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WORKMEN'S INSURANCE AND COMPENSATION SERIES

**WORKMEN'S COMPENSATION LEGISLATION
OF THE UNITED STATES AND CANADA**

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WORKMEN'S COMPENSATION LEGISLATION OF THE UNITED STATES AND CANADA, 1919.

INTRODUCTION.

The Fourth Special Report of the Commissioner of Labor, issued in 1893 under the title of "Compulsory Insurance in Germany," was the first report published in this country devoted to the subject of workmen's insurance.¹ At that time compensation for industrial accidents had been established by law in two countries only, Germany in 1884, and Austria in 1887; the third country—Norway—not following until 1894. In the other countries discussed in the appendix of this early report the workmen's compensation movement had not passed beyond the stage of Government commissions and legislative discussion.

Since the publication of this first report, the development of the legislation providing for workmen's compensation for industrial accidents in Europe and throughout the world has been extremely rapid; in fact, it may be doubted whether any other subject of labor legislation has ever made such progress or gained such general acceptance for its principles in so brief a period. At the present time at least 50 foreign countries and provinces have introduced some form of workmen's compensation for industrial accidents, which, while showing great variations in the industries covered, the amount of compensation provided, and the methods by which compensation payments are secured, recognize the principles of compensation as distinguished from the older idea of employer's liability previously accepted in the civil law of continental Europe, as well as in English and American law.

In the United States what might be called the period of investigation and education began somewhat late as compared with Euro-

¹ A list of the publications of the Bureau of Labor Statistics relating to the general subject of workmen's insurance and compensation may be found on the second and third pages of cover.

pean countries. But since that beginning, investigation and study have been followed with great rapidity by legislative action. The first American State commissions that led to the enactment of laws were appointed in New York, Wisconsin, and Minnesota in 1909, legislation following in New York in 1910, in Wisconsin in 1911, and in Minnesota in 1913. Beginning with the year 1909, 36 commissions, either appointed or voluntary, not including the Federal commission, have considered the subject of compensation, and compensation legislation has been enacted in 42 States and the District of Columbia (public employees only), as well as in the Territories of Alaska and Hawaii, and Porto Rico and the Philippine Islands. There are also to be noted the orders applicable to the Canal Zone and the Alaskan railway, and the Federal laws of 1908 to 1914, these orders and laws being now repealed and superseded by the United States Employees' Compensation Act of September 7, 1916.

Foreign countries, too, have been progressive in the same field, some of the laws noted in earlier reports being superseded, while in new and comparatively undeveloped industrial countries this type of law has been adopted, so that annual revisions are a practical necessity if current conditions are to be accurately presented. By reason of the bulk of the legislation enacted, and the volume of material afforded by any analysis of the laws, and also because of the closer community of interests, the present volume is limited to a presentation of the laws of the United States and Canada.

The lapse of time has diminished the value of the accounts of the work done by the investigative commissions; and moreover their ends have been accomplished for the most part, so that the summary of their reports which has been presented in earlier bulletins on the subject is omitted. Therefore the present volume will set forth in analytic form the main provisions of the laws, some account of their judicial construction and administrative methods, and the latest text, giving identical treatment to the laws of Canada and the United States so far as the conditions permit.

WORKMEN'S COMPENSATION LAWS OF THE UNITED STATES.

INTRODUCTION.

The first account of the action of the States of the Union and of agencies interested in compensation legislation appeared as an article of 40 pages in Bulletin No. 90,² September 1, 1910. Legislation bills, etc., of 1911 received attention in an article appearing in Bulletin No. 92.³ Subsequent accounts have been given in separate bulletins,⁴ besides special analytical studies.⁵

Investigative commissions began to be provided for as early as 1903 (Massachusetts) and 1905 (Illinois), but no legislative results followed. Later commissions in both these States, and two and even three commissions in others, indicate the degree of caution with which the approach was made to the subject of compensation legislation. The following tables show the progress of action, both in the appointment of commissions and in the enactment of laws:

STATES, ETC., IN WHICH COMMISSIONS WERE APPOINTED AND IN WHICH COMPENSATION LAWS WERE ENACTED, BY YEARS, TO THE END OF 1919.

| State, etc. | Year commission was appointed. | Year compensation law was enacted. | State, etc. | Year commission was appointed. | Year compensation law was enacted. |
|---------------------------|--------------------------------|------------------------------------|-------------------------|--------------------------------|------------------------------------|
| Alabama..... | 1915 | 1919 | Nevada..... | | 1911 |
| Alaska..... | | 1915 | New Hampshire..... | | 1911 |
| Arizona..... | | 1912 | New Jersey..... | 1910 | 1911 |
| Arkansas..... | 1919 | | New Mexico..... | | 1917 |
| California..... | | 1911 | New York..... | 1909 | { 1910 |
| Colorado..... | 1911 | 1915 | North Dakota..... | 1911 | 1913 |
| Connecticut..... | 1907 | 1913 | Ohio..... | 1910 | 1919 |
| Delaware..... | 1911 | 1917 | Oklahoma..... | | 1911 |
| District of Columbia..... | | 1919 | Oregon..... | d 1911 | 1915 |
| Hawaii..... | | 1915 | Pennsylvania..... | 1911 | 1913 |
| Idaho..... | | 1917 | Philippine Islands..... | | 1915 |
| Illinois..... | 1905 | 1911 | Porto Rico..... | 1913 | 1905 |
| Indiana..... | 1913 | 1915 | Rhode Island..... | | 1916 |
| Iowa..... | 1911 | 1913 | South Dakota..... | | 1912 |
| Kansas..... | | 1911 | Tennessee..... | 1913 | 1917 |
| Kentucky..... | b 1915 | { 1914 | Texas..... | 1911 | 1919 |
| Louisiana..... | 1912 | 1916 | Utah..... | 1915 | 1913 |
| Maine..... | | 1914 | Vermont..... | 1913 | 1917 |
| Maryland..... | d 1913 | 1915 | Virginia..... | 1916 | 1915 |
| Massachusetts..... | 1903 | 1912 | Washington..... | d 1910 | 1918 |
| Michigan..... | 1911 | 1911 | West Virginia..... | d 1911 | 1911 |
| Minnesota..... | d 1909 | 1912 | Wisconsin..... | 1909 | 1913 |
| Missouri..... | 1910 | 1913 | Wyoming..... | | 1911 |
| Montana..... | c 1910 | { 1909 | United States..... | 1910 | 1915 |
| Nebraska..... | 1911 | 1915 | | | { 1908 |
| | | 1913 | | | 1916 |

a Public employees only.

b Voluntary.

c Law declared unconstitutional.

d Appointed by the governor.

e Two laws, one (compulsory) declared unconstitutional.

² Recent action relating to employers' liability and workmen's compensation, September, 1910.

³ Workmen's compensation and insurance: Laws and bills, 1911. January, 1911.

⁴ Workmen's compensation laws of the United States and foreign countries. Bul. 126. December, 1913. 477 pp.

Compensation legislation of 1914, 1915. Bul. No. 185. October, 1915. 408 pp.

Workmen's compensation laws of the United States and foreign countries. Bul. 203. January, 1917. 961 pp.

Workmen's compensation legislation of the United States and foreign countries, 1917, 1918. Bul. No. 243. September, 1918. 477 pp.

⁵ Comparison of workmen's compensation laws. Bul. No. 240. May, 1918. 106 pp. Bul. No. 275, 1920. 140 pp.

10 WORKMEN'S COMPENSATION LAWS OF THE UNITED STATES.

NUMBER OF WORKMEN'S COMPENSATION COMMISSIONS AND LAWS, BY YEARS
1908 TO 1919.

| Year. | Commissions formed or provided for. | States, etc., enacting original law. | Year. | Commissions formed or provided for. | States, etc., enacting original law. | Year. | Commissions formed or provided for. | States, etc., enacting original law. |
|-----------|-------------------------------------|--------------------------------------|-----------|-------------------------------------|--------------------------------------|-----------|-------------------------------------|--------------------------------------|
| 1903..... | 1 | ..... | 1911..... | 12 | 10 | 1917..... | ..... | 5 |
| 1905..... | 1 | ..... | 1912..... | 1 | 4 | 1918..... | ..... | 1 |
| 1907..... | 2 | ..... | 1913..... | 7 | 7 | 1919..... | 1 | 4 |
| 1908..... | ..... | 1 | 1914..... | ..... | 2 | Total.... | 40 | 46 |
| 1909..... | 3 | 1 | 1915..... | 3 | 9 | | | |
| 1910..... | 8 | 1 | 1916..... | 1 | 1 | | | |

¹ United States.

The 40 commissions above accounted for operated in 32 jurisdictions, while laws have been enacted in 42 States, the Territories of Alaska and Hawaii, the Philippine Islands, and Porto Rico, for the civil employees of the Federal Government, and for the employees of the government of the District of Columbia. Not every law has been preceded by a commission, therefore; but every commission except that of Arkansas, appointed in 1919, has been followed by the enactment of a law, though in some cases so remotely as to suggest a lack of any real connection between the two events. The year 1911 was marked by the creation of the largest number of commissions as well as by the enactment of the largest number of laws. But one investigative commission has been appointed since 1916—that of Arkansas, said to be to remove constitutional objections in a pending bill; only four have been created since 1913, and it is obvious that the day of their usefulness is ended, either as an aid in determining the desirability of compensation legislation or of working out deviations from accepted standards so as to meet supposed local peculiarities.

PROGRESS OF LEGISLATION.

The status of the employees of the United States, which precludes suits for damages against their employer, the Government, led to a comparatively early enactment of provisions in their behalf which partook, to a considerable extent, of the nature of compensation laws, though not fully representing them either in principle or operation. Thus as early as 1882 (22 Stat., p. 57) provision was made for certain employees of the Life-Saving Service who might suffer from accidental injuries and from disease contracted in the service.

Beginning with 1900, the Post Office Department was given the authority to employ "acting clerks in place of clerks injured while on duty" in the Railway Service, the salaries of the injured clerks being continued for not more than one year. Death benefits were added by later enactments, half pay during the second year of disability being provided, and the scope of the provisions increased so as to cover many other employees of the department.

In 1908 a more general law for Federal employees was enacted to be administered by the Secretary of Commerce and Labor, but lacking much of complete coverage and falling far short of adequacy in its provisions. It remained practically unchanged, however, until in 1916 a law of general application to civil employees of the United States was passed, and an administrative commission provided for. This act extends to employees of the Isthmian Canal and the Panama Railroad, and of the Alaskan railways under Federal construction and control, but administration for these groups of employees rests with the officials in charge of the respective localities and undertakings.

The latest extension (1919) of the provisions of this act brings employees of the government of the District of Columbia within their scope, the law being administered in this regard by the same commission that has charge of the act as it affects civil employees of the United States generally.

The first State legislation enacted in the United States, providing for stated benefits without suit and without proof of negligence, was a cooperative insurance law of the State of Maryland, enacted in 1902. This law was of restricted application, affecting only mining, quarrying, steam and street railways, and work by municipalities in constructing any sewer, excavation, or other physical structure. This law was to be administered by the State insurance commissioner, and made payment an absolute requirement in case of death. It was declared unconstitutional after about two years' operation.⁶ An act of the same legislature made quite similar provisions for coal and clay miners in Alleghany and Garret counties.

The next law within the territorial jurisdiction of the United States was an enactment by the United States Philippine Commission in 1905, authorizing the continuance of wages for a period during disability, but not exceeding 90 days, in case of injury received by employees of the insular government in line of duty.⁷

Next in order of time was the Montana statute of March 4, 1909, in effect October 1, 1910, providing for the maintenance of a State cooperative insurance fund for miners and laborers in and about the coal mines of the State. Contribution to the fund was compulsory, employers to pay on the basis of the tonnage of coal mined and employees on the basis of their monthly gross earnings. State officials were to administer the fund, and payments for death and disability were provided for. While compulsory, the act was not exclusive as against injured workmen, who were permitted to sue under the employers' liability law, though bringing suit forfeited benefits under this act. The double obligation imposed upon the employer by the act was held by the supreme court of the State to invalidate it,

⁶ For an account of the operation of this law and the opinion declaring it unconstitutional, see Bul. No. 57, pp. 645-648, 689, 690. The law itself is given in Bul. No. 45, pp. 406-408.

⁷ Act No. 1416; see Bul. No. 71, p. 394.

though in its essential features it was held to be a valid exercise of the law making power.⁸

The next law enacted in this field, and the last before the effect of investigations by commissions came to be influential, was a law of 1910 of Maryland, superseding and repealing the act of 1902, affecting the coal and clay miners of Allegany and Garrett counties. This act was itself repealed by the compensation law of 1914. It provided for equal contributions by employers and workmen to a fund to be collected and disbursed by the treasurers of the respective counties. Administration rested with the county commissioners. Suit could be brought, but this barred compensation rights, and conversely the acceptance of benefits barred the right to sue. The fault of double liability which was held to invalidate the Montana statute was avoided in this law by a provision which authorized an employer who had defended a suit, and against whom judgment had been rendered, to deduct, on compliance with certain conditions, the amount of such judgment and costs from the payments thereafter to be made by him to the county fund.⁹

It is to be observed of the foregoing legislation, antedating what may be called the commission period, that it is of limited application, either as to the locality or classes of employees affected; also that there appears to have been little regard to compensation principles as at present understood. The remaining laws to be noticed may be said to be of general application, and have either followed the investigations of commissions or have been enacted under conditions making the results of such commissions available to those interested.

The first of the laws of this class is the elective compensation law of New York, 1910, followed at the same session by a compulsory law for hazardous occupations. The latter law was declared unconstitutional after a very brief term of existence, but after an amendment to the constitution, a new law was passed, which has been sustained by both the State and the Federal courts.

Of the 10 laws enacted in 1911, 7 provided for simple compensation, 3 containing also provisions for insurance; while in 1912, three States enacted compensation laws and one an insurance law; in 1913 seven States were added to the list, in five of which compensation only was provided for, while in two there is also a system of insurance. In 1914 compensation laws were enacted in two States, though in one (Kentucky) the law was declared unconstitutional before the time for it to take effect. Of the 10 new laws enacted in 1915 (one taking the place of the unconstitutional statute of Montana), 9 provided for compensation merely, while 1 established an insurance system. A new compensation law was passed in Kentucky in 1916, in lieu of the earlier law declared unconstitutional; this,

⁸ For the law in full see Bul. No. 85, pp. 658-661.

⁹ This act is given in Bul. No. 91, pp. 1066-1070; amendments enacted in 1912 appear in Bul. No. 111, pp. 88, 89.

with a law of Porto Rico which requires the insurance of the liabilities fixed by it are the only new laws of the year, though important amendments were made in Louisiana and New York. Indeed, practically every year is marked by amendments whose tendency is in general to strengthen the laws and enlarge their scope.

The extension of compensation legislation to five States in 1917, one in 1918, and four in 1919, besides the inclusion of public employees of the District of Columbia, marks the present bounds of compensation legislation. Of these, two of the laws of 1918 and one in 1919 provide for a State insurance system, though in only one of them is this system exclusive.

The following table shows in chronological order the States, etc., that have enacted compensation laws:

STATES, ETC., HAVING COMPENSATION LAWS, WITH THE DATE OF THEIR ENACTMENT AND COMING INTO EFFECT.

| State. | Approved. | Effective. | State. | Approved. | Effective. |
|----------------------------------|---------------|---------------|---|---------------|---------------|
| United States ¹ | May 30, 1908 | Aug. 1, 1908 | Wyoming..... | Feb. 27, 1915 | Apr. 1, 1915 |
| Washington..... | Mar. 14, 1911 | Oct. 1, 1911 | Indiana..... | Mar. 8, 1915 | Sept. 1, 1915 |
| Kansas..... | do..... | Jan. 1, 1912 | Montana ² | do..... | July 1, 1915 |
| Nevada..... | Mar. 24, 1911 | July 1, 1911 | Oklahoma..... | Mar. 22, 1915 | Sept. 1, 1915 |
| New Jersey..... | Apr. 4, 1911 | July 4, 1911 | Vermont..... | Apr. 1, 1915 | July 1, 1915 |
| California..... | Apr. 8, 1911 | Sept. 1, 1911 | Maine..... | do..... | Jan. 1, 1916 |
| New Hampshire..... | Apr. 15, 1911 | Jan. 1, 1912 | Colorado..... | Apr. 10, 1915 | Aug. 1, 1915 |
| Wisconsin..... | May 3, 1911 | May 3, 1911 | Hawaii..... | Apr. 28, 1915 | July 1, 1915 |
| Illinois..... | June 10, 1911 | May 1, 1912 | Alaska..... | Apr. 29, 1915 | July 28, 1915 |
| Ohio..... | June 15, 1911 | Jan. 1, 1912 | Pennsylvania..... | June 2, 1915 | Jan. 1, 1916 |
| Massachusetts..... | July 28, 1911 | July 1, 1912 | Kentucky ³ | Mar. 23, 1916 | Aug. 1, 1916 |
| Michigan..... | Mar. 20, 1912 | Sept. 1, 1912 | Porto Rico..... | Apr. 13, 1916 | July 1, 1916 |
| Rhode Island..... | Apr. 29, 1912 | Oct. 1, 1912 | South Dakota..... | Mar. 10, 1917 | June 1, 1917 |
| Arizona..... | June 8, 1912 | Sept. 1, 1912 | New Mexico..... | Mar. 13, 1917 | June 8, 1917 |
| West Virginia..... | Feb. 22, 1913 | Oct. 1, 1913 | Utah..... | Mar. 15, 1917 | July 1, 1917 |
| Oregon..... | Feb. 25, 1913 | July 1, 1914 | Idaho..... | Mar. 16, 1917 | Jan. 1, 1918 |
| Texas..... | Apr. 16, 1913 | Sept. 1, 1913 | Delaware..... | Apr. 2, 1917 | Do. |
| Iowa..... | Apr. 18, 1913 | July 1, 1914 | Virginia..... | Mar. 21, 1918 | Jan. 1, 1919 |
| Nebraska..... | Apr. 21, 1913 | July 17, 1913 | North Dakota..... | Mar. 5, 1919 | July 1, 1919 |
| Minnesota..... | Apr. 24, 1913 | Oct. 1, 1913 | Tennessee..... | Apr. 15, 1919 | Do. |
| Connecticut..... | May 29, 1913 | Jan. 1, 1914 | Missouri ⁴ | Apr. 28, 1919 | Nov. 1, 1919 |
| New York ⁵ | Dec. 16, 1913 | July 1, 1914 | District of Columbia ⁶ | July 11, 1919 | July 1, 1919 |
| Maryland..... | Apr. 16, 1914 | Nov. 1, 1914 | Alabama..... | Aug. 23, 1919 | Jan. 1, 1920 |
| Louisiana..... | June 18, 1914 | Jan. 1, 1915 | | | |

¹ Public employees only.

² Earlier laws of Montana (1909), New York (1910), and Kentucky (1914) were declared unconstitutional.

³ The law of Missouri is suspended awaiting the results of a referendum.

The dates given above are the dates of the actual inception of compensation methods in the various jurisdictions. As indicated by the footnotes, earlier laws were enacted in a few States, but were never really operative. The existing laws of a number of jurisdictions, widely differing in some instances from those enacted at the dates given above, are of more recent enactment; but the operation of a compensation law has been continuous since the original act became effective. There are therefore but six States in the southeastern portion of the Union that are without compensation laws, unless the referendum in Missouri should prove adverse to the act of that State. It also rests with Congress to provide for private employments in the District of Columbia and for interstate employees in transportation and for maritime workers.

Besides the statutory enactments noted above, there have been constitutional provisions made in a number of States, adopted with a view to the removal or forestalling of objections to compensation legislation on grounds of constitutionality. Thus the constitution of Arizona, adopted on the admission of that State into the Union in 1910, provides specifically for the enactment of a compensation law. Amendments in favor of such legislation were adopted in 1911 in California, in 1912 in Ohio, 1913 in New York and Vermont, 1914 in Wyoming, and in 1915 in Pennsylvania. In Oklahoma alone, of all the States where the question has been submitted to the people, was such an amendment rejected. This took place on August 1, 1916, the amendment failing along with eight others submitted at the time. Of this it has been said that the questions passed upon were rejected as a whole on account of other facts than the attitude of the public toward this particular subject.

The importance of such amendments to the constitution as preliminary to the enactment of compulsory laws has been greatly discounted by reason of decisions of the Supreme Court of the United States, upholding compensation laws of various types and form, as not in conflict with constitutional provisions; so that, in the absence of specific limitations which may be found by way of exception in some State constitutions, no bar appears to the enactment of a compensation law compulsory in form, and of general application. However, in but two States (California and Illinois) thus far has an original elective law been supplanted by a compulsory one.

TYPES OF LAWS.¹⁰

The rapid growth of compensation legislation, involving, as it has, the almost simultaneous enactment of laws in a number of States, has operated to prevent the adoption of any one form of law as a type, so that, although a single fundamental principle underlies the entire group of laws of this class, its expression and application present great diversity of details in the different States. This extends not only to the primary factors of the scope of the laws and the amount of compensation payable under them, but the matter of making the laws compulsory or voluntary in their acceptance, the securing or not securing the payments of the benefits, the mode of securing where it is required, methods of administration, of election or rejection, etc.

No fixed form of analysis or summary presentation can give in complete detail the provisions of the laws under consideration. They relate not only to the compensation of accidents, but to accident reporting, safety provisions, the enforcement of safety laws, the estab-

¹⁰ A detailed comparison of the provisions of existing laws appears as Bulletin No. 275.

lishment of insurance systems, premium rates, investments, the scaling of payments in cases of certain forms of negligence or their increase under certain conditions, procedure in arbitration, forms of appeal, and a great variety of subjects on which it would be impossible to generalize, and which can be discovered only by a reading of the individual statutes, though the use of the index to the laws will aid in this. The adoption by a few States of laws generally similar can be clearly recognized, but it is obvious that at the present time it can not be said that any one type of law is predominantly approved. However, it seems none the less certain that the welfare of both employer and employee, as well as the public interest generally, would be served by the general adoption of uniform laws, just and certain in their operations, and not dependent for their acceptance on the personal views or interests of individuals or groups of individuals.

It is encouraging to note in this connection that, though there is such diversity, and a manifest disposition on the part of some administrative and legislative bodies to regard variations as warranted by local conditions, if not absolutely desirable, there are certain discoverable tendencies to move in a common direction, and thus approach a common end.

Thus a comparison of the new and amendatory enactments from year to year discloses a movement toward an increase in the rate of compensation. Until the year 1919, a majority of the laws used a 50 per cent basis for compensation awards, while at present a larger number pay from 60 to 66 $\frac{2}{3}$ per cent of the wages as benefits. Waiting time has been reduced from a general standard of two weeks to a predominant limitation of one week or less, eight States shortening the waiting time in 1919, and 9 or 10 others by earlier amendments. Perhaps in no aspect have the laws been more generally liberalized than in regard to medical and surgical aid, important changes taking place each year, though there is yet room for improvement. Administration by a commission instead of by courts is increasingly recognized as necessary, three States having provided for them after experience, without them, leaving but 10 which are at present without such an agency.

Compensation laws may be classified first as compulsory or elective. A compulsory law is one which requires every employer within its scope to accept the act and pay the compensations specified. Usually, but not always, the employee must also accept the provisions of the act. In Arizona, for example, the law is compulsory as applied to the employer, but the employee, after an injury, has the option of accepting compensation or suing for damages.

An elective act is one in which the employer has the option of either accepting or rejecting the act, but, in case he rejects, the customary common-law defenses are abrogated. In other words, the employer is subjected to a higher degree of liability if he does not elect. In most States the employee also has the right to accept or reject the act, although in Texas he has no option and must accept if his employer elects.

None of the compensation laws covers all employments. Usually agriculture, domestic service, employments casual in nature or not conducted for the purpose of the employer's business, and in some laws nonhazardous employments, are exempted from the provisions of the act. It may be provided, however, that such employments may come under the provisions of the law through the voluntary acceptance of the employer or the joint election of employer and employee in these exempted classes, but the employer loses no rights or defenses if he does not accept, and to this extent the compensation law is a voluntary one. Thus a law may be either compulsory or elective as to the employments covered and voluntary as to other employments.

Furthermore, an act may be elective as to private but compulsory as to public employments. Classification, however, is based exclusively upon private employments.

Besides the distinction as to the compulsory or elective application of the law, it may require the employer coming under it, whether voluntarily or by compulsion, to insure his liability to make payments, or it may leave the matter of insurance to his own choice. On the basis of these two facts the following classification of State laws appears:¹¹

¹¹ The term State is used in this discussion to include the Territories of Alaska and Hawaii, and the Island of Porto Rico. Since the Federal law applies only to public employees, it is not, as a rule, considered.

| Compensation compulsory, 14. | | Compensation elective, 31. | |
|---|----------------------------|---|--|
| Insurance required, 13. | Insurance not required, 1. | Insurance required, 26. | Insurance not required, 5. |
| California. Hawaii. Idaho. Illinois. Maryland. New York. North Dakota. Ohio. Oklahoma. Porto Rico. Utah. Washington. Wyoming. | Arizona. | Colorado. Connecticut. Delaware. Indiana. Iowa. Kentucky. Maine. Massachusetts. Michigan. Missouri. Montana. Nebraska. Nevada. New Hampshire. New Jersey. New Mexico. Oregon. Pennsylvania. Rhode Island. South Dakota. Tennessee. Texas. Vermont. Virginia. West Virginia. Wisconsin. | Alabama. Alaska. Kansas. Louisiana. Minnesota. |

Very considerable differences appear in the methods provided by the laws of the 39 States in which insurance is obligatory. Thus the State may make provision for the carrying of such insurance, and require all employers coming under the act to avail themselves of such provision; or the State fund may simply offer one of alternative methods. Again, the State may refrain entirely from such action, but require insurance in private companies, stock or mutual; and lastly, self-insurance may be permitted—i. e., the carrying of the risk by the individual, subject to such safeguards as the law may prescribe.

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The following table shows the groupings on the bases indicated:

COMPULSORY INSURANCE STATES, CLASSIFIED AS TO KINDS OF INSURANCE ALLOWED.

| State fund (17). | | Private insurance (31). | Self-insurance (31). |
|----------------------------------|-------------------|----------------------------------|-----------------------------|
| Exclusive (8). | Competitive (9). | | |
| ..... | California..... | California..... | California. |
| ..... | Colorado..... | Colorado..... | Colorado. |
| ..... | ..... | Connecticut..... | Connecticut. |
| ..... | ..... | Delaware..... | Delaware. |
| ..... | Idaho..... | Hawaii..... | Hawaii. |
| ..... | ..... | Idaho..... | Idaho. |
| ..... | ..... | Illinois..... | Illinois. |
| ..... | ..... | Indiana..... | Indiana. |
| ..... | ..... | Iowa..... | Iowa. |
| ..... | ..... | Kentucky..... | Kentucky. |
| ..... | ..... | Maine..... | Maine. |
| ..... | Maryland..... | Maryland..... | Maryland. |
| ..... | ..... | Massachusetts..... | ..... |
| ..... | Michigan..... | Michigan..... | Michigan. |
| ..... | ..... | Missouri..... | Missouri. |
| ..... | Montana..... | Montana..... | Montana. |
| ..... | ..... | Nebraska..... | Nebraska. |
| Nevada..... | ..... | New Hampshire ¹ | New Hampshire. ¹ |
| ..... | ..... | New Jersey..... | New Jersey. |
| ..... | ..... | New Mexico..... | New Mexico. |
| North Dakota..... | ..... | ..... | ..... |
| ..... | New York..... | New York..... | New York. |
| Ohio ²..... | ..... | Oklahoma..... | Oklahoma. |
| Oregon..... | ..... | ..... | ..... |
| ..... | Pennsylvania..... | Pennsylvania..... | Pennsylvania. |
| Porto Rico..... | ..... | ..... | ..... |
| ..... | ..... | Rhode Island..... | Rhode Island. |
| ..... | ..... | South Dakota..... | South Dakota. |
| ..... | ..... | Tennessee..... | Tennessee. |
| ..... | ..... | Texas..... | ..... |
| ..... | Utah..... | Utah..... | Utah. |
| ..... | ..... | Vermont..... | Vermont. |
| ..... | ..... | Virginia..... | Virginia. |
| Washington..... | ..... | ..... | ..... |
| West Virginia ³..... | ..... | ..... | West Virginia. ³ |
| ..... | ..... | Wisconsin..... | Wisconsin. |
| Wyoming..... | ..... | ..... | ..... |

¹ The New Hampshire law requires employers accepting the act to furnish proof of solvency or give bond, but makes no other provisions for insurance.

² Ohio permits self-insurance, but all employers are required to contribute their proportionate share to the State insurance fund surplus.

³ West Virginia permits self-insurance, but employers desiring to carry their own risk must contribute their proportionate share of the administrative expenses of the law.

It is to be observed that the terms "exclusive" and "competitive" as used in the foregoing table relate to the competition of other insurance carriers, self-insurance being permitted in some States from which competing companies are barred.

Besides the 17 States here noted as having State funds, the law of Virginia mentions the State fund as one of the insurance carriers for employers coming under the act, but makes no provision for the creation of such fund. It will be noted that three¹² of the seven States which are classed in the foregoing table as having exclusive State funds are shown by the table next above to have an elective system of compensation. However, should employers in these States accept the compensation system, insurance in the State fund is

¹² Nevada, Oregon, and West Virginia.

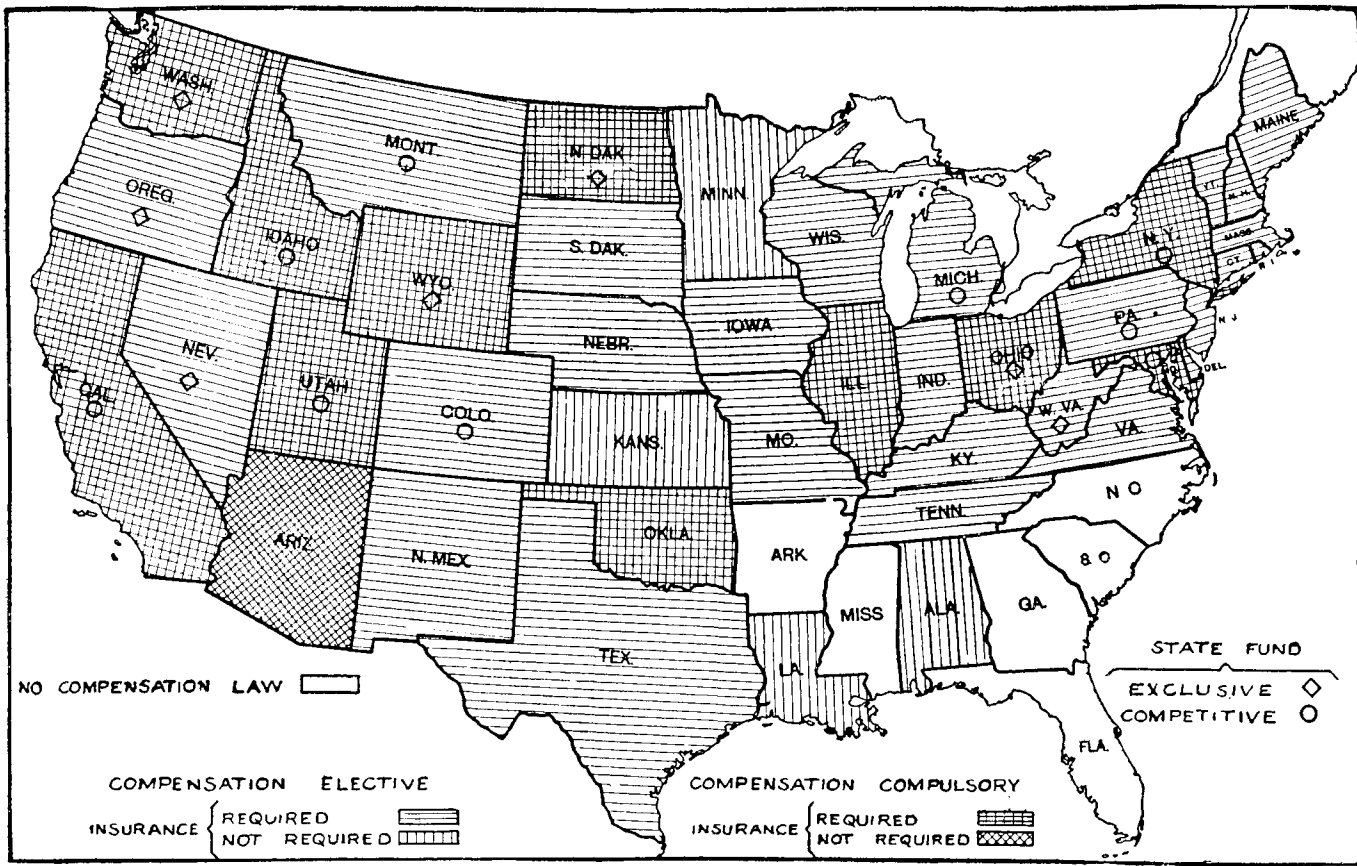
obligatory, except that in West Virginia approved employers may carry their own liabilities.

The law of Idaho affords some difficulty as to classification of the insurance system. Payments under the act are to be secured by insuring in the State fund, or by a deposit of satisfactory security. "Such security may consist of a surety bond or guaranty contract with any company authorized to do surety or guaranty business in Idaho." This has been construed by the attorney general of the State to permit both surety bonds and insurance contracts to be received as security.

The compensation laws of three States¹³ provide for a State mutual association, though, except in Kentucky, the management is entirely in the hands of directors chosen by insuring subscribers. In Kentucky the governor appoints 3 of the 15 directors. Massachusetts was the first State to provide for this type of insurance. The original purpose was to create an insurance monopoly conducted by an employers' mutual company and supervised by the State. Before the law was finally enacted, however, private companies were given practically the same privileges as the so-called State company, which at present is a regular competing private company. The other two States practically copied the provisions of the Massachusetts law. Massachusetts and Texas do not permit self-insurance, while Kentucky does.

The accompanying map shows the extent of existing legislation and the nature of the laws (i. e., elective or compulsory), and whether or not insurance is required; also the States having a State insurance fund and its type. An analysis of the law of each State, in comparable form, is presented on the following pages.

¹³ Kentucky, Massachusetts, and Texas.



ANALYSIS OF THE PRINCIPAL FEATURES OF THE LAWS.

ALABAMA.

Date of enactment.—August 23, 1919. Effective January 1, 1920.

Injuries compensated.—Injuries caused by accident arising out of and in the course of the employment, causing disability for more than two weeks, or death, not caused by employee's willful misconduct, intoxication, or willful failure to observe rules or statutory duties.

Industries covered.—All except those employing less than 16 persons, common carriers while engaged in interstate commerce and domestic and agricultural service. Municipalities and employers of less than 16 employees (except farm laborers), may elect to come under the act.

Persons compensated.—Private employment: All persons in the industries covered, including minors, but excepting casual employees. Public employment: Not covered unless employer elects.

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

Compensation for death:

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

(b) Total dependents: To widow, 30 per cent of wages; to dependent husband, 25 per cent; to widow or widower and one child, 40 per cent; to widow or widower and two or three children, 50 per cent; to widow or widower and four or more children, 60 per cent; to dependent orphan, 30 per cent; for each additional orphan, 10 per cent, maximum 60 per cent; to one parent, 25 per cent, both 35 per cent; to grandparent, brother, sister, mother-in-law, father-in-law, if one, 20 per cent, if more than one 25 per cent.

Compensation payable in the order named and ceases on death or remarriage, and upon arrival of children at age of 18.

(c) To partial dependents: A proportion of the above corresponding to the relation the contribution of the deceased to their support bore to his wages. Maximum weekly payment, \$12; minimum, \$5. Total period, 300 weeks; total maximum \$5,000.

Compensation for disability:

(a) Reasonable medical, etc., treatment for the first 60 days, not exceeding \$100.

(b) For temporary total disability, 50 per cent of wages for not over 300 weeks.

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

For certain specific injuries (mutilations, etc.), 50 per cent of wages for fixed periods (10 to 400 weeks).

(d) For permanent total disability, 50 per cent of wages for 550 weeks, not over \$5 weekly after 400 weeks.

Maximum weekly payments, \$12; with one wholly dependent child, \$13; with two children, \$14; with three or more children, \$15; minimum, \$5.

No compensation payable for first two weeks. Compensation may be commuted to lump-sum payments by agreement or by the court.

Revision of benefits.—Awards payable for more than six months may be revised by agreement or by court.

Insurance.—Employers may insure whole or part of compensation. Insurance not required.

Security for payments.—Compensation is not assignable, nor subject to garnishment, and is entitled to the same preferences as unpaid wages.

Settlement of disputes.—Settlements not made by agreement are determined by the courts.

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 for each child under 16 years of age, or child wholly dependent by reason of mental or physical incompetency, or unborn or posthumous child, 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.

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 (enumerated list), 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. 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 appraisal 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.

CALIFORNIA.

Date of enactment.—April 8, 1911; in effect September 1, 1911; new act, chapter 176, acts of 1913, in effect January 1, 1914; new act, chapter 586, acts of 1917, in effect January 1, 1918; amended chapter 471, acts of 1919.

Injuries compensated.—Injuries or disease arising out of and in the course of employment, including injuries to artificial members, causing disability for more than 7 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 services may come under the act by joint election.

Persons compensated.—Private employment: All employees, 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, including officers and enlisted men of the National Guard.

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 semimonthly 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.
- (d) If no dependents, burial expenses, and \$350 to be paid to rehabilitation fund. 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 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.

COLORADO.

Date of enactment.—April 10, 1915; in effect August 1, 1915. Reenacted, chapter 210, acts of 1919.

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

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

Persons compensated.—Private employment: All employees, including aliens and minors, whether lawfully or unlawfully employed, but excluding employees whose work is but casual and not in the usual course of the employer's business. 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, including acknowledged illegitimate children, 50 per cent of the weekly wages for six years, \$10 maximum, \$5 minimum, total not to exceed \$3,125 nor to be less than \$1,560. 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, \$10 maximum, \$5 minimum, for such part of six years as the commission may determine, total not to exceed \$3,125. 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 \$3,125.
- (c) If no dependents, medical services and \$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 \$1,041.66 in all.

Compensation for disability:

- (a) Medical and surgical assistance for first 60 days, not more than \$200 in value and \$100 for dental services.
- (b) For temporary total disability, 50 per cent of weekly wages during continuance, \$5 minimum, \$10 maximum; full wages if less than \$5.
- (c) For permanent total disability, 50 per cent of average weekly wages, maximum \$10, minimum \$5, for life.
- (d) For permanent partial disability, 50 per cent of the weekly wage decrease, \$10 maximum; total not to exceed \$2,600. Special schedule for specified injuries, 50 per cent of weekly wages for periods ranging from 4 to 208 weeks, in addition to other payments. Facial disfigurements may also be compensated for in an amount not exceeding \$500.
- (e) For temporary partial disability, 50 per cent of wage loss during disability; maximum \$10, minimum \$5 weekly, aggregate maximum \$1,300.

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

Revision of benefits.—Awards may be reviewed after making, and may be appealed from within 20 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. Claims to have same preference as to lien as wages, but not limited as to amount.

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

CONNECTICUT.

Date of enactment.—May 29, 1913; in effect January 1, 1914; amended, chapter 228, acts of 1915; chapter 368, acts of 1917; chapter 284, acts of 1918; chapter 142, acts of 1919.

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. Occupational diseases are included.

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 an employer accepting the act, in absence of contrary election, outworkers and casual employees who are employed otherwise than for the purposes of the employer's business 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 \$18 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.

Aliens receive only one-half of above compensation.

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 \$18 per week, or for longer than 520 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.

DELAWARE.

Date of enactment.—April 2, 1917; in effect January 1, 1918; amended, chapter 203, acts of 1919.

Injuries compensated.—Injuries by accident arising out of and in course of employment, causing disability for more than 14 days, or death within one year, 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, to dependent brothers or sisters, 15 per cent for one, with 5 per cent for each additional, the total not to exceed 25 per cent. Aliens (widows and children only) receive one-half the above amounts.

Payments are for a period of 285 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 285 weeks. Shares lapsing are redistributed.

Wages used in computing death benefits shall be reckoned as not less than \$10 nor more than \$30 per week.

Compensation for disability:

(a) Medical and surgical aid as may be reasonably required during the first 14 days, unless refused by the employee, but not to exceed \$75.

(b) For total disability, for the first 475 weeks, 50 per cent of the injured person's wages, not more than \$15 nor less than \$5 per week, unless the wages were less than \$5, when full 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 \$15 per week, for not more than 285 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 \$15 nor less than \$5, per week, unless the wages were less than \$5, 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.

DISTRICT OF COLUMBIA.

Date of enactment.—July 11, 1919; in effect July 1, 1919.

This act extends the provisions of the act compensating civil employees of the United States to "employees of the government of the District of Columbia so far as they may be applicable," except pensionable members of the police and fire departments. For analysis, see page 67.

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 with aid of a committee of arbitration, if desired by either party; appeals to courts.

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 within two years, or disability for more than seven days.

Industries covered.—Compulsorily, all public employment and all private employment 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, out-workers, 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. Alien dependents receive only 50 per cent of the above compensation.

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 guaranty 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.

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, June 25, 1917, June 28, 1919.

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; private employments (enumerated list), 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 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; also necessary hospital, medical and surgical aid during the period for which compensation may be payable.
- (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, \$7 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 \$7 per week is to be increased \$1 for each such child, the total not to exceed \$10. 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. Exempt from garnishment, attachment, or execution.

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.

INDIANA.

Date of enactment.—March 8, 1915; in effect September 1, 1915; amended, chapters 63, 81, 165, acts of 1917, chapters 57, 71, acts of 1919.

Injuries compensated.—Personal injury causing disability for more than seven days, or death within 300 weeks 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, and corporations engaged in mining coal.

Persons compensated.—Private employment: All employees and contractors' employees engaged upon the subject matter of the contract; employees whose work is casual and not in the usual course of the employer's business 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; industrial board may extend period 30 days; 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, 55 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 10 to 250 weeks in lieu of all other payments; for permanent disfigurement impairing opportunity or usefulness, benefits for not over 200 weeks.

Wage basis and total amounts are limited as for death benefits.

In unusual cases 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.

IOWA.

Date of enactment.—April 18, 1913; in effect July 1, 1914. Amended, chapters 188, 270, 336, 409, 418, acts of 1917; chapter 220, acts of 1919.

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 60 per cent of the wages of the deceased employee, but not more than \$15 nor less than \$6 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 and \$100 additional in exceptional cases.
- (b) For temporary total disability, 60 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), 60 per cent of average weekly wages for fixed periods, beginning with the date of injury. Payments under (b) and (c) for the fifth, sixth, and seventh weeks are 100 per cent of the weekly earnings, if the 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.

KANSAS.

Date of enactment.—March 14, 1911; in effect January 1, 1912; amended, chapter 216, acts of 1913; chapter 226, acts of 1917; chapter 222, acts of 1919.

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 those employed otherwise than for the purpose of the employer's business. 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.

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.

KENTUCKY.

Date 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 within two years, 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.

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.

MAINE.

Date of enactment.—April 1, 1915; in effect January 1, 1916; reenacted April 4, 1919.

Injuries compensated.—Injury sustained in course of employment, causing disability for more than 10 days, 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, logging, 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, employees whose work is casual or not in the usual course of the employer's business excepted. Public employment: Employees of the 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, 60 per cent of weekly wages for 300 weeks, \$6 minimum, \$15 maximum, not over \$3,500 in all.
- (b) If only partial dependents survive, amounts proportionate to the relation of the contribution paid by deceased, and his average wage, for 300 weeks.
- (c) 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 service during first 30 days of disability, not over \$100 in value, unless by agreement or order of commission a longer period or larger amount is provided for.
- (b) For total disability, 60 per cent of the wages for not more than 500 weeks, \$6 minimum, \$15 maximum, total not to exceed \$4,200.
- (c) For partial disability, 60 per cent of the weekly wage loss, not over \$15, for not more than 300 weeks. For specified injuries causing permanent partial disability, 60 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 question of law.

MARYLAND.

Date of enactment.—April 16, 1914; in effect November 1, 1914; amended, special session, chapter 6, 1917, chapters 86, 368, 379, 597, 713, acts of 1916.

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 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.

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; chapters 197, 198, 204, 205, 226, 272, 299, acts of 1919.

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 employees whose work is not in the usual course of the employer's business, 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 (16 if living apart from parent legally bound to render support), 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 \$7 nor more than \$16 per week, not exceeding 500 weeks, nor \$4,000 in amount.
- (c) For partial disability, two-thirds the wage loss, but not to exceed \$16 per week, nor \$4,000 in amount.
- (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.

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.

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; Nos. 64, 110, acts of 1919.

Injuries compensated.—Injuries causing incapacity to earn full wages for a period of one week, 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 legally permitted to work. 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 60 per cent of the deceased workman's average weekly wages, but not less than \$7 nor more than \$14 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 in addition to any medical services.

Payments to children cease at 16, unless mentally or physically incapacitated from earning.

Compensation for disability:

- (a) Reasonable medical and hospital services for the first 90 days after injury.
- (b) For total incapacity, a weekly payment equal to 60 per cent of the earnings, but not less than \$7 nor more than \$14 per week, nor for a period longer than 500 weeks from the date of the injury, and not exceeding \$6,000.
- (c) For partial incapacity, a weekly payment equal to 60 per cent of the wage loss, but not more than \$14 per week, and for not longer than 500 weeks.
- (d) For certain specified injuries (mutilations, etc.), 60 per cent of the average weekly earnings for fixed periods, in lieu of other payments.

