bar and terminate all right to any compensation under the provisions of this article.

Claims in five years. SEC. 309. No compensation shall be payable unless a claim therefor be filed, in case of disability, within five years after discharge or resignation from the service, or, in case of death during the service, within five years after such death is officially recorded in the department under which he may be serving: *Provided, however,* That where compensation is payable for death or disability occurring after discharge or resignation from the service, claim must be made within five years after such death or the beginning of such disability.

The time herein provided may be extended by the director not to exceed one year for good cause shown. If at the time that any right accrues to any person under the provisions of this article, such person is a minor, or is of unsound mind or physically unable to make a claim, the time herein provided shall not begin to run until such disability ceases.

Retroactive effect. SEC. 310. No compensation shall be payable for any period more than two years prior to the date of claim therefor, nor shall increased compensation be awarded to revert back more than one year prior to the date of claim therefor.

Assignments, etc. SEC. 311. Compensation under this article shall not be assignable, and shall be exempt from attachment and execution and from all taxation.

Benefits exclusive. SEC. 312. Compensation under this article shall not be paid while the person is in receipt of service or retirement pay. The laws providing for gratuities or payments in the event of death in the service and existing pension laws shall not be applicable after the enactment of this amendment to persons now or hereafter entering the military or naval service, or to their widows, children, or their dependents, except in so far as rights under any such law shall have heretofore accrued.

Compensation because of disability or death of members of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) shall be in lieu of any compensation for such disability or death under the act entitled "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September seventh, nineteen hundred and sixteen.

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Liability of third persons.

SEC. 313. If an injury or death for which compensation is payable under this amendatory act is caused under circumstances creating a legal liability upon some person other than the United States or the enemy to pay damages therefor, the director, as a condition to payment of compensation by the United States, shall require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability of such other person. The cause of action so assigned to the United States may be prosecuted or compromised by the director and any money realized thereon shall be placed to the credit of the compensation fund.

SIXTY-FIFTH CONGRESS—FIRST SESSION.

No. 82.—*Workmen's compensation—Admiralty and maritime jurisdiction.*

[This act amends certain sections of the Federal Judicial Code of March 3, 1911, so as to read as follows:]

SECTION 24. The district courts shall have original jurisdiction as follows:

* * * * *

Rights reserved.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State: * * *

SEC. 256. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several States.

* * * * *

Same.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State.

Approved October 6, 1917.

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