Payments begin with the eighth day after the injury, but if the disability continues for six 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.

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.

MINNESOTA.

Date of enactment.—April 24, 1913; in effect October 1, 1913; amended, chapters 193, 209, acts of 1915; chapters 302, 351, acts of 1917; chapters 176, 185, 354, 356, 358, 363, 367, 416, 439, 442, 508, acts of 1919, and chapter 44, special session, 1919.

Injuries compensated.—Injury by accident arising out of and in the course of employment causing disability for more than one 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 lawfully employed, in the absence of contrary election, employees whose work is casual and not in the usual course of the employer's business excepted. Public employment: Included, except employees of State, those elected or appointed for regular terms, and employees of cities whose charters provide for compensation.

Burden of payment.—Cost rests upon the employer, except that upon agreement with employee contributions may be required.

Compensation for death:

(a) \$100 funeral expenses.

(b) To a widow alone, 40 per cent of monthly wages of deceased, increasing to 66 $\frac{2}{3}$ per cent if four or more children; to a dependent husband alone, 30 per cent; to a dependent orphan, 45 per cent, with 10 per cent additional for each additional orphan, with a maximum of 66 $\frac{2}{3}$ per cent; if none of the above, 35 per cent to one parent and 45 per cent if both survive; if none of the foregoing, to other relatives wholly dependent, if but one, 30 per cent, or if more than one, 35 per cent, divided equally.

Widows, on remarriage, receive in lump sum one-half the unpaid compensation.

(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.

Maximum weekly compensation \$15, minimum \$6.50.

Payments continue for not over 300 weeks, and cease when a child reaches the age of 18, unless physically or mentally incapacitated, 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 temporary total disability, 66 $\frac{2}{3}$ per cent of wages for not over 300 weeks.

(c) For permanent total disability, 66 $\frac{2}{3}$ per cent of the wages for 550 weeks, but not more than \$6.50 per week after 400 weeks.

(d) For temporary partial disability, 66 $\frac{2}{3}$ per cent of wage loss, not over 300 weeks.

(e) For specified permanent partial disability (mutilations, etc.), 66 $\frac{2}{3}$ per cent of the earnings for fixed periods, in lieu of other payments, maximum of 400 weeks; for other permanent partial disabilities, not over 300 weeks.

Payments for disability may not be more than \$15; nor may they be less than \$6.50, unless the wages were less than \$6.50, then full wages.

Lump sums must be substituted for periodical payments, but in case of 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.

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

Security and 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 have same preference as unpaid wages.

Settlement of disputes.—By judge of district court, in a summary manner, subject to review by the supreme court as to questions of law.

MISSOURI.

Date of enactment.—April 28, 1919. Effective: [Deferred by referendum.]

Injuries compensated.—Injuries by accident arising out of and in course of employment causing disability for more than seven days, or death within 350 weeks, unless due to employee's or another's willful misconduct, including intentional self-inflicted injury, intoxication, or willful failure or refusal to use a safety appliance or perform a duty required by statute or failure to obey reasonable safety rule.

Industries covered.—All where employer has five or more employees, except farm labor and domestic servants provided employer fails to reject; compulsory as to the State and its municipalities except where the employee has rejected the act. Employers not included may elect to accept act.

Persons compensated.—Private employment: All employees in industries covered, including minors but excluding casual employees not engaged in the usual business of the employer, and outworkers. Public employment: All employees except officials of political subdivisions and those who reject act.

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

Compensation for death:

- (a) Burial expenses not to exceed \$100 and if not otherwise covered, \$200 for expenses of last sickness.
- (b) To total dependents, two-thirds of average annual earnings for not to exceed 300 weeks. Payments for more than one dependent child to be divided in the discretion of the commission. If more than one person is dependent the compensation is to be divided equally.
- (c) To partial dependents according to the facts but only when there are no total dependents.

The maximum weekly payment is to be \$15 and minimum \$6.

Payments to children cease at 17, unless physically or mentally incapacitated.

Compensation for disability:

- (a) Such medical, surgical and hospital, etc., treatment as may be reasonably required for first eight weeks, not exceeding \$200 in value.
- (b) For temporary total disability, two-thirds of wages for not over 400 weeks.
- (c) For temporary partial disability, two-thirds of wage loss, for not over 200 weeks, not in excess of \$12 per week.
- (d) For permanent partial disability, two-thirds of wages for periods fixed by commission, but not in excess of 400 weeks; for certain specific injuries (mutilations, etc.), two-thirds of wages for fixed periods, in addition to all other compensation; for disfigurement in an amount not to exceed \$750.
- (e) For permanent total disability, two-thirds of wages for 240 weeks, and thereafter for life on basis of 40 per cent of wages.

Except where otherwise limited the maximum weekly payment is \$15 per week and the minimum \$6.

No compensation is payable for the first seven days after the injury unless disability continues for more than six weeks.

The commission may commute the compensation by the payment of a lump sum.

Revision of benefits.—Readjustment of compensation may be made by the commission on its own motion or on application.

Insurance.—An employer under the act must insure his liability for compensation in an authorized insurance company or furnish proof of ability to carry own liability.

Security of payments.—Compensation is not assignable, and is exempt from attachment, garnishment, and execution, and from set-off or counter claim, or any liability for any debt, and is entitled to the same preference as claims for wages without limit as to time or amount.

Settlement of disputes.—Disputes are decided primarily by the Missouri Workmen's Compensation Commission, with right of appeal to the circuit court on questions of law.

MONTANA.

Date of enactment.—March 8, 1915; in effect July 1, 1915. Amended, chapters 95, 100, acts of 1919.

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.

Industries covered.—“All inherently hazardous works and occupations,” in which employers elect, including manufactures, construction work, transportation, and repair of the means thereof, but not including agricultural or domestic labor; compulsory as to public employment.

Persons compensated.—Private employment: All persons other than independent contractors, employed in the industries covered, whether as manual laborers or otherwise, except casual employees whose work is not in the usual course of the employer's business. Public employment: All employees in the industries covered.

Burden of payment.—All on employer; employees may contribute to 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; not over 50 per cent of above rates in any case. Term of payments may not exceed 400 weeks, \$12.50 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, \$12.50 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, not over \$6.25 per week, nor 75 per cent of the compensation provided for loss of the injured member; payments to continue not more than 150 weeks for permanent cases, and 50 weeks if temporary.
- (e) For specified maimings, 50 per cent of wages but not more than \$12.50 per week nor less than \$6 per week unless wages are less, then full wages.

Periodical payments may 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.—By industrial accident board, with limited appeal to courts.

NEBRASKA.

Date of enactment.—April 21, 1913; in effect December 1, 1914. [Deferred by referendum.] Amended, chapter 85, acts of 1917; chapter 91, acts of 1919.

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 employees whose work is but casual or not for the purpose of gain or profit of the employer or not in the usual course of the employer's business, and home workers. Public employment: All persons employed by the State, or any Government agency created by it, not 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 \$150 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 \$15 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 not exceeding \$200 in value.
- (b) For total disability, 66⅔ per cent of the weekly wages, but not more than \$15 nor less than \$6 per week for 300 weeks; thereafter, for life or while disability lasts 45 per cent of such wages, but not more than \$12 nor less than \$4.50 per week unless wages are less, then full wages.
- (c) For partial disability, 66⅔ per cent of loss of earning capacity, but not exceeding \$15 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, \$15 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.

NEVADA.

Date of enactment.—March 15, 1913; in effect July 1, 1913; amended, chapter 190, acts of 1915; chapter 233, acts of 1917; chapter 176, acts of 1919.

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 intent or intoxication.

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, including aliens and minors, whether lawfully or unlawfully employed, but excluding employees whose work is both casual and not in the usual course of the employer's business. 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 monthly wages, with 10 per cent additional for each child under 18 years of age. If only children survive, 15 per cent for each child; the total in either case not to exceed 66 $\frac{2}{3}$ per cent. If there are none of the foregoing, one dependent parent may receive 25 per cent, and two 35 per cent; if dependent brothers or sisters under 18, 20 per cent for one, and 30 per cent if more than one. Other cases of dependency are to be dealt with according to the facts.

Payments to a widow or dependent widower cease on remarriage; widow receives two years' benefits in a lump sum. Payments to children cease at 18, unless incapable of self-support.

Payments to nonresident alien beneficiaries are 60 per cent of the above. 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 60 per cent of the average monthly wages, but not less than \$30 nor more than \$72 for not over 100 months, with \$10 per month additional if injured person had dependents, total amount not to exceed \$7,200.

(c) For permanent total disability, 60 per cent of the average monthly wage, not less than \$30 nor more than \$60, payable during life.

(d) For temporary partial disability, 60 per cent of the loss of earning capacity, but not more than \$40 per month for not more than 60 months, wages in excess of \$120 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 \$30 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 one week beyond the first seven days 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.

NEW HAMPSHIRE.

Date of enactment.—April 15, 1911; in effect January 1, 1912, ch. 163.

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 (enumerated list), 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 (enumerated list); 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.

NEW JERSEY.

Date of enactment.—April 4, 1911; in effect July 1, 1911; amended by chapter 174, acts of 1913; chapter 244, acts of 1914; chapter 149, acts of 1918; and chapter 93, acts of 1919.

Injuries compensated.—Injury by accident arising out of and in the course of employment causing disability of over 10 days, 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. Non-resident aliens receive no benefits. Public employment: Every employee of the State, municipality, etc., 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 not exceeding \$200, and 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 \$6 nor more than \$12 per week, unless the earnings were less than \$6 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.

No compensation is allowed to nonresident alien dependents.

Payments to all dependents cease at death, to widows 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 27 consecutive days following the day of the accident, not exceeding \$50 in value, which may be extended to 17 weeks and \$200 in value in exceptional cases.
- (b) For temporary disability 66 $\frac{2}{3}$ per cent of wages, payable during disability, but not beyond 300 weeks.
- (c) For permanent total disability, 66 $\frac{2}{3}$ per cent of wages during such disability, not beyond 400 weeks.
- (d) For certain specific injuries (mutilations, etc.) producing partial but permanent disabilities, 66 $\frac{2}{3}$ per cent of wages during fixed periods, in addition to payments for any period of total disability.

All weekly payments are subject to a minimum of \$6 per week and a maximum of \$12 per week unless earnings were less than \$6 when full wages are paid.

A lump-sum payment may be substituted at the discretion of the workmen's compensation bureau.

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.

Settlements 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.

NEW MEXICO.

Date of enactment.—March 13, 1917; in effect June 8, 1917; amended, chapter 44, acts of 1919.

Injuries compensated.—Injury by accident arising out of and in course of employment, causing disability for more than 14 days, or death within one year, not due to the intoxication of the injured man or willfully suffered by him or intentionally inflicted by himself or another. Failure to observe statutory safety regulations or to use safety devices will cause the compensation to be reduced 50 per cent.

Industries covered.—Extrahazardous 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) \$75 for funeral expenses if death occurs as a proximate result.
- (b) 40 per cent of earnings 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 either case 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, nor less than \$12 per week except where the earnings are less than \$12 per week, then the amount of the earnings.

Compensation for disability:

- (a) Medical, surgical, and hospital services for the first 14 days, 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, for a term not to exceed 520 weeks.
Weekly benefits shall be not more than \$12 nor less than \$6 per week, unless the earnings are less than \$6, when the full amount shall be paid.
- (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; disfigurement of head or face, not over \$500.

Weekly benefits shall be not more than \$12 nor less than \$6 per week, unless the earnings are less than \$6, when the full amount shall be paid.

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 of a beneficiary, and the court may 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, garnishment, or execution, and can not be assigned.

Settlement of disputes.—Act is administered by courts. Proceedings are to be summary as far as possible. Appeals lie to the supreme court.

NEW YORK.

[Compulsory law.]

Date, of enactment.—December 16, 1913; in effect July 1, 1914; amended, chapters 41, 316; acts of 1914; chapters 167, 168, 615, 674, acts of 1915; chapter 622, acts of 1916; chapter 705, acts of 1917; chapters 249, 633, 634, 635, acts of 1918; chapters 458, 498, 629, acts of 1919.

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. 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 66 $\frac{2}{3}$ 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, 66 $\frac{2}{3}$ per cent of wages during continuance.
- (c) For partial disability, 66 $\frac{2}{3}$ per cent of wage loss; for specified permanent partial disabilities (mutilations, etc.), 66 $\frac{2}{3}$ 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 without limit as to amount.

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

NORTH DAKOTA.

Date of enactment.—Approved March 5, 1919; effective July 1, 1919, ch. 162; amended by chapter 73, special session of 1919.

Injuries compensated.—Injuries arising in the course of the employment causing disability for more than seven days or death within 6 years, not caused by employee's willful intention to injure himself or to injure another.

Industries covered.—"Hazardous employments," including any employment in which one or more employees are regularly employed in the same business or establishment, except agricultural or domestic service and common carriers by steam railroad. Employments not classed as hazardous may elect to come under act.

Persons compensated.—Private employment: All persons engaged in hazardous occupations, including minors, apprentices, and aliens, but excluding casual employees whose work is both casual and not in the course of the employer's business. Public employment: All employees of the State or any political subdivision thereof.

Burden of payment.—All on employer.

Compensation for death:

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

(b) To widow or wholly dependent widower without children, 35 per cent of the average weekly wages until death or remarriage; 10 per cent additional for each child under the age of 18, but not to exceed 66 $\frac{2}{3}$ per cent of the average weekly wages. Upon remarriage of widow she shall receive 156 weeks' compensation in a lump sum.

To orphans under 18, 25 per cent for one and 10 per cent for each additional not to exceed 66 $\frac{2}{3}$ per cent of the average weekly wages. Payments cease at 18 unless incapable of self-support.

To one dependent parent, 25 per cent, and to two, 20 per cent each when there is no widow, dependent widower, or child; if there are, then such amount as may remain after the widow, widower, or child are provided for, the total not to exceed 66 $\frac{2}{3}$ per cent of the average weekly wages, to continue until death.

To wholly dependent sister, brother, grandparent or grandchild, if no widow, widower, or child survives, if one, 20 per cent, if two, 30 per cent to be equally divided, to continue for eight years or until death, marriage, or termination of dependency.

(c) To partly dependent parents, brothers, sisters, grandparents, or grandchildren such percentages as may be allowed by board.

Payments are to be computed on the basis of a minimum wage of \$18 and a maximum of \$30 per week.

Compensation for disability:

(a) Such medical, etc., service and supplies as the injury may require.

(b) For total disability, 66 $\frac{2}{3}$ per cent of the average weekly wages during disability.

(c) For temporary partial disability, 66 $\frac{2}{3}$ per cent of the loss of earning capacity.

(d) For permanent partial disability, 66 $\frac{2}{3}$ per cent of weekly wages for fixed periods determined by percentages of total disability.

Compensation is paid from date of the injury if disability continues beyond seven days.

The maximum weekly compensation is \$20 per week, and the minimum \$6.

Lump-sum payments may be made instead of weekly payments when bureau thinks it to be to the best interest of the beneficiary.

Revision of benefits.—Bureau may review at any time, on its own motion or on application.

Insurance.—Insurance in the State fund is required of all employers in hazardous work.

Security of payments.—Fund is administered by workmen's compensation bureau. Agreements to waive rights to compensation are invalid, and all assignments of compensation are void. Compensation is exempt from claims of creditors.

Settlements of disputes.—All disputes are settled by the workmen's compensation bureau, with limited appeal to the district courts.

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; 277, 313, 555, acts of 1919.

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. 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, 66 $\frac{2}{3}$ per cent of the average weekly earnings of the deceased workman, not to exceed \$15 weekly, 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, not to exceed \$15 weekly, 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.
- Dependence of children not presumed after 16 unless physically or mentally incapacitated.

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 66 $\frac{2}{3}$ per cent of average weekly wages, during disability, not less than \$5 nor more than \$15 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, 66 $\frac{2}{3}$ 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 66 $\frac{2}{3}$ per cent of wages, for fixed periods, with the same maximum and minimum limitations as noted above.

Payments under (d) and (e) are 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.

OKLAHOMA.

Date of enactment.—March 22, 1915; in effect September 1, 1915. Amended, chapter 14, acts of 1919

Injuries compensated.—Personal injuries causing disability for more than seven days 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. If disability continues for 21 days compensation is paid from date of injury. 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, horticulture, 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. Schemes requiring contribution from employees may be approved by commission if they provide greater benefits.

Compensation for death.—Fatal injuries not covered.

Compensation for disability:

- (a) Necessary medical, surgical, or other treatment for first 60 days not to exceed \$100 in value unless in the judgment of the commission a greater period or amount is required.
- (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 partial disability, 50 per cent of wage loss for not more than 300 weeks; for specified permanent injuries, 50 per cent of weekly wages for fixed periods in lieu of other compensation.

Payments may not exceed \$18 per week nor be less than \$8 unless wages were less than \$8, 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.—Employer must insure with a stock or mutual company or association of the State or companies out of the State issuing approved policies, or maintain a benefit fund, or provide satisfactory proof of ability to make compensation payments.

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 are to be settled by the industrial commission, subject to appeal to the supreme court.

OREGON.

Date of enactment.—February 25, 1913; in effect June 30, 1914. [Deferred by referendum.] Amended, chapters 271, 334, acts of 1915; chapter 288, acts of 1917; chapters 55, 288, 397, acts of 1919.

Injuries compensated.—Injuries or death 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, etc. (enumerated list); all in absence of contrary election. Other employers may accept the law by affirmative election.

Persons compensated.—Private employment: Any workman employed in enumerated hazardous employments in absence of contrary election, except farm laborers, who may be brought under the law by 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) \$8 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) 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 of age, \$8 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, but not to exceed \$4,000.

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.

PENNSYLVANIA.

Date of enactment.—June 2, 1915; in effect January 1, 1916; amended. acts No. 57, 359, 395, acts of 1917; acts No. 277, 306, 310, 441, 455, acts of 1919.

Injuries compensated.—Personal injury by accident in the course of employment, causing disability for more than 10 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 whose work is not in the regular course of the employer's business, and outworkers 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, 10 per cent additional for each child, total not to exceed 60 per cent; if no parent, 30 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.

Upon remarriage a widow is to receive the then value of the compensation for one-third of the unpaid period.

Compensation for disability:

- (a) Reasonable medical and surgical expenses for first 30 days after disability begins, cost not to exceed \$100; in addition, hospital treatment for 30 days at prevailing costs.
- (b) For total disability, 60 per cent of weekly wages for 500 weeks, \$6 minimum, \$12 maximum, total not to exceed \$5,000, if wages less than \$6 full wages will be paid.
- (c) For partial disability, 60 per cent of weekly wage loss, \$12 maximum, for not over 300 weeks; fixed periods for specified injuries, in lieu of other payments, \$6 minimum, \$12 maximum, full wages if less than \$6.

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.

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 in the course of his employment and due thereto, causing death within one year or disability, excepting injuries due to an attempt to commit crime or to injure himself, 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 \$1,500 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 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.

RHODE ISLAND.

Date of enactment.—April 29, 1912; in effect October 1, 1912; amended, chapter 937, acts of 1913; chapter 1268, acts of 1915; chapter 1534, acts of 1917; chapter 1795, acts of 1919.

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, employees whose work is of a casual nature and who are employed otherwise than for the purpose of the employer's business, 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 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 \$7 nor more than \$14 per week, during such incapacity, but not for a longer period than 500 weeks, nor more than \$5,000.
- (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 revert to 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.

SOUTH DAKOTA.

Date of enactment.—March 10, 1917; in effect June 1, 1917; amended, chapters 363, 314, acts of 1919.

Injuries compensated.—Injuries by accident arising out of and in course of employment, causing disability for more than 10 days or death, not due to intoxication or willful misconduct.

Industries covered.—All except agriculture and domestic service, in the absence of contrary election. Exempt occupations may come in by voluntary election.

Persons compensated.—Private employment: All persons in service under a contract of hire or apprenticeship, except those whose employment is both 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; but if there are dependent children, amounts otherwise due her go to the children.

Compensation for disability:

- (a) Necessary medical, surgical, and hospital services for not more than 12 weeks nor in an amount above \$150.

- (b) For total disability, 55 per cent of the weekly earnings, not more than \$12 nor less than \$6.50, unless earnings are less, then full wages, until four years' earnings are paid, not to exceed \$3,000.

- (c) For partial disability, 55 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 10 days' duration, but if it continues for 6 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.

TENNESSEE.

Date of enactment.—April 15, 1919; effective July 1, 1919.

Injuries compensated.—Injury by accident arising out of and in course of the employment, causing disability for more than 14 days, or death, not due to employee's intoxication, willful, misconduct, or intentional self-inflicted injury, or refusal to use a safety appliance or perform a duty required by law.

Industries covered.—All employing 10 or more persons, except common carriers while engaged in interstate commerce, domestic and agricultural service, and coal mining. Those employing less than 10 persons, coal mines, and public employers may elect to come under the act.

Persons compensated.—Private employment: All employed in the industries covered except employees whose work is casual and not in the usual course of the employer's business. Public employment: Employees are not covered unless the employer elects to come under the act.

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

Compensation for death:

- (a) Burial expenses not to exceed \$100.
- (b) To widow, 30 per cent; with one child, 40 per cent; two or more children, 50 per cent. One orphan child, 30 per cent; each additional orphan, 10 per cent; total not to exceed 50 per cent. Dependent widower, 20 per cent. One dependent parent, 25 per cent; two dependent parents, 35 per cent. One grandparent, sister, brother, mother, or father-in-law, 20 per cent; two or more, 25 per cent, of the average weekly wages, in the order named, until death or marriage.
- (c) If only partial dependents survive, a proportion of the above corresponding to the relation of the contribution of the deceased to the total income of such dependents.

Payments to children cease upon their reaching the age of 18 years, unless incapable of self-support.

The maximum weekly compensation is \$11 per week and the minimum \$5, unless wages are less than \$5, when full wages are paid, for not over 400 weeks.

Compensation for disability:

- (a) Reasonable medical and surgical treatment for 30 days after notice of accident, not to exceed \$100.
- (b) For temporary total disability, 50 per cent of average weekly wages, for not over 300 weeks.
- (c) For temporary partial disability, 50 per cent of wage loss for not over 100 weeks.
- (d) For permanent partial disability, 50 per cent of wage loss for not over 300 weeks; for certain specific injuries (mutilations, etc.) producing permanent partial disabilities, 50 per cent of wages during fixed periods.
- (e) For permanent total disability, 50 per cent of wages for not to exceed 550 weeks reduced to \$5 per week after 400 weeks, with maximum total of \$5,000.

Payments are to begin on the fifteenth day unless disability continues for more than six weeks, when they date from the injury.

Payments may not exceed \$11 per week nor be less than \$5, unless wages are less than \$5, when full wages are paid, and may be commuted to a lump sum.

Revision of benefits.—Revision of payments for more than six months may be made by the court on agreement of parties; or, in case of disagreement, on application of one party.

Insurance.—Insurance is required in an authorized insurance company or association, or bond or proof of financial ability to make payments.

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

Settlement of disputes.—Disputes are settled by the judge or chairman of the county court, with right of appeal to the courts.

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, if the employer elects, except domestic and farm labor, railways (steam or electric) operated as common carriers, and vessels in interstate and foreign commerce.

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 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.

UTAH.

Date of enactment.—March 15, 1917; in effect July 1, 1917; amended chapter 63, acts of 1919.

Injuries compensated.—Injuries by accident arising out of and in course of employment, causing disability for more than three days, or death within 3 years.

Industries covered.—Compulsorily, all except agriculture and domestic service, in which three or more persons are employed; elective as to all exceptions.

Persons compensated.—Private employment: All persons regularly employed under any contract of hire, including aliens and minors legally permitted to work, but not including persons whose employment is but casual and 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, 60 per cent of the average weekly earnings of the deceased employees, not to exceed \$16, for not over six years, \$2,000 minimum, \$5,000 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.

- (d) When there are no dependents the employer or his insurer must pay, in addition to medical and funeral expenses, the sum of \$750 into the State treasury for a second-injury fund, unless the employer is insured in the State fund.

Compensation for disability:

- (a) Such medical, nurse, and hospital services and medicines as the employer or insurer may deem proper, not over \$500 in value.
- (b) For permanent total disability, 60 per cent of average weekly wages for five years, and 45 per cent thereafter until death, \$16 maximum, \$7 minimum.
- (c) For temporary total disability 60 per cent of weekly wages for 6 years, not to exceed \$5,000; \$16 maximum, \$7 minimum.
- (d) For partial disability, 60 per cent of the weekly wage loss, not over \$16 per week, for not more than six years. For specified injuries causing permanent partial disability, 60 per cent, not over \$16 weekly, is to be paid for fixed periods, in addition to payment for temporary total disability; proportionate awards for disfigurement or injuries not enumerated.

Any periodical payment under special circumstances may be commuted to a lump sum by the commission.

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.

VERMONT.

Date of enactment.—April 1, 1915; in effect July 1, 1915; amended, Nos. 171, 173, 174, 175, acts of 1917; Nos. 158, 159, acts of 1919.

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 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, those not in the usual course of the employer's business, and those receiving more than \$2,000 excepted. Public employes: 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) 33½ 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 \$12.50 nor less than \$3, for designated periods ranging from four to 170 weeks, following the period of total disability, the total not to exceed 260 weeks. 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.

VIRGINIA.

Date of enactment.—March 21, 1918; in effect January 1, 1919, ch. 400.

Injuries compensated.—Injuries caused by accident arising out of and in course of employment, not due to the injured person's willful misconduct, intoxication, intention to injure himself or another, or failure to use a safety appliance or to perform some duty required by law or to obey a rule of the employer, and causing disability for more than 14 days or death within 6 years.

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, including minors and apprentices, except employees whose employment is not in the usual course of the employer's business. 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.

Compensation to alien dependents (Canada excepted) may not exceed \$1,000.

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.

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 for full amount 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.

WASHINGTON.

Date of enactment.—March 14, 1911; in effect October 1, 1911; amended, chapter 138, acts of 1913; chapter 188, acts of 1915; chapters 28, 120, acts of 1917; chapters 67, 129, 130, 131, acts of 1919.

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

Industries covered.—All extrahazardous employment (enumerated list and covering clause), but not including railway employees engaged in interstate commerce; public utilities; State, county, and municipal undertakings involving extrahazardous work.

Persons compensated.—Private employment: All employees in industries covered by the act; including employees on the pay roll at a rate not less 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 if unmarried, \$100 if widow or child survives.
- (b) To widow or invalid widower, a monthly payment of \$30; to each child under 16, \$5 per month, the total not to exceed \$50 per month.
A widow receives in addition to monthly payments a lump sum of \$250 where the burial expenses do not exceed the amount allowed.
- (c) If no parent survives, a monthly payment of \$10 to each child under 16 years of age, the total not to exceed \$40 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 cease on death or remarriage, and to a child on reaching the age of 16 years, or 18 years if invalid. 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, \$30 per month; (2) if wife or invalid husband, but no child, \$30 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 \$50; if constant attendance is required, \$20 per month additional. In case of death from whatever cause, while totally disabled, death benefits accrue as above.
- (c) For temporary total disability, payments as for permanent total disability during disability with specified rates for first six months, according to number of dependents.
- (d) For temporary partial disability, the payment as for total disability continues in proportion to the loss of earning power, if over 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.

WEST VIRGINIA.

Date of enactment.—February 22, 1913; in effect October 1, 1913; amended, February 20 and March 13, 1915; ch. 131, February 13, 1919.

Injuries compensated.—All personal injuries not the result of willful misconduct or intoxication of the injured employee, disobedience to rules of employer, failure to use a safety device, or self-inflicted, causing incapacity for more than one week, or death within one year.

Industries covered.—All except domestic or agricultural labor, including the State and all government agencies.

Persons compensated.—Private employment: All employees in industries covered, including aliens, except members of firms, traveling salesmen, persons not legally employed, and the officers, managers, etc., of corporations. Public employment: Included, except elective officials.

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

Compensation for death:

- (a) Reasonable funeral expenses, not to exceed \$150.
- (b) To the widow or invalid widower, \$20 per month, and \$5 per month additional for each child under the age of 15 years.
- (c) To other persons wholly dependent, if no widow, invalid widower, or child under the age of 15 years 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.
- (d) If the deceased was a single minor, to a dependent parent, 50 per cent of the earnings, not to exceed \$6 per week for 6 years unless parents were only partially dependent or deceased was under 15 years of age, then until the time when he would have become 21.
- (e) If only partial dependents survive, a compensation computed as in (c), with the same maximum.

Payments to a widow or widower cease on remarriage, and to children on reaching the age of 15 years unless child is an invalid. 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, which may be increased to \$600 by the commissioner).
- (b) For temporary disability, during such disability, 50 per cent of the average weekly earnings for not exceeding 52 weeks, except that for certain ununited fractures, etc., the period may be 78 weeks.
- (c) For permanent disability, 50 per cent of wages for periods varying with degree of disability (from 5 to 85 per cent, with special schedule for maimings), periods ranging from 20 to 340 weeks; above 85 to 100 per cent disability, 50 per cent of wages for life.

Lump-sum payments may be substituted for periodic payments in case of either injury or death.

Payments for all disabilities \$5 minimum, \$12 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 of appeals.

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; 136, 457, 568, 577, 668, 680, 692, acts of 1919.

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; occupational diseases included.

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. Benefits for death resulting from intoxication are reduced 15 per cent.

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. Employee may have Christian Science treatment unless employer elects to the contrary.
- (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. Compensation is reduced 15 per cent if injury was due to intoxication.

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.

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.

WYOMING.

Date of enactment.—Chapter 124, February 27, 1915; in effect April 1, 1915; amended, chapter 69, acts of 1917, chapter 117, acts of 1919.

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.—Extra hazardous (enumerated list), in which three or more workmen are employed, interstate railroads, and persons whose employment is purely casual and not for the purpose of the employer's business 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 \$2,000 to widow or invalid widower, and additional sum, equal to \$100 per year, until the age of 16 is reached for each child under the age of 16, the total for children not to exceed \$3,000. If there are dependent parents and no spouse and no child under 16, a sum calculated on a basis of 50 per cent of the monthly support of the last year's contribution, for the period of probable support, not exceeding \$1,000.

Payments to nonresident alien beneficiaries are limited to 33 $\frac{1}{3}$ per cent of the amounts above provided, and only the widow and children under 16 years of age are considered.

Compensation for disability:

- (a) In cases of total disability and permanent partial disability, medical attention and care in a hospital, maximum \$100.
- (b) For permanent total disability, lump sum of \$2,500 if single or with wife or invalid husband, and a sum equal to \$100 per year for each child under 16, until the age of 16 is reached, the total for children not to exceed \$5,500.
- (c) For temporary total disability, \$35 per month if single, \$40 if married, and \$6 monthly for each child under 16, the total monthly payment not to exceed \$60, and the aggregate not to exceed the amount payable if the disability were permanent.
- (d) For permanent partial disability, fixed lump sums, from \$225 to \$1,500, 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.

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.

UNITED STATES—CIVIL EMPLOYEES.

Date of enactment.—Public No. 267, 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 within 6 years, 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 66 $\frac{2}{3}$ 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 66 $\frac{2}{3}$ 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 66 $\frac{2}{3}$ 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, 66 $\frac{2}{3}$ per cent of the monthly pay during the continuance of such disability.
- (c) For partial disability, 66 $\frac{2}{3}$ 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.

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 reviewable 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.

CONSTITUTIONALITY AND CONSTRUCTION OF STATUTES.

Especially in the early commission reports was great stress laid on the question of constitutionality, as the laws under consideration were obviously wide departures from the principles that had been applied theretofore. Until the decisions of the courts of several States passing upon the constitutionality of the laws of such States were available, there was nothing of controlling authority to which reference could be made as directly supporting laws of this class. There were, however, carefully worked out arguments presented in the report of the New York commission, as well as in those of Minnesota and Ohio, others devoting less space to this subject. In all these it was necessary to proceed on the basis of analogies, and it was not until the compulsory statute of New York (ch. 674, Acts of 1910) was considered by the courts of that State that there was any direct judicial ruling on the points involved in compensation statutes. This, of course, is excluding from consideration the Maryland statute of 1902, which, as already pointed out, was a cooperative insurance law applicable only to a very limited class of employments. This law was held unconstitutional by the court of first instance on the ground that it deprived the parties of their right to trial by jury, and as conferring judicial or at least quasi-judicial functions on an executive officer. The case was not carried up, so that no opinion of a higher court was ever secured.

However, at the present time, there is such a wealth of favorable judicial decisions, including several by the Supreme Court of the United States, that one can but wonder on what grounds or with what hopes the constitutionality of such legislation can now be challenged. Entitled to first rank as authority are the decisions of the Supreme Court handed down March 6, 1917, upholding as constitutional the laws of Iowa,¹⁴ New York,¹⁵ and Washington;¹⁶ that on the Texas statute handed down March 3, 1919,¹⁷ and one on the Arizona law, rendered June 9, 1919.¹⁸

The Iowa statute is elective, requiring insurance, but with no provision for a State fund; that of New York is compulsory, and offering a State fund as an optional means of carrying the required insurance; while that of Washington is compulsory, insurance in

¹⁴ *Hawkins v. Bleakly*, 243 U. S. 210, 37 Sup. Ct. 255.

¹⁵ *New York Central R. Co. v. White*, 243 U. S. 188, 37 Sup. Ct. 247.

¹⁶ *Mountain Timber Co. v. Washington*, 243 U. S. 219, 37 Sup. Ct. 260.

¹⁷ *Middleton v. Texas Power & Light Co.*, 249 U. S. 152, 39 Sup. Ct. 227.

¹⁸ *Arizona Copper Co. v. Hammer*, 250 U. S. 400, 39 Sup. Ct. 553.

the State fund being likewise obligatory. In the Texas case a statute elective as to the employer, but compulsory on the employee when the employer elects, was held not to violate constitutional rights, thereby controverting the position taken on this point by the Court of Appeals of Kentucky in declaring the law of 1914 of the State unconstitutional,¹⁹ chiefly by reason of the alleged inequity of such a provision.

The Arizona statute presents differences from any previously considered by the Supreme Court, and especially in the provision that gives the injured worker an election to accept compensation under the act or to sue in damages. The same legislature that enacted the compensation law enacted also a liability law giving damages in cases in which the employee is free from negligence. The contention was made that this option of the employee is inequitable, the employer being deprived of property without due process of law, and denied the equal protection of the laws, since liability is imposed without fault, and, it is claimed, without an equivalent protection. This contention was rejected, four justices dissenting.²⁰ The majority held that no new burden of cost is added to industry by these laws, if justly administered, but that an existing burden is merely brought to recognition and placed upon the employer as a cost of production, instead of being left upon the employee, to be borne without the power of distribution.

The dissenting opinions held the view that the acts violate the employer's right guaranteed to him by the fourteenth amendment, while the employee's rights are also vitiated, inasmuch as recovery thereunder is uncertain, delayed, and indefinite.

The form of law thus validated closely approaches, if it is not identical in principle with, the double liability law of Montana, which was declared unconstitutional by the supreme court of the State in 1911 (*Cunningham v. Northwestern Improvement Co.*, 44 Mont. 180, 119 Pac. 562); and in spite of the status thus given such legislation by the majority opinion, it can not be regarded as conforming to the generally approved ends of compensation legislation, which include certainty of adjustment, the avoidance of litigation, and such uniformity of procedure as will enable each party to reasonably anticipate the course of events incident to the employment relation.

In view of these decisions, it may be said that every essential feature of every compensation law has been approved by this highest authority. Moreover, this has been done without reference to authorizations contained in the constitution of the State of enactment. In other words, while the court of appeals of New York found itself

¹⁹ *State Journal Co. v. Workmen's Compensation Board*, 161 Ky. 562, 170 S. W. 437.

²⁰ The same justices dissented in the case, *Mountain Timber Co. v. Washington*, *supra*.

able in 1915 to sustain the compulsory law of that State,²¹ in contrast to its position in 1911 as to the law of 1910,²² because an amendment to the State constitution authorizing such a law had been adopted in the interval between the two acts, the Supreme Court found it possible to sustain the law as within the fundamental police power of the State, with reference to the amendment.

A striking illustration of the diversity of attitudes taken on the subject is afforded by comparing the opinion of the Supreme Court in the *White* case and that of the New York Court of Appeals in the *Ives* case. Diametrically opposite opinions are set forth on the subjects of the police power, the doctrine of liability without fault, due process of law, and the destruction of property interests. The one regarded the theory of compensation as "not merely new in our system of jurisprudence, but plainly antagonistic to its basic idea," the court being unanimous. The other likewise unanimously recognized "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," but added: "In our opinion it is fairly supportable on that ground."

The present status is indicated by a summary statement citing many cases made by Mr. Justice Pitney in the decision on the Texas statute:

In recent years many of the States have passed elective workmen's compensation laws not differing essentially from the one here in question, and they have been sustained by well-considered opinions of the State courts of last resort against attacks based upon all kinds of constitutional objections.

And the attack and support are, if possible, even more vigorous in regard to the compulsory laws.

In the face of this series of opinions, it would seem that the constitutionality of such laws would be regarded as established. However, the law of North Dakota (1919) was attacked on the ground that it violates the rules as to classification, in that it classed clerical employments as hazardous, and so within the law, and that it interferes with the freedom of contract guaranteed by the Constitution, as well as with the equal privileges and immunities of citizens. All these contentions were overruled, both on principle and on authority (*State v. Hagan* (Oct. 25, 1919), 175 N. W. 372). On the other hand, a circuit court judge of Davidson County, Tenn., found the law of that State objectionable to the constitution of the State, holding that the decisions of the Supreme Court and the courts of last resort of the States upholding the various laws were not precedents, in view of the pecu-

²¹ *Jensen v. Southern Pacific Co.*, 215 N. Y. 514, 109 N. E. 600.

²² *Ives v. South Buffalo R. Co.*, 201 N. Y. 271, 94 N. E. 431.

liar provisions of the State constitution; however, the court did cite with approval the Kentucky and New York decisions against the earlier laws of these States, though they have been in effect entirely overthrown by specific rulings of the Supreme Court. When this case came to the supreme court of the State, however, the position taken by the lower court was rejected, and the act was declared to be constitutional.

Under the peculiar system in vogue in Massachusetts, the question of the constitutionality of its statute was determined in advance of its enactment, the State senate having submitted the bill to the supreme judicial court of the State for its opinion on this point. In Ohio the State treasurer refused to pay a bill for supplies for the State board of awards on the ground that the act was unconstitutional, thus enforcing an early decision; in Washington also practically the same method of securing prompt court review was adopted. In the other States, as a general rule, interested parties raised questions attacking the general principles of the laws, thus securing adjudication in the customary order. The principal points will be considered in the light of the discussions of the various courts.

DUE PROCESS OF LAW.

Naturally, in the case of such wide departure from established procedure, doing away with trial by jury, questions of negligence, contributory negligence, and the old methods of legal process generally, and establishing a system contemplating practically automatic compensation and placing the burden of industrial accidents on the industry rather than on any particular member of it, the question arose as to whether or not there was a deprivation of "liberty or property without due process of law," in violation of the fourteenth amendment. As to what constitutes due process of law the Ohio Supreme Court said (*State v. Creamer*, 85 Ohio St. 349, 97 N. E. 602):

Perhaps no exact definition of due process of law has been agreed on. Judge Story defines it in his work on the Constitution, section 1935: "The right to be protected in life and liberty, and in the acquisition of property under equal and impartial laws, which govern the whole community. This puts the State upon its true foundation for the establishment and administration of general justice, justice of law, equal and fixed, recognizing individual rights and not impairing them."

In Cooley on Constitutional Limitations, section 356, it is said: "Due process of law in each particular case means such an exercise of the government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the classes of cases to which the one in question belongs."

The Ohio statute under consideration was an elective one, and the court found that there was in it "no resemblance to waiver" of any

constitutional right, and in the light of the foregoing definitions concluded:

We think that in a case such as is presented here, in which the State itself has undertaken a great enterprise in the interest of the general good, and in the exercise of its police power, and presents to its citizens the option to join in the undertaking and receive its protection and benefit on a right of action being withdrawn by the legislature which experience has shown to be difficult of practical enforcement, while preserving the valuable and substantial kindred rights of action, it can not be said that in such withdrawal there is a violation of the constitution in the respects claimed.

The elective laws of Massachusetts and Wisconsin were likewise upheld by the supreme courts of the respective States as against the charges that they had violated this principle, the Massachusetts court (In re Opinion of Justices, 209 Mass. 607, 96 N. E. 308) laying particular stress on the voluntary or noncompulsory features of the proposed law, and holding that there was nothing unconstitutional in its proposals and requirements; while the Wisconsin court (*Borgnis v. Falk Co.*, 147 Wis. 327, 133 N. W. 221) considered the nature of the administration of the law by a board and not by a court, and the limitations of the powers of such board, as contributing to keep the law within constitutional limits. In the principal opinion in this case it was pointed out that the law in question was enacted in response to an urgent public opinion in an attempt "to solve certain very pressing problems which have arisen out of the changing industrial conditions of our time." While declaring that constitutional commands and prohibitions must be implicitly obeyed so long as they exist, it was held that, in the absence of an express provision, conditions prevailing at the time of the adoption of the constitution and subsequent changes in social and economic affairs should be compared and weighed, and that no attempt should be made to hold back the legislation needed for present conditions by reason of earlier constructions and interpretations; and in general it may be said that statutes of optional acceptance are not open to the charge that they deprive one of property without due process of law, since it is of his own choice that he becomes subject to their provisions. (*Evanhoff v. Industrial Commission*, 78 Ore. 503, 154 Pac. 106; *Deibeikis v. Link-Belt Co.*, 261 Ill. 454, 104 N. E. 211.) It is sufficient to add that statutes which have been regarded as elective have been uniformly held not to violate due process of law. (*Hunter v. Colfax Coal Co.*, 175 Iowa, 245, 154 N. W. 1037; *Shade v. Ash Grove Lime etc. Co.*, 93 Kans. 257, 144 Pac. 249; *Greene v. Caldwell*, 170 Ky. 571, 186 S. W. 648; *Mathison v. Minneapolis St. Ry. Co.*, 126 Minn. 286, 148 N. W. 71; *Sexton v. Newark Dist. Tel. Co.*, 84 N. J. L. 85, 86 Atl. 451; *Borgnis v. Falk*, 147 Wis. 327, 133 N. W. 221; *Mailman v. Record Foundry & Mach. Co. (Me.)*, 106 Atl. 606; *Shea v. North Butte Mining Co. (Mont.)*, 179 Pac. 499.)

The Supreme Court of Washington had a different problem to meet, in that the law under consideration was one which proposed an exclusive remedy, the question of acceptance being determined by the statute and not left to the option of the employer. Under this act every employer to whom it applies is required to contribute to a fund from which payment is to be made for the injuries of employees of persons engaged in similar industries, such payments to be made without reference to the fault of the employer or the negligence of the employee, and also without reference to the fact that no workman in a contributing employer's establishment may be injured during the entire period for which the contributions are made. The court (*State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 117 Pac. 1106) conceded that on first impression the objections contained in these facts constituted a persuasive argument against the validity of the act, but added that these conditions do not furnish an absolute test of such validity.

The test of the validity of such a law is not found in the inquiry, Does it do objectionable things? but is found rather in the inquiry, Is there no reasonable ground to believe that the public safety, health, or general welfare is promoted thereby? * * * It is not meant here to be asserted that this [police] power is above the constitution, or that everything done in the name of the police power is lawfully done. It is meant only to be asserted that a law which interferes with personal and property rights is valid only when it tends reasonably to correct some existing evil or promote some interest of the State, and is not in violation of any direct and positive mandate of the constitution. The clause of the constitution now under consideration was intended to prevent the arbitrary exercise of power or undue, unjust, and capricious interference with personal rights; not to prevent those reasonable regulations that all must submit to as a condition of remaining a member of society.

The court then cited a number of authorities as supporting the principles above laid down, many of the cases being those mentioned in the earlier discussions presented in the reports of investigating commissions of Minnesota, New York, and Ohio.

The first Montana statute was also a compulsory one, and the court in considering it (*Cunningham v. Northwestern Improvement Co.*, 44 Mont. 180, 119 Pac. 562) cited and followed the Washington opinion and reached the conclusion that the general scheme of the act under consideration was well within the police power of the State:

If the people, represented by their legislature, are of opinion that the public interests demand that industrial insurance ought to be substituted in whole or in part for actions in wrongs, this court certainly can not say that they are in error.

With the exception of the Court of Appeals of New York, therefore, all the courts of last resort which passed upon the constitutionality of these earlier enactments held that they did not violate

the constitutional rule as to due process of law. The same view was held by the Supreme Court of New York in its opinion in the Ives case, quoting from the opinion of the Supreme Court of the United States in the case of *Holden v. Hardy* (169 U. S. 366, 18 Sup. Ct. 383):

While the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation; and the Constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land.

On appeal, however, the foregoing opinion was rejected by the court of appeals. As to the liability fixed by the New York compulsory statute, it was said that it plainly constitutes a deprivation of liberty and property under the Federal and State constitutions which would not be valid unless justifiable under the police power. The economic argument was considered and the defects of the present system were recognized.

We have already admitted the strength of this appeal to a recognized and widely prevalent sentiment; but we think it is an appeal which must be to the people and not to the courts. The right of property rests not upon philosophical or scientific speculations, nor upon the commendable impulses of benevolence or charity, nor yet upon the dictates of natural justice. The right has its foundation in the fundamental law. That can be changed by the people, but not by legislatures. * * * If such economic and sociological arguments as are here advanced in support of this statute can be allowed to subvert the fundamental idea of property, then there is no private right entirely safe, because there is no limitation upon the absolute discretion of legislatures, and the guaranties of the constitution are a mere waste of words.

It was further said that—

The argument that the risk to an employee should be borne by the employer because it is inherent in the employment may be economically sound, but it is at war with the legal principle that no employer can be compelled to assume a risk which is inseparable from the work of the employee and which may exist in spite of a degree of care by the employer far greater than may be exacted by the most drastic law. * * * In its final and simple analysis that is taking the property of A and giving it to B, and that can not be done under our constitutions.

The cases cited in the New York State investigating commission's report and later in the Washington and other decisions, were referred to and distinguished as not supporting the claims made for them. The opinion, therefore, of the New York Court of Appeals and that given out by the Washington Supreme Court are in direct conflict. In referring to the New York opinion the Washington court said:

The act the [New York] court there had in review is dissimilar in many respects to the act before us and is perhaps less easily defended on economic grounds. The principle embodied in the statutes is, however, the same, and it must be conceded that the case is direct authority against the position we have here taken. We shall offer no criticism of the opinion. We will only say that, notwithstanding the decision comes from the highest court of the first State of the Union and is supported by a most persuasive argument, we have not been able to yield our consent to the view there taken.

In a later case (*Stertz v. Industrial Insurance Commission*, 158 Pac. 256) the Supreme Court of Washington had before it a case where the injury was due to the wrongful act of a third party. It was said that the State law "positively ends the 'jurisdiction of the courts' on 'all phases' of master and servant liability," and that "liability for a stranger's acts on the premises is one of those phases * * *. It is but a slight extension of the common-law assurance of a safe place to work. Neither would it be a violation of the due process guaranty to make the master an insurer of the workman at the shop."

Before any case under a workmen's compensation law had reached the Supreme Court of the United States it was called upon to consider the validity of a sort of compulsory insurance of bank deposits provided for by a statute of Oklahoma. This was to be achieved by means of a fund maintained by contributions by banks within the State, very much as employers are called upon to secure the payment of awards due their injured employees by insuring in a State fund. This law was upheld (*Noble State Bank v. Haskell*, 219 U. S. 104, 31 Sup. Ct. 186), and the courts of Washington, Iowa, and other States were quick to claim the value of this judicial support of the principle in controversy. The New York Court of Appeals, on the other hand, when announcing its decision in the *Ives* case, refused to recognize this decision "as controlling of our construction of our own constitution." However, when the new compulsory law of New York was before this court in 1915, subsequent to the amendment to the State constitution, it was said:

Surely it is competent for the State in the provision of the general welfare to require both employer and employee to yield something toward the establishment of a principle and plan of compensation for their mutual protection and advantage. The act now before us seems to be fundamentally fair to both employer and employee. It is plainly justified by the amendment to our own State constitution; and the decisions of the United States Supreme Court, notably in the *Noble State Bank* case, make it reasonably certain that it will be found by that court not to be violative of the Constitution of the United States (*Jensen v. Southern Pacific Co.*, 215 N. Y. 513, 109 N. E. 600).

Of greatest interest, by reason of the rank of the court and the fact that the decision was the first to be made by it on the subject, is the opinion of the Supreme Court of the United States on the compul-

sory statute of New York (*New York Central R. R. Co. v. White* (1917) 243 U. S. 188, 37 Sup. Ct. 247). The question of due process is here disposed of by pointing out that the common-law doctrine of the employer's liability for negligence, with its defenses of contributory negligence, fellow service, and assumption of risks, "is based upon fictions, and is inapplicable to modern conditions of employment," its application resulting in litigation that "is unduly costly and tedious, encouraging corrupt practices, and arousing antagonisms between employers and employees."

The close relation of the rules governing liability for injuries to the fundamental rights of liberty and property is recognized; "but these rules, as guides of conduct, are not beyond alteration by legislation in the public interest. No person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit."

Negligence is said to be "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 fellow-servant doctrine is characterized by "material differences in different jurisdictions," and "it needs no argument to show that such a rule is subject to modification or abrogation by a State upon proper occasion."

The same conclusion is reached as to the subjects of assumption of risks and contributory negligence; and it is further pointed out "that the entire matter of liability for death caused by wrongful act, both within and without the relation of employer and employee, is a modern statutory innovation, in which the States differ as to who may sue, for whose benefit, and the measure of damages." Departures from the common-law rules have repeatedly been made by State legislatures and by Congress as well, and these acts have been upheld by the court.

It is true that in the case of the statutes thus sustained there were reasons rendering the particular departures appropriate. Nor is it necessary, for the purposes of the present case, to say that a State might, without violence to the constitutional guaranty of "due process of law," suddenly set aside all common-law rules respecting liability as between employer and employee, without providing a reasonably just substitute * * *. No such question is here presented, and we intimate no opinion upon it. 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. We have said enough to demonstrate that, in such an adjustment, the particular rules of the common law affecting the subject matter are not placed by the fourteenth amendment beyond the reach of the law-making power of the State.

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 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 question of due process was raised in the discussion of the Kentucky statute (*Kentucky State Journal Co. v. Workmen's Compensation Board* (1914), 161 Ky. 562, 170 S. W. 1166). The State constitution forbids any limitation by law on the amount to be recovered for injuries resulting in death, or for injuries to person or property. This was held to guarantee rights which the law in question violated by reason of the limitation of amounts, and also by the provision that a workman might make a contract of waiver which would be binding both upon himself and upon all persons claiming under or through him. On rehearing, however, it was suggested that the mere fact of waiver would not be objectionable if free choice in making the same was secured, the court having held in the first instance that though the act was elective in form it was in fact compulsory. A further objection to the act was found in the fact that where the employer accepted the statute, the employee was automatically drawn into the contract and made subject to the provisions of the law on pain of being deprived of all his causes of action.

Another provision of the statute was held to violate the employer's rights in that where a fatally injured workman left no dependents a fixed amount was to be paid to the State compensation board for its own use, barring the estate or personal representatives from any claim. This was held to violate another provision of the constitution (sec. 241), which gives a right to sue for damages in case of injuries causing death, and the court ruled that a law to be valid must not thus restrict the rights of personal representatives nor compel contributions to the State fund. The legislature of 1916, in the enactment of a new law, undertook to avoid the defects indicated.

The new law was before the court of appeals of the State in June of the year of enactment, a test case having been made to secure an early decision as to its constitutionality (*Greene v. Caldwell*, 170 Ky. 571, 186 S. W. 648). It was upheld in all points, the elective provisions being extended to employer and employee alike. The restriction of the amount of recovery was held not to conflict with the clause of the constitution forbidding the limitation of the amount of recovery, since it was optional with the claimant to accept the compensation law in the first instance. Having accepted it he was not in a position to complain of the limits set by the new law, and in the absence of constitutional objections, the wisdom and propriety of the law were held to be for the legislature to determine without interference by the courts.

In connection particularly with the holding of the Kentucky court that the provision of the law making the act binding on employees when accepted by the employer was unconstitutional, the opinion of the Supreme Court of the United States on this exact point is of interest. The case involved the Texas statute (*Middleton v. Texas Power & Light Co.*, 249 U. S. 152, 39 Sup. Ct. 227), which contained this identical provision. The contention was made that the employee was thereby deprived of liberty and property without due process of law, but the Supreme Court held that the employee had no vested right to have the rules of law remain unchanged for his benefit, and that his only loss was a part of his liberty to make a contract under rules of law that had previously obtained. These rules being subject to change in the public interest, the employee had no greater right to object to a compulsory compensation system (made so by the election of the employer) than has the employer when the system is made compulsory by an act of the legislature, as in New York and Washington.

The position of the Kentucky court as to the validity of the provision requiring contributions to the expense fund is also controverted by the ruling of the New York Court of Appeals (*Industrial Com. v. Newman*, 118 N. E. 794), upholding a provision of law requiring contributions to a special fund where no beneficiary survives the death of an injured workman.

EQUAL PROTECTION OF THE LAWS.

The same amendment that guarantees due process of law likewise guarantees equal protection of the laws. The statutes of a number of States are applicable only to designated hazardous industries, or those that may be so classed by an administrative authority, and their validity has been attacked on the grounds of an alleged inequality. This form of attack has uniformly failed, even the New York Court of Appeals, that held the first compulsory statute of that State unconstitutional, sustaining the validity of the classification of

certain employments as hazardous, as therein proposed. Another limitation makes the law applicable only to employers of a designated number of persons, as more than four or five, or some greater number. This also was held to be a valid restriction, as the danger from fellow servants is less in smaller establishments (*Jeffrey Mfg. Co. v. Blagg*, 235 U. S. 571, 35 Sup. Ct. 167).

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 of the United States, in passing upon the Washington statute, 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 (*Anderson v. Hawaii Dredging Co.*, 24 Hawaii Sup. Ct. 97), 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 a 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 York law; and following this and other decisions of the Supreme Court sustaining compensation legislation, the Alaska statute was upheld throughout.

The exclusion of farm laborers and domestic servants is held proper by the Supreme Court on the ground that the legislature reasonably might consider that the risks inherent in these occupations were exceptionally patent, simple, and familiar (*White case*). Similar reasoning was applied by the Supreme Court of Texas to the work of cotton-gin laborers, who were excluded from the original law of that State. This was approved by the Supreme Court of the United States (*Middleton case*), but there must be a feeling of satisfaction that this obviously hazardous employment is now included under the law.

The law of Maine excludes "the work of cutting, hauling, rafting, or driving logs," and the act has been held constitutional (*Mailman v. Record Foundry & Machine Co.* 106 Atl. 606), though with no particular discussion of this point. The same exemption appears in the liability law of the State, and this was held by the supreme court to be a valid classification on the ground that the appliances and power used in logging "are well known and their dangers obvious. The lumber business is as old as our Government, and many of its features are familiar to employees before entering them." (*Dirken v. Great Northern Paper Co.*, 86 Atl. 320.) Unconvincing as this reasoning doubtless appears to a layman, it has seemed thus far to suffice to retain this provision in both the liability law and the compensation law of the State. Perhaps the exemption of coal mines in the Tennessee statute will be similarly defended in case of a challenge on this point, but the more customary classification of employments would certainly place both these occupations in the group designated as hazardous.

The exclusion of railroad employees engaged in interstate commerce is rather a superfluous provision, in view of the paramount and exclusive authority of Federal legislation in this field (*Michigan Central R. R. Co. v. Vreeland*, 227 U. S. 59, 33 Sup. Ct. 192); but such an exemption has been upheld (*Mathison v. Minneapolis St. Ry. Co.*, 126 Minn. 286, 148 N. W. 71). And the exclusion of all employees of common carriers by rail is justified by the Supreme Court in passing on the Texas statute, in view of the Federal law covering interstate

employees, and of "the difficulty that so often arises in determining in particular instances whether the employee was employed in interstate commerce at the time of the injury," so that railroad employees generally "might better be left to common-law actions with statutory modifications already in force, and such others as experience might show to be called for" (Middleton case).

An objection that was found fatal to the Montana statute was its failure to provide equal protection, not as between different classes of employers or of employees, but as between the employers and workmen to whom the act applied. The law in question was a compulsory cooperative insurance statute, requiring the payment of contributions to a State fund by the employer in his own behalf and in behalf of his employees, and permitting him to recoup himself in part by withholding from the employees' wages fixed amounts as their contribution to the fund. Designated amounts were provided as benefits for injured workmen to be paid from this fund, but the workmen were given the option of suing the employer in an action to recover damages for injuries received. This resulted in the compulsory maintenance of a fund by the employers' contribution and also liability to an action in damages after having made such contribution. This provision of the statute, not essential to its general scheme (which had been declared constitutional by the court), was held to be inequitable and unjust so as clearly to invalidate the law as charging the employer with a double liability and not affording equal protection (Cunningham case). It may be noted that in the local law of Maryland applying to Allegany and Garrett Counties (now repealed), the option was permitted employees of accepting benefits from the funds maintained by contributions or to sue the employer for damages. The difficulty which invalidated the Montana law was avoided, however, by permitting the employers to reimburse themselves by withholding from subsequent contributions such an amount as would equal the judgment and costs incurred in the action.

Attention has already been called to the decision of the Supreme Court upholding the Arizona statute (*Arizona Copper Co. v. Hammer*, 250 U. S. 400, 39 Sup. Ct. 553), although that law permits options to the injured worker of a common-law action, suit under the liability law if the worker is without negligence, or a claim under the compensation law, which is compulsory on the employer regardless of all questions of fault or negligence on his part. (See *Arizona S. Co. v. Ujack*, 15 Ariz. 382, 139 Pac. 465.) It is evident that the employer may be insured against the liabilities imposed by the compensation law, to which he is subject without option, and may yet be called upon to defend a suit for damages, with the defense of fellow service abrogated, and the defenses of contributory negligence and

assumption of risks "at all times left to the jury." (Const., art. 18, secs. 4 and 5.)

Objections to this situation are disposed of in the majority opinion, four justices earnestly dissenting, with the remark that—

It is thoroughly settled by our previous decisions that a State may abolish contributory negligence as a defense, and election of remedies is an option very frequently given by the law to a person entitled to an action; an option normally exercised to his own advantage, as a matter of course.

However, the dissent finds that—

Here, without fault, the statute in question imposes liability in some aspects more onerous than either the New York or Washington law prescribed; and the grounds upon which we sustained those statutes are wholly lacking. The employer is not exempted from any liability formerly imposed; he is given no quid pro quo for his new burden; the common-law rules have been set aside without a reasonably just substitute; the employee is relieved from consequences of ordinary risks of the occupation, and these are imposed upon the employer without defined limit to possible recovery which may ultimately go to nondependents, distant relatives, or, by escheat, to the State; "the act bears no fair indication of a just settlement of a difficult problem affecting one of the most important of social relations"—on the contrary, it will probably intensify the difficulties.

JURY TRIAL.

A contention made in connection with the question of due process of law, but as a specific point, was that the system of awards proposed was an abrogation of the right of trial by jury, in violation of constitutional rights. The Supreme Court of New Jersey (Sexton case) in speaking of this point said:

This contention totally misconceives the proper construction and effect of the constitutional provision in question. The language with respect to this mode of trial is that it shall remain inviolable, not that it shall be unalterable. It is therefore a privilege which may be waived by either party and not an absolute right which is not the subject of such a waiver.

It was pointed out that there had been for a number of years provisions for the waiver of the right of jury trials, and that provisions of this sort had been uniformly held to be constitutional.

In the foregoing case it is obvious that the matter of election or option was of the essence of the opinion; but in Washington (Clausen case) the subject of a fixed rule was before the court, and it was objected that "the legislature can not fix a procrustean rule for the admeasurement of damages arising from injuries received by one in the employment of another," as both parties were entitled to have the question of right and amount submitted to a jury. The court having held, however, that for the privilege of engaging in business

of certain sorts the State might properly require contributions to a benefit fund, it concluded that it might also require employees entering into contract relations with employers of the foregoing class to receive a given sum for such injuries as they might incur during employment. In this view the legislature would be authorized to provide that if a workman was injured while so engaged he should receive a "sure award in a limited sum as compensation for his injury and in lieu thereof shall forego his common-law action in damages therefor. * * * The desirability of this substitution is unquestioned, and we believe that the legislature had the power to make it without violating any principle of the fundamental law."

A similar conclusion was reached by another line of argument, the court saying that "the right of trial by jury accorded by the constitution, as applicable to civil cases, is incident only to causes of action recognized by law." If, therefore, the legislature is able to take away the cause of action on the one hand and the ground of defense on the other and merge both into a statutory indemnity, the right to sue has fallen and with it, of necessity, the right of jury trial. The United States Circuit Court of Appeals, while discussing the Washington statute (*Raymond v. Chicago, Milwaukee & St. Paul Railway Co.*, 233 Fed. 239), pointed out that the guaranty of the Federal Constitution as to trial by jury does not prevent the establishment of a process of law in which trial by jury is omitted.

In the *Cunningham* case (Montana) also it was pointed out that the Constitution of the United States does not guarantee a trial by jury in a civil action in a State court, citing a decision by the Supreme Court of the United States. It was said, further, that the provision of the State constitution that the right of trial by jury shall be secured to all and remain inviolate had been construed by the court as applying only to those cases wherein a right of trial by jury existed at the date of the adoption of the constitution.

It was held, therefore, that such guaranty would have no reference to claims against an indemnity fund such as are provided for by the act in question, since the adjustment of claims under the act is administrative and not judicial, nor does due process of law necessarily require a jury trial, citing *Montana Co. v. St. Louis Min. Co.* (152 U. S. 160, 14 Sup. Ct. 506).

The Supreme Court of Massachusetts pointed out that under the law of that State an employee retained the right to jury trial as to the facts as to whether the employer had insurance and whether the employee had given the statutory notice not to be bound by the act; but failure to give such notice was a waiver of the right to trial by jury, which was not a compulsory deprivation, but optional with the employee. (*Young v. Duncan*, 106 N. E. 1.) The elective character

of the Illinois statute was also pointed out by the supreme court of that State, as relieving the law of the charge of depriving parties of the right of trial by jury (*Deibeikis v. Link-Belt Co.*, 261 Ill. 454, 104 N. E. 211); of the Iowa law, by the Supreme Court of Iowa (*Hunter v. Colfax Consol. Coal Co.*, 175 Iowa 245, 154 N. W. 1037); of the Pennsylvania law, by the Supreme Court of Pennsylvania (*Anderson v. Carnegie Steel Co.*, 99 Atl. 215); of the Rhode Island law, by the Supreme Court of Rhode Island in sustaining its constitutionality (*Sayles v. Foley*, 38 R. I. 484, 96 Atl. 340), and, more recently, of the Montana law, by the Supreme Court of Montana (*Shea v. North Butte Mining Co.*, 179 Pac. 499).

Somewhat broader in its form was the charge made against the New York statute that it deprives plaintiffs of their right to recover for torts, in reply to which the court of appeals declared that there is no deprivation, but a substitution, which, if restricted, is yet a remedy, and this restriction may be viewed as the employee's contribution to the insurance fund, the employer discharging his obligation by the payment of premiums. (*Jensen v. Southern Pacific Co.*, supra.)

The matter was disposed of by the Supreme Court of Texas by saying that the right of trial by jury can not be claimed in an inquiry that is nonjudicial in its character or with respect to proceedings before an administrative board, such as the accident board provided for by the act (*Middleton v. Texas Power & Light Co.*, 185 S. W. 556), while a district court of the United States emphasized the elective nature of the Iowa statute, saying that the constitutional guaranty of the right of trial by jury, as well as of liberty to contract and of due process of law, could be waived, either expressly or by common consent or acquiescence (*Hawkins v. Bleakly*, 220 Fed. 378).

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 a similar contention in the case of *New York Central R. 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 with-

draws 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 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.)

Superseding the earlier elective law of Ohio is a compulsory one, which provides that an employer failing to contribute to the State fund must pay his injured workmen such sums as the State commission may award, if the employee makes claim through the commission. Failure of the employer to pay the award subjects him to a penalty of 50 per cent. This was held constitutional, since the State constitution authorizes a compulsory law, which would include reasonable provisions to make the law effective. The State will enforce the payment, in a proceeding that involves a jury trial, with the one question removed as to the amount of the recovery, which is fixed pursuant to statute; so that there is no denial of right of trial by jury as to any issue which the employer is entitled to raise. The acts of the commission are administrative and not judicial, so that there is no unlawful transfer of powers. There is therefore no denial of due process or of equal protection of the law (*Fassig v. State*, 95 Ohio St. 232, 116 N. E. 104).

LIABILITY WITHOUT FAULT.

Perhaps the ground on which the New York Court of Appeals most strongly condemned the first compulsory law of that State was that it charged the employer with a liability without fault. The point was argued at considerable length, and the cases offered in support of such liability were examined and held to be inapplicable to the

questions under consideration by the court, and the conclusion was therefore reached that the law in question contained no justifying provision that would warrant the imposition of such liability.

It contains not a single provision which can be said to provide for the safety, health, or morals of the employees therein specified, nor to impose upon the enumerated employers any duty or obligation designed to have that effect. It does not affect the status of employment at all, but reads into the contract between the employer and employee without the consent of the former a liability on his part which never existed before and to which he is permitted to interpose practically no defense, for he can only escape liability when the employee is injured through his own willful misconduct (Ives case).

The Supreme Court of Washington (Clausen case) held with equal vigor that the valuable ends in view and the reasonable provisions of the law for the securing of those ends warranted the imposition of such liabilities as were enforced by the law of that State, so that in the exercise of the police power for the promotion of the welfare of the State, a sufficient warrant existed for the fixing of the liability in question, citing in this connection an extended list of cases, some of which the New York court had noted and distinguished.

In a case decided by the Supreme Court of Wisconsin (*City of Milwaukee v. Miller*, 144 N. W. 188), in discussing the nature of compensation laws, the court referred to the old rule of liability as being based on "the common-law principle that he who tortiously injures another in his person or his property incurs a legal liability to make good to that other all the loss which is directly and naturally caused thereby, regardless of any element of reasonable anticipation of consequences." The court then said:

This extreme and rather harsh rule is characterized by a penal element, grounded on the moral turpitude of the wrongful act. Under the statutory system for dealing with personal injury losses incident to performance of the duties of an employer they are regarded as mutual misfortunes to be charged up, as directly as practicable, to the cost of production. The right to have the employer regarded as an agency to make payment to the employee and absorb the same as an expense of the industry, regardless of whether the loss is attributable to any human fault, is a legislative creation within the constitutional exercise of the police power to legislate for the public welfare.

The Supreme Court of California took up the question in very much the same manner as that of Washington, assuming the power of the legislature to declare a liability without fault as a matter of public policy. It pointed out that it was generally admitted that the common-law defenses of the employer can be abrogated, and declared that the rule of fault was neither more sacred nor more necessary. At common law, in the absence of fault, the burden of the accident

fell on the employee; and by declaring the liability of the employer in such cases, the legislature was simply exercising its right to shift the burden to the employer, and through him to the industry. It was held that no vested right was disturbed, the statute not being retroactive, and that what was effected was simply a readjustment of the employment status, not forbidden by the fourteenth amendment (*Western Indemnity Co. v. Pillsbury*, 151 Pac. 398). It may be mentioned in this connection that the Arizona compensation law specifically abrogates "the common-law doctrine of no liability without fault," in so far as it might be pleaded with reference to the classes of accidents covered by the act; and the courts uniformly rule that the negligence of the employer need not be proved in proceedings under the compensation laws, the question being not one of the right to recover damages for a tort, but one of the grant of a different right based on the status of the employee as such.

The establishment of this principle 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.

The Supreme Court 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 loss of life through industrial accident, entailing the loss of self-support, and in fatal cases depriving widows 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.

A quite recent (1918) decision by the New York Court of Appeals says:

An award under the workmen's compensation law is not made on the theory that a tort has been committed; on the contrary, it is upon the theory that the statute giving the commission power to make an award is read into and becomes a part of the contract. * * * These payments are made irrespective of whether or not the employer was guilty of wrongdoing. It is a part of the compensation agreed to be paid for services rendered in the course of the employment (*Doey v. Howland Co.*, 120 N. E. 53).

In passing upon this point in the Arizona case the Supreme Court said:

We are unable to say that the employers' liability law of Arizona, in requiring the employer in hazardous industries to assume—so far as pecuniary consequences go—the entire risk of injury to the employee attributable to accidents arising in the course of the employment and due to its inherent conditions, exceeds the bounds of permissible legislation or interferes with the constitutional rights of the employer. The answer that the common law makes to the hardship of requiring the employee to assume all consequences, both personal and pecuniary, of injuries arising out of the ordinary dangers of the occupation, is that the parties enter into the contract of employment with these risks in view, and that the consequences ought to be and presumably are, taken into consideration in fixing the rate of wages. In like manner the employer, if required—as he is by this statute in some occupations—to assume the pecuniary loss arising from such injury to the employee, may take this into con-

sideration in fixing the rate of wages; besides which he has an opportunity, which the employee has not, to charge the loss as a part of the cost of the product of the industry.

There is no question here of punishing one who is without fault. That, we may concede, would be contrary to natural justice. The statute requires that compensation shall be paid to the injured workman or his dependents, because it is upon them that the first brunt of the loss falls; and that it shall be paid by the employer, because he takes the gross receipts of the common enterprise, and by reason of his position of control can make such adjustments as ought to be and practically can be made, in the way of reducing wages and increasing the selling price of the product, in order to allow for the statutory liability. There could be no more rational basis for a discrimination; and it is clear that in this there is no denial of the "equal protection of the law."

ABROGATION OF EMPLOYERS' DEFENSES.

In a number of cases the question was raised as to the power of the legislature to abolish the defenses of fellow service, contributory negligence, and assumption of risks, as was done in most of the laws providing for compensation. There was, however, little disagreement by the courts on this point, the New York Court of Appeals saying that the power of the State to make changes in methods of procedure and the rules of law was clearly recognized.

We have said enough to show that the statutory modifications of the "fellow-servant" rule and the law of "contributory negligence" are clearly within the legislative power. These doctrines—for they are nothing more—may be regulated or even abolished. This is true to a limited extent as to the assumption of risk by the employee (*Ives v. South Buffalo Ry. Co.*, supra).

The Massachusetts court (opinion of justices) said that the rules of law relating to these three defenses were established by the courts, not by the constitution, and that the legislature may change them or do away with them altogether as defenses. The courts of Wisconsin, New Jersey, and Ohio agree with the opinion of the Massachusetts court, the Ohio court (*Creamer case*) saying that as to the right to abolish the defense of assumption of risks the great weight of authority is against the New York court, holding that it is subject to the same complete legislative control as the other defenses made. The Supreme Court of Appeals of West Virginia, speaking on this point, says that "the defenses inhibited or barred are such as the legislature had a clear right to eliminate for reasons of public policy" (*De Francesco v. Piney Mining Co.*, 86 S. E. 777).

See also *Deibeikis v. Link-Belt Co.*, 261 Ill. 454, 104 N. E. 211; *Mathison v. Street Ry. Co.*, 126 Minn. 286, 148 N. W. 71; *Wheeler v. Contoocook Mills*, 77 N. H. 551, 94 Atl. 265; *State v. Creamer*, 85 Ohio St., 349, 97 N. E. 602; *Middleton v. Texas Power & Light Co.*, 108 Tex. 96, 185 S. W. 556, etc.

Despite the uniform attitude of the State courts on this question⁴ 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 separately 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.

EXERCISE OF JUDICIAL POWERS.

Most of the laws in question provide for their administration and the settlement of disputes by boards or commissions, and these provisions were made the grounds of attack on their constitutionality as conferring judicial powers upon nonjudicial officers. In no case was the contention of unconstitutionality admitted, though the courts found different grounds for sustaining the various laws, and indeed the laws themselves differ somewhat in regard to the powers and prerogatives of the administrative bodies.

The Montana law conferred certain duties upon the State auditor, which were held by the supreme court of that State to be administrative and not judicial, while the suggestion that he might in certain cases be called upon to exercise judicial power was said to be of no persuasive force, since such procedure would be altogether voluntary on his part and he might resort to the courts if he so desired (*Cunningham v. Northwestern Improvement Co.*, supra). Its present law is administered by a commission or board, of which it is said that "it is true that many of the functions exercised by the board are judicial in character," but it is, nevertheless, not vested with judicial power within the constitutional meaning of that term, being "a purely administrative body," without power to render an enforceable judgment (*Shea v. North Butte Mining Co.*, supra).

The industrial commission provided for in the Wisconsin statute was said by the court of that State not to be a court, and the act was construed as not vesting in this commission judicial powers within the meaning of the constitution. "It is an administrative body or arm of the Government, which in the course of its administration of the law is empowered to ascertain some questions of fact and apply existing law thereto, and in so doing acts quasi-judicially; but it is not thereby vested with judicial power in the constitutional sense." It was held that the act made no attempt to confer on the board power to consider and determine its own jurisdictional authority, but that courts were open for appeals from its findings on any one of three grounds: First, that the board acted without or in excess of its powers; second, that the award was procured by fraud; and, third, that the findings of fact did not support the award. In view of these provisions the court held that there was no violation of the constitution in conferring such powers on the commission as it was authorized to exercise. (*Borgnis v. Falk*, 147 Wis. 327, 133 N. W. 221; see also *Menominee Bay Shore Lumber Co. v. Industrial Commission*, 156 N. W. 151, where the ruling that the commission is not a court was incidental to a decision that a minor needs no guardian in order to appear before it.)

Similar considerations were involved in the discussion of the Ohio statute, and like conclusions were reached by the court in this case (*State v. Creamer*, supra). It was said that the board of awards created by the act was purely an administrative agency with duties relating to the creation and administration of the insurance fund, and the fact that it is empowered to classify persons to come under the law and to ascertain facts as to the application of the fund does not invest it with judicial power within the constitutional sense; so also of the Texas statute (*Middleton v. Texas Power & Light Co.*), and that of Kentucky (*Greene v. Caldwell*); and of Maryland (*Solvuca v. Ryan & Reilly Co.*, 101 Atl. 710).

The law authorizing the industrial accident board of Michigan was held not to be unconstitutional, on the ground that it is merely an administrative agency available at the option of the parties interested (*Mackin v. Detroit-Timkin Axle Co.*, 187 Mich. 8, 153 N. W. 49). In Iowa also it was held that though the right of appeal from the decisions of the commission was more restricted than under the laws of a number of other States, there was no excessive delegation of judicial powers, since the conditions and amounts of awards are fixed by statute, and further, an acceptance of the act must precede its application (*Hunter v. Colfax Consol. Coal Co.*; *Hawkins v. Bleakly*, 220 Fed. 378). The elective nature of the law was held by the Supreme Court of Illinois to obviate any difficulty that might otherwise arise on the ground of the exercise of judicial powers by the commission of that State (*Deibeikis v. Link-Belt Co.*).

In all the foregoing cases the nonjudicial character of the boards and commissions was affirmed, but the courts of several States adopt another view for identical agencies therein. Thus it was said by the Supreme Judicial Court of Massachusetts that for certain purposes and in certain respects the commission on arbitration and the industrial accident board, provided for by the compensation law of the State, should be classed as courts, though the members are not judicial officers within the constitution. However, as they have power to summon witnesses, administer oaths, make rulings, and render decisions they are in a sense courts, in which proceedings may be had which correspond to actions (*Pigeon v. Employers' Liab. Assurance Corp.*, 102 N. E. 932). But in a later case this court defined the industrial accident board of the 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).

The Supreme Court of California found the powers of the accident commission of that State to be those of a court, the law giving to it "full power, authority, and jurisdiction to try and finally determine" all proceedings for the recovery of compensation, which are "precisely the same functions that are performed by any court in passing upon questions brought before it." Power thus to act is held to be given by the amendment to the constitution of the State authorizing the enactment of the law and the creation of the board with authority to settle disputes (*Western Metal Supply Co. v. Pillsbury*, 156 Pac. 491; *Carstens v. Pillsbury*, 158 Pac. 218). The fact that the commission is held to have such a status entails the necessity of a procedure in conformity to the standing of a court, in compliance with

constitutional requirements as to due process of law. This was held to restrict somewhat the power of the commission to proceed informally, to waive the customary rules as to evidence, etc. (Carstens case).

In discussing its law the Supreme Court of Oregon held that the constitution of the State gave the legislature authority to set up new courts if the three departments of the government, legislative, executive, and judicial, are kept properly separate (*Evanhoff v. Industrial Accident Commission*, 78 Oreg. 503, 154 Pac. 106). Evidently, the peculiar limitations of the State constitutions afford ground for diverse rulings on the power to establish courts, while the functions of the commissions also vary; but, on one ground or another, the authority of these bodies has been unanimously upheld.

Somewhat different was the point raised against the statute of Rhode Island, the contention being made that the provision of the act which authorizes employers to maintain benefit schemes as a substitute for the provisions of the act amounted to a delegation of legislative powers. This was overruled by the supreme court on the ground that the establishment and acceptance of such schemes was optional, and not binding as a law would be (*Sayles v. Foley*, 38 R. I. 484, 96 Atl. 340).

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 case noted above, though their authority was, of course, assumed in so far as the validity of awards made without jury trial was upheld. In the *White* case, the New York commission was said to have "administrative and judicial functions, including authority to pass upon claims to compensation on notice to the parties interested. * * * No question is 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 Iowa statute calls for an arbitration committee appointed for the case in hand, with power of review lodged in an industrial commissioner. This results in what the Supreme Court characterized as an "administrative tribunal," powers of judicial review remaining in the courts (*Hawkins v. Bleakly*, citing the decision of the Supreme Court of Iowa in the case; *Hunter v. Colfax Consolidated Coal Co.*, *supra*).

Whatever may be lacking in uniformity of reasoning in the citations on this point, there is complete agreement that in the establishment and authorization of the various administrative commissions no new courts have been created or judicial power delegated in such wise as to offend the provisions of the Federal or State constitutions.

FREEDOM OF CONTRACT.

The compulsory laws of New York and Washington were, because of their nature, subjected to scrutiny on the ground that they interfered unconstitutionally with the freedom of contract, and in the Ives case (New York) it was held that this was unwarrantably done, reading into the contract between the employer and employee, and without the employer's consent, a new liability to which he can interpose practically no defense. In the Clausen case (Washington) it was said that personal rights, such as that of contract, are not absolute. "On the contrary, it has been many times said that there is no absolute right to do as one will, to assume any calling one desires, or contract as one chooses; that the term 'liberty' means absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community," citing *Frisbie v. United States* (157 U. S. 160, 15 Sup. Ct. 586). Other opinions cited were *Holden v. Hardy* (169 U. S. 366, 18 Sup. Ct. 383), in which the Supreme Court, speaking of the power to limit the hours of labor a workman may be employed in underground mines, said: "This right of contract, however, is itself subject to certain limitations which the State may lawfully impose in the exercise of its police powers", and *State v. Buchanan* (29 Wash. 602, 70 Pac. 52), in which a law limiting the number of hours of labor that women might be employed in a day was held constitutional, although requiring the yielding of individual rights.

The Supreme Court of Massachusetts (opinion of justices) found no difficulty in disposing of the question of freedom of contract because of the elective or optional feature of the State law, by reason of which employers and employees were alike at liberty to choose whether or not they would accept the provisions of the statute. As to the Wisconsin law it was contended that while it in form presented to employers and their workmen a free choice as to acceptance or rejection of its terms, it was in fact coercive, since the employer is constrained by the abolition of his defenses to accept the act, while the employee will feel himself obliged to come within its provisions for fear of discharge if he does not accept. The court assumed that certain employers would feel themselves able adequately to safeguard their workmen and carry their own risks under the liability laws of the State, even with the defenses abrogated, since under the circumstances of their establishments they would consider that preferable to assuming the burdens of the compensation law. So also it was argued that in all probability a great body of workmen, especially the unskilled classes, would be glad to secure a certain compensation in case of injury instead of accepting the uncertainties of a lawsuit. This phase of the subject was dismissed as being speculative and conjectural, since no one could say what

the practical operation of the law would be. "It is enough for our present purpose that no one can say with certainty that it would operate to coerce either employer or employee" (Borgnis case).

The same situation was developed in the Ohio opinion on the earlier (elective) law, in which it was said that "it is urgently insisted that while the law is apparently permissive and leaves its operation to the election of the employer and employees, it is really coercive." The law in question deprived the employer of certain defenses if he failed to elect, election by the employee being presumed if he continued in service, but he might sue in certain cases of the employer's negligence. The system thus provided was held by the court not to be coercive on account of the common-law and statutory rights still preserved to the parties. "As was said in the Wisconsin case, 'Laws can not be set aside upon mere conjecture or speculation. The court must be able to say with certainty that an unlawful result will follow.' We do not see how such a thing could be said here" (Creamer case).

The New Jersey Supreme Court took the same view, holding that no coercion was exercised upon either party to the contract of hire. There are two principal parts of the law—one a stringent liability law, and the other a compensation statute—and both parties are free to choose under which of them the employment is to stand. It is provided that in the absence of notice of rejection acceptance of the compensation system is presumed. It was said that it would have been quite as competent for the legislature to have adopted other alternatives, but in its wisdom the particular choice made was the one adopted.

Really, the matter comes down to a question of presumption or burden of proof, which it is entirely within the control of the legislature to regulate so long as the parties are left entirely free to make whatever contract they choose, as they are in this case. We are therefore of the opinion that, as against the objections taken, section 2 is constitutional. [Sexton case.]

To the general charge that the laws interfered with freedom of contract, the supreme courts of Illinois and Iowa in the cases already cited (p. 173) give the answer that the statutes are elective, and that if the parties elect they can not complain of the consequences; so also of the right of the parties to waive remedies otherwise provided and subject themselves to such inquiries as to violate the provisions of law as to unreasonable search and seizure, their acceptance of the act being voluntary.

More specifically the point of the restriction of freedom is raised against the presumptions as to election. The Supreme Court of Minnesota held that the law of that State was not vitiated as a voluntary and optional one, because express disavowal of its provisions was re-

quired (*Mathison v. Minneapolis St. Ry. Co.*); while the Massachusetts court declared that a requirement which provides that the law must be rejected at the time of hiring if the employee does not wish to come under it is reasonable (*Young v. Duncan*). Of this provision the Michigan Supreme Court, speaking of the presumption that the employee will accept where the employer elects, said that the former has a knowledge of the law and a presumptive notice of his employer's action, there being merely an establishment by the legislature of a presumption which can be overcome, the purpose being to avoid uncertainty (*Mackin v. Detroit-Timkin Axle Co.*).

Considerable stress was laid by the appellants in the *White* case, when it was before the Supreme Court, 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 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, 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.

We are unable to discern any ground in natural justice or fundamental right that prevents the State from imposing the entire burden upon the industries that occasion the losses.

In passing upon the law of Texas, which makes acceptance of the law binding on employees remaining in the service of an employer who accepts the act, the Supreme Court said:

A moment's reflection will show the impossibility of giving an option both to the employer and to the employee and enabling them to exercise it in diverse ways. * * * What plaintiff [employee] has lost, therefore, is only a part of his liberty to make such contract as he pleased with a particular employer and to pursue his employment under the rules of law that previously had obtained. But, as has been held so often, the liberty of the citizen does not include among its incidents any vested right to have the rules of law remain unchanged for his benefit. [Middleton case.]

A provision of the law of Pennsylvania forbidding contracts of waiver or agreements for releases prior to the happening of an accident was attacked in a case (*Anderson v. Carnegie Steel Co.*, 99 Atl. 215) which was before the supreme court of that State. The court held that this was in accordance with the declared policy of the State as set forth in an earlier law, the present provision being but an extension of the same, and not an invalid interference with the freedom of contract.

The law of Arizona, as already pointed out, goes to the other extreme in regard to the granting of options, the injured workman being given a choice, even after the injury, between the compensation law and a suit for damages, which accords with existing provisions of the constitution. The legislature went further, however, and undertook to give to the personal representative of an employee whose injuries were fatal the same option. This the supreme court of the State declared was beyond the power of the legislature, since the representative had only the right to sue, and could be given

no right under the compensation act in case the injured man had failed to make the election before death (*Behringer v. Copper Co.*, 149 Pac. 1065).

STATUS OF BENEFIT FUNDS.

An objection was urged against the constitutionality of the statute of Washington in its provision for the maintenance of a fund to be formed of premiums or contributions by employers, on the ground that this was a violation of the provisions of the constitution requiring equal and uniform taxation of property for public purposes. It was held that while the fund was a charge laid on persons engaged in the industries named, imposed by public authority as are taxes, it was not in the meaning of the constitution a tax, as "no acquisition to the public revenue, general or local, is authorized or aimed at. It is to be used, not to meet the current expenses of government, but to recompense employees of the industries on whom the burden is imposed for injuries received by them while engaged in the pursuit of their employment. It is the consideration which owners of the industries pay for the privilege of carrying them on. It is therefore in the nature of a license tax, and can be justified on the principle of law that justifies the imposition and collection of license taxes generally." Cases were then cited showing the power of the legislature to levy such taxes in the State, the conclusion being reached that the sums might be considered as partaking of the nature of a license for both revenues and regulation, but in neither aspect was there anything inimical to either the State or Federal constitution (*State v. Clausen*, 65 Wash. 156, 117 Pac. 1106). Considering another phase of the subject, the supreme court of the State said that when the employer had contributed to the fund, his obligations were discharged, and an injured employee would look not to the employer but to the fund, and if the claim were rejected no suit would lie against the employer but against the commission (*Stertz v. Industrial Insurance Commission*, 158 Pac. 256).

When these provisions of the Washington law came before the Supreme Court of the United States (*Mountain Timber Co. v. Washington*), it was pointed out that while the State court relied principally on the police power of the State, the levying of contributions on employers in the specified industries was also justified "as possessing the character of a license tax upon the occupation, partaking of the dual nature of a tax for revenue and a tax for purposes of regulation." The court then said:

We are not here concerned with any mere question of construction, nor with any distinction between the police and the taxing powers. The question whether a State law deprives a party of rights secured by the Federal Constitution depends not upon how it is characterized, but upon its practical operation and effect. And the Federal Constitution does not require a separate exercise by the States of their powers of regulation and of taxation.

It seems to us that the considerations to which we have adverted in *New York Central R. R. Co. v. White*, supra, as showing that the workmen's compensation law of New York is not to be deemed arbitrary and unreasonable from the standpoint of natural justice, are sufficient to support the State of Washington 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.

Taking the law, therefore, to be justified by the public nature of the object, whether as a tax or as a regulation, the question whether the charges are excessive remains. Upon this point no particular contention is made that the compensation allowed is unduly large; and it is evident that unless it be so, the corresponding burden upon the industry can not be regarded as excessive if the State is at liberty to impose the entire burden upon the industry.

As we have seen, its fourth section prescribes the schedule of contribution, dividing the various occupations into groups, and imposing various percentages evidently intended to be proportioned to the hazard of the occupations in the respective groups. Certainly the application of a proper percentage to the pay roll of the industry can not be deemed an arbitrary adjustment, in view of the legislative declaration that it is "deemed the most accurate method of equitable distribution of burden in proportion to relative hazard." As further rebutting the suggestion that the imposition is exorbitant or arbitrary, we should accept the declaration of intent that the fund shall ultimately become neither more nor less than self-supporting, and that the rates are subject to future adjustment by the legislature and the classifications to rearrangement according to experience, as plain evidence of an effort to limit the burden to the requirements of each industry.

Like the Washington statute, the earlier Montana law was compulsory in the matter of contributions to the general fund. It was held by the supreme court of the State that as the act in question was a scheme calculated to result to the public welfare, it was a proper corollary conclusion that the contributions to the fund were of the nature of a tax imposed for a public purpose; or the procedure might be justified, if the act abolished suits at law for personal injuries and death, on the theory that the State had given a *quid pro quo* to the employer. The court concluded, however, that it was not required to accept either of these arguments, but that it was within the police power of the State to levy such an impost as an employment tax upon the occupation covered by the act.

It is not at all necessary to justify the imposition of such a tax that the business itself should particularly require police supervision, although, as we have seen, extrahazardous enterprises may demand restraint and regulation. Such a tax may be imposed, either for regulation or revenue, or for both. Property and occupation are alike legitimate objects of taxation. [Cunningham case.]

A somewhat different aspect of this question is involved in the Wisconsin statute, since, while no general fund is maintained, compensation is compulsory as to the State and its municipalities. It follows, therefore, that public funds raised by taxation are used for the payment of the benefits contemplated by the act, and on this ground the constitutionality of the law was challenged as compelling municipalities to levy taxes for other than public purposes. As to this point the supreme court of the State (*Borgnis v. Falk*) said:

We have not been quite able to perceive the force of this point, and we find no argument upon it in the brief. We shall only say that the manner in which the State or the public shall treat its workmen is peculiarly a matter for the legislature to determine. No one is compelled to work for the public, and, if he does, he takes the situation on the terms which the public gives. We know of no reason why the public, acting by its lawmaking power, may not provide that its employees shall have as part of their compensation certain indemnities in case of accidental injury in the public service. When the law does so provide, the raising of the funds to discharge those indemnities becomes plainly a proper public purpose.

It is evident that the principles here enunciated are the same as those set forth by the supreme courts of Michigan and Ohio in sustaining the laws of the respective States against contentions that the compulsory application of the statute to municipalities and the diversion of taxes were unconstitutional.

The Ohio Supreme Court had before it in an earlier case (*State v. Creamer*, 85 Ohio St. 349, 69 N. E. 602) the question of the legality of the State fund, which, under the law as it then stood, was made up of contributions from both employers and employees, while the State assumed the expense of administration. It was charged against this system that the law directed the State to use public funds for private purposes, to which the court replied that the ends in view were of a nature to justify the action of the State in its power to secure peace, safety, and the best interests of the Commonwealth, and quoted from the opinion of the Supreme Court in the case of *Noble State Bank v. Haskell* (219 U. S. 104, 31 Sup. Ct. 186), in which the constitutionality of a statute of Oklahoma, authorizing the establishment of a guaranty fund for deposits by a levy on the banks of the State, was under consideration. The quotation is as follows:

The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. * * * Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. * * *

It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanc-

tioned by usage or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.

The objection on this ground was therefore overruled.

The same views were expressed by the Supreme Court of Iowa and the Court of Appeals of New York in meeting the contention that the insurance systems established by the laws of these States effected a taking of property without due process of law.

The Employees' Insurance Association of Texas was attacked on the ground that it was a private corporation formed otherwise than by a general law, contrary to the provisions of the constitution of the State. This contention was rejected, the supreme court saying that the association was only an agency for the proper administration of the law and not properly a corporation, even though so designated in the act (*Middleton v. Texas Power & Light Co.*, 185 S. W. 556).

A special fund is provided under a section of the New York law that looks to the protection of employers of workmen who have suffered a partially disabling injury (sec. 15, subd. 7, added by ch. 622, 1916). This fund is to be maintained by levying a contribution of \$100 on the insurance carrier in each case in which there is a death of an insured person with no survivor entitled to compensation. The proceeds are to be used as special benefits in "second injury" cases, when a partially disabled person becomes totally disabled through an injury that would only partially disable a normal person. This arrangement was held by the court of appeals to be within the power of the legislature to provide, conforming to the spirit of the act, and of uniform application to all persons coming within the conditions prescribed by the act (*State Industrial Commission v. Newman*, 118 N. E. 794).

POLICE POWER.

As to whether or not the acts under consideration properly fall within the police power of the State is a question to be answered according to the views taken as to the scope and purpose of the laws themselves. With the exception of the New York court, the laws were regarded as tending to meet existing needs in a legitimate manner and as being within the police power of the State. The Supreme Court of Ohio (*Creamer case*) quoted with approval from the discussion of Prof. Freund in his work on the subject, as follows:

The term "police power" has never been circumscribed. It means at the same time a power and function of Government, a system of rules, and an administrative organization and force.

Prof. Freund is further quoted as saying that a consideration of the subject "will reveal the police power not as a fixed quantity, but as the expression of social, economic, and political conditions. As long as these conditions vary, the police power must continue to be elastic—i. e., capable of development."

This court regarded the law in question as a proper exercise of the police power of the State in view of the objects to be gained by its enforcement. So also the Washington court, which said: "In fine, when reduced to its ultimate and final analysis, the police power is the power to govern." The insurance law of the State having, as this court held, "a reasonable relation to the protection of the public health: morals, safety, or welfare, it is not to be set aside because it may incidentally deprive some person of his property without fault or take the property of one person to pay the obligation of another" (Clausen case).

The Montana statute was opposed on the ground that it was not designed to prevent the evils growing out of and incident to the present system of actions for fault, because it does not abolish such actions. In passing the court remarked that if the act has a reasonable tendency to accomplish the desired result it ought to be upheld as within the police power. Aside from the humanitarian features of the law which provided prompt and certain relief for injured workmen, which might be regarded as a matter of private benefit, this opinion considered the view that the act might be fairly construed as an attempt to prevent persons injured in coal mines and their dependents from becoming public charges.

Any measure which tends to minimize indigency of necessity raises the general standard of the people; any statute which has a tendency to reduce the present enormous expense of operating our courts would seem to be presumptively a proper exercise of the police power. * * * * * In our judgment the general scheme of this act is well within the police power of the State. If the people, represented by their legislature, are of opinion that the public interests demand that industrial insurance ought to be substituted, in whole or in part, for actions for wrongs, this court certainly can not say that they are in error (Cunningham case).

Other opinions reached the same conclusions by practically the same arguments, the laws being regarded as calculated to serve the public welfare. The New York court, however, says:

We have tried to make it clear that in our judgment this statute is not a law of regulation. It contains not a single provision which can be said to make for the safety, health, or morals of the employees therein specified, nor to impose upon the enumerated employers any duty or obligation designed to have that effect.

The recent decisions by the Supreme Court relied upon in other opinions as supporting the views adopted as to the police power (*Noble State Bank v. Haskell*, 219 U. S. 104, 31 Sup. Ct. 186; *Assaria State Bank v. Dolley*, 219 U. S. 121, 31 Sup. Ct. 189) were referred to, but of them it was said:

We can not recognize them as controlling of our construction of our own constitution. [Ives case.]

The Supreme Court of Washington (*State v. Mountain Timber Co.*, 135 Pac. 645), called upon to consider its earlier decision on the constitutionality of the industrial insurance law of that State, had before it objections on the ground that the act violated article 4, section 4, of the Constitution of the United States, which guarantees for the State a republican form of government; that it violated the fourth amendment to the Constitution, which secures all persons against unreasonable searches and seizures of their persons and effects; that it violated the fifth and seventh amendments in depriving the plaintiff of property without due process of law, and for a public use without just compensation, and also without the right of trial by jury; and, lastly, that it violated the fourteenth amendment in granting privileges and immunities and depriving the plaintiff of property without due process of law, and also depriving him of equal protection of the laws.

The court recognized that not all these points had been considered in detail in the case *State ex rel. Davis-Smith Co. v. Clausen*, but said:

When we say that we sustain a law by reference to the police power that might otherwise be in conflict with some provision of the Constitution it would seem that every incident to that law, as well as all methods necessary to make it effective, are likewise exempted from the prescriptions and limitations of the Constitution. The legislature has adopted the idea of industrial insurance and seen fit to make that idea a workable one by putting its execution, as well as its administrative features, in the hands of a commission.

The court then cited a number of cases on the subject of the police power, quoting therefrom to show its development and application under the conditions:

Having in mind the sovereignty of the State, it would be folly to define the term. To define is to limit that which in the nature of things can not be limited and which is rather to be adjusted to conditions touching the common welfare when covered by legislative enactment. The police power is to the public what the law of necessity is to the individual. It is comprehended in the maxim, *Salus populi suprema lex*. It is not a rule; it is an evolution.

It was further said that "to hold the idea of industrial insurance to be constitutional, and to hold its incidents and machinery when molded into law to be inoperative because of some constitutional limitation, would lead to absurd results." The court then unanimously upheld the judgment from which the appeal was taken, declaring that the power to provide for the execution and administration of the law had been sustained in a previous decision (*Davison v. Walla Walla*, 52 Wash. 453, 100 Pac. 981, and cases cited); that the constitutional provision as to the right to a trial by jury has no application in the State courts or to prosecutions for the violation of State laws, citing *State v. McDowell* (61 Wash. 398, 112 Pac. 521), and that the contention that the industrial insurance law is in viola-

tion of a republican form of government needs no discussion, citing *Pacific States Telephone & Telegraph Co. v. Oregon* (223 U. S. 118, 32 Sup. Ct. 224) and *Kiernan v. Portland* (223 U. S. 151, 32 Sup. Ct. 231). In the concluding paragraph the court said: "We recognize that this case is appealed to this court in order to bring it to the future attention of the Supreme Court of the United States"; and concluded with citations of the decisions of the various courts sustaining compensation laws and other decisions bearing on points of law of like nature.

The Supreme Court of Illinois avoided the issue by declaring that the compensation law of that State was not an exercise of police power, but simply offered the parties concerned a method of settlement of cases falling within its purview (*Deibeikis v. Link-Belt Co.*). The Supreme Court of Rhode Island, on the other hand (*Sayles v. Foley*), declared that the law of that State was a warranted exercise of the police power, taking modern industrial conditions into consideration.

As forecast by the Washington court, the Mountain Timber Co. appealed its case, and the Supreme Court, in passing on this point, said:

We are clearly of the opinion that a State, in the exercise of its power to pass such legislation as reasonably is deemed to be necessary to promote the health, safety, and general welfare of its people, may regulate the carrying on of industrial occupations that frequently and inevitably produce personal injuries and disability with consequent loss of earning power among the men and women employed, and, occasionally, loss of life of those who have wives and children or other relations dependent upon them for support, and may require that these human losses shall be charged against the industry, either directly, as is done in the case of the act sustained in *New York Central R. R. Co. v. White*, supra, or by publicly administering the compensation and distributing the cost among the industries affected by means of a reasonable system of occupation taxes. If any industry involves so great a human wastage as to leave no fair profit beyond it, the State is at liberty, in the interest of the safety and welfare of its people, to prohibit such an industry altogether.

Much that has been said in the discussion under the various headings above is in fact determinations of the propriety of the various provisions as an exercise of the police power; and the frequent appeal to modern industrial conditions can not escape notice. Indeed, the New York Court of Appeals acknowledged the cogency of the economic and equitable reasons for the enactment of a compensation law, while declaring such a statute unconstitutional (*Ives v. South Buffalo Ry Co.*). This fact is pointed out by the Supreme Court of New Hampshire in its statement that the opinion in the *Ives* case supports all the provisions of such a law as that enacted by the New Hampshire Legislature (*Wheeler v. Contoocook Mills*).

PARTICULAR PROVISIONS OF THE LAWS.

Besides questions of a more general nature, as the foregoing, numerous decisions have been made by the courts construing particular phrases and features of the laws, and determining their application to particular cases. Where industrial commissions and administrative boards exist, charged with the duty of deciding controversies under the acts, rulings, and opinions are formulated, and these also are available as setting forth the scope and method of the laws in their practical working. It would be both undesirable and impractical to attempt a complete survey of this field in the present bulletin, but inasmuch as the construction of a statute is of no less vital importance than its terms, some account will here be given of the action taken by the various courts and administrative bodies with reference to a number of the specified provisions of the laws.

INJURIES COMPENSATED.

As to the class of injuries compensated, the natural conclusion from the fact of the enactment of compensation laws to supersede those governing the employer's liability would be that only injuries due to accident are covered by the acts. Indeed, in most of the laws this is specifically stated, and carefully chosen language is used in several with the obvious intent of excluding what are commonly known as occupational diseases and the results of cumulative processes as distinguished from the immediate results of single accidental occurrences. In a few jurisdictions, however, only the word "injury" or the phrase "personal injury" occurs, and in such cases the field would seem to lie open for the inclusion of any physical disability occasioned by the nature and conditions of the employment, thus permitting awards for occupational diseases. The qualifying term "accidental" does not appear in the laws of California (as amended, 1915), Connecticut, Massachusetts, Ohio, the Philippine Islands, Texas, West Virginia, and the Federal statutes of 1908 and 1916. In Wyoming the definition is obscure, the words "injury and personal injury" being declared not to include "a disease except as it shall directly result from an injury incurred in the employment." This is obviously a definition in the terms of the thing defined, but it seems probable that the intent was to exclude other than accidental injuries. This construction is supported by the reports required when "an accident occurs causing injury;" also in some degree by the title of the State fund for insurance, i. e., "industrial accident fund."

Inasmuch, however, as the spirit of the laws undoubtedly suggests relief for industrial incapacity due to employment, it is difficult to support the narrower view of sudden and violent injury as a necessary basis, as against the more inclusive idea of injury due to the working

conditions, whether of sudden or gradual development. A few States have recognized this in their laws, amendments to those of California, Connecticut, Hawaii, and Wisconsin specifically providing for the compensation of occupational diseases, as do the new (1916) Federal law and the original (1919) North Dakota law; while the courts of Massachusetts have construed the law of that State as including them (but see p. 119).

Accidents.—The term "accident" can hardly be said to have any peculiar meaning in laws of this class, but for statistical purposes the compensation commission of New York defines an industrial accident as one which causes loss of time from work or which requires medical aid, and orders that all such accidents be reported. The laws of some other States make specific limitations by defining the term as implying that the event is unexpected, unforeseen, happening suddenly or violently, and producing at the time objective symptoms of the injury. This strictness has not been uniformly observed by the courts, however, as regards either violence or objective symptoms.

Whether sunstroke should be classed as an accidental injury has been considered by the administrative authorities of several States, the California industrial commission saying that as a general rule injuries suffered from so-called acts of God, such as sunstroke, freezing, lightning, wind, etc., are not compensable, since they are risks which the whole citizenry takes. Circumstances in the instant cases were held to warrant an award for sunstroke, the workman having been engaged in removing cement from a warehouse with an iron roof and no windows, the thermometer standing at 105°.

The Illinois board gave compensation to a laborer digging in a trench and overcome by heat, stating that a rational and reasonable conclusion is that the prostration would not have occurred had he not been so employed. This board took the same view of the case of a stationary engineer, whose death was reported due to heat prostration, he having worked in a poorly ventilated room, with a temperature of about 120°. The Iowa board ruled in one case that heat prostration was not an injury within the act, there being no extraordinary hazard or exposure to heat on account of the laborer's employment; but ruled in another case that "where the employee sustains such injury when put to work at a task which peculiarly exposes him to such injury, he should be paid the compensation provided for in the act." The commissioner of labor of Minnesota, in passing upon this question, reached the conclusion that where heat stroke or sunstroke is due to the conditions of employment rather than to physical weakness on the part of the injured person, it is an accident within the provisions of the compensation law. The industrial commission of Ohio awarded compensation for heat prostration of a roller in an iron-mill, holding that it was an injury within the

meaning of the act, though it was held that sunstroke, in the absence of special conditions artificially produced, would not support an award.

The Pennsylvania board ruled that the physical changes produced in the tissue of the body by an injury of this nature were such as properly to be classed as violence to its structure; and this view was sustained by the supreme court of the State (*Lane v. Horn & Hardart Baking Co.*, 104 Atl. 615). 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 heat stroke, 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 & Mfg. Co.*, 164 N. W. 712).

The Supreme Court of Rhode Island affirmed an award for death from heat exhaustion, against the contention of the employer that death in such a case was due to disease and not to accident (*Walsh v. River Spinning Co.*, 103 Atl. 1025). As to the nature of the injury the court said:

It appears to us that the unusual and excessive heat in the boiler room, producing the sudden inability of the physical system to longer resist its debilitating effects, constituted a chain of circumstances which may fairly be regarded as an unlooked-for mishap not designed and undoubtedly unexpected.

Against this practically uniform allowance of benefits for an injury unquestionably arising out of and in course of employment, stands the opinion of the Supreme Court of Michigan, which denied compensation for death from heat prostration on the ground that there was no accident. The case was one of a bricklayer who was prostrated at 4 p. m. of the fourth day of his employment in a boiler room, dying in less than three hours. The temperature in the room was said to have been 136°. The State board had made an award but the court reversed it, saying:

The record is absolutely barren of any evidence that anything untoward or unusual happened in the course of his employment during any of the three days or that he exerted himself in any un-

usual manner or to an unusual degree. He was doing the work which he and his associates were employed to do exactly in the manner they expected to do it. To permit recovery in this case would make it impossible to deny recovery in any case where a fireman of a stationary or marine boiler in the performance of his ordinary and accustomed labor succumbs to heat prostration [Roach v. Kelsey Wheel Co., 167 N. W. 33].

It is a pleasure to record that here, as in the Bischoff case (p.183), decided by the same court, there was a vigorous, even if futile (so far as immediate results are concerned), dissent by two judges. In this it was pointed out that the workman was in the course of his employment, was robust and temperate, and that he fell instantly upon excessive exertion in moving a heavy load after working in the extreme heat in which he had been employed.

The minority further insisted that in denying compensation in this case the court was rejecting its own precedent in a case decided in 1916 (*La Veck v. Parke, Davis & Co.*, 190 Mich. 604, 157 N. W. 72). In this case a workman affected by arterio-sclerosis had suffered a rupture of a blood vessel in his brain, caused by overexertion and exposure to extreme temperature. An award in his favor was affirmed on the ground that there was an accident, since, though the workman "intended to do the prolonged work which the situation demanded," the rupture "was an unexpected consequence from the continued work in the excessively warm room." The majority met this citation with a bare statement of opinion that the case was not "authority for the determination of the board" in the Roach case.

These two opinions bring to light the difficult and unsettled question of the extent to which a distinction may be recognized, within the spirit and purpose of the compensation laws, between accidental causes and accidental results. What can be looked upon in no other light than as a border-line case, though of a somewhat different nature than those under consideration above, is one in which the compensation commission of New York allowed a claim where a man had been at work for 21 hours, with a total of 1½ hours out for meals, during which time he was on his feet almost continuously and climbed 216 steps three times. About half an hour after stopping work he was found sitting dead in a chair. Death was said to be due to angina pectoris, brought on by overexertion and exhaustion.

But whatever view is taken of the propriety of recognizing a distinction between cause and result, it does not seem in harmony with the intent of such legislation to permit an employer to operate with immunity and at the sole risk of the workman, under conditions and for periods that produce immediate and demonstrable results, not anticipated indeed, but following a more or less protracted routine, and at some unforeseeable moment breaking over the boundary of human endurance and working disability or death of the exact economic

effects and under the same general conditions as are contemplated in the enactment of the laws.

The New York Supreme Court, appellate division, denied benefits in a case of heat prostration, following the ruling of the industrial commission to the same effect, in a case (*Campbell v. Clausen-Flanagan Brewery*, 171 N. Y. Supp. 522), in which a driver was overcome while out in the open air. The accidental nature of the injury was admitted but, since the surroundings were only those of the public generally, it was held that it did not arise out of the employment, and was therefore not compensable under the law.

The rule as to injury by freezing or frostbite would naturally be the same as for heat prostration. A compensation commissioner of Connecticut ruled that a collector driving long distances in very cold weather was exposed to such hazard as to warrant an award for freezing followed by erysipelas and death. This was affirmed by the supreme court of the State (*Larke v. Insurance Co.*, 97 Atl. 320). The same commissioner, however, denied the claim of a night watchman who suffered frostbite of a toe while bringing coal from a storage shed into the boiler room of the establishment. The Massachusetts industrial accident board made awards for freezing where outdoor employment led to the exposure of the employees, and the supreme court of the State affirmed an award in favor of a longshoreman whose hands were frozen while at work at a wharf, the view being adopted that he was exposed to materially greater danger of freezing than the ordinary outdoor worker (in re *McManaman*, 113 N. E. 287). The industrial accident board of Montana took a similar position, saying that where an accident is due to forces of nature which might have been anticipated or foreseen there must be present some aggravation of the hazard whereby the workman is more exposed to danger as a result of his employment than is the ordinary man; but if the employment entails such unusual degree of exposure there is liability for the injurious consequences.

So also in a Wisconsin case (*Ellingson Lumber Co. v. Industrial Commission*, 169 N. W. 568), the court found that a woodsman was exposed to the inclemency of the weather by reason of his occupation, and that frozen feet were the result of an "accident within the meaning of the compensation statute."

The same principle was 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, 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).

That there was no ground for an award was the opinion of the commissioner of labor of Minnesota in a case in which there was an abscess due to ink or metal poisoning where there was no break or infection due to accident, the commissioner saying that "if there was no breach of the surface of the body due to accident and through which the infection or poisoning takes place, it does not come within the meaning of the act." Likewise adverse was the ruling of the compensation commissioner of West Virginia in a case where a coal miner was overcome by smoke on account of returning to his working place too soon after the firing of a shot; and the law of this State was held not to cover the case of a miner suffering from an abraded bunion infected by the poison of bank water in a mine, though claims were allowed for ulcerated eyes caused by the splashing of such water into the eyes of a miner while pulling down coal, and where carbolineum used to preserve the crossarms of a telegraph pole got into a lineman's eyes and face, causing abscesses. The compensation board of Pennsylvania also allowed compensation in a case where a workman was poisoned by sumac in a skin which he was handling, dermatitis and disability resulting. The board ruled that the injury was sudden, not a disease and not a secondary result, but due to a cause proceeding from without and encountered in the course of service.

The condition of a breach of the surface of the body prescribed by the labor commissioner of Minnesota seems to have been met in a case passed upon by the industrial commission of Ohio in which an

employee handling goods claimed to have incurred blood poisoning by scratching her face with her fingers, this being held not to be an occupational disease, but an accidental injury. That lesion is not required by the industrial commission of California as a basis of awards appears from favorable rulings in two cases passed upon by that body, one being that of a man who appeared to be suffering from nervous shock due to efforts to rescue fellow workmen from suffocation in a septic tank, two having been killed and the superintendent nearly so. It was said that the risk of such experiences was involved in any employment and should be compensated if it directly causes injury. In the other case there was no apparent serious injury, but an apparently sincere belief of incapacity, which was held to entitle the claimant to compensation until the restoration of mental balance. As to such cases it must be said that there is an abundance of experience to show that a final determination, whether favorable or adverse to the claimant, is very generally followed by prompt recovery.

The Supreme Court of Wisconsin sustained an award as for an accidental injury proximately causing the death of lumbermen where the death was due to typhoid fever induced by drinking polluted water furnished for the camp by the employer (*Vennen v. New Delfs Lumber Co.*, 154 N. W. 640).

A settlement was made under the compensation law of Illinois on account of the death of 20 employees due to diphtheria and typhoid fever. These diseases were contracted by drinking polluted water furnished by the employing company. No contest against the payments was made by the company, the settlement being voluntary, according to a statement by one of the members of the State industrial board. The Illinois act contemplates the payment of benefits for accidental injuries arising out of and in the course of employment, the term accidental, according to the construction usually adopted, eliminating the ordinary occupational diseases from the scope of the act. The Supreme Court of Minnesota took a diverse view from the foregoing in a case involving a similar 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 unforeseen 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 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).

Over against these awards stands a reversal by the same court of an award made in behalf of a fireman who was wet while fighting a fire, and remained so for many hours on a winter day. Taken ill the next morning, his death followed from pneumonia in about two weeks. The court held that it was no unusual thing for a fireman to become wet while at work, so "that pneumonia was brought on, not by an unexpected event, but by an event which was an incident to his regular employment," to be classed "among the ordinary ones attending the duties of a fireman, and not as an accident" (*Landers v. City of Muskegon*, 163 N. W. 43).

The Supreme Court of Connecticut ruled similarly adversely in the case of a workman whose exposure was the result of a walk through deep snow to his place of employment, where he worked for 12 hours in wet clothing. The line of reasoning was different, how-

ever, for though the combination of weather conditions and prolonged and exhausting labor may be regarded as the accidental cause of the exhaustion which was followed by the pneumonia, such exhaustion could not be classed as "in and of itself a bodily injury" within the meaning of the act (*Linnane v. Aetna Brewing Co.*, 99 Atl. 507).

The circumstances in the *Linnane* case are not unlike those in a case under the Indiana statute (*United Paper Board v. Lewis*, 117 N. E. 276). Here overwork in a hot, steam-filled room was followed by chills and nephritis developed. This was said to be a personal injury by accident, and an award in behalf of the workman was affirmed.

This accords with the action of the Supreme Court of Massachusetts in allowing compensation in a case in which lobar pneumonia was found to result from the wetting of the clothing and the inhalation of smoke by a fireman—a situation quite comparable to that in the *Landers* case above (*In re McPhee*, 222 Mass. 1, 109 N. E. 633). The court in this case declared the inhalation of smoke and the drenching to be a personal injury within the act, the law of the State not necessitating the finding that it was accidental.

Compensation was allowed in a New York case where the accident itself caused no injury, but was followed by injurious consequences. Disease due to inclement weather conditions was the basis of the award (*Rist v. Larkin & Sangster* (1916), 156 N. Y. Supp. 875), though there was some complication of causes. A heavy cold followed by pleurisy and pulmonary tuberculosis was attributed to the accidental necessity of the workman's jumping into a river, where the jumping itself had no immediate disabling effect, but the wetting and the subsequent exposure were chargeable with having caused the disease.

Where a compensable accident originates the train of events in the course of which serious results follow an apparently slight physical injury, the question is not of the nature of the injury, but of proximate cause. This subject is considered more fully under another head (see pp. 128 to 135).

Construing the act as limited to accidental injuries, the solicitor of the Department of Commerce and Labor allowed benefits under the Federal law of 1908 in a case of compressed-air illness, otherwise known as "bends" or caisson disease, distinguishing this as a traumatic disease due to the lesion of tissues on account of the abnormal atmospheric pressure (*Op. Sol.*, p. 201). This disease, however, is classed as an occupational disease by the British law and in treatises on the subject. Other traumatic diseases (i. e., those due to an injury or wound,) as in the case of lockjaw or other infection, would be excluded from the class of occupational diseases as being entirely unrelated to the nature of the employment. Such diseases if the

sequel of a compensable accident, would, of course, come within the provisions of all compensation laws.

Typhoid fever and diphtheria, for which compensation was paid under the Illinois law, are neither occupational nor traumatic in their origin, but are idiopathic—i. e., of primary causation—and are subject to compensation, if at all, either on the basis of being accidental injuries, or injuries arising out of employment merely, under laws not requiring the injury to be accidental.

Hernias as injuries have been the subject not only of much discussion by courts and commissions, but special sections have been devoted to them in some of the more recent statutes. Questions of preexisting condition and proximate cause are involved, as well as of the proper treatment to be applied and the right of the employee to accept or reject the prescribed course of conduct. The industrial commission of Ohio concludes that "hernia (or so-called rupture) is a disease which ordinarily develops *gradually*, being, *very* rarely, the result of an accident." Rules were therefore adopted to the effect that where there is real traumatic hernia, resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, full disability will be allowed; but in all other cases it will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury, unless conclusive proof is offered that the immediate cause which calls attention to the hernia was such as a sudden effort, severe strain, or bruise; that the descent of the hernia immediately followed the cause; that there was severe pain immediately following; and that the foregoing facts were noticed and communicated immediately to one or more persons. Where these conditions are fulfilled, compensation will be allowed as for the aggravation of previous conditions, for a time loss only and to a limited extent.

The Washington commission presented in its first annual report a tentative decision to award compensation only when it is proved that the hernia appeared suddenly, that it was accompanied by pain, that it immediately followed an accident, and that it did not exist prior thereto. A year later it called attention to the Ohio rules, saying, however, that the Ohio commission's findings are not subject to review in court, so that it can settle hernia cases on their merits from a medical standpoint, not being confronted by the legal side of the question. A case rejected by the Washington commission came to the supreme court of the State, and a claim was there allowed, the court holding the injury complained of to be the result of a "fortuitous event" within the meaning of the law, saying that "to hold with the commission that if a machine breaks, any resulting injury is within the act, but if the man breaks, any resulting injury is not within the act, is too refined to come within the policy of the act as

announced by the legislature. * * * It must admit that the tearing of the muscles or the rupture of fibers, or whatever it is that causes hernia, while exercising unusual effort, is likewise covered by the act" (*Zappala v. Industrial Insurance Commission*, 144 Pac. 54).

It is apparent that the matter of the "tearing of the muscles or the rupture of the fibers" was rather vaguely assumed by the court as the explanation of the condition made the ground for a claim; while a compensation commissioner of the State of Connecticut, in an extensive memorandum, quotes medical authorities in accord with the statements of the Ohio commission, one of them saying that "local trauma, which has long been accorded by the laity an important place in the etiology of hernia, practically very rarely is the cause." The commissioner, however, awarded compensation in a limited form to the claimant in the case in hand, requiring him to submit within four weeks to proper surgical treatment.

The industrial accident board of Michigan likewise has furnished a pretty full discussion of the question, concluding in favor of the accident theory, if it may be so designated, saying:

We do not overlook the medical evidence introduced at the hearing to the effect that hernia should be classed as an accident only in a few rare cases. We think the weight of authority in workmen's compensation cases is clearly against such theory, and that the general rule established in the adjudicated cases and the textbooks is otherwise.

The award of the committee in the case under consideration was approved by the board. That this is the conclusion of the supreme court of the State appears from its decision in a case (*Bell v. Hayes-Ionia Co.*, 158 N. W. 179) in which an award of the board was affirmed, even though there was evidence that there had been structural weakness prior to the event to which the injury was traced; the court saying that this would not "preclude a recovery if the injury itself is distinct and the result of a particular strain causing a sudden protrusion of the intestine." This case was decided largely on the authority of an earlier case (*Robbins v. Original Gas Engine Co.*, 157 N. W. 437), in which the view that hernia is a disease was discussed. It was said by the court that it would be assumed from the evidence that the strain to which the condition of the claimant was traced was the occasion of the first protrusion of the sac through the abdominal wall, and if it was also assumed that there was a certain lack of physical integrity of the parts, still compensation might be allowed for the injury, and that not on the basis of disease, but of accidental injury.

It would seem, however, that the Michigan Supreme Court has here again assumed a more conservative attitude, as was done in the *Roach* case (p. 108), since in a more recent case (*Tackles v. Bryant & Detwiler Co.* (1918), 167 N. W. 36) compensation was denied where an inguinal

rupture developed, following the lifting of a heavy timber, at which time a severe pain was felt, and the hernia was found to be developed, but as "he did not slip nor fall, nor did the timber strike him," it was concluded there was no accident. Nothing out of the ordinary happened, "because he had lifted such timbers before," so that there was evidently no "accidental injury within the meaning of the act." Evidently the doctrine of accidental result as accident is rejected by this court quite uniformly.

The Appellate Court of Indiana, on the other hand, affirmed an award made by the industrial board of the State, when a man suffering from hernial trouble had his condition so aggravated by heavy lifting as to necessitate an immediate operation. The mere fact of his susceptibility was said to afford no grounds for denying benefits, even though in some jurisdictions there was a restricted use of the word "accident" that would preclude the award; "but the weight of authority and the better reason, we think, favor the adoption of the popular meaning of said word, which includes any unlooked-for mishap or untoward event not expected or designed." (Puritan Bed Spring Co. v. Wolfe, 120 N. E. 417).

The industrial commission of Wisconsin, in passing on a case before it, said:

This is another case where a man who suddenly discovers that he has hernia concludes that it must have resulted from some fall or strain, and immediately recalls to his mind some recent incident which not only seems to him to constitute a sufficient cause, but which he honestly brings himself to believe did cause it. At best, such an incident constitutes nothing more than a mere possible cause. Except such incident was particularly violent or was followed immediately by severe pain, it can not, with any degree of certainty, be said to be a probable cause. In this case, a hernia on each side, an insignificant accident or strain given as the cause does not argue much.

The application was accordingly dismissed. Similar was the position of the Massachusetts board in a case in which the claimant testified to injury by heavy lifting, the impartial physician testifying:

The hernia could have been caused by his work. But every hernia is related to and is caused by strain, and if the board authorizes compensation for this hernia, it must require some employer hereafter to pay for every hernia that arises in any employee. Hernia, to be caused by some specific accident, can only follow a physical effort of tremendous and unusual violence.

The finding of the board was adverse to the claimant.

The Supreme Court of West Virginia, on the other hand, takes the view of that of Washington and of the Michigan board, and specifically rejects the position of the Washington commission, reversing also the public service commission of its own State, allowing a claim

attributed to heavy lifting, and holding hernia to be an accident within the meaning of the law of the State (*Poccardi v. Public Service Commission*, 84 S. E. 242). The Minnesota department of labor and industries took a similar position, offering as a typical decision and award the case of *Rakovich v. Agnew Bros.* decided by a county court, in which a rupture was held compensable as an injury under the act, with an award also for medical and hospital expenses covering the costs of an operation.

It would seem therefore still to be a matter for medical definition and legislative determination, since the courts are so-unable to agree. Whether or not the true cause of hernia can in any case be found in the strain of extraordinary effort, the fact remains that a previously capable workman is frequently found to be disqualified for further labor as the result of such strain; while there are admitted, even if rare, instances of genuine traumatic hernia. In either case there is a disabling injury arising out of and in course of the employment; and it would seem to be more in accordance with the fundamental principles of compensation legislation that it should be a charge on the industry than on the worker alone.

An entirely different phase of the term "accident" is presented when an intentional assault is committed on an employee, several such cases being noted under the head, "Arising out of and in course of employment" (pp. 170 to 188). An opinion on this point is that of the Supreme Court of California (*Western Metal Supply Co. v. Pillsbury*, 156 Pac. 491), in which a night watchman was shot by a burglar, the court ruling that as to the injured man there was an accident, even though there was intention on the part of the person inflicting it, citing *Western Indemnity Co. v. Pillsbury* (p. 177), where a foreman was assaulted by a discharged workman. The statute of Washington, as construed by the supreme court of that State (*Stertz v. Industrial Insurance Commission*, 158 Pac. 256), does not require that the injury arise out of the employment, so that a man shot by a discharged workman is within the protection of the act in any case if on the employer's premises, and if in course of employment when off the premises.

Occupational diseases.—As already noted, the Federal act of 1908 provided for compensation for employees injured in the course of employment without the restricting words "by accident." However, the Attorney General of the United States said of this act that "there is nothing either in the language of the act or its legislative history which justifies the view that the statute was intended to cover disease contracted in the course of employment, although directly attributable to the conditions thereof. On the contrary, it appears that the statute was intended to apply to injuries of an accidental nature resulting from employment in hazardous occupations, not to the

effects of disease. * * * The word 'injury,' as used in the statute, is in no sense suggestive of disease, nor has it ordinarily any such signification." The language and intent of this statute had been previously construed by the Solicitor of the Department of Commerce and Labor in the same way, a case of lead poisoning incurred from employment being held not covered by it.

It may be noted here that the later rulings by the Solicitor of the Department of Labor, construing the same Federal statute, approved claims for disability due to lead poisoning, distinguishing such cases from the one in which the Attorney General used the language above quoted, the disease in that instance being pneumonia contracted in the course of employment. In construing the law to include cases of lead poisoning and the like, the solicitor said:

It is, in fact, difficult to find any good, substantial reason why Congress should have desired to make a discrimination as to the manner in which the incapacity arose. The intention was clearly to provide compensation for loss of time caused by incapacity arising from the employment in a similar manner to which the States and United States "are requiring private employers to respond, so that all injuries shall be compensated for out of the business or industry in which sustained instead of requiring the employee to bear this burden."

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 of 1916 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 and of the Massachusetts industrial accident board and Supreme Court. Compensation has been allowed by this commission, in pursuance of this construction, in cases of lead poisoning, dermatitis from fulminate of mercury, dermatitis from machine oil, injuries from a variety of corrosive and poisonous substances, typhoid and malarial fevers, 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 similar diseases were under consideration were rejected on account of the failure to establish a causal connection.

As above noted, the amendment of 1915 did away with the necessity of making proof of injury "by accident" under the California law; but in passing upon an injury antedating this amendment, it was held that loss of sight due to poisoning by wood alcohol was compensable (*Fidelity & Casualty Co. v. Industrial Commission* (1918), 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 a result of constant standing on the hard pavement, classing this as an injury due to the nature of the employment. The new act of 1917 formally includes diseases "arising out of the employment."

The Supreme Court of Errors of Connecticut construed the law of that State as not covering occupational diseases, reversing an award by one of the compensation commissioners in a case of lead poisoning (*Miller v. American Steel & Wire Co.*, 97 Atl. 345). There was a dissenting opinion, in which was pointed out the fact that the majority, by "judicial construction, ascertains that the term 'personal injury' includes only injuries arising through accident, while I [the dissenting judge], by judicial construction, find the same term to include all injuries, whether arising from accident or disease."

The commissioner for the fifth district of that State allowed compensation for incapacity from an injury to a plumber caused by working in a kneeling position for a considerable time, the result being what is commonly known as "housemaid's knee." The account of the ruling at hand does not designate the disability as one due to occupational disease, though it comes within that definition according to British law, the award being made on the basis that "there was a direct causal connection between the employment and the resulting injury." A committee of arbitration considered another case in the same State in which claim was made for occupational neurosis attributed to the jarring of the arm of a workman using a pneumatic chipping machine, and while the statement was not made directly, it is inferable that if the facts had been found to support the claim, there would have been an award. As it was, apoplectic strokes were held to be the cause of the weakness, and as these were not due to the employment, no compensation was allowed. The law of the State was amended in 1919 so as to include diseases "peculiar to the occupation."

Under the Massachusetts law the meaning of the term "personal injury" without the qualifying words "by accident" was held by the supreme judicial court of that State to so broaden the law as to warrant the inclusion of occupational diseases, awards being made in the case of a claim by an employee suffering from lead poisoning (*Johnson v. London Guarantee & Accident Co.*, 104 N. E. 725); and one based on blindness induced by the inhaling of poisonous gases at a

kiln or furnace (In re Hurlé, 104 N. E. 336). The court held that personal injuries as contemplated by the act are not restricted to those caused by external violence or physical force, but that the phrase covers bodily harm caused by the conditions of employment. Under the same law a committee of arbitration awarded benefits in the case of a claim based on illness said to be due to the severe shaking of the floor on which the workman sat while at work, the referee physician reporting the case as one of "occupation neurosis due to continual vibration"; 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, 225 Mass. 57, 116 N. E. 972).

Quite similar to the circumstances in the Maggalet case are those in a case (Pimental's case, 127 N. E. 424), in which a somewhat deformed cigar worker was unable to sit evenly and squarely on account of a bodily deformity. He developed a condition of neuralgic pain, which the court found as a "reasonable inference" to be "not due to his occupation, but was rather the result of faulty posture brought about by long and laborious work." The case was held not to be one of disease. "Pain is not disease, nor is disease resulting in pain a personal injury."

In the Johnson case, above, the same judge wrote the opinion as in the Pimental case, saying in the earlier case that "it is clear that 'personal injury' under our act includes any injury or disease which arises out of and in the course of the employment, which causes incapacity for work and thereby impairs the ability of the employee for earning wages." It is the more surprising therefore to read in the later case:

"If it could be held that the employee was suffering from an occupational disease, still the workmen's compensation act does not in terms include disease. It can not be held to cover disease contracted by employees in the course of and arising out of their employment."

It can not only be said that this statement is in exact contradiction of the language used by this judge in the Johnson case (which is said to be "not an authority in favor of the contention of the employee in the case at bar"), but it is also out of harmony with the very desirable trend toward broad and adequate coverage for industrial disabilities. The statement is not required as a basis for the decision reached in the Pimental case, and the hope may be entertained that on further consideration it will be regarded as obiter, and the forward-looking attitude of the earlier Massachusetts cases be continued.

Lead poisoning is so typically a disease of occupation that the attitude of a court or commission on a case of this malady is deter-

minative 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 Michigan in its body uses the same phraseology as that of Massachusetts, and the industrial accident board of the State held that the language was broad enough to include cases of occupational disease, the particular instance being one of lead poisoning. The supreme court of the State took the opposite view, construing the compensation act as a substitute for the old liability laws only, providing relief in cases of accidental injuries, and not embracing new fields. It was further held that the title of the act, which indicated its purpose to provide "compensation for accidental injury or death," was sufficiently restrictive to exclude occupational diseases not due to accident (*Adams v. Acme White Lead & Color Works*, 148 N. W. 485).

The Ohio statute, while not containing the word "accident," has been construed by the industrial commission of the State to be restricted in its application to injuries other than those which can be classed as diseases. It was admitted that the word "injury" might be so construed as to include every kind of disability, whether due to accident or not, "but if the word is to be taken in its ordinary and popular sense, then the applicant is not entitled to compensation, for by the term 'injury' is generally understood some sudden and unexpected event inflicting bodily harm and resulting in a period of disability." The fact that the constitution of the State had just been amended so as to specifically authorize compensation for occupational diseases was also referred to as supporting the construction. A case of lead poisoning incurred in factory processes thus decided adversely to the claimant by the industrial accident commission was reversed by the trial court, and compensation awarded. This case reached the supreme court of the State, however, and the award of the commission denying compensation was approved, practically for the reasons assigned by the commission (*Industrial Commission v. Brown*,

110 N. E. 744). However, when a laborer died from poisoning by fumes given off by paint being heated in a closed room, preparatory to its use on a cold day, the court ruled that this was a death by misadventure and not from a disease incident to the occupation and "developed in the usual and ordinary manner by reason of and because of the occupation." The rule against occupational diseases did not apply, therefore, and an award by the commission was affirmed (*Industrial Commission v. Roth*, 120 N. E. 172). What was said to be a border-line case was approved by a judge in a Minnesota case, where tin poisoning developed so suddenly and under such circumstances as to "conform to the requirements of an accident," and was compensated (*Meisel case*, 1919), and the Supreme Court of New York allowed a claim where a workman was disabled by reason of the poisonous fumes and gases which were allowed to accumulate in his working place, the injury being classed as accidental (*Naud v. King Sewing Machine Co.*, 159 N. Y. Supp. 910).

In Texas, though the word accident does not appear, the court held that the law relates to accidental injuries. However, the distinction was between accidental and intentional injury, and not between accident and disease (*Middleton v. Texas Power & Light Co.*, 185 S. W. 556). No decisions or rulings have come to hand relative to the construction of the law of West Virginia as to this point. In Colorado a dishwasher complained of a rash caused by sal soda used in the dishwater, claiming compensation therefor. The State industrial commission held that the disability was not due to accident, as is required by the statute, but was an occupational disease and not compensable. In Illinois injuries that might be classed as diseases were admitted under the act, one case being that of a punch pressman who after three days' work found his arm numb from constant vibration, with acute pain, necessitating cessation of work. The diagnosis was traumatic peripheral neuritis, resulting in practical loss of the use of the right arm. An award was made over the contention that there was no accidental injury within the meaning of the compensation act. So also in the case of an employee working on an inside pipe at a pumping station within from 1 to 5 feet of a gas flame. There was imperfect combustion, and death followed within 24 hours after a collapse, an autopsy and analysis of the blood showing cerebral hemorrhage caused by gas poisoning, due to the inhalation of the unburned particles of gas. The industrial board took as its definition of an accident, "an untoward event which is not expected or designed," and ruled that there was a causal connection between the conditions of employment and the resulting injury warranting the award.

A later Illinois case that reached the supreme court of the State (*Mattheisen & Hegeler Zinc Co. v. Industrial Board*, 120 N. E. 249)

involved a claim for death due to inhaling fumes given off by oxide of zinc in a smelter. The poison was said to have accumulated during a long period, with a fatal climax. An award in favor of the claimant was affirmed, the court saying that "the word 'accident' is not a technical legal term with a clearly defined meaning, and no legal definition has ever been given which has been found both exact and comprehensive as applied to all circumstances." It was said that the statute was "meant to include every injury suffered in the course of employment for which there was an existing right of action at the time the act was passed; also, to extend the liability of the employer to make compensation for injuries for which he was not previously liable and to limit such compensation"; and if there is "a definite time, place, and cause, and the injury occurs in the course of the employment, the injury is accidental within the meaning of the act." The company claimed that in 50 years they had never had a case of either sickness or death from such poisoning, but also denied liability for compensation on the ground of the death being due to an occupational disease. The court ruled that there was no evidence to prove that the poisoning was a disease incident to the occupation, and the award was affirmed.

The industrial board of Indiana awarded compensation to a workman who suffered from an eruption and sores on his hands, following the use of the same gloves for four days, without cleaning, while handling TNT powder, for which work fresh gloves had customarily been supplied daily.

A New Jersey case quite similar to that of the dishwasher in Colorado is one that was passed upon by the New Jersey Supreme Court, where claim was made for an eczema probably due to acid used in a bleachery. This was held not to be an injury by accident, since no specific time or occasion of its occurrence could be pointed out (*Liondale Bleach, Dye & Paint Works v. Riker*, 89 Atl. 929). The industrial commission of Wisconsin in November, 1913, and December, 1914, had before it cases in which claims were made for disability from lead poisoning. In the earlier case it is said that "lead poisoning is an occupational disease and is not contemplated within the provisions of the act, except such as might follow so quickly and proximately from some specific condition in the employer's business that it could be included within the meaning of the word 'accident' as used in the law." In the other case it was said that if the poisoning was due to the inhaling of lead it must have been through a considerable period of time, "which in its culminative effect resulted in an occupational disease, which is not an injury within the meaning of the act." An amendment of 1919 includes occupational diseases.

The Pennsylvania law limits its benefits to injuries due to "violence to the physical structure of the body." Claims were presented in a case of anthrax without evidence of any wound or cut, and in

one of palsied wrist caused by inhaling acid fumes, the industrial board holding in both cases that the act did not extend to such injuries. However, compensation was allowed where the claimant was made sick from inhaling fumes caused by an explosion in the workroom, the board holding that such "involuntary inhalation of gas is an accidental injury" (Baith case, 1917); and the supreme court of the State affirmed an award in the case of a wool sorter who became inoculated with anthrax through an abrasion on his neck (*McCauley v. Imperial Woolen Co.*, 104 Atl., 617). The court pointed out that though occupational diseases are not within the act, there was in the contact with the anthrax germ a fortuitous happening, determinable in time and effect, and of the nature of an accident within the meaning of the act.

The Supreme Court of New York, appellate division, took identical grounds in a similar case, the germ gaining access to the system through a crack in the back of the workman's hand. The injury was said to be due to an attack "made unexpectedly by a concealed disease germ" (*Hiers v. John A. Hall & Co.*, 164 N. Y. Supp. 767). The same court affirmed an award in a somewhat later decision (*Eldridge v. Endicott, Johnson & Co.*, 177 N. Y. Supp. 863), in which the case of a man dying from anthrax was considered. In the *Hiers* case it was at least presumable that the crack in the hand was the result of the conditions of the employment; but in the *Eldridge* case it was admitted that the germ gained access to the system through a slight cut inflicted by a barber on the day prior to the development of the disease. In affirming the award as for an accidental injury arising out of and in course of the employment, the court cited as authority a recent decision of the court of appeals of the State (*Horigan v. Post-Standard Co.*, 224 N. Y. 620, 121 N. E. 872). In this case a workman had cut his finger while at home, the cut evidently becoming infected while he was at work the next day by contact with filth, blood poisoning and death following. This case was disposed of in a memorandum decision, the ruling being merely that the poisoning was the result of the work in which he was employed rather than of the cut received at home. However, the court of appeals reversed the decision in the *Eldridge* case, and remanded it to the industrial commission for rehearing, on the ground that there was no evidence that the anthrax was contracted from the hides handled (126 N. E. 254). It was said that the commission was not authorized to take judicial knowledge of the presence of anthrax germs in the hides, some evidence at least being necessary.²³

Disfigurement.—Injuries disfiguring but not disabling the recipient raise questions under laws whose intent is economic and not to make good suffering or injuries not interfering with industrial opportunity.

²³ Chapter 538, Acts of 1920, extends the law to cover anthrax and 22 other enumerated "occupational diseases."

However, it must be recognized that disfigurements of certain kinds are a pronounced hindrance to employment, and particularly in certain lines of employment, and specific provision is made for their compensation in the laws of some States.

The industrial board of Illinois made allowances in cases where, even though there was no wage loss immediately effected, it was probable that the disfigurement was sufficient to affect the earning capacity or opportunity for employment in another occupation; but in a case where scars on the head would not be seen unless the hair was cut very short, it was ruled that no award was warranted. The statute provides for such awards where no claim is made for permanent partial or total disability. An award for disfigurement that also took account of "other disabilities" was therefore reversed by the supreme court of the State, and new proceedings were directed, to follow the terms of the act in excluding the idea of a permanent partial disability, if compensation for disfigurement was in issue (*Stubbs v. Industrial Board*, 117 N. E. 419).

In an Oklahoma case (*Adams v. Iten Biscuit Co.*, 162 Pac. 938) the claimant suffered permanent injuries and also serious disfigurement. It was urged that the compensation law was inadequate, and that at least a right of action for the disfigurement should be had. The court ruled to the contrary, holding that it was the legislative intent to provide by the act for all accidental injuries, and not to divide them up, and that the compensation provided by the act was intended to be exclusive.

A contrary view to the foregoing was taken in a Louisiana case, in which a woman lost her scalp (*Boyer v. Crescent Paper Box Factory*, 78 So. 596). Here the temporary total disability for which the law provided compensation was said to be less of an injury than that sustained which was not a disability affecting earning power. The law was therefore said not to cover such a case, and a judgment for damages was affirmed.

The Iowa statute was construed by the compensation commissioner of the State to give compensation only in cases of actual disability, and no claim was allowed in the instant case. It was said, however, that no decision was made on the question of a disfigurement which would prevent the obtaining of any employment. Rulings covering the loss of an ear are on hand from three sources, the industrial accident board of Michigan and the labor commissioner of Minnesota making allowances for the mutilation, while the New York Supreme Court, appellate division, ruled that such an injury was neither enumerated in the schedules of the law nor did it cause disability, so that no compensation could be awarded for it. It was said, however, that the right to sue for such an injury was not affected by the statute, it not being included under it, so that an action at

common law would lie (*Shinnick v. Clover Farms Co.*, 154 N. Y. Supp. 423). The supreme court of the State in special term in a later case (*Connors v. Semet-Solvay Co.*, 159 N. Y. Supp. 431) rejected this view and allowed compensation for burns causing disfigurement and pain, saying that no recovery could be had apart from the compensation act, holding that the compensation law covers all points of the employer's liability, and citing the court of appeals of the State (*Jensen v. S. P. Co.*) as authority.

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); and in a quite similar case the same court affirmed an award on the ground that disfigurements had a tendency to impair earning power (*Sweeting v. American Knife Co.*, 123 N. E. 82), asserting also that the statute would stand even though the facial disfigurement were unrelated to loss of earnings.

The constitutionality of this provision of the law was sustained in a case that reached the Supreme Court of the United States (*New York Central R. Co. v. Blanc*, 40 Sup. Ct. 44). It was contended that only impairment of earning capacity warranted a compulsory payment of compensation, and that the "disfigurement clause" of the act was arbitrary and oppressive, violating the constitutional rule as to due process of law. The court ruled that earning power might be reduced by other than mere reasons of capacity; nor could it concede that impairment of earning power is the sole ground for compulsory compensation to injured workers. The amendment was therefore upheld and the judgments upholding awards affirmed.

The doctrine expressed in this opinion finds application in the case of other injuries, not necessarily impairing earning power, but undeniably constituting physical injuries. Conflicting opinions in two such cases are found in a New Jersey case (*Hercules Powder Co. v. Morris County Court of Common Pleas*, 107 Atl. 433), and one decided by the Appellate Court of Indiana (*Centlivre Beverage Co. v. Ross*, 125 N. E. 220). Both cases involved the loss of a testicle

as the result of accidental injury. The Supreme Court of New Jersey ruled that the law did not limit benefits to cases of loss of earning power, but that the injured man might properly be compensated for a "permanent impairment of his physical entity," such as was suffered in the case at hand. The Indiana court, on the other hand, reversed an award made by the industrial board, saying that the injury was not one specified by the act, nor was it one likely to "impair the future usefulness of the employee." It was held that loss of earning power was the sole basis for compensation, in contrast with the two opinions last cited.

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 conditions involved in the industry and the accidents that may result therefrom. Where the laws are construed as applying only to cases of accidental injury, using that term in its customary significance, there is great difficulty in determining the proximate cause of the physical conditions for which claims are submitted—i. e., whether or not the causal connection between the condition and the alleged happening back of it is such as to support a claim. It is a common rule that where, on account of preexisting conditions, as of varicose veins, hardening of arteries, or incipient or latent tubercular, cancerous, etc., conditions, the employee is peculiarly liable to serious results from comparatively slight injuries, "the employer takes his employee subject to the physical condition he is in at the time he enters the employment";²⁴ and even though the injury was in reality but an aggravation of existing conditions, compensation must be paid where the injury actually caused the disability of a person otherwise able to continue in employment. This rule is followed by the California industrial commission, but in a case in which recovery from ulceration and varicose veins was prolonged by reason of a previous ulceration which had destroyed the true skin and left only a scar tissue of slow-healing capacity, the period of compensation was restricted to an estimated period ordinarily required for recovery from varicose ulceration. The Ohio industrial commission allowed full benefits for the death of a man who was predisposed to apoplexy, a stroke having been induced by overexertion in the course of his employment. A ruling by the Massachusetts board on review awarded total-incapacity benefits in the case of a man to whom an injury had caused aggravation of an old arthritis of the spine, recovery from the injury being interfered with by habits of regular drinking which affected "circulation, heart, blood vessels, liver, and kidneys. It will be a tremendously long time before such a spine becomes normal. The accident is responsible for taking two or

²⁴ Decisions, Industrial Accident Commission of California, vol. 2, p. 525.

three years out of the man." The same board, however, determined that the general physical condition of another employee would have incapacitated him in any event within approximately one year after the date of the injury which effected his disability, and payments were limited to that period; and a Minnesota county court decided that the condition of a miner's eye was such prior to the injury that it would have become useless in 67 weeks, so that compensation should be limited to the period thus fixed, where the injury resulted in the blindness of the affected eye (*Pintar v. Morton Mining Co.*). This corresponds to the action of one of the compensation commissioners of Connecticut in estimating the period of probable capacity to remain at work of an injured man who was afflicted with a progressive disease at eight weeks beyond the date of his injury, limiting the award for compensation to that period.

It seems impossible to reconcile these rulings with another ruling of the Massachusetts accident board in which compensation for the full term was awarded a widow for the death of her husband from apoplexy following heavy lifting. It was found that the man had previously suffered from advanced arteriosclerosis, Bright's disease, and heart trouble, and "probably would not have lived a year if he had not been injured." In making this ruling, however, the board cited two decisions of the supreme court (*In re Fisher*, 108 N. E. 361, and *In re Brightman*, 107 N. E. 527), in both of which the statutory allowance was made for the death of employees who were affected by weakness of the heart and succumbed after exertion which would probably not have produced any serious results in the case of a person in normal physical condition. That this is definitely the position of the Massachusetts Supreme Court appears from the following, quoted from a later opinion handed down by it (*In re Madden*, 111 N. E. 379):

There is nothing said in the act about the protection being confined to the healthy employee. The previous condition of health is of no consequence in determining the amount of relief to be afforded. It is the injury arising out of the employment and not out of disease for which compensation is to be made. Yet it is the hazard of the employment acting upon the particular employee in his condition of health, and not what the hazard would be if acting upon a healthy employee or upon the average employee. All who rightly are describable as employees come within the act.

This rule was also applied in a case, *Crowley v. City of Lowell*, 111 N. E. 786, in which an accident to a man having dormant syphilis resulted in insanity.

The industrial commissioner of Iowa, in discussing a case in which there was a syphilitic condition which presumably doubled the period of disability, ruled that there was nothing found in the law which justified taking this difference into consideration, saying:

It is my opinion that in Iowa compensation must be paid for the entire period of disability and that you should not take into consideration the physical defects.²⁵

The Supreme Court of Michigan took the same view as that expressed by the Iowa court in a case (*Hills v. Oval Wood Dish Co.*, 158 N. W. 214) involving similar conditions. It was said that, assuming that the disability was in fact prolonged by the disease, there was yet no point at which it could be said that the consequences of the injury ceased to operate, the claim being indeed that the consequences of the injury were prolonged rather than that they ceased to have effect. "There is no part of the period of disability that would have happened, or would have continued, except for the injury." Compensation was therefore to be continued during the whole term of disability.

The Supreme Court of Louisiana took the same position where a latent case of locomotor ataxia was developed by an injury, though there was "no doubt" that the plaintiff's physical disability resulting from the accident "is worse than it would be if he had not been diseased" (*Behan v. John B. Honor Co.*, 78 So. 589); and the Appellate Court of Indiana affirmed an award for death from a ruptured aorta caused by a strain, although it was evident that the aorta was in such a diseased condition that death would eventually

²⁵ The provisions of the laws vary in regard to any limitation in this field, but they generally undertake to exclude diseases not the result of injuries in the employment, the law of Kentucky excluding also "the results of a preexisting disease."

An obvious necessity for safeguarding the situation in this respect is the examination of applicants for employment, and it has been suggested that this duty be performed by the State so as to enable such distribution or employment of impaired workmen as will best avoid their being entirely deprived of opportunity for self-support. The industrial commission of Ohio has a special bulletin on this subject (*Physical Examination of Wage Earners in Ohio, 1915*), giving an account of results of examinations of applicants and employees in establishments employing some 68,000 persons. An Executive order of President Taft, date of Dec. 7, 1912, covering "all artisan and supervisory artisan positions under the jurisdiction of the Department of the Navy" under the competitive classified service, contains the following:

"No artisan or supervisory artisan whose position is included in the classified service by this order shall be classified unless he has established his capacity for efficient service or has been examined and found qualified by the labor board and is recommended for classification by the commanding officer under whom he is employed."

In accordance with the foregoing, instructions were drafted by the Civil Service Commission in 1914 barring applicants from examination who are affected by insanity, tuberculosis, paralysis, epilepsy, blindness, loss of both arms or both legs, loss of arm and leg, badly crippled or deformed hands, arms, feet, or legs, uncompensated valvular diseases of the heart, locomotor ataxia, cancer, Bright's disease, or diabetes. Ratings were also adopted showing deductions for the impairments named ranging from 5 per cent to rejection.

Besides the rejections named, contagious or infectious disease (including venereal) and arteriosclerosis were added. Deductions from 30 per cent to rejection were directed in case of loss of hand or foot or hernia; from 15 to rejection for piles, fistula, or fissure, and for deformities, old fractures, etc.; from 10 to rejection for chronic disorders of stomach or bowels; and from 5 to rejection for rheumatism or history of it. Also deductions of 30 per cent for valvular disease of heart fully compensated, as attested by certificates of two physicians; 15 for loss of eye, middle ear disease, or deafness; 15 to 30 for spinal curvature, loss of one or more fingers or toes; 10 to 25 for enlarged heart (unaccompanied by valvular disease) or irregular heart; 5 to 30 for varicose veins; 5 to 25 for skin diseases (noncontagious) and chronic bronchitis; 5 to 15 for chronic tonsillitis or pharyngitis; 5 to 10 for varicocele, minor defects of vision, deficient chest mobility, insufficient muscular development, obesity, too rapid heart, or deviation of nasal septum, cleft palate, etc.

A rating of at least 70 per cent on physical ability is required for all positions filled through noneducational examinations.

result therefrom, even without severe exertion (*Indian Creek Coal & Mining Co. v. Calvert*, 119 N. E. 519).

That a case of appendicitis was the result of a blow on the walls of the abdomen, and compensable under the act, was the ruling of the accident board of Maine, the injury following a fall against an object near the injured man's working place, the floor being slippery with oil. A Connecticut commissioner made a full award in the case of a man suffering from appendicitis, the appendix being ruptured by a strain, resulting fatally; and an award was affirmed by the Supreme Court of New Jersey, where an internal cancer was ruptured by effort while at work, with fatal results, the court saying: "But for the injury, life might have continued for a considerable period" (*Voorhees v. Smith Schoonmaker Co.*, 92 Atl. 280); while the California commission held that the fatal consequences of a perforation caused by gastric ulcer, following an effort in cranking an automobile, was not compensable, as the effort was only the occasion of the injury and not the cause. An unusual situation developed in the case of a Connecticut employee who had practically lost the sight of an eye previously, but received an injury necessitating its removal. The award made was for the period of total disability and for medical, surgical, and hospital services prescribed by the law, and not for the loss of an eye.

The administrative bodies of Michigan and Wisconsin ruled against claims where workmen fell as the result of illness and injured themselves by so falling, the Michigan board saying that "the employer is not liable for injury due to illness rendering the employee incapable of properly guarding himself against injury"; while the Wisconsin commission declared that "such injuries are not subject to compensation unless they result from unusual physical conditions." The New York commission, on the other hand, awarded the regular benefits in a case in which an employee fell in a fit of apoplexy and was burned by a pail of hot tar which he was carrying. And the Appellate Court of Indiana held that compensation should be paid as for an injury arising of the employment, where a workman fell into a tank of water and was drowned while seized by an epileptic fit (*Miller v. Beil*, 127 N. E. 567). It was said that, though his physical condition was the remote cause of the death, the consequences were due to his employment requiring him to work at or near the tank.

A case of this nature was passed upon by the Supreme Court of Michigan, where a workman on a properly constructed scaffold fell in an epileptic fit and received fatal injuries. The court held that he 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, "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 there held that the dizziness, fall, and injury were all due to the place and nature of the employment. In a case in which a fall while at work apparently lighted up a latent infection, the Wisconsin commission allowed a claim for resultant disability.

A different form of the question of proximate cause was passed upon by the Supreme Court of Massachusetts, which sustained an award in the case of death from suicide following insanity, the employee having had his eye burned from a splash of molten lead, the court saying that if the injury arose out of and in the course of employment it was not of importance whether the consequences appeared natural and probable or abnormal and inconceivable, the only question being whether or not they actually resulted (*In re Sponatski*, 108 N. E. 466).

The question of sequence was also before the appellate division of the Supreme Court of New York in *Plass v. Central N. E. R. Co.* (155 N. Y. Supp. 854), in which a railroad section man was poisoned by contact with poison ivy, blood poisoning, bronchitis, congestion of the lungs, and death following. These facts found by the industrial commission were held not open to review by the court, there being "certainly some evidence to warrant them." The award in this case was affirmed by the court of appeals of the State (123 N. E. 852).

The question of proximate cause is quite closely related to that of the preexisting condition of the employee in many instances, an illustration being found in a case decided by the compensation commission of New York, in which a man injured by burning developed delirium tremens while in the hospital and died. The ruling of the commission was in favor of the dependent claimant, on the ground

that the primary cause of the death was the burning, the delirium tremens being contributory. The industrial board of Massachusetts took the same view in a case in which a fracture of the leg resulted fatally by reason of the low resistance of the injured man, due to regular use of alcohol. The chain of incidents was given as injury, sepsis, delirium tremens, death, the death being held to be connected with the injury. The Supreme Court of Michigan affirmed an award of compensation in a very similar case (*Ramlow v. Moon Lake Ice Co.*, 158 N. W. 1027), the view being taken that the delirium tremens would not have developed at the time but for the injury.

“An inconsequential fall” resulted in the breaking of a diseased bone of the leg, and the diseased condition necessitated the amputation of the leg some inches above the fracture. While admitting the propriety of an award for the accident, the Supreme Court of New York, appellate division, held that an award for the loss of the leg was not warranted (*Brady v. Holbrook etc. Corp.*, 178 N. Y. Supp. 504), citing *Richardson v. Greenberg* (188 App. Div. 248, 176 N. Y. Supp. 651), in which the distinction between accident and disease was more fully discussed.

The Supreme Court of Wisconsin denied compensation to a man who, when recovering from a hurt, engaged in a boxing bout which seems to have excited bacteria that were walled off so as to be harmless, but by blows received were brought into the circulation, resulting in blood poisoning. It was held in that case that the original hurt was not the proximate cause of the subsequent disability, but that it was superseded by an act not in the course of employment (*Kill v. Industrial Commission*, 152 N. W. 148).

Subsequent happenings were involved in a case in which a man fractured his knee in October and was making normal recovery, when he slipped and fell the following March, loosening the bone, and again fell in July and received injuries while waiting to receive his crutches after getting out of a wagon. 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). Under the Massachusetts law decisions are originally made by a committee of arbitration, and in a case passed upon by such a committee it was shown that liquor had been smuggled to the injured man while in the hospital, and the conclusion was reached that death was due to the delirium caused by such surreptitious use of liquor, and compensation was denied.

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., p. 129). 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, 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, p. 131).

Pneumonia, regarded as the result of an accident, formed the basis of awards by the commissions of New York and West Virginia, while the Massachusetts accident board on review denied compensation in a case where a janitor, overheated while stoking a furnace, became chilled while sweeping, the finding being that there was no personal injury in the course of employment, so that no compensation was due. In the New York case a watchman fell and broke his leg and developed static pneumonia and pleurisy, followed by death. In one of the West Virginia cases the injured man was kicked in the chest, while in the other the injury consisted of a fracture of the skull. Obviously the development of a case of inhalation pneumonia following an operation for compensable hernia would furnish a basis for an award (Industrial Accident Board of Massachusetts). That the injury was the proximate cause of death was determined by the industrial accident commission of California in a case in which a blistered heel, due to the wearing of boots, furnished by the employer, too large for the employee, was followed by blood poisoning, uremia, and death, it being held that the chain of causation was complete. Where a chauffeur's arm was broken, and unpadded splints led to the formation of an abscess, followed by blood poisoning and ankylosis of thumb and fingers, the Supreme Court of New Jersey allowed an award, as without the happening of the original injury none of the subsequent events would have taken place (*Newcomb v. Albertson*, 89 Atl. 928); and a district court judge of the same State allowed a claim for the death of an upholsterer from cancer which was held to be traceable to injuries to the tongue caused by his holding tacks in his mouth, according to the custom of the trade.

Somewhat stricter than the foregoing appears to be the ruling of the Supreme Court of Kansas in a case (*Ruth v. Witherspoon-Englar Co.*, 157 Pac. 403), compensation for total disability

being disallowed on the ground that it was due, not to the original injury, but to the malpractice of the physician treating the case. The cause was remanded to the lower court for a determination of the extent of the injury due directly to the accident as distinguished from the subsequent malpractice.

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 laws of the different States. 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 from the scope of compensation acts employees engaged in the movement of trains. The cases under this head turn 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 common omission of domestic and farm labor is sometimes absolute and sometimes conditional. In some States, in common with other excluded employments, it may be brought within the act by an affirmative election. In others, however, the exclusion is absolute by the terms of the act. Thus the attorney general of Minnesota ruled that a farm owner could not bring his workmen under the law of that State, which “shall not be construed or held to apply to * * * farm laborers.” Questions requiring determination arise where there is a combination of duties or of industrial undertakings. Thus the industrial accident board of California excluded an employee who was in regular employment in his employer’s saloon, but whose injury was received while cleaning windows in the employer’s apartment above the saloon, such employment being classed as household domestic service and not compensable. On the other hand, a horseman and general utility man about a house, caring for the garden, lawn, etc., was held to be within the compensation act while exercising horses belonging to the employer. The Supreme Court of Illinois rejected a claim on account of the injury of a carpenter received while building a crib for a farmer, the ground being taken that the farmer was not engaged in the business or occupation of building, the work itself not being extrahazardous and the business of farming being excluded from the act (*Uphoff v. Industrial Board*, 111 N. E. 128). The question is approached from the other side in a case before the industrial board of this State where a farm hand and teamster on the farm of a seedsman was injured, the employer maintaining a seed warehouse with an elevator

subject to city ordinances and a storeroom, so that he was an employer within the hazardous class and had elected to accept the law. The employer was held bound as to all employees except those specifically exempted, this exemption including the claimant in the present case.

The Massachusetts law was construed by the supreme court of that State so as to permit a farmer and market gardener to insure drivers and helpers, while omitting laborers whose duties were strictly agricultural, the court saying that such a classification is reasonable and valid and conforms to the spirit of the act (*In re Keaney*, 104 N. E. 438). The industrial board of the same State recognized similar distinctions in the case of an employer who insured his office force and other employees. The family chauffeur was held not to be included in the policy of insurance, as his work was not in the usual occupation of his employer, his principal duties being to drive the car of his employer on errands of pleasure. The industrial accident board of Michigan awarded compensation to a farm laborer where the employer was a corporation whose business it was to manufacture chemicals, serums, etc., incidental to which a farm was maintained, the injury being caused by a kick from a horse. It was held that the maintenance of the farm was in this case a part of the manufacturing business of the company, and it was further pointed out that the law of the State does not exclude farmers, but merely places them under no added burdens if they fail to accept the act. This was reversed by the supreme court of the State (*Shafer v. Parke, Davis & Co.*, 159 N. W. 304), on the ground that the status of the employee was fixed by the work actually done by him, and not by the fact that his employer had other interests, not affecting the nature of his work.

Questions similar to the foregoing were passed upon by the industrial accident board of Texas in a case in which a partnership operated a farm and an irrigation plant. It was held that even though the management of the two undertakings was the same, if they were operated separately the irrigation plant could come under the statute while the farm and the laborers on it would be excluded. It was further said that the same workmen might be included or excluded according as they were employed in the one undertaking or the other. The same board in another case, however, excluded all the employees on a farm and ranch, though one man was a mechanic in charge of a considerable amount of machinery on the place. It was added that even if a different ruling should be made with reference to the mechanic it would not have the effect of bringing the farm laborers within the act.

No one who knows the actual hazard of farming operations, and the accident rate incident thereto will claim that the exclusion of farm

labor from the compensation acts is based on its freedom from danger of accidental injury. This is perhaps particularly true of the operations of harvesting and thrashing, and the specialized nature of the latter has opened the door to its inclusion in some cases. Thus the Appellate Court of Indiana ruled that an employee engaged as a part of the crew of a thrashing machine, which was moved 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).

The Supreme Court of New York, appellate division, took a similar view as to the nature of the work, so that an employee following a thrasher was said not to be a farm laborer; and while the law did not name the running of a thrashing machine as a hazardous business, the fact that the injury was received while moving the separator enabled a classification as operating a vehicle to be made, which brought the case within the act (*White v. Loades*, 164 N. Y. Supp. 1023). The Supreme Court of Minnesota took the opposite view, classing a separator man as a farm laborer, and not within the law of the State (*State ex rel. Bykle v. District Court*, 168 N. W. 130).

Similar or perhaps greater hazards attend the operation of corn shredders, which likewise are moved from farm to farm in the performance of their work. The Supreme Court of Iowa classed an engineer and laborer working for the owner of a shredder, who was an independent contractor as to the work in hand, as a farm laborer engaged in agricultural pursuits (*Slycord v. Horn*, 162 N. W. 249).

Hazardous employments.—The question of hazard is made the basis of determining inclusions and exclusions in a number of the laws, enumerations being made by the acts in a number of cases, while in the others the matter is open to determination. The Supreme Court of New York, appellate division, has had before it a number of cases involving the definition of the term "hazardous" under the act of that State. Thus (*Aylesworth v. Phoenix Cheese Co.*, 155 N. Y. Supp. 916), a laborer employed by a company at harvesting ice was held not to be within the act, since the harvesting of ice is not classed as hazardous (since included by an amendment of the law, 1916), and the employee was not working for the company in the preparation of foods, in which case he would have been included. A butcher or chef's assistant in a hotel who cut an artery while preparing a leg of mutton for cooking and died from the injury was held

not engaged in the manufacture or preparation of meats or meat products, so that no claim on his account could be allowed (*De la Gardelle v. Hampton Co.*, 153 N. Y. Supp. 162); so also where a driver for a packing house, who in his ordinary employment would be included within the act, but who was sent on foot to deliver a retail order and fell over a bucket of glass and received injuries from which he died, it was held that he was at the time not in hazardous employment (*Newman v. Newman*, 155 N. Y. Supp. 665; affirmed by court of appeals).

While the business of warehousing is covered by the statute, it was held that an employee injured while handling a barrel of vinegar for a wholesale produce merchant in his warehouse was not protected by the law, since the employer was not engaged in warehousing, that phase of his business not being for pecuniary gain (*Mihm v. Hussey*, 155 N. Y. Supp. 860). The act by amendment of 1916 now includes storage of all kinds. Another excluded case was that of a janitor whose general duties were not of the kinds classed by the law as hazardous, and who was injured while hanging out a flag, which was a part of his duties. It was held that in the case of such employees it must be specifically shown that the work in which the employee was engaged at the time of his injury was of the hazardous class, which was held not to be the case in the present instance, though the man fell and broke his leg (*Reisner v. Gross & Herbener*, 155 N. Y. Supp. 946).

Admitted to benefits by this court were a porter and elevator man in a manufacturing and wholesale drug house in which some parts of the work were hazardous, the court saying that an employee therein would be presumptively included in the act (*Larsen v. Paine Drug Co.*, 112 N. E. 725); and a butcher's helper in a retail establishment who lost four fingers in an electric meat chopper, pneumonia and death ensuing, it being held that the injured man might be regarded as included in the work of manufacture or preparation of meats or meat products unless the employer showed specifically otherwise (*Kohler v. Frohmann*, 153 N. Y. Supp. 559). Meat markets are now within the act. A man injured while lifting glass from a cutting table in an establishment in which plate glass was polished, mirrors made, etc., was presumed to be engaged in the manufacture of glass, glass products, etc., unless specific facts to the contrary should be presented in the defense. It was said in this case that the employer's premiums were the same, whether or not the employee was engaged in hazardous employments at all times (*McQueeney v. Sutphen & Hyer*, 153 N. Y. Supp. 554).

The court of appeals of the State had before it a case involving the operation of an elevator, and reached the conclusion that this does not come within the protection of the law unless the business in connection with which the elevator is used is classed as hazardous (*Wilson*

v. Dorflinger Sons, 112 N. E. 567) This reversed a judgment of the supreme court, appellate division, awarding compensation in the case named on the ground that elevators should be classed as vehicles "other than on tracks." An amendment of 1916 brings freight and passenger elevators within the scope of the act.

The compensation commission of the State ruled in favor of a hotel porter injured while at work in the hotel's ice-manufacturing plant, since, though his regular employment was not covered by the act, the work in which he was engaged at the time of his injury was held to be so, laying down the rule that employees in industries that are nonhazardous as a whole are protected under the act while engaged in occupations covered by it. In another case before this commission an employee of a mining company, whose duties were to act as policeman on the premises, was killed while making an arrest. It was found that he was an employee of the company under contract, and since the business of the company was classed as hazardous, all its employees would be covered by the act, the injured man in this particular instance being required to be on the premises in the discharge of his duties, even though not actually engaged in the physical operation of the plant. Other contentions to the effect that the injury was not an accidental one, and that it did not arise out of and in the course of employment, were rejected and compensation awarded.

It is of interest to note that the law of New York, the most important one using hazard as a basis, after several amendments adding enumerated employments, has practically abolished this test by making the law apply to all unenumerated undertakings in which four or more "workmen or operatives" 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. An amendment of 1916 also makes compensation available by election for all employments.

The Supreme Court of Washington met the contention of a telegraph company that the work in which it was engaged was not hazardous with the statement that the legislature had declared the work of construction of telegraph and telephone lines to be extrahazardous, which it might do unless the court could take judicial notice that such was not the case (*State v. Postal Telegraph-Cable Co.*, 172 Pac. 902). The company could not therefore be heard to dispute the declaration, and it was held subject to the act.

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);

but the building of a shed 32 by 24 feet and 17½ feet high was declared not to be an "enterprise" in which the building "of any structure" would bring an employer automatically within the act as engaging in an extrahazardous employment (*Uphoff v. Industrial Board*, 111 N. E. 128).

This law includes as extrahazardous "any enterprise in which statutory or municipal ordinance regulations" govern the use or guarding of appliances for the safety of the employees or the public. This was held (*Hahnemann Hospital v. Industrial Board*, 118 N. E. 767) to warrant an award for the death of an engineer in a hospital in which the elevator, electric wiring, etc., were the subject of municipal regulation, even though none of these instrumentalities was connected with his death. The digging of trenches for sewers was held to be within the class of extrahazardous work, which includes excavating (*Scully v. Industrial Commission*, 120 N. E. 492).

Rulings on the question of hazard are obviously difficult, since they would seem to be practically answered by the fact of the occurrence of the injury which must happen before the case can come to consideration; and the fact of the injury is in itself proof that the occupation is at least in some degree hazardous. It is difficult, therefore, to avoid the impression of unfair exclusion in cases where a workman suffers injury in circumstances ordinarily giving rise to valid claims for compensation, but finds himself, or his dependents in case of fatal injuries, deprived of supposed rights, and, indeed, of all possibility of recovery, because the industry is reckoned by the courts or administrative commission as nonhazardous. Industrial protection is incomplete in such a state of affairs, besides the uncertainty that exists where the decision rests on opinion, statistics of accident rates in specific industries not being available in many cases to afford a real basis of determination.

In any view, the matter resolves itself into this, that if a given occupation is hazardous, those engaged in it may properly expect provision to be made in their behalf; if the risk is comparatively slight, the cost of providing for the occasional injuries arising in it is not burdensome on the employer while ministering to the needs of the injured individual, which are none the less urgent because of the comparatively small number of persons injured in like circumstances.

Casual employment.—The exception in many laws of persons whose employment is only casual and not in the usual course of the trade, business, etc., of the employer has been passed upon in a number of cases at hand. The California law requires for exception that the employment shall be both casual and not in the usual course of the employment, its provisions corresponding with those of the British act; the Iowa industrial commissioner construes the law of that State to be of the same effect. In a California case, where an employee passing

a creamery operated by his employer was requested to furnish aid for a short time in work outside the usual course of his employment and was injured while doing so, it was held that while his employment in this case was casual it was nevertheless in the usual course of his employer's business, so that he was entitled to compensation. This commission has fixed an arbitrary term of one week as the standard, employment for a less period being held per se casual, if not in the usual course of the trade or business of the employer. A plasterer doing less than one week's work for a rooming-house keeper was held excluded for both reasons, while a decorator who usually had his carpenter work done by his regular employees was required to pay compensation to a carpenter hired for less than one week to do such work for him, as it was in the regular course of the employer's business. Where a locomotive engineer wished a garage built on his premises he engaged the services of a workman, who agreed to secure the services of another man and assured the employer that the job would not last more than five days, relying on which assurance the employer did not insure his liability under the compensation law. The failure of the workman to secure constant assistance prolonged the work beyond the period of one week, but the California commission held that the employer had a right to rely upon his employee's agreement to complete the work within a time which would have made the employment casual, so that no compensation could be demanded.

The law of Massachusetts originally excepted persons whose employment was but casual or not in the usual course of the trade, etc., of the employer, and under it a caterer was held not required to compensate for injuries to a waiter employed by him for a single occasion (In re Gaynor, 217 Mass. 86, 104 N. E. 339). As employment on occasion merely is the custom in this class of work, it is evident that service of this nature was by this decision excluded from the act, until an amendment of 1914 struck out the provision debarring casual employees from its benefits. They are therefore now within the act unless employed at work "not in the usual course" of the employer's business.

The exclusion of casual employees not only leads to difficulties, but to absurdities as well, and some harsh results have followed their exception from coverage. The status of a workman not employed in the business of the employer was considered by the Court of Appeals of New York in a case (*Bargey v. Massaro Macaroni Co.*, 113 N. E. 407) in which a carpenter engaged in making alterations in the factory was injured while at work. It was held that under the act the company was an employer in its capacity as a manufacturer of foodstuffs, but as the carpenter was not engaged in that work he was not an employee, his work having no relation to the hazardous business of the employer. Recovery under the pro-

vision of the act covering the construction, demolition, and repair of buildings was also denied on the ground that the company did not carry on such occupation for pecuniary gain. An award of the commission of the State in the claimant's behalf was therefore reversed.

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). The law of this State no longer excludes casual employees.

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.

As in the case of Massachusetts, such results have in some States 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. Massaro Macaroni Co.* 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).

So that although an employment may be properly classed as casual, as where a workman was replacing a smokestack at a factory, he is now within the act if the principal business of his employer is hazardous (*Cummings v. Underwood Silk Fabric Co.*, 171 N. Y. Supp. 1046); and 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 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 Supreme Court of Wisconsin also held that repairs in an industrial plant, whether usual and capable of anticipation, or such as may occur but once in a long industrial life, are not without the usual

course of business of the employer. It therefore affirmed an award under a provision of law which excluded employees whose work "is but casual, or not in the usual course," etc., where the injured man was in no wise a regular employee of the establishment (*Holmen Creamery Assn. v. Industrial Commission*, 167 N. W. 808). The law of this State has also been amended by striking out the words "is but casual or."

The strict attitude of the Illinois Supreme Court has already (p. 142) been noted. A plasterer at work in an addition to the employing company's plant was fatally injured, practically at the completion of a three-day job. The court denied his widow's claim on the ground that irregular employment, even through a period of years, was casual within the meaning of the act (*Aurora Brewing Co. v. Industrial Board*, 115 N. E. 207). And where the work was admittedly in the line of the employer's business, a structural-iron worker who was employed by a railroad for a job of three or four days' duration was held to be a casual employee, and not within the act (*Chicago G. W. R. Co. v. Industrial Commission*, 120 N. E. 508). The law, which was of the same effect as that of Wisconsin, noted above, was similarly amended in 1917.

The laws of Connecticut and Minnesota agree with that of California in following the British act, so that even if the business is but casual, if it is in line with the employer's business, the employer is liable (*State v. District Court of Rice County (Minn.)*, 155 N. W. 103); while in a Connecticut case (*Thompson v. Twiss*, 97 Atl. 328), an indefinite term of employment, though to last at least several weeks, was held not to be casual, even though the work was not in the main business of the employer, "yet a very substantial one." This viewpoint coincides with that of the compensation commission of Pennsylvania; in this State the law excludes persons whose employment is casual *and* not in the regular course of the employer's business. The commission rules that "the policy of the law is against the creation of any situation whereby a workman can be engaged in his occupation in the State of Pennsylvania and be deprived thereby of the benefits of the workmen's compensation act." It was said that if a farmer undertook to build a barn, hiring the men therefor, they would not be classed as agriculturists because employed by him; but if he hurriedly employed a workman to repair a suddenly discovered leak that would be a casual employment. This accords with an earlier ruling by a referee in this State who allowed the claim of a carpenter remodeling the residence of his employer, who was engaged in no trade, but was held for the occasion to be engaged in the business of reconstructing the home. It was said that if there was "time for premeditation, calculation, and design he must be considered to have engaged in a business, and the employee under those circumstances can not be considered as casual."

The attitude of the supreme court of the State is less liberal. In the case of *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.

Where an employee came to the employer's house for one day each week to assist in domestic duties it was held that such employment was not casual but periodical, and injuries received during its continuance were compensable (compensation commissioner of Connecticut). Quite similar was the view taken by the Maryland accident commission in the case of an employee who received \$2 per week from an employer in a market, with the privilege of rendering services to other persons having stalls in the same market. An injury received while at work for one employer was held not to be during the rendering of casual services. Where one renders occasional services, but is under no contract and has no agreement therefor, the defense of casual employment was held to apply in a Massachusetts case, even though the employment was in the line of the employer's business. This ruling by a committee of arbitration is in harmony with a decision of the supreme court of that State, where a teamster with team rendered services of a few days' duration once or twice a year (*In re Cheevers*, 106 N. E. 861). The accident board of the same State allowed a claim where an employee was supplied under a contract with a union, the man not being hired as an individual but as a member of the union; the injured man was supplied as a substitute mailer, and was injured during the first day of his employment, though he had been pretty constantly at work in other offices in the city. The board held that his employment was substantially regular and not casual and that he was working under a contract, so that compensation must be allowed. The supreme court of that State passed upon another case in which a workman employed to trim trees to keep the wires of the employing company clear was directed by his foreman to trim the limbs of a tree through which none of the company's wires ran. The court held that as he was supposed to obey orders it was none of his business to inquire as to the right of the company to trim a particular tree, and that as he was doing what he had been hired to do the work was not casual (*In re Howard*, 105 N. E. 636).

The Minnesota commissioner of labor ruled that the length of service did not determine the nature of employment as casual in a case where a contractor who had no regular employees took on such

men as he could obtain in a strange town for the purpose of a piece of work which he had contracted to do there.

The Supreme Court of New Jersey applied a principle already noted under this head in a case where a longshoreman was killed two hours after taking employment. Men in his line of service do not work regularly for one employer, but render services on the occasion of ships coming into port, being a regular class of employees for this purpose. The court held that such employment was not casual despite its irregularity (*Sabella v. Brasileiro*, 91 Atl. 1032). The industrial commission of Ohio holds the law of that State to cover public employees without distinction as to whether casual or not. The same view is taken of the Wisconsin statute by the industrial commission of that State and of the Michigan law by its board.

Other exclusions.—The Washington statute was held not to authorize the inclusion of elevators in mercantile establishments, the term "elevator," where used in the act, referring to grain elevators, and mercantile establishments not being among the extrahazardous places of employment contemplated by the act (*Guerrieri v. Industrial Insurance Commission*, 146 Pac. 608).

The law of Illinois includes occupations subject to statutory or municipal regulations. This was held by the appellate court not to cover occupations known not to be extrahazardous, so that the driver of a milk wagon was held not to be covered by the act, even though the dairy business was subject to municipal regulation. It was stated that transportation and warehousing were mere incidents to the conduct of the employer's business and were not of such nature as the act was intended to cover, and an award by the lower court was reversed (*Bowman Dairy Co. v. Noyes*, Ill. App.). The Supreme Court of Washington, in passing upon this phase of the law of that State, rules that a merchant who has repair shops and employs mechanics in them is, as to such employees and mechanical departments, engaged in extrahazardous employment within the meaning of the act, though simply as a merchant he is not (*Wendt v. Industrial Insurance Commission*, 141 Pac. 311).

The Texas statute excludes railways operated as common carriers, and this exclusion is held to cover street railways. The industrial accident board held that a company operating a street railway and also an electric light plant would be under the act as regards the latter if the electricity was furnished for other purposes than the operation of the road. Labor being interchangeable to a certain extent, it would be a question of fact in each case whether a claimant was injured while working for the electric light plant as such or was in the service of the railway company. The statute of this State also has a provision exempting employers of not more than five employees. It was held that a mercantile partnership operating stores

in two different places in one city, each store having five employees, might become a subscriber under the act on the basis of its aggregate force of employees, since it was a single employer, though operating separate establishments.

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 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.

This accords with a decision of the Supreme Court of California in the case of a member of a mining partnership (*Cooper v. Industrial Commission*, 171 Pac. 684). This man was a practical mining engineer, and was killed in a mine shaft while getting samples of ore for assaying. It was said that the compensation act did not contemplate such a mixed relation as would result if partners were to be regarded at the same time principal and agent or employer and employee. The industrial accident board of Massachusetts likewise denied the benefits of the act of that State to a partner who received \$30 a week from the firm and claimed that it was wages. The public service commission of West Virginia also disallowed the claim of an employee who was bookkeeper and secretary of the company, on the ground that he was an officer of the corporation and not an employee within the meaning of the act of that State.

One of the compensation commissioners of Connecticut declared that if it had been desired to exclude officers of corporations from benefits as employees specific language would have been employed, so that one who was engaged in the company's service, although he was stockholder, director, and treasurer, was held entitled to compensation. The compensation commissioner of New York likewise allowed benefits to the president of an employing corporation who

was injured while working in its shops as a mechanic; and the supreme court of the State, appellate division, though denying a claim on the ground that the employment was not covered by the act, held that a shareholder and vice president of a corporation was an employee within the meaning of the compensation act where he worked alongside the regular workmen, though he was general foreman (*Beckman v. J. W. Oelerich & Son*, 160 N. Y. Supp. 791).

The law of Texas was construed by the industrial accident board of that State to cover sons, wives, and daughters of merchants working in the store and paid a salary or wages. On the contrary, the Supreme Court of Massachusetts held that the wife of a merchant, who acted as cashier and bookkeeper and drew regular wages, was not an employee of her husband. Cases were cited to the effect that a married woman can not make a contract either with her husband or with a partnership of which he is a member (*In re Humphrey*, 116 N. E. 412).

The question of the status of employees engaged otherwise than on a fixed salary was ruled upon by the compensation commission of New York, the instant case being that of a traveling salesman employed on a commission basis. It was held that such employees should be included in the pay roll upon which premiums are based, though it is permissible to exclude any salesmen who are continuously employed outside of the State. Similar were the rulings of the industrial accident board of Texas as to salesmen taking orders on commission and pieceworkers in factories; so also as to a porter working in a hotel, dependent entirely upon tips for his income, the same board ruling that he was rendering service for the company, even though his payment came from such tips.

The matter of numerical exclusions would ordinarily seem to offer no ground for dispute. However, the question was raised in a Connecticut case, the State law not being applicable unless there are at least five employees. The fact that a building contractor employed a housekeeper in addition to four workmen about a building was held by a commissioner to bring him within the law.

The New York law, applicable to designated hazardous groups of employment, was amended by adding "all other employments not hereinbefore enumerated" in which "four or more workmen or operatives" are regularly employed. This was an attempt to cover all occupations having the requisite number of employees; but the 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.

Public employees.—The status of employees in public service was passed upon in a number of cases coming under notice. The law of New York as enacted defined employments as trades, etc., carried on by the employer “for pecuniary gain,” and under this provision the attorney general of the State in 1914 made a ruling, under which the commission has since acted, by which the claims of a number of employees of municipalities were rejected on the ground that no municipality could be engaged in business for pecuniary gain. The view of nonliability was taken by the supreme court of the State, appellate division, in the case of a worker on a State road (*Allen v. State*, 160 N. Y. Supp. 85), though it was said that the State has power to engage in business for profit, of which this was not an instance. Where there is profit, therefore, as may occur in municipal docks, lighting and water plants, and the like, compensation would seem to be payable. The Supreme Court of Kansas took a similar position in the case of a teamster hauling sand for a county road, holding that the county was not, in the work in hand, engaged in trade as business within the meaning of the act (*Gray v. Board of County Commissioners*, 165 Pac. 867).

It is obvious that such interpretations largely minify the value of the laws as regards public employees; and the New York law was amended in 1916 so as to make it applicable to work carried on by the State or a municipality, regardless of the question of profit. The attorney general of the State has ruled that all such agencies must insure their employees coming within the classes covered by the act, though self-insurance is permitted.

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 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 (p. 142).

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).

Another class of employment was under consideration by the Supreme Court of Michigan (*Wood v. City of Detroit*, 155 N. W. 592), the injured person being an employee of the public lighting commission of the city. The State accident board had made an award over the city's contention that the act was void as applied to municipalities, and this award was sustained by the court. The method of disposing of the question of constitutionality has already been noted (p. 93).

The constitutionality of the Montana law was challenged by a county of that State, the claim being made that inasmuch as counties were not originally subject to the operation of the liability statutes they could not be brought under the compensation law. The supreme court of the State dismissed this contention, stating that the present law was not a substitute for the liability statutes, but rested on fundamentally different grounds, and that counties were subject to its

operations (*Lewis and Clark County v. Industrial Accident Board*, 155 Pac. 268).

The University of Illinois claimed that it was not covered by the act of that State; that it had not elected to come under the act; and that it was not engaged in a hazardous occupation. A claim was allowed on account of the death by accident of an elevator operator in the institution, the industrial board ruling that the institution was within the act compulsorily, and that on account of the various enterprises connected with it it was an employer at hazardous labor. The Agricultural College of Michigan also contested the claim of a carpenter who did repair work about the buildings of the institution, in the course of which he fell, sustaining a fractured leg. The claim was contested on the ground that the employee was a casual one, and also that the college was not subject to legislative control, so that it was not under the law. The industrial accident board of the State held that the proviso excluding casual employees does not apply to employees of the State or municipal corporations, and also that the college is subject to general laws regarding liability, an award in behalf of the claimant being affirmed.

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.

In Connecticut a woman supervising pupils in a State school for imbeciles was held to be an employee of the State within the act, the law covering all employers who use "the services of another for pay."

The industrial commissioner of Iowa discriminates between school-teachers in cities and in the country on the ground that country teachers frequently have to do the work of a janitor, while teachers in the city schools are not required to perform such duties. School janitors and country school-teachers, as well as other employees who perform manual labor for the school districts, were held to be included in the act; but as the law contains no reference to either manual or hazardous employments as conditioning rights under it the grounds for the distinction are not clear.

A Massachusetts statute (ch. 807, acts of 1913) authorizes cities to vote on the question of accepting the provisions of the State compensation law for "laborers, workmen, and mechanics" employed by them. These words were held by the supreme court of the State (*Devney v. City of Boston*, 111 N. E. 788) not to apply to a hoseman in the city fire department, such employees being classed as in "the

official service" of the city and not in "the labor service," as determined by the civil service rules laid down by the State civil service commission. It was also said that laborers were persons without particular training, employed at manual labor, while workmen and mechanics broadly embrace those who are skilled users of tools, hose-men coming in neither class.

The same court held, however, that a janitor of a school building, though under the civil service act, was nevertheless a laborer or mechanic, the nature of the service and not the mode of appointment being the test (*White v. City of Boston*, 116 N. E. 481). But a teacher in a vocational and industrial school, who taught and demonstrated repair work, was held not to be a laborer or mechanic, and was outside the law (*Lesuer v. City of Lowell*, 116 N. E. 483).

The status of police officers, under a city charter where appointment is made by a commission and the police are required to take an oath of office, was passed upon by the supreme court of the State of Michigan (*Blynn v. City of Pontiac*, 151 N. W. 681), the court holding that the injured man was a public officer and not an employee of the city, reversing an award by the State accident board. The Supreme Court of Connecticut spoke similarly of a sheriff elected to office, and not "working under a contract of service," and therefore not an employee (*Sibley v. State*, 96 Atl. 161). The legal department of the city of Newark, N. J., held that the law of the State did not apply to a patrolman of the city; while the Pennsylvania compensation board rules that policemen are protected by its statute, though constables and elective officers generally are not. The industrial commission of Ohio also held that a police lieutenant in a city which does not maintain a policeman's pension system is an employee within the meaning of the act of that State, this decision being based on the particular provision of the law on this point.

The law of Minnesota excludes city officials elected or appointed for a regular term of office. This was held (*State v. District Court of St. Louis Co.*, 158 N. W. 790) not to debar policemen from a right to recover under the act; nor firemen in the city fire department (*State v. District Court of St. Louis Co.*, 158 N. W. 791); and the fact that the fireman was a member of a voluntary relief association supported in part by the city and in part by the members, from which the dependents of the decedent drew benefits, does not affect the right to compensation nor the amount thereof. The compensation law was also held not to repeal provisions of a city charter granting injured firemen full wages for fixed periods; they may therefore receive both benefits (*Markley v. City of St. Paul*, 172 N. W. 215).

The status of a city policeman was passed upon by the Supreme Court of Kansas in *Griswold v. City of Wichita* (99 Kans. 502, 162 Pac. 276). In this case, as in the *Gray* 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).

The industrial commission of Wisconsin ruled that a prisoner placed at work during the term of his sentence was not an employee of the State, so that no compensation could be allowed for the loss of the right hand of an imprisoned sailor from an injury while employed about a planing machine in a chair factory. A similar ruling was made by the attorney general of Minnesota where a prisoner lost an eye while working for the county.

Children unlawfully employed.—The status under the compensation acts of children employed in contravention of other statutes is not well defined. Some laws explicitly exclude them, leaving the employer subject to a suit in damages, with the special liabilities attaching to cases in which a statute has been violated (*Waterman Lumber Co. v. Beatty* (Texas), 204 S. W. 448); also with those connected with the status of children against whom the common law defenses can not be pleaded. But even where the laws are similarly phrased, the courts of different States have ruled differently. Thus in New York, where the law covers "employees" generally in designated classes of industries, the compensation law was held to be available in the case of a minor employed at a prohibited dangerous machine (*Ide v. Faul & Timmins*, 166 N. Y. Supp. 858); and this over the objection that the insurance contract limited the company's liability to cases of employees "legally employed." However any person "entitled to compensation" under the State law was to be covered, and the court held that the fact of employment in violation of the labor law furnished no defense to either the employer or the insurance carrier. A suit for damages was held not to be available in a similar case, on the ground that compensation is the exclusive remedy; though in this the judge declared himself to be following precedent, and not his own views as to the better policy (*Robilotto v. Bartholdi Realty Co.*, 172 N. Y. Supp. 328; see also *Kenny v. Union R. Co.*, 166 App. Div. 497, 152 N. Y. Supp. 117).

These opinions have been announced in the absence of any decision by the State court of last resort, and a later opinion by another court takes a different attitude (*Wolff v. Fulton Bag & Cotton Mills*, 173 N. Y. Supp. 75). The foregoing cases are cited, but the view is taken that by "employee" the legislature meant only a person

legally employed, so that a suit for damages is the proper and only remedy in the case of employment in violation of the labor law. This accords with the view taken by the New Jersey Court of Errors and Appeals, the provisions of the laws of the State being the same as in New York (*Hetzel v. Wasson Piston Ring Co.*, 89 N. J. Law 203, 98 Atl. 306), and of Washington (*Hillestad v. Industrial Commission*, 141 Pac. 913). However, a recent decision by the Supreme Court of New York, Trial Term, regards the position taken in the *Wolff* case as untenable, both on reason and on authority (*Boyle v. Piano Action Co.*, 181 N. Y. Supp. 668).

The Supreme Court of Wisconsin drew the line at a somewhat different point, and held that a minor who was of legal age for employment but was engaged at forbidden hazardous occupations was under the compensation act, and could not sue for damages, since the statute itself gives minors of employable age a right to contract under it (*Foth v. Macomber & Whyte Rope Co.*, 154 N. W. 369). In a later case the same court held that a child of employable age but working without a statutory certificate was not an employee under the compensation act, even though his age had been misrepresented and the employment was found by the court to have been in good faith. A compensation award had been paid and release secured, but this was held void, and damages were allowed under the liability act of the State (*Stetz v. Boot & Shoe Co.*, 156 N. W. 971). This case is distinguished from the *Foth* case above on the ground that in that case the minor was legally authorized to engage in the business in which he contracted to work, even though at the time of the injury he was employed at a machine forbidden by law; while in the present case, in the absence of an employment certificate, no employment was lawful. One judge dissented from this finding, while two others took no part in the decision. The law of this State was amended in 1917 so as to give treble damages in case of a child of permit age working without a permit or at a forbidden employment, and suffering injury. The amendment was declared constitutional, and was applied in the case of a boy 16 years of age being employed without a permit, the law requiring permits for children up to 17 years of age (*Brenner v. Heruben*, 176 N. W. 228).

The law of California includes minors as employees, and their illegal employment is held by the accident commission of the State not to bar recovery under the compensation act (*Shanton case*, 2 Com. Dec. 698); however, an insurance company limiting its policy to persons legally employed is not liable under such policy. But if the policy covers employees for whom compensation is provided by law, the company must pay the award, even though the employment was unlawful (*Clark case*, 5 Com. Dec. 219).

The Illinois law covers "minors who are legally permitted to work under the laws of the State." The industrial commission awarded benefits where a minor was illegally employed, saying that, as he could recover wages, so also he was entitled to compensation; but the supreme court of the State denies such right (*Boszek v. Bauerle & Stark Co.*, 282 Ill. 557, 118 N. E. 991; *Moll v. Industrial Commission*, 123 N. E. 562). The Ohio law contains a similar limitation, and is similarly construed (*Acklin Stamping Co. v. Kutz*, 98 Ohio St. 61, 120 N. E. 229); and the supreme court of Indiana ruled that employment means lawful employment, so that the compensation law was no bar to a suit for damages when a boy unlawfully employed suffered an injury (*New Albany Box & Basket Co. v. Davidson*, 125 N. E. 904).

The accident board of Massachusetts, however, gave compensation to a boy injured while employed without a permit, saying that the penal liability of the employer did not affect the boy's rights under the compensation act (*Kroeger case*, 1920.)

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 of in the State of West Virginia.

Denying extraterritorial application of the laws of their respective States are also to be found the opinions of the industrial accident commission of Maryland and the industrial accident boards of Michigan and Texas.

The industrial commission of California took the position that though its law was in itself of no effect beyond the boundaries of the State, a contract made in the State followed the employee even though injured outside its limits; and as such contracts were made with the statute in view, compensation under it was recoverable regardless of the place of the injury. The supreme court adopted this view on its first consideration (*Anderson v. North Alaska Salmon Co.*, Mar. 31, 1916); but on rehearing in December it reversed its position (*North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 162 Pac. 93). A distinction was drawn at this time between elective laws, under

which the obligation to pay compensation may be regarded as a matter of agreement or contract, and compulsory laws, as that of California, where the obligation is fixed by the statute and not by the contract. The law was amended in 1915, subsequent to the occurrence of this accident for the purpose of covering injuries to employees, residents of the State at the time of the injury and contracting within the State, regardless of the place of the injury (sec. 75a of the act of 1913; sec. 58 of the act of 1917).

The constitutionality of this amendment was challenged in an action (*Estabrook Co. v. Industrial Accident Commission*, 177 Pac. 848) in which it was claimed that it discriminated against nonresidents. The plaintiff was an employer and a resident of the State, and the court held that he was not affected by the discrimination complained of, if any existed, and therefore had no right to raise the question of constitutionality. The award against him made under this section was therefore affirmed.

However, another employer petitioned about a year later, raising the same question, and the court held there were exceptions to the general rule laid down by the supreme court; so that if a member of the class discriminated against was not in a position to contest the validity of the act, any person affected by its application might take action (*Quong Ham Wah Co. v. Industrial Accident Commission*, 59 Cal. Dec. 18), citing *Buchanan v. Warley* (245 U. S. 60, 38 Sup. Ct. 16), and *Middleton v. Texas Power and Light Co.* (249 U. S. 152, 39 Sup. Ct. 227).

In passing on the point raised it was held that the legislature had the power to enact a law providing for compensation under California contracts, whether the employee be a citizen of the State or not. It was also recalled that the industrial accident commission was without power to act on any extraterritorial case unless such power was given by the statute under consideration. But to limit the benefits of the act to citizens or persons domiciled in the State, in so far as extraterritorial effects are concerned, would effect an unlawful discrimination against citizens of other States of the Union who might make contracts in the State, but would be debarred the benefits of the act because not coming within its designated class of residents of the State. The provision was therefore declared unconstitutional. On rehearing, however, the court decided that the State had power to regulate all contracts entered into within its borders, and might make compensation benefits payable to the parties to such contracts wherever injured. The grant of that right could not be confined to residents of the State, under the Federal Constitution, but must be available to all the citizens of all the States who are affected by like conditions of contract and injury; so that instead of declaring the section void, it was broadened to include nonresidents, citizens of other States (*Quong Ham Wah Co. v. Industrial Acc. Com.*, 59 Cal. Dec. 18).

The industrial commission of Colorado decides that the contract of employment follows the employee into other States wherever he goes in its performance. This view was adopted by the supreme court of the State, saying that otherwise an employer would be burdened with the duty of insuring under the law of each separate State into which his employee might go in the performance of his contract (*Industrial Commission v. Aetna Life Ins. Co.*, 174 Pac. 589). The Supreme Court of Connecticut similarly construed the law of that State (*Kenneron v. Thames Towboat Co.*, 94 Atl. 372). This is the position also of the Supreme Court of Rhode Island (*Grinnell v. Wilkinson*, 98 Atl. 103), the Supreme Court of Minnesota (*State ex rel. Chambers v. District Court*, 166 N. W. 185), the Supreme Court of West Virginia (*Gooding v. Ott*, 87 S. E. 802), and the Supreme Court of New Jersey, the latter saying that the compensation act is contractual in its nature and the place of the performance of the contract thereunder is no more essential than in the case of life insurance (*Rounsaville v. Central R. Co.*, 94 Atl. 392).

The law in all of these States is elective. However, the New York Court of Appeals, construing a compulsory law, takes the same view, saying that the contract was entered into with the compensation law in view, and that the premiums paid for insurance were computed on the pay roll and not on the time worked within or without the State boundaries (*Post v. Burger & Gohlke*, 216 N. Y. 544, 111 N. E. 351). It was pointed out by this court that the liability was not contractual, strictly speaking, since the law is a compulsory one; but that it is quasi-contractual, and the provisions of the law would affect the contract on that basis (*Smith v. Heine Safety Boiler Co.*, 224 N. Y. 9, 119 N. E. 878).

The Supreme Court of Iowa went so far as to say that, where the statute was elective as to both parties, the payment of compensation was not the performance of a statutory duty, but the fulfillment of the conditions of a contract, and the place of injury was not of the essence of the case (*Pierce v. Bekins Van & Storage Co.*, 172 N. W. 191.)

Where an accident occurred in the State of New Jersey, the contract of employment having been made beyond its borders, recovery under the New Jersey law was allowed on the ground that it covers all accidents occurring within the State unless rejected (*American Radiator Co. v. Rogge*, 92 Atl. 85). However, where an employer hires an employee outside the State to do work outside its borders, the New York Supreme Court holds that the law does not apply (*Gardner v. Horseheads Construction Co.*, 156 N. Y. Supp. 899).

The original law of New Jersey provided that disputes under the act are to be settled by a judge of the court of common pleas, and this provision was held by the Supreme Court of New York, special

term, to prevent it from taking cognizance of a claim under the New Jersey law, or giving judgment on an amount alleged to be due under the provisions of that law, the court saying that a forum had been fixed by the act itself, and the right being statutory, all its conditions should be complied with (*Lehmann v. Ramo Films, Inc.*, 155 N. Y. Supp. 1032); and this was said to be true even though both parties are citizens of New York, where the claim is under the law of New Jersey (*McCarthy v. McAllister Steamboat Co.*, 158 N. Y. Supp. 563). When this question came to the court of appeals, however, it was said that there was no public policy of the State that would prevent recognition and enforcement of the law of New Jersey in the courts of New York (*Barnhart v. Am. Concrete Steel Co.*, 125 N. E. 675).

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* 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.

A New York workman injured in Pennsylvania claimed and was awarded compensation under the law of Pennsylvania, and afterwards sought the larger benefits provided by the New York statute. The insurer claimed that by accepting benefits under the Pennsylvania law the workman was estopped from further proceedings. However, the New York commission allowed the claim, but with deduction of the amount received under the Pennsylvania law (*Dumberger case*, 1919.)

Other variations were passed upon by the industrial commission of the State of New York, one case being that of a resident of New Jersey, who had been hired by a Philadelphia corporation to do work in the State of New York. The employee was injured and applied for compensation under the New York law. It was held that jurisdiction existed in the State of New York and that difficulty might arise in

establishing it in the other States named, while if the claim is made in New York the claimant would be estopped to deny recovery had, so that no double recovery could be secured. The claim was therefore allowed. In another instance a marine engineer living in New Jersey, but employed by a New York corporation in waters in and about New York Harbor, was killed in Newark, N. J. A claim in his behalf was allowed. The Ohio law is given the same application by the industrial commission of that State where a citizen of the State was sent outside its boundaries in the employer's service.

The question of extraterritorial jurisdiction was before the Supreme Judicial Court of Massachusetts in the case of *In re American Mutual Liability Insurance Co.* (Gould's case, 215 Mass. 480, 102 N. E. 693). In this case the parties in interest were residents of the State of Massachusetts and had accepted the provisions of the compensation law of the State. The death, however, occurred while the workman was rendering service to his employer in the State of New York, his employment occasionally leading him to service in that State and in other States. The industrial accident board of the State found that the insurance company had been paid by the employer for insuring all injuries received by its employees in the course of their employment, whether within or without the Commonwealth. The supreme court, however, declined to accept this fact as binding, and held that the scope of the law itself must determine; and from a consideration of all its terms it was decided that the law had no effect as to injuries received outside the State and that the company was not liable in the case in hand.

The ruling in this case as to the nonextraterritorial effect of the Massachusetts law is cited by the Supreme Court of Connecticut in a case in which a Massachusetts employee of a Massachusetts employer was injured while performing a piece of work in the State of Connecticut (*Douthwright v. Champlin*, 100 Atl. 97). Its own decision favoring the extraterritorial operation of the Connecticut law (*Kennerson case*, supra) was mentioned, and a statement was quoted therefrom that the Connecticut courts would enforce such laws of other jurisdictions, "provided they did not conflict with our laws or public policy," and the processes prescribed "could be used in our jurisdiction." However, as the Massachusetts law is restricted by State boundaries, according to the construction put upon it by its own courts, the parties come into Connecticut in the same status as "if the contract had been made in South Carolina, where there is no compensation act." In either case a contract performed in Connecticut will have read into it the conditions of the law of Connecticut, in the absence of a positive rejection of the act.

The Supreme Court of Wisconsin considered the nature of compensation legislation as bearing on the question: "We do not regard

the liability of the employer under the workmen's compensation act merely as a substitute for the common-law liability of the employer." The question is not of the result of a wrong committed by the employer but of an incident of industry conducted under modern conditions. "Therefore the damages arising therefrom should be borne by the whole industry rather than by the employer or employee." To put injuries occurring within the State boundaries in one class and those occurring without in another would open the way to a continuation of both the old and the new system, "and the legislative purpose would not be accomplished" (*Anderson v. Miller Scrap Iron Co.*, 170 N. W. 275). A judgment for damages under the Michigan liability statute was therefore reversed and the cause remanded for proceedings under the compensation law of Wisconsin, the place of residence, contract, and principal employment of the deceased workman, this law being declared a part of every contract, and exclusive in its effects, where both parties are under the act.

Admiralty.—What might be considered as a part of the foregoing subject is the question of persons employed at occupations giving them a right of action under the admiralty law. The Supreme Court of Connecticut held that the State has concurrent jurisdiction in such cases, and the compensation law is available (*Kenneron v. Thames Towboat Co.*, supra).

The compensation commission of New York held that the law administered by it was exclusive in its application to longshoremen, whether at work on docks or on vessels in the harbors of the State, and the court of appeals (*In re Walker*, 109 N. E. 604) ruled that as the employee formerly had the option of proceeding at common law or in admiralty to recover for injuries, so now he has the option of choosing the compensation law, which has superseded the common law. As to the contention that shipowners are not equally exempted from possible suits with other employees, the court held that this lies in the nature of the case and is not a result of the action of the legislature, so that no question of the constitutionality of the act was raised thereby.

The California commission held that a man injured on the high seas was covered by the law of that State on the ground of the residence of himself and of the employing corporation and of the location of the port of registry of the vessel and the place of contract. When the supreme court of the State came to consider the subject it held that the provision of the judiciary act of 1789 that saved to suitors in admiralty their common-law remedies, where the common law was competent to give a remedy, was broad enough to let in statutory remedies of subsequent enactment, even though a new right was thereby created (*Northern Pac. S. S. Co. v. Industrial Acc Comm.*, 163 Pac. 199). The new remedies were said to be personal

and not in rem, and therefore could exist alongside of the admiralty rights.

The Supreme Court of Washington took the opposite view, holding that since the State had no power to modify the shipowner's liability under admiralty, it could not be presumed to make the compensation act effective where admiralty might apply; it was further held that to do so would require shipowners to contribute to the State insurance fund and still be liable to suits in admiralty (*State v. Daggett*, 151 Pac. 648). The same view was taken by the District Court of the United States for the Western District of Washington (*The Fred E. Sander*, 208 Fed. 724).

In thus construing and applying their law the New York authorities had in mind provisions of the act specifically covering longshore work and the operation and repair of vessels used in interstate or foreign commerce; also those covering employees in interstate and foreign commerce working within the State, in so far as not forbidden by act of Congress (*Jensen v. Southern Pacific Co.*, 215 N. Y. 514, 109 N. E. 608). However, when these cases (*Walker* and *Jensen* cases) came to the Supreme Court of the United States for consideration the statute was declared to go beyond the power of the State legislature to enact, and these particular provisions were held unconstitutional. It was said, four judges dissenting, that a State can not impose obligations such as are contained in the New York 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 (Oct. 6, 1917), saving to claimants of the class affected the right to proceed under any compensation law applicable to the locality in which the injury was received, similar to the saving of the common-law remedies. Following this amendment also was the act of the New York Legislature restoring the provisions of its law which had been declared unconstitutional by the Supreme Court.

Questions of construction and application of the amended code and of the State law immediately arose, leading to widely differing adjudications. Thus it has been held that the amendment of the Judicial Code had the effect of so far validating the compensation law of New York in its application to maritime workers that no other remedy remains. The act purports to provide an exclusive remedy where it applies, and this provision was held to be incorporated into the Judicial Code by its amendment of 1917, the limitation declared by the decision of the Supreme Court in the *Jensen* case having been

set aside by the action of Congress (*The Howell*, 257 Fed. 578). The United States District Court for the Eastern District of Louisiana, on the other hand, rejected the contention that where there was a compensation law the admiralty courts were deprived of jurisdiction (*Hogan v. Bula*, 262 Fed. 225). The United States District Court for the District of Oregon holds that the amendment does not interfere with the power of Federal courts to administer the maritime law, where a remedy in admiralty is chosen, and that they must administer maritime law only, unaffected by State statutes. An action in admiralty was therefore held to be a proper means of securing redress for injuries to a maritime worker, where he chose that form of relief (*Rohde v. Grant Smith Porter Co.*, 259 Fed. 304). To the same effect is a decision of the Supreme Court of Washington, upholding the right of the injured man to exercise a choice of remedies (*Lund v. Griffiths & Sprague Stevedoring Co.*, 183 Pac. 123). Here the option was to proceed at common law, and it was contended that the State compensation act barred suits for damages in case of injuries to employees; but the court held that the Federal act controls, and that the amendment of 1917 did not abolish either admiralty or common-law remedies, but merely added compensation to the list of remedies available. The same view was adopted by the Supreme Court of New York in cases where the common-law remedies were pursued (*Dziengelewsky v. Turner & Blanchard*, 176 N. Y. Supp. 729; *Simpson v. Atlantic Coast Shipping Co.*, 176 N. Y. Supp. 731).

In the case of a dredge hand who fell overboard and was drowned, the Massachusetts accident board rejected the contention that the amendment to the Judicial Code did not bring under the State compensation law any injury not theretofore included, and awarded compensation, though there could be no recovery for the death of a seaman either under the common law or the general maritime law (*Dorman case*, 1920).

The California commission went so far as to award compensation to an injured seaman who had received benefits from his employer on account of an injury during the voyage, and subsequently made a claim under the act. It was said that the mere receipt of benefits from the employer did not constitute an election under the admiralty law, so that his claim was not barred (*Mestrand case*, 1919).

Somewhat earlier than the foregoing was the decision by the commission in the *Soarez case* (July 31, 1918), in which an award was made for the death of a stevedore injured while unloading lumber at a dock. The contention was made that no compensation legislation would be valid unless enacted subsequent to the amendment of the Judicial Code. This the commission rejected, ruling that the amendment granted rights under existing laws, and awarded com-

compensation for the death of Soarez. This case was taken on appeal to the supreme court of the State, where it was decided on March 30, 1920, the award being annulled (*Sudden and Christenson v. Industrial Accident Commission*, 188 Pac. 803).

The court took the view that Congress had exceeded its powers under the Constitution in attempting to confer upon the States authority given to Congress alone under Article III, section 2, of the Constitution of the United States. The decision of the Supreme Court in the Jensen case was cited as sustaining the view that "Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country." It was held that this must be done by Congress acting directly and not by giving the State legislatures authority to act in such a manner as would "destroy the uniformity of the maritime law which it was the aim of the Constitution to secure."

The Court of Appeals of New York had earlier sustained the constitutionality of this amendment (*Stewart v. Knickerbocker Ice Co.*, 226 N. Y. 302, 123 N. E. 383), but the argument in this case did not appeal to the California court. Subsequently the New York case was reversed by the Supreme Court of the United States (*Knickerbocker Ice Co. v. Stewart* 40 Sup. Ct. 438). This opinion was rendered May 17, 1920, and authoritatively annuls the amendment of 1917 to the Judicial Code, Congress having no power to so act in view of the limitations fixed by the Constitution. "To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the States to do so as they might desire, is false reasoning." As the California court pointed out, so also here it was said that to do so "would inevitably destroy the harmony and uniformity which the Constitution not only contemplated but actually established."

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 case 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 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.

Interstate commerce.—The initial difficulty confronting both legislatures and courts in determining the application of State compensation laws to railroad employees lies in the fact that the control of interstate carriers is vested by the Constitution of the United States in the Federal Congress. Various regulative measures have been enacted by this body affecting employees of such carriers, but the only statute which demands consideration in this particular field is the act of 1908, amended 1910, determining the liability of railroad companies for injuries to their employees while engaged in interstate commerce. As the authority of Congress is necessarily paramount (*Michigan Central Railroad Co. v. Vreeland*, 227 U. S. 59, 33 Sup. Ct. 192; *Grand Trunk Railway v. Knapp* (C. C. A.), 233 Fed. 950), the States are compelled to legislate with this statute in mind. Phraseology is frequently used to indicate the purpose of the legislature to enact laws applicable to railroad employments only in so far as such employments are not covered by the Federal law. The laws of other States exclude railroad employments, or at least train operation, from their purview, leaving persons in such employments in recovering for injuries therein to the rights established by statutes declaring the liability of employers. Actions for damages are therefore necessary in these jurisdictions in all cases of injury to railroad employees, whether engaged in interstate or intrastate commerce; and this principle controls even to the extent of making it impossible for an injured workman and his employer to make an

agreement of settlement under the terms of a State compensation law (that of Michigan in the instant case), where the case is clearly one of interstate commerce, according to a decision of a United States circuit court of appeals (*Waters v. Guile*, 234 Fed. 532)²⁸.

In States having compensation laws opposite conclusions have been reached as to the boundaries of the field within which they may act, one view being that since the Federal law applies only where there is negligence on the part of the employer, other cases may be cared for by a supplemental act, the contrary opinion being that the Federal statute is exclusive and comprehends the entire liability of employers in interstate commerce by railroad. Thus, in harmony with the latter view, the Illinois Supreme Court reversed the lower courts which awarded judgment in favor of an employee injured in interstate commerce without negligence of the employer, holding that the State had no authority to supplement the Federal statute in this manner (*Staley v. I. C. R. Co.*, 268 Ill. 356, 109 N. E. 342). The industrial commission of Ohio took practically the same view, setting forth that under the State law railroads and their employees engaged in intrastate and also in interstate commerce are subject to the provisions of the State compensation act only to the extent that the two kinds of work are clearly separable and distinguishable; also that under the act the application as to intrastate employees is effective only after the voluntary acceptance of the act by both parties in writing. Since such acceptance is voluntary, a nonaccepting employer loses no defenses by a failure to accept (*Connole v. Norfolk & Western Railway Co.*, 216 Fed. 823).

In contrast with the Illinois opinion, the Court of Errors and Appeals of New Jersey held that the Federal act is exclusive only where there is negligence on the part of the employer. In proceedings for compensation the plaintiff does not charge negligence, and if the plaintiff does not admit or plead negligence none appears, so that there is no applicability of the Federal law, and compensation may be awarded on the contractual obligation imposed by the compensation statute (*Winfield v. Erie R. Co.*, 88 N. J. L. 619, 96 Atl. 394). The supreme court of the State in an earlier case (*Rounsaville v. Central R. Co.*, 87 N. J. L. 371, 94 Atl. 392) remarked that the Federal law

²⁸ It is of interest to note in this connection the procedure agreed upon by the Pennsylvania Railroad Co. in regard to injuries due to accidents occurring in the State of Pennsylvania. In cases clearly intrastate the compensation law of the State is followed by the making of agreements for periodical payments as contemplated by the act. Where there is doubt and where the commerce was clearly interstate, if a claim petition is filed in accordance with the act, an agreement for a lump-sum payment is made, based on the schedule of the act, and on payment of this to the proper party a general release is obtained, thus securing protection for the company under both Federal and State laws. Where no claim is filed the company seeks an adjustment on the basis of the schedule provided in the act, commuted to a lump-sum payment, taking the release as above. In both these cases commutations are either made by, or notified to, the compensation authorities, so that a proper record can be kept.

established no new right of action, merely taking away defenses, and that liability under it is not affected by the terms of contract, while the compensation act is a new remedy, contractual in nature, the two not overlapping, but each valid where applicable; but a referee under the Pennsylvania law refused to admit the defense of interstate commerce in the case of a brakeman killed in railroad yards, and awarded compensation under the State law. The State board confirmed such an award, saying that where the company offers the objection that the Federal law controls, its contention is matter of defense and must be supported by positive testimony, the full burden of proof resting on the company to take the case out from under the State law.

The New York Court of Appeals took the same view as the New Jersey courts, saying that the acts are so different as to leave room for both. Employees in the State are protected by the regular insurance covering all accidents regardless of negligence. The Federal law covers cases of negligence by its exclusive right, but goes no further, so that there is no risk of double liability (*Winfield v. N. Y. C. & H. R. R. Co.*, 216 N. Y. 284, 110 N. E. 614). The industrial commissioner of Iowa similarly construed the law of that State, though the point seems not to have been passed upon by its courts.

The New York Court of Appeals also held that longshoremen loading interstate vessels are not operating the vessels within the meaning of the State law. It was added that regulating the relations between employers and employees was not a regulation of commerce, and was within the jurisdiction of the State until Congress acts, which it has not done as to vessels, so that an award might be made in the case in hand (*Jensen v. S. P. R. Co.*, 215 N. Y. 514, 109 N. E. 600); and generally where the interstate commerce is by water, the authorities available agree that, since Congress has not legislated at all on the subject, the State laws control. The law of Washington declares on this point that its provisions "shall apply to employers and workmen engaged in intrastate and also interstate or 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." The court held that taking the law as it stood in all its points it was intended to legislate for all persons engaged in the extrahazardous employments enumerated in the act, and that Congress having in no way legislated in the particular premises, the State had the right to enact laws incidentally affecting such commerce. It was held, therefore, that any right of recovery which the plaintiff might have would be by way of a claim under the compensation law of the State (*Stoll v. Pacific Coast S. S. Co.*, 205 Fed. 169).

Not using the same language as to strict exclusiveness, but maintaining the applicability of the laws, are to be found the supreme courts of Connecticut (*Kennerson v. Thames Towboat Co.*, 89 Conn. 367, 94 Atl. 372) and of Minnesota (*Lindstrom v. Mutual S. S. Co.*, 132 Minn. 328, 156 N. W. 669); while the industrial commission of Ohio, though refusing to consider cases of interstate commerce by railroad, as already noted, applied the compensation law to the case of an employee swept overboard from a tug in Lake Erie and drowned.

In spite of the weight of authority usually accorded to the courts holding the views set forth above, the persuasive reasoning by which their positions were supported, and the obvious need for relief not afforded by the Federal liability law, the Supreme Court of the United States declared against the supplemental or piecing-out theory of these courts. In taking their stand, the State courts had recognized the exclusive force of the Federal act where it was applicable, 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 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; *Erie R. Co. v. Winfield*, 244 U. S. 170, 37 Sup. Ct. 556).

Thus both the New York and New Jersey courts of last resort were reversed. It may be noted that two justices dissented in these cases, on the ground 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 obligation that might exist by reason of the occurrence of accidents.

Assuming the exclusive authority of the Federal act in its territory, the question of which law to seek relief under, whether State or Federal, remains obscure in many cases. 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 of *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 com-

pany 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 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 required 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 converse of this situation arose in a case in which the widow of a deceased electric lineman presented a claim to the industrial commission of California. An award was made as for intrastate employment, and was affirmed by the supreme court of the State (*Southern Pacific Co. v. Ind. Acc. Com.*, 171 Pac. 1071). The deceased received an electric shock while wiping insulators on a main line by which current was transmitted to a transformer station, from which it passed to lines by which both interstate and intrastate traffic was moved. The court regarded this service too remote to be classed as interstate, comparing it to switching coal cars to a chute from which both kinds of traffic would be supplied with fuel. The Supreme Court of the United States reversed this decision (same case, 40 Sup. Ct. 130), saying that if the current had been short circuited through the decedent's body, interstate commerce would have been immediately interfered with; hence the employment must be classed as interstate, and subject only to the Federal law. As this law contains a two-year limitation, and as a longer time than two years had elapsed when the final decision was reached, the widow was without redress.

An interesting point in connection with this case is that the Supreme Court of California in declaring the injury intrastate relied principally upon the analogy of the present case to one decided by the Supreme Court, holding a member of a switching crew to be in intrastate service (*Chicago B. & Q. R. R. Co. v. Harrington*, 241 U. S. 177, 36 Sup. Ct. 517). The crew was engaged in switching cars of coal to supply bins from which locomotives would be supplied, for both interstate and intrastate operations. The argument in the *Harrington* case was cited and said to be apt, the decision resting squarely on the court's understanding of the Supreme Court's views. A subsequent reversal by the very court which was sought to be followed illustrates the complexity of the situation.

A very recent decision involves the claim of a trainman moving coal from the mine to a railroad yard, 2 miles distant. A fatal injury was the basis of an award to the widow, affirmed by the Supreme Court of Pennsylvania (264 Pa. 220, 107 Atl. 735). The case was then taken to the Supreme Court of the United States and there reversed (*Philadelphia & R. Ry. Co. v. Hancock*, 40 Sup. Ct. 512), on the ground that as some of the cars had been designated by instruction cards to the conductor as intended for shipment outside the State, they were in interstate commerce from the time of leaving the mine, though not yet weighed and billed. "The determining circumstance is that the shipment was but a step in the transportation of the coal to real and ultimate destinations in another State."

The question is almost insoluble under existing conditions, and the variety of conditions seems far from being exhausted. A recent case before the Supreme Court of Washington involved the status of a telegraph company (*State v. Postal Telegraph-Cable Co.*, 172 Pac. 902). It was held that as to employees engaged in construction the employment was intrastate and within the State law. Employees sending messages were engaged in both interstate and intrastate service, and inasmuch as the two forms of work could not be segregated, the State law had no application thereto. The problem is in no wise different in principle from the earlier one of under which law to sue, before the enactment of compensation laws; and as to this it was said by the Supreme Court that "each case must be decided in the light of the particular facts, with a view to determining whether, at the time of the injury, the employee is engaged in interstate business."

Alien beneficiaries.—The laws are in most instances specific enough on the point of the inclusion or exclusion of nonresident alien beneficiaries to make construction unnecessary. The Illinois statute is not thus specific, however, but the industrial board of the State ruled that the wording of the law, "the people of the State," includes aliens as among those workmen covered by the act, so that their nonresident

dependents are entitled to benefits; this view was confirmed when a case involving the point came before the supreme court of the State (*Victor Chemical Works v. Industrial Board*, 113 N. E. 173). The New Jersey statute excludes nonresident beneficiaries, and inasmuch as employees within the State have no other remedy than that provided by the act, it was held that no right survives, so that Lord Campbell's act giving the right of recovery for fatal injuries no longer avails for nonresident aliens, the only right that the injured man had having died with him (*Gregutis v. Waclark Wire Work*, 91 Atl. 98, 92 Atl. 354).

The law of California makes no reference to alien beneficiaries, but does include alien employees, and the contention was made (*Western Metal Supply Co. v. Pillsbury*, 156 Pac. 491) that this made possible payments to alien and nonresident dependents; that no public purpose cognizable by the legislature was to be served thereby, and that therefore the law was unconstitutional. The supreme court of the State rejected this view, saying that "there is no constitutional or rational ground for limiting the benefits of this legislative scheme to citizens or residents of this State. If the employment was such as to fall within the State's lawmaking jurisdiction, the legislature certainly had the power to pass laws operating uniformly upon all persons affected by such employment."

Under like conditions as to legislation, the Court of Civil Appeals of Texas held that dependents of a workman to whom benefits had been paid up to the time of his death were entitled to compensation, even though nonresident aliens, "since neither under the workmen's compensation act nor under the general law of this State are they denied right to inherit" (*Surety Ins. Co. v. Vickstrom*, 203 S. W. 389).

The Pennsylvania law allows nonresident aliens two-thirds benefits. This was held by the State board to be an attempt to equalize money values, and if resident beneficiaries leave the State and go back to their native country, the award should be reopened and revised accordingly (*Ciambella case*, 1918).

ARISING OUT OF AND IN COURSE OF EMPLOYMENT.

The majority of the laws of the States contain as a limitation on the injuries to be compensated the statement that they must arise out of and in the course of employment, and the rulings on this point are necessarily numerous. The phrase is copied from the British workmen's compensation law, and in considering its frequent use has been made of English decisions. The Supreme Court of New Jersey discussed its effect in an early case (*Bryant v. Fissell*, 86 Atl. 458), reaching the conclusion that "an accident arises 'in the course of the employment' if it occurs while the employee is doing what a man

so employed might reasonably do within the time during which he is employed, and at a place where he may reasonably be during that time." Since, however, the law of New Jersey contains also the words "out of" and requires that both conditions be met, further consideration was had, concluding "that an accident arises 'out of' the employment when it is something the risk of which might have been contemplated by a reasonable person when entering the employment as incident to it. * * * A risk is incidental to the employment when it belongs to or is connected with what a workman has to do in fulfilling his contract of service." In this case a carpenter engaged in the erection of a building was injured by the falling of material in charge of the ironwork contractor, who was a separate employer of labor. It was held that the injury was received in the course of and arising out of the employment. The same court applied this doctrine to include the case of a workman killed while crossing railroad tracks on the way from the place of his employment to the toilet customarily used by persons in the employer's service (*Zabriskie v. Erie R. Co.*, 88 Atl. 824). In discussing the same phraseology the Supreme Judicial Court of Massachusetts (In re Employers' Liability Assurance Corporation, 102 N. E. 697, frequently cited as "McNicol's case") first laid down the rule that both conditions of the phrase must be complied with, and in discussing the effect of these words said:

It is not easy nor necessary to the determination of the case at bar to give a comprehensive definition of these words which shall accurately include all cases embraced within the act and with precision exclude those outside its terms. It is sufficient to say that an injury is received "in the course of" the employment when it comes while the workman is doing the duty which he is employed to perform. It arises "out of" the employment, when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises "out of" the employment. But it excludes an injury which can not fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

On these grounds the court allowed benefits for the death of a man killed by blows and kicks of a fellow workman who was "in

an intoxicated frenzy of passion," his habits and disposition having been known to his employer, the award being based "upon the causal connection between the injury of the deceased and the conditions under which the defendant required him to work."

Difficulty remains in the determination of the question as to whether the hazard is due to the employment or to conditions affecting the public generally. Thus a delivery man walking along the street and falling over a bucket of broken glass, receiving fatal injuries, was denied compensation by the New York Supreme Court, appellate division (*Newman v. Newman*, 155 N. Y. Supp. 665, affirmed by the court of appeals, 113 N. E. 332), the court saying that he was exposed to no other hazard than that to which any one walking in the same locality would have been exposed, so that it was not an incident of the employment. The supreme court of the State, appellate division, however, allowed compensation in a case (*Miller v. Taylor*, 159 N. Y. Supp. 999) in which the driver of an express truck was struck by an automobile while crossing the street to deliver a package, distinguishing this from the *Newman* case above; and the same court affirmed the finding of the industrial commission in a case (*Putnam v. Murray*, 160 N. Y. Supp. 811) where a driver engaged in collecting dirt from the streets of a city stepped on a rusty nail, the injury resulting in tetanus and death, the contention that the injury was the result merely of conditions to which the public generally was exposed not being admitted as a defense. The employee was held to have been engaged in a hazardous employment under the act, and "the mere fact that a person not engaged in a hazardous employment was exposed to the danger of a similar injury should he chance to travel that way furnishes no argument for a denial of the right of compensation to a person whose hazardous employment compelled his constant presence on the street."

A foreman struck by an automobile while crossing a street from his work place to use a telephone was held by the Supreme Court of Illinois to have been injured in the course of his employment and to be entitled to benefits (*Mueller Const. Co. v. Industrial Board*, 118 N. E. 1028). So also a Minnesota court ruled that a driver was exceptionally exposed to street risks, so that one hurt by the fall of material from a building which he was passing was held to have been injured by an accident arising out of and in course of the employment (*Mahowald v. Thompson-Starrett Co.*, 134 Minn. 113, 158 N. W. 913; *Hansen v. Northwestern Fuel Co.*, 174 N. W. 726). An award was also made by the Massachusetts board in the case of a street sweeper injured by a runaway horse, over the contention of the city of New Bedford that such an occurrence was not a natural incident of the injured man's employment.

The California commission allowed the claim of a motorman who had reported for work five minutes before starting time, according to rule, but slipped and fell on the street while going from the barn to his car; it was contended that the nature of his employment was not such as to expose him to street risks more than the average man, but the commission stated that this rule should not be applied too broadly, but with reference to the particular circumstances of the case. Where an office employee, after finishing her day's work, took some of her employer's letters to deposit in the post office on the way home and was struck by a train, the New York commission rejected the claim for compensation on the ground that she was following the same route that she would have followed if she had been going home without undertaking to mail the letters; that she was exposed to no unusual hazard due to the employment; and that the injury did not arise out of and in course of the employment.

The Supreme Court of Wisconsin made a ruling similar to that of the California commission in the case of the motorman above, in the instance of an employee who reported at 7.30 a. m. for orders as to work which was to begin at 8, and while proceeding along the street under orders to his work place, slipped and fell; the court held that the status of employer and employee existed, and that the accident grew out of and was incidental to his employment (*City of Milwaukee v. Althoff*, 145 N. W. 238).

Where the injury was due to lightning stroke the Michigan Supreme Court held that the exposure of a railroad section man who sought shelter in a barn which was struck by lightning was in no way different from the risk of other members of the community, and was not caused by or in connection with his employment (*Klawinski v. Lake Shore & M. S. Ry.*, 152 N. W. 213)—a position that was assumed also by the Supreme Court of Wisconsin (*Hoenig v. Industrial Commission*, 150 N. W. 996), deciding on a case in which a workman on a dam was killed by lightning. The Supreme Court of Minnesota, on the other hand, affirmed an award of the lower court in behalf of a claimant, where a man was injured by lightning while seeking shelter under a tree at the time of a storm, the court saying that there was evidence to sustain a finding that the injury arose out of the employment (*State ex rel. People's Coal & Ice Co. v. District Court of Ramsey County*, 153 N. W. 119).

The Pennsylvania statute provides compensation for accidents in the course of employment, omitting the limitation as to "arising out of." It was held, therefore, by the compensation board of the State that as death by lightning is unquestionably an accident, and the law does not require that it should arise out of the employment, an employee killed by lightning while engaged in the regular course of his employer's business was within the act.

To the same effect was the ruling of a Pennsylvania referee, who held that a delivery boy struck by an automobile on the street and killed was at the time engaged in furthering his employer's interests, and compensation was allowed accordingly. The supreme court of the State affirmed an award in a case where an engineer was found dead from a bullet wound inflicted by an unknown person, holding that it was for the employer to prove that the injury was due to personal reasons; further, the act is not limited to injuries "arising out of" the employment (*Keyes v. New York, O. & W. R. Co.*, 108 Atl. 406).

Compensation was also 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*, 95 Ohio Stat. 232, 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 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 award in the Minnesota case last named necessarily involved the conclusion that the injured man had not left employment while thus seeking shelter, and this question was also involved in the case of a railroad lineman who took shelter from a storm under cars standing on an adjacent track. The cars moving without warning, he

was injured, and the Supreme Court of New York, appellate division, affirmed an allowance of compensation on the ground that to seek available shelter was not leaving the employment but was incident thereto (*Moore v. Lehigh Valley R. R. Co.*, 154 N. Y. Supp. 628). And where a workman, chilled by exposure, fell asleep and was burned while sitting by a fire, waiting for an opportunity to use an elevator, the injury was held to have arisen out of the employment (*Richards v. Indianapolis Abattoir Co.*, 92 Conn. 274, 102 Atl. 604); also where an injury occurred to a workman unloading cars at intervals of about 15 minutes, injured by a car running upon him while seeking warmth from the unloaded contents of the previous one (*Northwestern Iron Co. v. Industrial Com.*, 160 Wis. 633, 152 N. W. 416). But an employee taking a rest between the loading of two wagons, and choosing a place on a frequently used track to lie upon, and going to sleep there, was held not to be protected by the act, other places being available, and the unnecessary hazard being the result of his own choice (*Weis Paper Mill Co. v. Industrial Com.* (Ill.), 127 N. E. 732). Where one's employment is of such a nature as not to involve fixed working hours, difficulty may arise in determining between service for the employer and the pursuit of private ends. Thus a real estate and insurance agent, whose time was occupied largely according to his own judgment, was injured while on his way to keep an appointment with a prospective customer. The injury was held by the California industrial commission to be while in his employer's service, without regard to the time. The same body awarded compensation to a traveling salesman injured in an automobile accident while returning from a search for prospective customers, basing the decision on the same grounds. This principle was also applied by a compensation commissioner of Connecticut in the case of a general manager of his employer's business, who was killed while going on an errand for his employer's benefit after the expiration of the usual working time. The industrial accident board of Texas approved the claim of a traveling salesman who volunteered to assist workmen repairing a bridge which he was to cross on his way from one town to another, a delay of several hours being imminent; and the appellate court of Indiana held that the injury arose out of the employment where an insurance agent slipped on an icy sidewalk on his way from the station to a hotel in the town to which his employer had sent him (*In re Harraden*, 118 N. E. 142).

Taking a contrary position to that assumed in the foregoing rulings, the Supreme Court of Massachusetts laid down a rule of a strictness that would go far to limit the application of a compensation law in cases where an employee was not restricted in his movements to a set of conditions strictly affected by his employment. The superior court had affirmed the award of the State industrial accident

board in a case where a life insurance agent was injured in an automobile accident, he having accepted the invitation of a prospective customer to ride with him and talk over the policy proposed. The court held that the field of the agent's employment was in a sense boundless—that his time and his method of procedure were his own.

He might travel on foot, or horseback, by trolley, train, or automobile. * * * He was wholly free as to time, place, or weather. Under such circumstances, when one accepts an invitation to ride, an injury received is not "occasioned by the nature of the employment." The danger incident to the use of an automobile is not a "causative danger" "peculiar to the work," but is a risk which is common to all persons using one. The injury can not be said reasonably to have been contemplated as the result of the exposure of the employment.

The claim of the injured man was therefore ordered dismissed (*Hewitt v. Casualty Co. of America*, 113 N. E. 572).

A still different aspect of the question of the nature of the employment calls for consideration where the preservation of discipline or order or the handling of funds giving rise to a temptation to robbery is a factor. The California commission awarded compensation in the case of a city marshal killed while in the performance of duty, even though a premeditated assault could not be classed as an accident. It was said, however, that the injury under such circumstances might be said to be accidental. Similarly a citizen called upon to aid a deputy sheriff in arresting an offender was held to be entitled to compensation as an employee of the municipality, an award to this effect being affirmed by the Supreme Court of Wisconsin (*Village of West Salem v. Industrial Commission*, 155 N. W. 929); so also of a night marshal or policeman killed while attempting to enforce the speed laws of the State (*Village of Kiel v. Industrial Commission*, 158 N. W. 68).

Compensation was denied by the commissioner of West Virginia in a case where a night watchman was attacked and went in the darkness to secure his gun, which was accidentally discharged, causing injury to himself, the commissioner saying that the injury was not one received in the course of and by reason of the employment. On the other hand, the industrial board of Illinois awarded compensation in behalf of a railroad watchman who was shot by a thief whom he had taken; and the supreme court of this State (*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; so also where a night watchman was killed by a burglar (*Supreme Court of California, Western Metal Supply Co. v. Pillsbury*, 156 Pac. 491);

and where a mill superintendent was murdered by an objectionable person whom he had ordered to leave the mill (Massachusetts Supreme Court, *In re Reithel*, 109 N. E. 951; see also *Hayden v. Keown*, 122 N. E. 264); where a foreman was shot by an employee whom he had discharged (Ohio industrial commission); where a foreman was assaulted and seriously injured while trying to compel a discharged workman to leave the place of his former employment (California Supreme Court, *Western Indemnity Co. v. Pillsbury*, 151 Pac. 398); where an employee with authority to enforce discipline was attacked after threatening discharge for frolicking during work time (compensation commission of New York); and where a superintendent was killed by a watchman, following a quarrel in which both matters of employment and personal matters were involved (*Am. Smelting & Refining Co. v. Cassil* (Nebr.), 175 N. W. 1021).

A difficult case within this group was before the Supreme Court of Massachusetts (*In re Harbroe*, 111 N. E. 709), in which a night watchman was mistakenly shot by officers pursuing burglars who had robbed a safe elsewhere and were being pursued. There was nothing to indicate a fear of robbery of the premises which Harbroe was guarding, and he was not fired upon because of his employment. Shots were exchanged under mutual mistake, and the fatal injury was said not to be an incident reasonably connected with employment of that nature. The claim was therefore rejected on the ground that the injury did not arise out of the employment. Quite similar is a case decided by the Supreme Court of New Jersey (*Schmoll v. Weisbrod & Hess Brewing Co.*, 97 Atl. 730), in which an award approved by a lower court was reversed. The claim arose on account of the death of the employee who was a delivery man and collector for the employing company and who was shot by an unknown person and for an unknown cause while in the service of the company. The man had money on his person, but no attempt at robbery was made, and it was held that there was nothing to indicate that the shooting was in any way connected with the employment.

In another case (*Walther v. American Paper Co.*, 98 Atl. 264) the same court affirmed the award of the court below—a night watchman having been killed by a coemployee for purposes of robbery. It was said that the facts differentiated the case from the *Schmoll* case above, and the reasoning of the memorandum filed in the lower court was approved. One point emphasized therein was that the assailant gained the knowledge as to the watchman's movements and his possession of his pay from the fact of coemployment, which also gave him access to the building in which the attack was made. "The facts are so interwoven with the question of his employment that it must be determined that the accident arose both out of the and in course of his employment." This case was reversed by the court of

errors and appeals (99 Atl. 263), practically without opinion, the court merely saying that it thought the death did not arise out of the employment, and was not distinguishable in this respect from *Hulley v. Moosbrugger* (p. 180).

Other cases in which robbery appeared as a motive were decided in favor of the claimants by the industrial commission of California, where a street-car conductor whose line terminated in an uninhabited locality was attacked for the purposes of robbery; by the industrial commission of Ohio, where the bookkeeper of a firm was assaulted and robbed while returning from a bank with the weekly pay roll; and by the West Virginia public service commission, where the paymaster of a coal company was ambushed while carrying money for the employees, being killed and robbed. The correctness of such rulings is supported by remarks of the Supreme Court of New Jersey in the *Schmoll* case above, in which such conditions are discussed and are said to fall within the principle of an approved English case cited.

The presumptions were held by the California commission to be against a claim for the death of a chauffeur, whose body was found after having taken two men out in his employer's machine to an agreed point a few miles outside. The employment was held not to be one giving rise to risk of assault, and in the absence of direct evidence favoring an award the claim was dismissed. Where an intentional assault was committed upon a workman who had been employed in the place of discharged employees, it was held that the positive danger peculiar to the work and not common to the neighborhood was a factor that was present, and also that the injury was incidental to the character of the business and not independent of the relation of master and servant. The injury need not have been foreseen or anticipated, but if it happens it must be seen to have had its origin in a risk incidental to the employment and to have flowed from that source as a rational consequence. The discharged workmen had been reemployed and had shown ill feeling, the injuries being the result of a fight between them and the injured man. The New York commission held that the incident might reasonably have been anticipated and that it arose out of and in the course of the employment. The award was affirmed by the supreme court, appellate division (*Hartnett v. Thomas J. Steen Co.*, 153 N. Y. Supp. 1119).

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 the application of compressed-air hose causing internal injuries to a workman, the case as usual being one of a claim for fatal injury. In a similar though non-fatal 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 (*Tarpper 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).

In support of its position the court said in an earlier opinion on the same case:

The employer, with knowledge of the facts, permitted such practice to continue. It was within his power to have prohibited it. By failing to do so it became an element of the conditions under which the employee was required to work.

In line with the above was a decision by the Supreme Court of Kansas to the effect that where the employer had notice of horseplay as a custom, injuries due thereto are compensable, as arising out of the employment (*White v. Kansas City Stockyards Co.*, 117 Pac. 522). The industrial commission of California, while recognizing that the general rule would be that "skylarking" was out of employment and not compensable, allowed a claim in the case of a man who was known to be peculiarly susceptible of being tickled, and was made to fall by the action of one of his associates, he himself taking no part in any scuffling or diversion. It was said that a rigid application of the general rule would deny compensation to a considerable number of persons who are injured without stepping outside the course of their employment, and without any intent to injure or any seeming likelihood of injury resulting from the act of a fellow employee. In a similar case, however, the same commission denied benefits in the case of an employee of a brewing company who, in accordance with custom, undertook to drink beer from a bottle, and found that a fellow employee had, as a practical joke, put caustic soda used for cleaning the bottles into this bottle, causing injury; and when the first case noted above came before the Supreme Court of California the award was reversed, the court saying that while the accident was undoubtedly in the course of the employment, it did not arise out of it, as there was no causal connection between the accident and the conditions under which the employee was working (*Coronado Beach Co. v. Pillsbury*, 158 Pac. 212). The same view was taken in a case (*Fishing v. Pillsbury*, 158 Pac. 215) where a workman sought compensation for the loss of an eye due to an injury afflicted by a fellow workman who pointed a trick camera at the injured man, from which a spring was ejected when a button was pressed.

The industrial board of Illinois discredited the contention of horseplay where the employer claimed that the injury was received during a scuffle among employees who were at the pay window for the purpose of receiving their pay checks. Employment was said to be continuous during this time, and the claim was allowed.

Two claims passed upon by the industrial accident board of Massachusetts were rejected, one being where workmen were scuffling for possession of a truck, the other that of a man who was tickled by a coworker, he himself taking no active part in the affair. The Supreme Court of Nebraska (*Pierce v. Lumber & Coal Co.*, 156 N. W. 509) ruled that horseplay or anger leading to the injury of an employee by another is not within the act. So also the Court of Errors and Appeals of New Jersey reversed the supreme court of the State in the case of an award made by it allowing a claim where an employee fell and was fatally injured by dodging a playful blow, saying that it was not the employer's duty to prevent playful assaults, and that it was immaterial whether the employee engaged therein or not, the risk not being reasonably incident to the employment (*Hulley v. Moosbrugger*, 88 N. J. L. 161, 95 Atl. 1007). This corresponds to the action of the Supreme Court of New York, appellate division, which reversed an award in behalf of a girl who practically lost the sight of one eye by scissors thrust though a crack toward which she leaned to discover the occasion of a slight disturbance (*De Fillipis v. Falkenburg*, 155 N. Y. Supp. 761). However, the compensation commission of that State has made other awards in cases coming under this principle which, so far as is now known, have not been reversed. In one instance an employeeslapped a fellow workman who was asleep on a table and walked away while looking backward at him, running into an object, which necessitated the removal of an eye. In another case workmen quarreled as to the performance of a piece of work on which they were jointly engaged; while in the third instance a friendly controversy was in progress when injuries were incurred by one of the parties which might lead to total blindness. The court of appeals of the State took a position more nearly in accord with the rulings of the commission than of the supreme court as expressed above in a case in which an injury to the eye of a stableman, received in the course of a quarrel or argument as to the best method of doing a piece of work, was held compensable (*In re Heitz*, 112 N. E. 750).

The industrial board of Indiana allowed compensation where an employee was assaulted by his employer, and the department of labor of Minnesota ruled similarly where a bartender was injured by a drunken customer. This latter finding was approved by the supreme court of the State (*State v. District Court of Koochiching Co.*, 158 N. W. 713).

The Ohio commission ruled in favor of a workman struck by a missile thrown in sport by a fellow workman while the former was going from his work place to a locker; also where a man was killed by an enraged fellow workman with whom he had previously had an altercation, though the deceased was engaged in his employment at the time of the attack and was not fighting; and in the case of a stenographer killed by a jealous suitor in the establishment. In this last case the injury was said not to be due to the hazards of the employment, but did occur in the course of it. Where, however, men suspended their work for a brief time and engaged in a friendly boxing bout, one being hurt, the injury was held not to have been received in the course of employment.

The industrial commission of Oklahoma rules that injuries of this sort are not covered, whether only one or both of the employees voluntarily engage in the diversion. The Supreme Court of Wisconsin also denied benefits in the case of a man injured by the sportive application to his body of a compressed-air hose by a fellow employee, the injuries being said not to be a rational consequence of the employment (*Federal Rubber Mfg. Co. v. Havolic*, 156 N. W. 143).

The Supreme Court of Michigan passed upon a case where a workman voluntarily left his post to participate in an altercation in which his employer was engaged, going to his defense, the court ruling that the man was not injured in the course of his employment (*Clark v. Clark*, 155 N. W. 507). On the other hand, the industrial commission of New York made an award in such a case (*Sassabo case*, 1917). The attempted rescue of a fellow workman, resulting in the death of the volunteer, was held to be an act in the line of duty and compensable (*Supreme Court of Illinois, Dragovich v. Iroquois Iron Co.*, 109 N. E. 999). The New York Court of Appeals carried this principle a step further in a case (*Waters v. William J. Taylor Co.*, 112 N. E. 727), in which an award was approved in behalf of a workman who attempted the rescue of a workman on the same building, but employed by another contractor. It was admitted that the man stepped "somewhat beyond the limits which would fix the scope of his employment under ordinary circumstances," but to bar a claim in his behalf would be "narrow and disappointing."

What departure from the strict performance of duty will amount to leaving employment was ruled upon by the California commission in a case in which compensation was allowed where an employee in a canning establishment moved a few steps to hear the remarks of a fellow workman and was injured, the course of employment being held not to be broken by this act; so where a deck hand was in an engine room to help start the engine, as ordered by his superior, though the rules forbade deck hands to be in the engine

room. The New York Supreme Court, appellate division, affirmed an award by the commission of that State in behalf of the driver of a truck who was injured while putting his horse in the stable, the court holding that the care of the horse was a part of the operation of the truck, and was therefore covered by the act (*Smith v. Price*, 153 N. Y. Supp. 221). The public service commission of West Virginia rejected a number of claims on the ground that the injuries were not due to the employment, one instance being that of a miner who while on his way to work stopped at a pump to get some water in a bucket, the pump handle striking his watch pocket and exploding four dynamite caps which were in it, causing serious injury to his hands, it being held that the injury was not received in the course of and resulting from the employment. In another case an employee volunteered to assist a fellow employee in adjusting a kicker on a log deck, and suffered injury, compensation being denied on the ground that the injury was not received in the course of the workman's employment; so also where a lathe operator undertook to operate a machine of a different type. The fourth instance was that of a miner attempting to drill a dynamite cap for a tube for his carbide lamp. The industrial commission of Wisconsin was less stringent in its consideration of a case in which an employee in a packing house, engaged in general lines of service, undertook to kill a hog and cut his hand, the ruling being that as he had not been instructed that it was not his duty to kill the hog, there was a failure on the part of the employer to make the nature of the employment sufficiently specific to lead to the conclusion that this accident was not in the course of employment, and the claim was allowed. But the Supreme Court of Illinois reversed an award in favor of a punch pressman who left his own machine and undertook out of curiosity to operate a similar one, differently equipped, that stood near his own. The injury was said to be due to a voluntary act outside of the duties of his employment, for which the employer was not responsible (*Adams & Westlake Co. v. Industrial Commission*, 127 N. E. 168).

A case passed upon by the Supreme Court of Michigan presents a construction of a strictness surpassing the usual attitude of the courts on this point, and was dissented to by three of the eight judges before whom it was tried. The claimant was a molder in a foundry, who also as a part of his duties operated a crane used to aid him in his work, such operation being effected from the floor. It was the duty of a machinist to make any needed repairs, and there being need of repairs, notice was given by the claimant, and the machinist, a German, went upon the crane to do the required work. The claimant was a Croatian, and was not able easily to tell the machinist where the difficulty lay, so went upon the crane to point it out, and while

descending lost a portion of his hand by the unexpected starting of the crane. The accident board awarded compensation, which the employer contested on the ground that the employee had left his place of employment, so that the injury did not arise out of and in course of the employment, and that he was guilty of intentional and willful misconduct. The majority opinion held that the injury did not arise in the course of the employment, and that being the case, it was immaterial whether or not there was misconduct (*Bischoff v. American Car & Foundry Co.*, 157 N. W. 34). The dissenting judges were of the opinion that there was no other purpose in the man's act than to hasten the repair of the crane, the difficulty with which he knew and which he was not able to indicate clearly by word of mouth. "His effort was made in furtherance of the master's business, and it should not deprive him of the award."

This case has been referred to as being violently out of harmony with the entire spirit of compensation legislation. That the views of the minority are regarded as good law in some jurisdictions is evidenced by a decision of the Supreme Court of Wisconsin upholding an award to a widow whose husband lost his life in an effort to extinguish a fire which he discovered in his employer's premises after working hours (*Belle City Malleable Iron Co. v. Industrial Commission*, 174 N. W. 899). In this case the court said:

We do not think that either the letter or the spirit of the workmen's compensation act requires that such employee should be penalized for obeying such a natural and commendable instinct on his part.

See also the view of the New York Court of Appeals in the *Waters* case, *supra*, and of the Illinois court in the *Dragovich* case.

The interruption of employment for a matter of personal convenience has already been noticed in the case of a workman going to the toilet (*Zabriskie* case, p. 171). Similarly, the public service commission of West Virginia held that a laborer had not left service while on his way to procure a drink of water, this being said to be a necessity and not terminating employment. The Supreme Court of Massachusetts held that an employee going out for lunch by the only means of egress from the shop was within the act, even though the stairway was not a part of the rented establishment nor under the control of the employer (*In re Sundine*, 105 N. E. 433); and so of a compositor going on a roof on a hot night for fresh air, in accordance with a permitted practice, and falling presumably by reason of a misstep, whereby his death was caused (*In re von Ette*, 111 N. E. 696). The decision in the *Sundine* case corresponds with the ruling of a Connecticut commissioner under practically identical circumstances. It was held by the Supreme Court of New Hampshire that a workman did not leave the course of his employment when he went some 20 feet from his work place in a moment of leisure to

converse with a friend (*Barber v. Jones Shoe Co.*, 108 Atl. 690). The industrial commission of Michigan awarded compensation in a case where a section hand on a railroad was killed by a train while going home for his lunch at the noon hour; this was reversed by the supreme court of the State on the ground that the employee had not remained on the premises and had broken the status of employer and employee for the time being (*Hills v. Blair*, 148 N. W. 243).

The California commission held that service had not been suspended in the case of a cook who had left the kitchen to smoke for a time on the adjoining porch, and on attempting to return opened the wrong door and fell downstairs. It was held that what one may reasonably do of a personal nature and not in conflict with specific instructions does not take him out of his employment. The assistant attorney general of Iowa approved a claim for compensation in the case of a workman injured by undertaking to light his pipe while his hands were moist with gasoline with which he had been cleaning clothing; and the California commission allowed a claim where a workman lit a cigarette, setting fire to a bandage on an injured hand, the bandage being soaked with turpentine (*Duarte case*). The supreme court of the State sustained the award, saying that the habit of smoking was an incident to be reckoned with (*Whiting-Mead Commercial Co. v. Ind. Com.*, 173 Pac. 1105). The Supreme Court of Illinois likewise affirmed an award in a case in which an employee entered the washroom in a factory and struck against a locker, igniting matches that were in his pocket. His clothing was oily and he was fatally burned. The carrying of matches was said to be a common practice, and the employee had a right to be where he was. The injury was therefore held to be within the act (*Steel Sales Corp. v. Industrial Commission*, 127 N. E. 698). The industrial commission of Iowa took a different stand from that adopted by the attorney general 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). And the public service commission of West Virginia, in a case in which an employee of a gas company was burned by lighting his pipe near a leaky line, ruled that no compensation was payable, since it was no part of the man's employment to smoke or to light his pipe.

The compensation commissioner of the same State (succeeding the public service commission mentioned above) similarly denied compensation to a plumber who drank a poisonous fluid by mistake, thinking that it was drinking water furnished by the employer for his workmen's use. This action was reversed by the court of appeals of the State, however, and compensation allowed (*Archibald v. Ott*, 87 S. E. 791). Where accidental poisoning on the premises involved

the intervention of a third party the Court of Appeals of New York (*O'Neil v. Carley Heater Co.*, 113 N. E. 406) held that payment of compensation was not warranted. In this case a workman complained of feeling poorly and was told by an employee of another contractor at work on the same premises where about the establishment a remedy might be found. The workman, however, took the wrong substance by mistake, with fatal results. The State commission had made an award, which the court reversed, distinguishing this case from that of Archibald, which had been cited as supporting the award in favor of the claimant.

In line with the position of the court of West Virginia is the ruling of the New York commission in another case of poisoning, or of corrosive effects rather, where an employee in a millinery establishment became nervous, hysterical, and finally fainted after a rebuke from her foreman for talking when she had in fact been speaking on a subject connected with the establishment. Ammonia and water were brought in separate receptacles, but in the confusion the former was dashed on the employee's face in lieu of the latter, with serious results to the eyes, lips, etc. Compensation was awarded as for injuries arising out of and in the course of employment.

The continuity of employment is not broken by reason of the fact that service is being rendered in violation of the Sunday rest law, the employer being also a violator of the law, and the fact of violation not contributing to the injury (*Frint Motorcar Co. v. Industrial Commission (Wisconsin)*, 170 N. W. 285). And this was held to be true even though the injury would not have been received if the workman had remained at the place assigned him by his employer. The employee was a mechanic and volunteered to go to one of his employer's cars on the race track, presumably in need of assistance, and this act was said not to take him out of the scope of his employment. But the Supreme Court of Illinois denied compensation where an employee volunteered to take an implement from a fellow workman and do the work the latter was directed to do, and was killed by accident while attempting to perform the task (*Mephram v. Industrial Commission*, 124 N. E. 540).

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).

This was sustained by the supreme court of the State, as against a contrary decision by a circuit court, the finding being that the employee was under the protection of the company, using the things furnished him for his use during the employment, and that under these circumstances he was performing services incidental to and growing out of the employment (*Holt Lumber Co. v. Industrial Commission*, 170 N. W. 366).

The Supreme Court of Iowa ruled against a claim on account of the death of a workman killed by lightning while sitting in a lodging tent furnished by his employer, the work of the day being ended (*Griffith v. Cole Bros.*, 165 N. W. 577). It was said here that, though injury occurred in the course of the employment, it did not arise out of it.

Incidents arising before the beginning or after the termination of work form a border area in which individual cases must be considered largely on their own merits, and the fundamental principles can hardly be said to differ from those applicable under the old liability laws. Thus where an employer transports his employees to and from their place of work the responsibility of the employer was ruled upon diversely in two cases before the industrial accident commission of California, in one case the ruling being made that where the employer was in the habit of furnishing such transportation his liability ran during the period of its performance; in the other case it was found that the element of transportation was not a part of the contract of hiring but merely an accommodation granted without cost and terminable without notice, so that no responsibility attached for injuries occurring during its period. The Supreme Court of Massachusetts held that transportation in a wagon furnished by the employer was a collateral or subsidiary part of the contract in the instant case and therefore within the act (*In re Donovan*, 104 N. E. 431).

In line with the Massachusetts decision are others from Connecticut (*Swanson v. Latham & Crane*, 101 Atl. 492) and New York (*Littler v. Geo. A. Fuller Co.*, 119 N. E. 554), where it is held that the employment relation continues during the period of transportation by a conveyance furnished or procured for the purpose by the employer.

A man employed by the city and furnishing his own team was held by the Supreme Court of Minnesota not to have been in the course of his employment by the city while feeding his horse in his barn in the evening, so that compensation could be had for his death from injury while so engaged (*State ex rel. Jacobson v. District Court*, 175 N. W. 110).

Where woodchoppers were allowed time to return to camp from the place of the day's work the commission of California ruled that

an injury to an employee who fell from a log while on his way to camp was on the employer's premises and in the course of employment.

The Supreme Court of New Jersey held within the act of that State the action of a girl combing her hair to remove bits of wool at the close of the day's work, the hair being caught in the machinery and injury following (*Terlecki v. Strauss*, 89 Atl. 1023). A similar ruling was made by the Supreme Court of Michigan in the case of an employee running to punch a time clock at the close of work and colliding with a fellow workman on account of an obstruction that hid him from view (*Rayner v. Sligh Furniture Co.*, 146 N. W. 665). The same court more recently affirmed a decision of an arbitration committee awarding compensation for the death of a railroad laborer whose time of employment was irregular, and who was killed while on his way home at night on the right of way after leaving reports at the station (*Papinaw v. Grand Trunk Ry.*, 155 N. W. 545).

The industrial commission of Ohio allowed benefits in the case of a man killed on a roadway which was on the premises of his employer, and while on his way to work; also in a case in which a workman was hurt, by contact with objects lying on the floor, while going for his coat and hat after the whistle blew; and the Wisconsin commission allowed a claim in the case of a 14-year-old boy returning to work after lunch, who diverged from the most direct route, placing his hand under a machine hood and losing the forearm by the action of the knives therein. It was said that the natural curiosity of a boy of 14 years must be taken into consideration and that a common-sense construction of the law must be made, the responsibility for such accidents resting on employers who place such children in places of danger rather than upon the children themselves.

Admitting that the accident arose out of the course of the employment, but holding that the degree of injury complained of was not due thereto, the Supreme Court of Kansas reversed an award in a claimant's favor where it appeared that total disability would not have resulted from the injury but for the malpractice of the attending physician (*Ruth v. Witherspoon-Englar Co.*, 157 Pac. 403). The case was remanded for a determination of the degree of disability due to the accident as such and a corresponding award.

The law of Washington makes no mention of arising out of employment, but provides for employees "injured in extrahazardous work," so that the law is of broader application than those considered above. The State commission refused the application of a widow for compensation for the death of her husband, who was shot by a discharged workman in a general mêlée, on the ground that the injury was not a direct result of the employment; but the supreme

court reversed this ruling, saying that "under our statute the workman is the soldier of organized industry, accepting a kind of pension in exchange for absolute insurance on his master's premises" (*Stertz v. Industrial Ins. Com.*, 158 Pac. 256).

WILLFUL MISCONDUCT.

The term "willful and serious misconduct" is used in the British compensation statute, and these words or words of similar intent have been incorporated in a number of the American laws. What constitutes such conduct as will bar claims is a question that frequently comes up for discussion. The industrial accident commission of California held that an injured employee, who attempted to clear away the sawdust from a saw after having signaled for the power to be shut off and waited the usual time for the saw to cease revolving, was not guilty of willful misconduct, even though negligent, in undertaking to do the work before movement had actually ceased. In another case an award was made where an employee was electrocuted by undertaking repair work without shutting off the current; it was in evidence that this had been the custom, since to do otherwise would bring a considerable amount of work to a standstill, and there was no evidence that the foreman himself had taken such precautions. It was said that in fatal cases evidence regarding willful misconduct must be clear and of the highest character.

Another case of fatal injury passed upon by this commission was that of an employee riding a motor cycle down hill at a claimed excessive speed in violation of an ordinance. The brakes of the motor cycle were defective, so that the speed was not entirely under control of the employee. It was said that a mere violation of an ordinance would not establish willful misconduct, and the defense must prove the element of willfulness by a preponderance of testimony. A somewhat similar award by the commission was reversed by the supreme court of the State where the injury resulted from the driving of an automobile at a rate of from 35 to 45 miles per hour, the court saying that such action was willful misconduct, especially where wholly unnecessary, even if not unusual in the locality and not in violation of rules and orders of the employer (*Fidelity & Deposit Co. v. Industrial Accident Commission*, 154 Pac. 834).

A district court of appeal of the same State denied the right to compensation where a messenger boy was killed by an elevator which he had been warned not to ride on or to operate, and which he undertook to operate, the court holding this act to be willful misconduct such as to bar recovery (*Pacific Coast Casualty Co. v. Pillsbury*, 162 Pac. 1040).

A compensation commissioner of Connecticut made an award in the case of a motorman killed in a head-on collision said to be due

to his running his car beyond an agreed stopping point. The same view was taken as to the evidence in fatal cases as that indicated by the California commission, pointing out that a distinction should be drawn between a criminal action against a living man and a compensation claim made by dependents of a deceased employee. It was said that "serious and willful misconduct connotes deliberation and intention, mere carelessness or negligence not being sufficient." The Supreme Court of Michigan applied practically this view in the case of a man injured by failure to observe the movements of the crew of a train on a track which he was crossing, the court saying that, though there was gross negligence, it was not willful and intentional misconduct so as to defeat the recovery (*Gignac v. Studebaker Corporation*, 152 N. W. 1037); while in New Jersey the defense of willful negligence was not allowed where a workman digging at a pier was injured by falling objects, the court saying that intentional self-infliction and intoxication were the only bars to recovery mentioned in the act of that State (*Taylor v. Seabrook*, 94 Atl. 399).

Less liberal was the ruling of the public service commission of West Virginia where a "pickler" in a sheet-iron mill attempted to secure his tongs, which had slipped from his hand into the acid solution, and was burned thereby. Compensation was refused on the ground that he knew of the injurious nature of the acid, so that reaching his arm into it was equivalent to serious and willful misconduct. The element of disobedience to rules and orders was involved in several cases in hand, the Supreme Court of California denying compensation to a lineman who was killed by contact with a live wire, though he had rubber gloves with him and had been instructed to use them, an award of the commission in favor of his beneficiaries being annulled (*Great Western Power Co. v. Pillsbury*, 149 Pac. 35). The earlier administrative body of the State (the accident board) had formulated a rule that "convincing proof of the deliberate intentional violation of a rule formulated, brought to the attention of those whom it is designed to govern, and diligently enforced, will establish willful misconduct." The later commission, however, made an award in favor of a claimant who was injured while performing a service which it was stated he had been forbidden to render, the commission saying that where it appears that the disobedience of an oral instruction was not actuated by willful desire to disobey an order, but by a wish to further the employer's interests, it is not willful misconduct so as to defeat a claim.

This latter principle was applied by the industrial board of Illinois to the case of a workman who volunteered to operate a punch press whose operator he was to serve by the delivery of material to him, the operator being at that time absent. It was held here that the violation of orders, specific or general, does not amount to willful

misconduct or take one out of the course of his employment if it is done in good faith and upon the theory that it is for the best interests or promotes the business of the employer. In another case it was said that to make a ruling that a workman violating instructions or committing acts of negligence or willfulness should not be entitled to compensation would add to the law by the exercise of judicial powers not conferred upon the board by law.

The Supreme Court of New Jersey affirmed an award for the death of a servant killed while attempting to start a fire by the use of wood alcohol, though she had been warned not to use kerosene, "or anything like that." The court held that she was in her line of duty, and that the measure of disobedience was not so great as to bar the claim (*Kolasynski v. Klie*, 102 Atl. 5). And the Supreme Court of Massachusetts allowed compensation in a case where a man was told that he must do certain work only when the adjacent machinery was at rest, but did not do so and came in contact with a revolving shaft and was killed. The court said in this case that serious and willful misconduct means more than negligence or gross negligence, and that disobedience to orders, to constitute such misconduct, must be deliberate and not merely thoughtless (*In re Nickerson*, 105 N. E. 604). In a case before the industrial accident board of the State, however, compensation was denied a workman who was injured by contact with a machine which he had no occasion to touch, and which he had been told repeatedly not to touch or work on, and had been threatened with discharge if he used it contrary to orders. The supreme court also denied compensation where a workman incurred injury while attempting to open a window which was nailed down, obviously to prevent its being opened. The plain implication was equivalent to an order, the violation of which would bar his claim (*In re Borin*, 116 N. E. 817).

Misconduct was charged in the Rayner case (p. 187), where a workman was injured while running to punch the time clock. This, however, the Supreme Court of Michigan disallowed. In two cases the Supreme Court of New Jersey denied compensation, where injuries were fatal, on the ground of disobedience, one being that of an employee using an automobile contrary to specific and immediate orders (*Reimers v. Proctor Publishing Co.*, 89 Atl. 931); the other that of a workman on a building who was of infirm health and had been forbidden to go on any scaffold, and was killed by a fall following disobedience of the order (*Smith v. Corson*, 93 Atl. 112). In two cases also the industrial commission of Wisconsin denied benefits on account of injuries, one of them fatal, where men undertook the operation of appliances which they had been forbidden to use.

The failure of a workman at a quarry to take shelter from a blast when warned by the usual signal was held by the Supreme Court of Con-

necticut to be "careless and perhaps negligent," but not such "serious and willful misconduct" as to bar a claim for his death (*Merlino v. Connecticut Quarries Co.*, 104 Atl. 396). Quite similar was the view of the Court of Appeals of Maryland where a shop employee was killed while seeking to pass between moving cars, though warned of his danger. "It was a thoughtless and heedless act, but not a willful breach of a positive rule of conduct or duty" (*Baltimore Car Foundry Co. v. Ruzicka*, 104 Atl. 167).

Of like tenor with the foregoing are decisions by the Appellate Court of Indiana (*Haskell & Barker Car Co. v. Kay*, 119 N. E. 811), and by the Supreme Court of Oklahoma (*Wick v. Gunn*, 169 Pac. 1087), in which the failure to use a guard for the machinery operated resulted in injury. In both cases it was found that the workmen used poor judgment, but not that there was willfulness so as to prevent the making of claims. A district court of appeal of California, on the other hand, found that the removal of a guard by an experienced laundry worker was willful misconduct within the meaning of the compensation act, as well as a violation of the commission's safety orders (*Bay Shore Laundry Co. v. Ind. Acc. Com.*, 172 Pac. 1128).

That the injury was self-inflicted was made the ground for the denial of benefits in two West Virginia cases, both being cases where the workman opened pimples or blisters, infection following, the public service commission saying that the injury was not the result of employment, but was a self-inflicted injury in nowise connected therewith. The opposite view was taken by the accident commission of California, where a man undertook to remove a sliver from his finger with a pocketknife against the protest of the employer's wife. The commission said that the action was unwise, but did not constitute willful misconduct. In another case metal splinters were extracted from the hand of a toolmaker with forceps, infection and dermatitis following, a Connecticut compensation commissioner here ruling that the employee was guilty of willful misconduct, there being full instructions for reporting injuries in all cases.

Intoxication is mentioned in a number of laws as a bar to claims, or it may be classed in itself as serious misconduct. The California commission rejected this defense in an instance where the only evidence was that of the smell of liquor on the breath and perhaps an admission of the occasional use of beer, it being said that this did not meet the burden of proof required. In three cases reported from two compensation districts of Connecticut claims were disallowed on the ground of the intoxication of the injured man, in one instance the commissioner saying that the employee was guilty of willful misconduct in using intoxicants while in the course of employment; in the second a quarrelsome and abusive man under the influence of liquor was ordered to leave the works, and fell or was thrown down while

being ejected; in the third case a teamster under the influence of liquor was permitted to remain at work on the strength of a promise that he would drink no more that day, which promise was broken, and the man fell off the wagon in the afternoon and suffered serious injuries.

The omission of any mention of intoxication or willful misconduct in the law of Illinois, already mentioned, left the industrial board of that State free to approve the claim of a beneficiary of a man who had fallen down a stairway while intoxicated. The law of Massachusetts bars injuries due to serious and willful misconduct, and the degree of intoxication found in two cases, reports of which are at hand, was held by the accident board of the State as sufficient to bar recovery, one instance being that of a man falling from his wagon, while in the second the injured man was struck by an electric truck in the street.

The converse to the barring of claims by reason of the willful misconduct of the employee is the principle of allowing special damages or double compensation where the employer is so careless of the welfare of his employees as to incur such liability under the law. A committee of arbitration under the Massachusetts law had made an award of double damages as for wanton and reckless disregard of an employee's safety in neglecting to furnish a kicking strap for a horse of known vicious disposition. The industrial accident board of the State reversed the penal part of the award, saying that the employee knew of the tendency and should have been cautious, and that the personal injury could not be held to have resulted from the serious and willful misconduct of the superintendent.

The supreme court of the State had a like contention before it in a case in which an award of double benefits had been granted against an employer who maintained an elevator badly out of repair, which was held by the commission to be the cause of the injury for which compensation was sought (*Riley v. Standard Accident Ins. Co.*, 116 N. E. 259). The court ruled that there was evidence of negligence, but not of "serious and willful misconduct," which "involves conduct of a quasi criminal nature," intentionally injurious or with "wanton and reckless disregard of its probable consequence," citing *Burns's* case (218 Mass. 8, 105 N. E. 601).

The Ohio statute allows suit for damages where injury results from the willful acts of the employer; and it was held by a Federal court that it was not necessary that there should be a deliberate intent to do bodily injury, but that liability would lie where there was, as appeared in the instant case, an "utter disregard of consequences" (*McWeeney v. Standard Boiler & Plate Co.*, 210 Fed. 507). It may be noted that the legislature of the State subsequently amended the law by incorporating a definition of the term "willful act," restrict-

ing it to "an act done knowingly and purposely with the direct purpose of injuring another," thus controverting the position taken by the court in the *McWeeney* case. This definition comports with the interpretation placed upon the term "deliberate intention" found in the Oregon statute, the supreme court of that State saying that it does not imply carelessness or negligence, however gross, but a determination to injure (*Jenkins v. Carman Mfg. Co.*, 155 Pac. 703).

An Ohio case that arose subsequent to the amendment referred to above involved the construction of the amendment and of the constitutional provision that permits suits for damages where an injury is due to the failure of the employer to comply with lawful safety requirements. The term "lawful requirement" was held to imply more than a mere common-law rule, and to mean either specific orders or a definite statute or ordinance. An injury due to the negligent piling of lumber on a car and to a defective condition of railway tracks was held therefore not to sustain a suit for damages, as against a claim for compensation (*American Woodenware Mfg. Co. v. Schorling*, 117 N. E. 366).

LIABILITY OF THIRD PARTIES.

It is commonly provided by the statutes that where the injury to an employee is due to the negligence of a third party, claim may lie against the employer, he being subrogated to the rights of the injured man, and entitled to sue; or the workman himself may sue, the employer being thereby left free from liability. In construing this provision of the Massachusetts statute the supreme court of the State held that the injured employee has the choice of remedies, and if he dies his personal representative has similar rights to elect which of the two remedies he will pursue; an insurer giving relief under his contract is not equitably subrogated to the rights of the injured man, but stands as an assignee of such rights, and may proceed in any amount that the latter could recover, not being limited by what he as insurer has paid or was liable to pay (*Turnquist v. Hannon*, 107 N. E. 443). The same court had before it a case in which a man injured by the negligence of a third party had recovered from him for the injuries received and subsequently died therefrom. It was held that the widow could look to the employer for benefits under the compensation law, as her rights were independent of her husband's, and were not affected by his receipt of any sum from the third party (*In re Cripp*, 104 N. E. 565). But the injured man himself, having accepted benefits under the act, can not then have recourse to a suit against the third party (*Barry v. Bay State Street Ry. Co.*, 110 N. E. 1030).

The validity of the corresponding provision of the Minnesota statute was vigorously attacked in a case (*Matheson v. Minneapolis Street*

Ry. Co., 126 Minn. 286, 148 N. W. 71) in which a city employee sued a street railway company for injuries inflicted by one of its cars while he was laying paving near the track. All parties were under the compensation law, which permitted such a suit, but limited recovery to the amount of compensation fixed for a like injury if the employer alone was responsible. This was held to be valid against the injured man's contention that his right to sue could not be thus limited. In a later case before the same court (*Hansen v. Northwestern Fuel Co.*, 174 N. W. 726) a similar situation was involved, a laundry driver being injured by a truck of the fuel company. The third party defendant was under the compensation act, as well as the employer and injured employee. On hearing it developed that the injury arose out of and in course of the injured man's employment, so that he would have been entitled to an award against his employer. The third party moved the dismissal of the suit as a common-law action, and that the court award or deny compensation in accordance with the compensation act. This motion was granted, and the defendant having invited an award of compensation was said to be without power to question its liability up to that of the employer. The only duty devolving on the court, therefore, was to fix the compensation payable.

A New York claimant undertook to recover from both his employer and a third party, which the supreme court of the State, appellate division, held impossible (*Miller v. New York Rys. Co.*, 157 N. Y. Supp. 200). The same court passed upon a case in which the injured man had signed a release to the third party and sued to recover compensation under the law, the court holding that the release would serve only to reduce his claim for compensation by the amount paid for such release, and was not an absolute bar to the claim; on the other hand, the release would be ineffectual as against the insurer's rights to recover from the third party unless the insurer had assented thereto in writing (*Woodward v. E. W. Conklin & Son*, 157 N. Y. Supp. 948).

A somewhat different aspect of the question was developed in a case in which 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 specified sums periodically 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). It was also held in this case that the judgment could not even cover future payments under the award.

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.

The Ohio statute permits employers to act as self-insurers on a showing of financial ability, etc. No provision as to injuries by third parties appears in the law, and the industrial commission of the State ruled that an employee injured by the negligence of a third party might proceed both against such party for damages and against his employer for compensation under the act. The Supreme Court of New Jersey passed upon a case which was practically identical in its situation to the facts in the Cripp case above, and the court held that in the existing state of the law not only could a widow recover from the employer under her independent right, but further that the employer was not subrogated to the rights of the injured man as against the third party (*Newark Paving Co. v. Klotz*, 91 Atl. 91). It was said that double compensation would be possible under the circumstances, just as was allowed under the ruling of the Ohio commission last noted; but it was said that this situation, if it was to be remedied, must be remedied by the legislature. Action was subse-

quently taken to this end, and an amendment to the law subrogates the employer to the rights of the injured man against the third party, where compensation is claimed under the law.

In West Virginia, as in Ohio, the law omits all reference to injuries due to the negligence of third parties, and the supreme court of that State decided (*Mercer v. Ott*, 89 S. E. 952) that the personal representative of a man killed by the fault of a third party might recover against the latter, the right of the widow to compensation from the employer under the law being unimpaired thereby.

The Wisconsin statute contains a provision as to subrogation, and in a case in which the employer had settled with his employee and was therefore subrogated to the latter's rights against the third person for the injury, the employer subsequently assigned this right of action to the injured employee; the third person thereupon objected that the employer should be made a party plaintiff, which contention the court rejected, ruling that there had been a full and complete assignment (*McGarvey v. Independent Oil & Grease Co.*, 146 N. W. 895).

The Michigan law permits recovery against either the employer or the third person, and if the employer pays he is entitled to take action against the third person for his own reimbursement. It was contended that this fixed the amount of the recovery against the third person at the amount awarded as compensation and was unconstitutional, as depriving the third party of his right to appear and defend in the action and have his rights determined by a court of competent jurisdiction. The supreme court of the State (*Grand Rapids Lumber Co. v. Blair*, 157 N. W. 29) held that this was not the proper construction of the law and that as properly construed it was not unconstitutional, merely making the payment of compensation prima facie evidence of the liability of the third party, which was within the power of the legislature.

The same court had before it a case in which a widow had sued the third party and recovered judgment to the amount of \$10,000. The widow and her deceased husband's employer had agreed that if her recovery should be less than \$3,000, the employer would make good the deficit up to that amount. The defendant offered this agreement as constituting an election to accept compensation in that sum and as a bar to the action. The court rejected this contention, holding the contract void, and declaring the suit the only effective election (*Detloff v. Hammond, Standish & Co.*, 161 N. W. 949).

In a case before the Illinois board the claimant contended that the amount received by him from the third party had nothing to do with his claim against the employer for compensation. This was not allowed by the board, and as the amount so received exceeded the

amount recoverable as compensation, no claim was considered, the application being dismissed. The law of this State provides that where the employer, the employee, and the third party are all under the act, the employer shall pay the compensation due, and shall be subrogated to the employee's rights against the negligent third person. This was claimed to be a limitation on the employee's right to recover adequate damages without any benefit to offset the loss. The court pointed out (*Friebel v. Chicago City Ry. Co.*, 117 N. E. 467) that the employer is obligated to make the payment when nothing might be recoverable from the third person; nor is the employee dependent entirely upon the solvency of his employer, since he might proceed against the third party in his employer's name in case of the latter's insolvency and refusal to sue. In any case, the employee took the choice of compensation, with the conditions attached, when he made his election. The provisions of the law in this respect were therefore held valid.

The Kentucky statute differs from the foregoing in that it permits the injured man to sue the third party and also seek compensation from his employer; but the employer is subrogated to the employee's rights to the extent of any compensation paid by him. This is held in no way to limit the amount of the employee's recovery against the third party (*Book v. Henderson*, 197 S. W. 449). The employer should interplead and set up his cause of action, whereupon it would be the duty of the court to apportion between the employer and the employee the damages recovered; or if the employer did not seek to recover, the third party would be entitled to have credited on his judgment any sum received by the employee in the form of compensation.

The California act of 1913 did not in terms provide for redress against a third party, but did declare the liability of principals and contractors other than the immediate employer, such remedies to be administered by the commission. This provision was held to be unconstitutional, the court declaring that the legislature was not authorized to confer upon the commission any authority to settle liabilities against persons not employers, the constitutional amendment merely permitting legislation to "create and enforce a liability on the part of all employers to compensate their employees" for injury (*Carstens v. Pillsbury*, 172 Cal. 572, 158 Pac. 218). A new law was enacted in 1917, embodying provisions to the same effect as those condemned in the *Carstens* case. The section containing these provisions was held to be unconstitutional for the same reason as previously assigned, "in so far as it attempts to authorize the awarding of compensation against a third person not an employer" (*Perry v. Industrial Accident Commission*, 181 Pac. 788). This is not to be construed as affecting the succeeding section of the law, which author-

izes suits for damages where a third person is liable, and does not attempt to confer on the commission the power to determine liabilities; and the subrogation of the employer who has paid compensation, and seeks to recover from the third party, is likewise constitutional (*Western States Gas & Electric Co. v. Bayside Lumber Coal*, 187 Pac. 735).

In the case of *Bryant v. Fissell* (86 Atl. 458), already noticed, the negligence of the independent contractor whose employee caused the death by dropping the piece of metal on the workman below, was offered as a reason why Bryant's employer should not be held as the responsible party. The Supreme Court of New Jersey said on this point that when there has been an acceptance of the elective compensation system provided by the act, it is expressly stated that compensation shall be made by the employer without regard to his negligence.

The fact, if it be a fact, that the representative of the decedent has also a right of action against a third party in no wise militates against the present action. The act under which this suit is brought, and which at best provides only for partial compensation, nowhere provides specifically or by implication that an employee shall be deprived of his right to compensation thereunder merely because the accident gives rise to a right of recovery against a third party.

Another phase of this general question was discussed in a case arising under the law of Washington (*Northern Pacific Ry. Co. v. Meese*, 36 Sup. Ct. 223). Action was first brought in the district court of the United States to recover from a railway company for an injury caused by the alleged negligence of its employees in moving cars in a brewery yard, causing a fatal injury to an employee of the brewery. This action was in damages as against a third person. The compensation law of the State provides that all claims against employers for injuries to workmen shall be determined in accordance with the provisions of this act, and civil suits for damages are abolished, with some exceptions. The statute provides that if an injury to a workman occurs away from the plant of his employer, and is due to the negligence or wrong of a third person, action may be brought against the third person or a claim made under the compensation law, at the option of the injured workman or his survivors. In the case at hand the injury did not occur away from but at the plant of his employer, and the court held that as the right of action for fatal injuries was entirely a statutory one, it was within the power of the legislature to make the provisions that it had, and that it was the evident intent to abolish private controversies and civil actions except as specifically provided for, the case in hand not coming within the exception. Since, therefore, the provision of the law was thus clear, the remedy by a claim for compensation was held to be exclusive, and the action against the railroad company was dismissed (206 Fed. 222).

On appeal, however, this decision was reversed by the circuit court of appeals (211 Fed. 254), but the Supreme Court of the United States, on further appeal, adopted the opinion of the trial court, reversing the court of appeals. This accords also with the view taken by the supreme court of the State (*Peet v. Mills*, 76 Wash. 437, 136 Pac. 685), which declares that the law is exclusive, reaching to "every injury sustained by any workman while engaged in any such [included] industry, regardless of the cause of the injury or the negligence to which it might be attributed."

Not going so far as the above, but representing something of the same attitude, was a case decided by the Supreme Court of New York, appellate division (*Winter v. Peter Doelger Brewing Co.*, 162 N. Y. Supp. 469), in which a driver employed by a brewery was injured by reason of a defective elevator on the premises of a saloon where he was making a delivery. Instead of taking compensation of the employer, he sued the saloon owner as the negligent third party liable for the injury. As it happened, the saloon was owned by the employing brewery company, which resisted suit on the ground that the case was one of compensation for injuries to an employee. This contention was sustained by the court, it saying that the fact that the elevator and saloon were located at some distance from the employer's brewery did not make the employer a third party or in any way change the relation of the plaintiff to his employer, so that his rights were based on the compensation law and not on the law of negligence (reversing appellate term, 159 N. Y. Supp. 113).

Another phase of the question was before the same court in a case (*In re Cahill*, 159 N. Y. Supp. 1060) where a deceased employee left a widow and a mother entitled to claim benefits. It was held that the widow's action in electing to sue the third party for damages did not debar the mother's claim for compensation under the act.

TEMPORARY DISABILITY.

As compensation usually terminates on recovery from the effects of the injury, it is a fundamental necessity of administration to determine when this occurs, and when there are other causes that intervene to prolong disability, while the matter of malingering must also be taken into consideration.

The industrial commission of California ruled in two very similar cases that the prolongation of disability due to the failure of the injured man to take the necessary exercise required to restore a fractured limb to use was not ground for prolonging payments, saying in one instance that the law does not contemplate compensation for mere pain and inconvenience, but only for disability to labor, which would not exist in the instant case had the injured man possessed the necessary resolution to put the injured member into service. In another case before this commission it was said that the applicant

must prove his actual disability as a physical fact as distinguished from an inability to secure employment on account of the scarcity of opportunities, saying, "compensation is payable for inability to do work, not for inability to find work to do." In contrast with this is the ruling of the Supreme Court of Kansas (*Gorrell v. Battelle*, 144 Pac. 244), in which a man, unable to secure employment after recovery from a total disability by reason of a continuing partial disability, was held entitled to full compensation until work was obtained, the court holding that compensation is to be paid for the loss of earning power as the result of the injury, whether manifested in inability to perform obtainable work or inability to secure work to do. This accords with the ruling of the Supreme Court of Massachusetts that the act of that State covers not only physical incapacity but also inability to obtain work, resulting directly from a physical injury (*In re Sullivan*, 105 N. E. 463; *In re Septimo*, 107 N. E. 63).

The California rulings noted above accord with a statement in an opinion by the superior court of New Haven County, Conn., in which it was said that the law was not concerned with the fact of whether an injured man had recovered and was actually earning the same amount as before the injury or whether he had found a position where he could so earn, but that the statute was satisfied with his adequate recovery to be able to do so.

In a case before a compensation commissioner of Connecticut the injured man's action in delaying recovery by the use of intoxicants was held adequate ground for denying a claim for compensation for 16 weeks, the award being for but 6 weeks. In another case a Connecticut commissioner denied disability benefits where a claimant refused to do work that was offered him and which he was able to do, because he had formed the idea that it would interfere with his getting pay for his injury. Apparently departing from the foregoing practice is the ruling in another case before a commissioner of the State in which the former employer had no work for the injured man on the declared termination of his disability, and the latter found other employment which he was compelled to withdraw from after two days, being unable to continue. It was ruled that the injured man was entitled to employment by his former employer, or that suitable work should be found for him. This corresponds also with a ruling by the industrial board of Indiana to the effect that the employer was liable for compensation until such recovery as would enable the injured man to resume his former occupation, though the employer might discharge his liability by furnishing work which the employee could do.

The industrial accident board of Massachusetts required an employer to continue payments in behalf of an employee who lost a foot, beyond the period of the schedule award for partial disability "until occupation suitable for a one-legged man is found."

Taking the same view as that of the California commission above was a ruling by the Massachusetts board terminating benefits on a fixed date, as the continuing incapacity could be attributed to the lack of confidence of the injured man in using his leg; while a finding of a committee of arbitration in this State was affirmed by the board where there was claim of a continuing pain and disability which led the man to stop working, although it was held that "he would be better off if he worked," so that, though he had not entirely recovered, compensation benefits should not be extended beyond an elapsed date, incapacity from the injury having ceased at that time.

Two cases involving alleged simulation required a determination of actual capacity to work where there were vigorous claims of pain and sensitiveness and inability to use the muscles, medical examination showing injuries neither to the physical nor to the nervous system, cases of a class that are so definitely recognized in German practice as to receive the designation "Renten-hysteria" or compensation hysteria.²² The industrial commission of Wisconsin, in commenting on a similar condition, said that "the employee's trouble is largely of the mind, increased perhaps by the prospect of compensation." Compensation for an adequate period of recovery was allowed, but not for the period for which claim was made. The necessity of returning to work, even at the cost of some inconvenience, was emphasized by the commission in another case in which it was said that there would necessarily be some tenderness of amputated fingers, no matter when the injured man returned to work, and compensation was terminated at the time of the healing of the wounds.

A situation the converse to that appearing in some of the foregoing cases was before the industrial board of Illinois in a case in which an employee whose fractured patella had been joined by a silver wire was taking exercise as directed by his physician and felt something give way, an examination showing that the wire had pulled through the bone. As against the contention of the employer that this was a second injury for which he was not liable, the board ruled that the condition of the employee was due to the original injury, and that he was doing what could reasonably be expected, as advised by the physician, and payments were continued. The same view was taken of a case before the California commission, where a broken collar bone parted after a supposed uniting, no accident intervening, and the original employer was held responsible.

PARTIAL DISABILITY.

Where there is a surviving effect of an injury, amounting to a permanent partial disability, the question of the amount of compensa-

²² An interesting recent contribution to the literature on this subject is a work by Francis X. Dercum, M. D., entitled "Hysteria and Accident Compensation," 1916.

tion for designated injuries is fixed in many of the laws by schedule, while in other cases proportional awards or estimated rates must be allowed; questions of possible benefits from operations, etc., are also involved. (See "Medical treatment," pp. 232 to 240.)

The original Connecticut statute contained no provision as to partial loss of vision, and in a case before a commissioner an award for the period of temporary total disability was all that was found possible under the act, though there was a 50 per cent impairment of the vision of one eye, which might not, however, and it was testified that it probably would not, interfere with the employee's earning capacity. In a case before another commissioner of the same State there was no evident loss of earning capacity at the time, but it was ordered that in view of the possibility of further decrease or total loss of vision on account of the injury, "this claim remains active in the files and is subject to revision." The Pennsylvania schedule provides only for "the loss of an eye," and it was held by the board that in the absence of proved loss of earning power, a proportionate award for partial loss of vision was not authorized.

The original Illinois statute, likewise, made provision only for the loss of sight of an eye, but the board of that State ruled that for the partial loss there should be a proportional award. The schedule of Michigan makes the same omission, and where the State board allowed a proportional award in the case of the loss of from one-third to one-half the vision of an eye, there being no immediate wage loss, the supreme court disallowed the award except for the period of total disability (*Hirschhorn v. Fiege Desk Co.*, 150 N. W. 851). In another case (*Cline v. Studebaker Corporation*, 155 N. W. 519), the same court held that where there was a 90 per cent loss of vision which could be reduced to a 50 per cent loss by the use of glasses, it was the duty of the employee to use such a common appliance as glasses, and compensation would be allowed for partial disability on the basis of the wage loss sustained, if any, and not as for the loss of vision, which would be practically total without the aid of the glasses. The Supreme Court of Wisconsin had before it a case involving similar facts, there being a permanent impairment of the vision of one eye, but no present wage loss. The law of this State as it then stood provided for compensation "in all other cases in this class" in an amount proportionate to the awards presented in the schedule, the schedule itself providing for both enucleation and the total blindness of an eye. The industrial commission had made an award on account of the probable difficulty in securing future employment, which the court reversed, as not being judicially aware of the loss of earning power of a man with but one eye. Three judges dissented on the ground that "in the exercise of common knowledge and observation the capacity to obtain employment is

impaired" (*International Harvester Co. v. Industrial Commission*, 147 N. W. 53).

The distinction between the loss of an eye and the loss of sight was considered by the Court of Appeals of Kentucky (*Nelson v. Kentucky River Stone & Sand Co.*, 206 S. W. 473). The law schedules the loss of certain members at a fixed rate, but mentions only the "loss of sight of the eye." Where a workman lost an eye, requiring its removal, the court held that the loss was greater than that covered by the schedule, and should be determined on the basis of "other cases of permanent partial disability."

In a case that came before the New Jersey Supreme Court (*Feldman v. Braunstein*, 93 Atl. 679) an award had been made as for permanent partial disability, the injury consisting of a 90 per cent loss of the vision of one eye, the partial disability payments to run for not more than 300 weeks, there being an expression of opinion that the disability would be but temporary if an operation was had. The court reversed this award and made the schedule allowance of 100 weeks' benefits as for the loss of an eye, subject to review in case an operation should be had, saying that the award must be made on the basis of existing facts and not on contingencies or the probable effects of an operation. In another case this court considered the method of an award where both eyes were affected, there being an 80 per cent loss of vision. The original award was for 80 per cent of the 100 weeks for each eye, taken alone—i. e., for 160 weeks for the two. The supreme court substituted for this an award of 80 per cent of the compensation allowed for the loss of both eyes—i. e., 400 weeks, which allowed 320 weeks' compensation (*Vishney v. Empire Steel & Iron Co.*, 95 Atl. 143).

The Supreme Court of New York, appellate division, had before it a question as to the nature of the injury where a workman lost the lens of an eye (*Frings v. Pierce-Arrow Motorcar Co.*, 169 N. Y. Supp. 309). An artificial lens gave normal vision, but it could not be coordinated with the other eye, so that he could use but one eye at a time. The court held that, as he had two useful eyes, there was not the loss of an eye within the meaning of the statute, so that compensation was payable only for the period of temporary disability. This case was distinguished from one in which the use of glasses gave the injured eye about one-third normal vision, and that only when the other eye was closed (*Smith v. F. & B. Construction Co.*, 172 N. Y. Supp. 581). In the *Frings* case either eye could be used as a normal eye; here the good eye must be closed to obtain a one-third vision of the injured eye. An award for permanent loss of use of the eye was affirmed.

The original law of Kansas contained no schedule, but provided for a percentage of the wages for a period not exceeding eight years

in cases of partial disability, no reference being made to actual wage loss. The supreme court of the State held (*Gailey v. Peet Bros. Mfg. Co.*, 98 Kans. 53, 157 Pac. 431) that the continuation of an injured man in employment at the same wages would not deprive him of a right to compensation unless the employment continued for the full period for which compensation might be paid; and, even so, the employee might wish to take other employment where the injury would, perhaps, interfere with his earning capacity, in which case recovery of compensation in accordance with the terms of the act would be the only means of discharging the liability of the employer. An award in the claimant's favor was therefore affirmed, at the minimum rate allowed by the law. The same action was taken in the case of a carpenter who lost an eye, but suffered no reduction in earning power, so far as shown; however, he testified that he was not able to "get the focus" so as to drive nails or do similar work with his former facility (*Oliver v. Christopher*, 159 Pac. 397). In another case partial disability for 80 weeks was estimated and an award made, and the court refused to disturb this, although within that period the injured man was earning more than his original wages (*Dennis v. Cafferty*, 99 Kans. 810, 163 Pac. 461; see also *Hood v. Transit Co.*, 186 Pac. 977).

An opinion of the Supreme Court of New York, appellate division, (*Wagner v. American Bridge Co.*, 158 N. Y. Supp. 1043) corresponds more closely to that of the dissenting opinion in the International Harvester case above than to the decision of the majority. The injury resulted in practically total deafness of one ear. The New York statute presents a schedule of awards for specific permanent partial disabilities, but does not mention deafness as one of them. The injured man sought to recover damages in a suit at law, but the employer claimed the right to settle under the compensation law of the State, whose provisions were applicable to him. This position was sustained by the court, saying that, though there was no mention of this particular injury in the schedule, the enumeration did not profess to be inclusive, the injuries set out being merely examples to aid in administering the statute. The law provides that in other cases where there is a permanent partial disability compensation shall be awarded on the basis of the loss of earning capacity, and the court directed that the industrial commission of the State should take the case under advisement and make such award as the facts indicated, saying that "Total deafness, the gravamen of this complaint, obviously impairs plaintiff's industrial efficiency," thus taking judicial notice of the consequences of such an injury.

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).

The law of New Jersey fixes a schedule of benefits for designated injuries and provides that other injuries shall be proportionately compensated. Under these provisions the supreme court reversed a judgment allowing more for a stiffened ankle than the schedule allowance for an amputation between the knee and the ankle, leaving it for the trial judge to decide on reconsideration whether the award should equal such amount or be less (*Rakiec v. D., L. & W. R. Co.*, 88 Atl. 953).

The Appellate Court of Indiana 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.

In a somewhat similar case the New York Court of Appeals set aside an award for the temporary total disability period where the commission had awarded for both this and the schedule loss for a permanent partial disability (*Marhoffer v. Marhoffer*, 116 N. E. 379).

The Supreme Court of Connecticut took a different view, and held that where multiple injuries occurred, one causing temporary partial

disability should be compensated independently of another, received at the same time, causing permanent partial disability and compensable at a fixed rate under the schedule (*Olmstead v. Lamphier*, 104 Atl. 488). This court drew a distinction between an injury requiring an immediate amputation of a finger (*Kromer v. Sargent & Co.*, 104 Atl. 488) and one in which a period of disability preceded the amputation (*Franko v. Schollhorn Co.*, 104 Atl. 485). In the former case the temporary total and permanent partial disability were a single incident, and no separate awards could be made, that for the permanent partial disability being the sole remedy. In the *Franko* case there were several weeks of disability while a cure was being attempted, and compensation was said to be due for this period, as well as for the schedule period fixed for the loss of the member.

In the New Jersey case of *Nitram Co. v. Creagh* (86 Atl. 435) an employee was injured by the crushing of certain fingers of his hand, causing a temporary total disability of approximately six months and also a partial but permanent disability, due to the injury to the fingers. The law provides for compensation for temporary total disability at a rate based on the injured employee's earnings, and in another clause for compensation in amounts determined on the basis of a percentage of the employee's wages payable for fixed periods of time for different specific injuries. In the case in hand the award for total disability for the term of its continuance was made, and in addition to this the award under the subsequent clause for permanent disability partial in character. To this the employer objected that compensation could be awarded only under a single clause, which contention the supreme court rejected, sustaining the principle of a combined award, one for total disability during its continuance and one for the partial disability that remains after any degree of maiming.

Much the same question was involved in the case of *George W. Helme Co. v. Middlesex Common Pleas* (87 Atl. 72), in which an injury involving several fingers was compensated for under provisions of the law which designate the amount to be paid for each separate injury. The injury consisted in the loss of parts of the second and fourth fingers and all of the third finger, and separate awards were made according to the schedule for each finger. It was claimed by the employer that as all three fingers were injured in the same accident the time should run concurrently, so that during the first 15 weeks there would be a total computed compensation of \$13.20, reduced to \$10 per week by the maximum limitation of the statute, while for the succeeding weeks during which any compensation was allowed there would be the concurrent operation of awards for the designated injuries. This contention was denied in the trial court

and on appeal in the Supreme Court of New Jersey. It may be noted that the law of this State has been amended so as to make benefit payments consecutive and not concurrent, allowing first for the temporary total disability and subsequently for such payments as are awarded as compensation for permanent partial disability.

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). The employee in this case had taken special training and been reemployed at higher wages; but compensation was awarded on the ground that there was evidence of his being unable to perform the duties of his former employment.

The New York cases vary from this point of view, the court of appeals saying that the terms "loss" and "loss of use" used in the law should be given their unrestricted and ordinary meaning, and not limited to mean incapacity merely for the work of a particular employment (*Grammici v. Zinn*, 219 N. Y. 322, 114 N. E. 397; *Modra v. Little*, 223 N. Y. 452, 119 N. E. 853). So that the loss of 80 per cent of the vision of the eye, capable of improvement by the use of an artificial pupil, does not warrant compensation as for the loss of an eye; since, the use of an artificial pupil, though not fitting him for a vocation requiring reading or fine work, will qualify him for some employments (*Boscarino v. Carfagno & Dragonette*, 115 N. E. 710).

A ruling by the Illinois board related to the rating of disability where the four fingers of a hand were lost, claim being submitted as for the complete loss of the use of the hand. Award was made on this basis as against the contention that with the thumb and palm remaining intact the schedule award for individual fingers should control.

Another aspect of the question was before the Supreme Court of Minnesota, which affirmed an award in behalf of a man suffering from an ununited fracture of the leg near the hip. It was held that there was not only the loss of use of the leg (compensable under the law as for the loss of a leg), but there was a greater injury on account of the inconvenience and suffering, occasioning total disability, so that compensation should be the maximum for temporary total disability—300 weeks—and not 175 weeks as for the loss of a leg (*State ex rel. Albert Lea Packing Co. v. District Court of Freeborn Co.*, 178 N. W. 594).

The industrial accident board of Michigan took the same view of the loss of all the fingers of the right hand as constituting loss of the use of the hand as that set forth by the Illinois board above; in this instance, however, there was some impairment of the use of the thumb. In another case before the Michigan board the schedule of maimings was interpreted as having the purpose to furnish indemnity to the person who suffers the loss of members; and the fact that he earned the same wages as before was not admitted to consideration, specific indemnities being "payable not on account of the effect on the earning capacity but because the injured man must go through life without the use of the member lost." A similar view was taken by the Supreme Court of California in a case (*Frankfort General Insurance Co. v. Pillsbury*, 159 Pac. 150) in which a carpenter was awarded 20½ per cent of disability for the loss of the greater part of a forefinger, though no loss of wages was suffered on account of the maiming. The law of the State has no schedule of awards, but uses a table based on employment, occupation, etc., the immediate effect of the injury on earning capacity not being the sole test.

In contrast with this is a decision of the Supreme Court of Wisconsin (*Northwestern Fuel Co. v. Leipus*, 152 N. W. 856), in which an award based on an impairment of function of the arm of the injured man was reversed, the court saying that the basis of compensation was not the impairment of function but the impairment of earning capacity. This diverges again from the opinion of the Supreme Court of New Jersey (*Burbage v. Lee*, 93 Atl. 859), where it was said that permanent injuries (limitation of wrist motion and shortening of leg in this case), even if not causing wage loss, are to be compensated, as it is not the mere loss of earning power that is considered but also the physical efficiency not so measured, which harmonizes more nearly with the expressions of the Michigan board and the Supreme Court of California.

Another case, involving the construction of the New York schedule, was that of a workman who lost a phalanx of a finger, with injuries stiffening other joints. The supreme court, appellate division, ruled that there should be an award on the schedule basis as for not more than the loss of a finger, and not a compensation on the basis of wage reduction, which might increase the award above that for such a loss (*Fineman v. Albert Mfg. Co.*, 155 N. Y. Supp. 909). The industrial accident board of Vermont made a ruling involving this principle, in which it declared that the schedule of maimings as set forth by the law of that State was the exclusive award in cases to which it was applicable, nothing being allowable for subsequent reduced earning capacity.

The schedule of Connecticut contains a provision for injury to the hand involving partial disability, and an award on the basis

of the present condition of the injured hand was made in a case in which it was admitted that an operation might improve the condition, the commissioner ruling that an award on a contingency could not be made.

Questions of fluctuating status were passed upon by the Supreme Court of Massachusetts in two cases, in one of which (*In re Durney*, 111 N. E. 166) it was said that where partial disability is to be compensated for by a payment of one-half of the wage loss, as was required by the law of that State, no account should be taken of the depressed labor market, but the difference between the amount that the injured man would have been able to earn if there had been no depression in employment and his former earning capacity should be made the basis of payments. In the other case (*In re Stickley*, 107 N. E. 350) a man who returned to work for his former employer with a partial disability and was allowed compensation therefor, at the expiration of this contract found himself unable to obtain work on account of his crippled condition; he was held entitled to compensation as for total disability for an indefinite period, subject to the right of review.

The disposition of cases involving multiple injuries was considered by the supreme courts of Minnesota, New Jersey, and New York in cases at hand. The Supreme Court of Minnesota (*State ex rel. Kennedy v. District Court of Clay County*, 151 N. W. 530) held that an award involving injuries to the hand and arm should be proportionate to the total effects and not to the sum of the items. This was the view taken by the Supreme Court of New Jersey (*O'Connell v. Simms Magneto Co.*, 89 Atl. 922). In both these cases awards made below by addition were in excess of the award computed according to the rules of the courts. In a case before the Supreme Court of New York, appellate division, however (*Rockwell v. Lewis*, 154 N. Y. Supp. 893), separate awards for the loss of several fingers amounted to less than the award for the loss of the hand; on review the injury was found practically to amount to such loss, and the award made on the latter basis was affirmed. In another case before this court there was the loss of a foot, together with injuries to the hands, and concurrent awards had been made. This was reversed by the court, the award for the loss of the foot being allowed to stand, though leaving the matter of other injuries open for subsequent consideration if they should continue beyond the period of the schedule allowance for the loss of the foot, the court saying that a payment of two-thirds of the wages (for 205 weeks in the case of a foot) is the maximum benefit, and concurrent awards leading to an excess of such an allowance would violate the principle of the law, which is not to furnish profit to the employee nor

to punish the employer who, though liable under the statute, may not have been negligent (*Fredenburg v. Empire United Railways Co.*, 154 N. Y. Supp. 351).

TOTAL DISABILITY.

A number of States declare total disability as a presumed fact in case of the loss of both eyes, both hands, both feet, a hand and foot, etc. 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 *Sauvain 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 (Cf. *New York Cases*, p. 207). The Wisconsin Supreme Court also 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 of a schedule of maimings eliminated the difficulty which was developed in this particular case; and it is evident 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 result of the form of the Michigan law was considered in a case before the supreme court of the State (*Foley v. Detroit United Ry.*, 157 N. W. 45) in which an injured man suffering permanent partial disability was earning more after the injury than before, though disabled from work in his former employment. The law provides for compensation for partial disability on the basis of the wage loss suffered, but further provides that this shall be computed so that it will "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 while the court recognized that the law might work inequitably in its literal application, it was said that this was for the legislature and not for the court, as the law was not contradictory nor impossible as it stood, and an award as for partial disability was approved.

An award of compensation as for permanent total disability, due to injuries to both hands, was held reviewable by the Supreme Court of New Jersey (*Safety Insulated Wire & Cable Co. v. Court of Common Pleas*, 100 Atl. 846), where the injured man, after about a year and a half, began to do light work, and subsequently secured a position paying more than his wages at the time of injury. The Supreme Court of Wisconsin, on the other hand, refused to hold up a lump-sum award as for permanent total disability where a carpenter was partially paralyzed so as to be unable to do work requiring walking or stooping (*McDonald v. Industrial Commission*, 162 N. W. 345). The fact that he and his wife might be able to conduct some small business successfully was said not to contradict the finding, even though the law required "other suitable employment" than the vocation of the injured man to be considered. In reaching this conclusion a Kansas case (*Moore v. Peet Bros. Mfg. Co.*, 162 Pac. 295) was referred to. In this case the injured man was awarded full benefits, and was found to have opened a small business in his home, from which he made profit. The court ruled that these profits were not earnings under the law, and refused to disturb the award.

The status of an employee who has previously lost an eye or a hand raises the question of the degree of the award where the second member is subsequently lost. The industrial accident commission of California considered the question at length and reached the conclusion that it would be an injustice to one-eyed workmen in the State seeking employment to hold that there would be a liability as for the loss of both eyes in case of the loss of the second eye, and an award was made as for the loss of one eye. The industrial board of Illinois made a similar ruling in a like case. The Supreme Court of Massachusetts, on the other hand, held that a man with but one eye "had that degree of capacity which enabled him to do the work for which he was hired," and since the loss of the second eye terminates that capacity, it causes total disability, and he should be so compensated (*In re Branconnier*, 223 Mass. 273, 111 N. E. 792). The Supreme Court of Louisiana took a similar view, saying that a "workman is as totally disabled from work by the loss of one eye as by the loss of two, if he has but one," and should be compensated as for total disability (*Brooks v. Peerless Oil Co.*, 83 So. 663).

The Supreme Court of Illinois (*Wabash R. Co. v. Industrial Com.*, 121 N. E. 569), awarded compensation as for total disability where a man with one arm lost a leg, citing the Massachusetts case as a precedent. The Supreme Court of Rhode Island also followed the Branconnier case in finding total disability to be the result of the loss of a second eye (*In re J. & P. Coats (R. I.), Inc.*, 103 Atl. 833). As the law of this State gives additional benefits in the case of maim-

ings, there was also an award for the specific loss of an eye, but not of two.

On the contrary, the Supreme Court of Michigan (*Weaver v. Maxwell Motor Co.*, 152 N. W. 993) and that of Minnesota (*State ex rel. Garwin v. District Court of Cass County*, 151 N. W. 910) sustained the view enunciated by the California commission, the latter court saying that "If the injury would alone cause partial disability, but with a previous injury causes total disability, the employer is liable for a partial disability," which conforms to the provision of the law of that State. The compensation commissioner of West Virginia adopted the position set forth by the Massachusetts court and made an award for life payment in such a case as for permanent total disability. The department of justice of Iowa ruled in favor of a middle course, holding that a workman having but one eye and losing that was entitled to more compensation than one with two good eyes, but not as much as though he had lost both eyes in the single accident.

The Supreme Court of New York, appellate division, had before it the question of the loss of the hand of a man who had suffered by a previous maiming, and it also followed the doctrine of the Massachusetts Supreme Court, making an award as for total disability, arguing that such a man was presumably paid on the basis of a reduced earning capacity, and to allow merely as for the loss of but one hand of an unmaimed man would be to place him at a double disadvantage, so that he would practically get but half as much for the second hand, which was of double importance, as for the first (*Schwab v. Emporium Forestry Co.*, 153 N. Y. Supp. 234). An amendment of 1915 limits awards to the consequences of the immediate injury, without regard to combined effects.

In 1916 a further amendment provided for payments in addition to the specific loss, such payments to be in compensation for the resultant total disability. The fund for this payment is to be sustained by payments in case of death where no beneficiary survives. A provision comparable to this was embodied in the first Kentucky statute, and was declared unconstitutional by the court of appeals of the State, which was of the opinion that the legislature did not have "the right to take what is due the estate of one man and give it to another" (*Kentucky State Journal Co. v. Workmen's Compensation Board*, 170 S. W. 1166). The New York Court of Appeals upheld the provision, however, saying that the creation and use of the fund do not differ in principle from those of the State fund, and are "within the letter and spirit of the constitution (*Industrial Commission v. Newman*, 118 N. E. 794). It was also held that the payment of \$100 to an undertaker was not payment to a "person entitled to compensation" so as to relieve from the contribution to the special fund. The fact that the deceased workman received benefits

for a time prior to his death is not a bar to the collection of this sum, since he himself is not "a person entitled to compensation" in a "case of injury causing death" (*Stempfler v. Rheinfrank & Co.*, 179 N. Y. Supp. 659).

The creation of a fund derived from employers where the deceased employee leaves no dependents, the money to be used merely as an administrative fund, was held by the Supreme Court of New Jersey to be beyond the power of the legislature, as it was a taxing law resting on no proper basis of classification (*Bryant v. Lindsay*, 110 Atl. 823).

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 entire 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 adjustment period had expired, subject to the statutory limitations (*Wills case*, 1918). This is in contrast with the decision in the *Purchase case*, decided by the Supreme Court of Michigan, where the loss of a defective eye was compensated for as for the loss of an eye (see p. 134).

A different cause for total disability from any heretofore noted was set up by the employer in a case before the Supreme Court of Kansas (*Ruth v. Witherspoon-Englar Co.*, 157 Pac. 403), where it appeared that the state of total disability was due not to the original injury as a proximate cause, but to the malpractice of the physician who treated the case. The court held that recovery under the compensation law could be had only for the consequences of the accident as such and not for the consequences of an intervening event, such as the failure of the physician to give the injured man proper treatment. A decision of the lower court in favor of the claimant was therefore reversed and a new trial ordered for a determination of the extent of the disability actually due to the original injury. Action was pending at the time to recover from the employer for the injuries due to the malpractice of the physician, who had been furnished by the employer in accordance with the requirements of the act.

Appropriate for consideration in this connection or in connection with the cases in which preexisting conditions due to disease were discussed are a few cases in which the injury affected aged employees. In answering the contention that the injury disabling the employee would not have had that effect but for his senility the in-

dustrial board of Illinois ruled that if the injured man was able to do the work for which he had been employed, his disability was chargeable to the accident and not to his physical condition, and compensation was allowed. The Supreme Court of Massachusetts took the same view, saying that the fact that a man's powers are failing and he would soon be unable to work on account of age was no bar to compensation if the present incapacity was the result of injuries (*Duprey v. Maryland Casualty Co.*, 106 N. E. 686). The court in this case also applied a principle already noted in ruling the incapacity total, though the man was able to do certain kinds of work which were not obtainable. A different view was taken by the Supreme Court of New Jersey in the case of a man 73 years old whose broken leg bones would not knit on account of his age and who had been awarded compensation as for total disability. This award the court reversed, allowing compensation only for the loss of a leg (*Bateman Mfg. Co. v. Smith*, 89 Atl. 979).

Noted here because the same principle is applied, though involving a death claim, is a case that was before the Supreme Court of Wisconsin (*City of Milwaukee v. Ritzow*, 149 N. W. 480). The law of Wisconsin provides for a scaling of permanent disability payments to aged persons, 5 per cent being deducted if over 55, 10 per cent if over 60, and 15 per cent if over 65 years of age. The deceased was 80 years of age, and the full death award was allowed in his case, the provision for scaling being held not to apply in case of death, since the law does not specifically provide therefor, though it was said that analogy would suggest it. It is of interest to note that the award in this case provided an income, based on the assumed earning capacity of the deceased, for a period of 320 weeks, i. e., in excess of six years, while according to the American experience table of mortality his life expectancy was but 4.4 years. In the New Jersey case above, also, the award for disability as originally made was for 400 weeks, which was in excess of the life expectancy of the workman in that case, though unless the award should be construed to be a vested right in the estate payments would of course terminate with the death of the injured man unless it was found due to the injury.

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, nor 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.

The determination of benefits payable to survivors of deceased employees was the subject of several cases arising under the New Jersey statute, which in its original form did not make a clear provision for the various classes of survivors. Thus in the case of a dependent mother where the deceased employee left no widow (*Blanz v. Erie R. R.*, 85 Atl. 1030), it was held by a judge of the common pleas that the failure to make a specific provision for a case of this kind left applicable only that section of the law which allows benefits in the amount of \$200 in cases in which there are no dependents surviving.

The mother appealed, and the supreme court took the view that the object of the law was clearly to award compensation to actual dependents, and while it made no specific stipulation for a mother alone, it contained no language expressly excluding her if there is no widow, provided, of course, that she is an actual dependent. It follows from the above that where dependence is actual and the law clearly contemplates compensation to actual dependents, specific statutory provision is not necessary. In another case before the same court (*Miller v. Public Service R. R. Co.*, 85 Atl. 1030) the question arose under the law of New Jersey as to the amount payable in a case where the decedent left a childless widow and a father, brothers, and a sister. As already noted, the widow was entitled under the law to a benefit of 25 per cent of her deceased husband's wages, while if there was also a dependent parent the compensation would be 50 per cent. The court below made an award of 50 per cent of the deceased workman's wages on the ground that besides a childless widow there was a father surviving. This ruling was held by the Supreme Court of New Jersey to be erroneous, the mere fact of relationship not being controlling, but a showing of actual dependence.

Another case before the Supreme Court of New Jersey (*Batista v. West Jersey & S. R. Co.*, 88 Atl. 954) resulted in reversing a judgment which awarded compensation to a widow who had been abandoned some years before her husband's death, the latter having lived unlawfully with another woman whom he had supported and who had borne him children.

The question of dependence was also involved in a case arising under the Wisconsin statute (*Northwestern Iron Co. v. Industrial Commission of Wisconsin*, 142 N. W. 271). In this case the beneficiary was a nonresident alien, widow of the deceased workman. The deceased workman had made two remittances to his wife during the time of his employment, at intervals of three months, having made the statement that if he did not send money every three months his wife could not make a living. On the facts the industrial commission ruled that the husband and wife were living together within the meaning of the statute, and that she was therefore an actual dependent entitled to the benefits provided by the law for such persons. The employing company appealed from this ruling and it was set aside by the circuit court as being in excess of the powers of a commission and contrary to the facts. The supreme court considered the language of the law which provides for a conclusive presumption of the dependence of a wife upon a husband with whom she is living at the time of his death. Speaking on this point, the court said:

Proof of total dependency is dispensed with under the statute where the husband and wife are "living together" at the time of the death of the injured employee. It seems, therefore, quite obvious that the legislature intended by the use of the words to include all cases where there is no legal or actual severance of the marital relation, though there may be physical separation of the parties by time and distance. The "living together" contemplated by the statute, we think, was intended to cover cases where no break in the marriage relation existed and therefore physical dwelling together is not necessary in order to bring the parties within the words "living together."

The judgment of the circuit court was therefore reversed and the award of the industrial commission directed affirmed.

The Minnesota statute presumes the dependency of the wife unless shown to be voluntarily living apart from her husband at the time of the injury. Separation for 12 years following an order to leave and threats of shooting was held not to imply a voluntary living apart, and the supreme court of the State affirmed an award in the widow's favor (*State ex rel. London, etc., Indemnity Co. v. Dist. Court*, 166 N. W. 772).

The Supreme Court of Massachusetts construed the law of that State in a case in which a wife was living apart from her husband for alleged justifiable cause, ruling that under the circumstances the question of dependence would be subject to proof and not con-

clusively presumed. It was said that such cause may not be sufficient to warrant divorce, but it must be continuing, and if not in existence at the time of the fatality it will not suffice even though once valid (In re Newman, 111 N. E. 359). An award was refused in the case of a nonresident wife to whom the deceased had sent \$161 in the course of eight years, there being insufficient evidence as to the wife's circumstances and means of support. It was said that there must be proof of actual dependence and a knowledge of the facts as to the separation of the parties before an award can be made (In re Fierro, 111 N. E. 957). That the intent of the parties will be considered was ruled by the accident board of this State in a case where a wife and children had been left in Syria, but with the definite purpose in mind of a future reunion of the family, an award for the wife's total dependency being made. That such intention must be definite would be concluded from the decision of the Supreme Court of Michigan in a case (*Finn v. Detroit, etc., Ry.*, 155 N. W. 721) in which a wife had left her husband following some friction and resumed teaching, contemplating a reunion as possible some time in the future, the court holding that such indefinite prospect did not bring the case within the act.

In the foregoing case, of course, the wife was earning, but that this of itself would not be a bar to a claim was the ruling of the industrial commissioner of Iowa in applying the law of that State to the case of a claimant widow who was herself a wage earner. It is pointed out that there must be a legal marriage and not a willful desertion without fault of the husband, and that under the provisions of the act of the State it is immaterial that she herself earns and was helping to support herself at the time of the injury.

The Ohio commission awarded benefits in the case of a wife and child deserted and left without support for several months through no fault of her own; in the case of a bigamous wife, ignorant of the fact of the first marriage of the deceased (lawful wife deserted for 18 years ruled not a dependent and was not a claimant); and in the case of a common-law wife and child with whom the deceased had lived and whom he supported. The West Virginia commissioner struck a middle course in the case of a man who had deserted his legal wife and had lived with another woman for 14 years, denying compensation both to the deserted wife and to the common-law wife making claim, but allowing compensation for the benefit of the three young children of the latter. In another case the same law was considered to warrant compensation to the children of the deceased, the widow's claim being denied, where she had deserted her husband two months prior to his death, taking her children with her, and going to live with another man, who supported the family.

Where the commissioner denied compensation to a nonresident widow on the ground that dependency had not been proved, the supreme court of the State reversed him on the widow's testimony that while able to aid herself in part, she was in greater part dependent on her husband for support (*Poccardi v. Ott*, 96 S. E. 790, Schipani case). Total dependency is not essential to support a claim, the law providing for those dependent "in whole or in part." It was said in another case (*Poccardi v. Commissioner*, 91 S. E. 663, Cucca case) that it was not a question of being able by skimping to provide the bare necessities of life, but of reasonable support and maintenance, taking into consideration the class and position of the claimant, citing *Dazy v. Apponaug Co.*, 36 R. I. 81, 89 Atl. 160. It was decided in the Cucca case that the mere sending of occasional contributions to the father and mother did not prove dependence upon the son.

The Massachusetts law declares a presumption in favor of the dependence of the widow of a deceased workman and of "a child or children under the age of 18 years * * * upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving dependent parent. Under this provision of the act it was held that a divided award to a widow and to a child under 18 years of age residing with her was not in accordance with the terms of the law, since the child would be a beneficiary only in case there was no surviving dependent parent, the widow in the present instance being entitled to the entire amount of the benefits (*In re Employer's Liability Assurance Corporation*, 102 N. E. 697).

Another case under the law of Massachusetts (*Coakley v. Coakley*, 102 N. E. 930) involved the correlative rights of a dependent daughter of a deceased workman and his widow and children by a second marriage. It was held by the supreme court of the State that the daughter was entirely orphaned and a dependent to share equally with the widow, even though the latter had also dependent children of the deceased dependent on her, the widow and the orphaned daughter representing a case in which "there is more than one person wholly dependent," between whom the law provides that the death benefit should be equally divided.

The Illinois law of 1913 allowed benefits to certain relatives to whose support the deceased had contributed within the four years preceding the injury. This was held to cover the case of an adult daughter who had been self-supporting, but whose father had aided her during illness and an operation, and she had subsequently lived with him for at least a part of the time (*Mechanics' Furniture Co. v. Industrial Board*, 117 N. E. 986). Awards were also sustained where the deceased father had regularly contributed to the assistance of two married daughters and their families, though they were not dependent upon their father (*Peabody Coal Co. v. Industrial Board*,

117 N. E. 983). The law was amended in 1917 so as to require actual dependence or a legal obligation to support.

The dependence of children is usually restricted by a provision of the law fixing an age limit, though physical or mental incapacity frequently waives this limitation. The Massachusetts board had before it a case in which the father and mother lived separately, and an 18-year old daughter was unable to work. The mother made a statement that she was not dependent, while the daughter had made a claim on the ground of her total dependence, she having been previously supported by the father, and having no other income. An award was made exclusively for the daughter's benefit on the ground that she was wholly dependent. In a case before the supreme court of this State (In re Herrick, 104 N. E. 432), an adult daughter capable of self-support but living with and caring for her father, both being supported by his earnings, was held a dependent.

An anomalous result follows from the wording of the Colorado law, which stops the payment of awards to children on their reaching the age of 18, unless mentally or physically incapacitated, but makes no such restriction in the case of other minor beneficiaries. An award to a minor sister of the deceased was held therefore not to terminate on her reaching 18, as she was not a "child" of his, though when the beneficiary is the offspring of decedent, the limit would be effective (*Hasselman v. Travelers' Ins. Co.*, 185 Pac. 343). Such a contradiction is safeguarded in the Kansas statute, for instance, by making the 18-year limitation effective in all cases of "minor dependents."

The industrial accident board of Massachusetts denied compensation to an illegitimate child, not living with the deceased but actually supported by him (Olson case, 1920). It was noted illegitimate children had been allowed compensation under similar laws, but on the ground that they were members of the employee's family, and the employee in this case was not the head of any family.

An insane woman supported entirely by the State for several years was held not entitled to be considered as a beneficiary under the Michigan law (*Roberts v. Whaley*, 158 N. W. 209), but the attorney general of Minnesota held that a man confined in jail was nevertheless entitled to compensation, and the department of labor of the same State awarded compensation to a child in confinement in a reformatory institution.

The question of dependence of parents on their children involves no particular principle peculiar to compensation laws, but a few rulings have been noted. In a case before the Supreme Court of New Jersey (*Reardon v. P. & R. R. Co.*, 88 Atl. 970), the employer contested an award under the law of the State for the death of an unmarried workman. The court held, however, that since the father had been dependent on his son's earnings an award in his behalf was

valid. A compensation commissioner of Connecticut awarded benefits to a nonresident alien mother in a case in which the son had been in the habit, while in France, of giving his earnings to his parents, and while in this country had given the money to his father for the support of the family. The industrial accident board of Massachusetts made an award on the claim of the mother where it was shown that the son had contributed to the support of herself and a large family, making contributions in an amount which was found to be more than double the actual cost of the board received by him. Where the father and son worked together, both losing their lives in the same accident, and the son's earnings had gone largely to the family support, the mother was held to be a partial dependent of the son. It was also held that the young man's sister, though 19 years of age and competent to make her own living, was in fact supported by the family and was dependent so as to justify an award in her behalf on account of her brother's death. So, also, under the law of New Jersey an award was made on behalf of a sister who received substantial benefits from her adult brother's earnings, which he had turned over to the father, the question being one of dependence as a fact, and not of minority or incapacity to work (*Connors v. Electric Co.*, 97 Atl. 792). Of course such a ruling depends on the terms of the act.

The Supreme Court of Massachusetts made an award as for entire dependency—i. e., based on the full wages of a minor son, where all his earnings had been turned into the family fund, the father and other children also working (*In re Murphy*, 105 N. E. 635). In another case (*Grove v. Royal Indemnity Co.*, 111 N. E. 702) this court affirmed an award of the State board where a young man had turned over part of his wages to his mother, receiving his board as a member of the family, the father also working. The mother was declared to be a dependent upon the son to the full amount of the wages turned over to her, without deducting therefrom the value of the board received by him, the benefits under the compensation law differing from the judgments allowed under Lord Campbell's act, in that it is not on the amount of injury done to the dependent, but on the amount of the decedent's wages that awards are to be based.

In a third case (*In re Murphy*, 113 N. E. 283), the deceased workman had lived with a dependent mother, who was an invalid, whose sole support he was. A sister was the housekeeper for the family, there being other members who were, however, self-supporting. Before the final determination of the mother's claim she died and an administrator intervened and secured an award in behalf of the next of kin of the deceased mother. The superior court affirmed this award, but it was reversed by the supreme court on the ground

that the mother was the sole next of kin dependent on the deceased workman under the act, the family being not his but his mother's and the determination as to dependence being made necessarily at the time of the injury. In a quite similar case an unmarried son assumed the care of his aged parents and invited his sister to become the housekeeper of the family, not on a wage basis, but with a promise of support. It was held that the sister was a dependent on the brother, but since she had some property of her own the dependence was said to be partial only, and consideration was not to be given to any sum that she might inherit from her brother (*Kennedy v. Boston*, 111 N. E. 47).

Somewhat in contrast with the ruling in the *Murphy* case above is the decision of the Supreme Court of Rhode Island in a case (*Dazy v. Apponaug Co.* (36 R. I. 81; 89 Atl. 160), in which it appeared that there was no actual dependence on a minor son who had turned in his wages to his father, the facts being that without them the father was able to support his family and put by savings. The only allowance made therefore was for last sickness and funeral expenses. A lower court of Minnesota, on the other hand, declared the partial dependency of a mother on her son where she was earning \$60 per month, and he had given her \$97.50 monthly (*Hayden v. Great Northern Power Co.*).

The position taken by the commission of Ohio, in a case where a son contributed \$7 or \$8 per week to the family fund and lived as a member of the family, the father earning \$12.50 per week, was the same as that taken by the Massachusetts commission above, holding that the mother was entitled to an award as a partial dependent.

Where the deceased made no contributions and was under no legal obligation to do so in the absence of court proceedings, the Supreme Court of Michigan held that the mother was not a dependent (*Pinel v. Rapid Ry. System*, 150 N. W. 897).

In the case of *Boyd v. Pratt* (130 Pac. 371) the construction of the Washington statute as to the duration of benefit payments where the deceased employee was a minor, on whose earnings his mother was dependent, was the question before the court. The deceased was 19 years of age, and on the occurrence of his death by accident an order was made providing for payments to his dependent mother until such time as he would have arrived at the age of 21 years. From this order of the industrial insurance department an appeal was taken to the court, where the order of the department was reversed and a new order entered allowing monthly payments as long as dependency should continue. The statute in question provides that dependents shall receive during dependency 50 per cent of the average monthly support received during the preceding 12 months, but not in excess of \$20 per month. It also provides that in the

case of the death of unmarried minors their parents shall receive \$20 per month for each month after the death until the time at which the deceased would have arrived at the age of 21 years. The Supreme Court of Washington construed the latter clause as being based on the parents' right to the earnings of a minor and not involving the question of dependence. Where, however, there was actual dependence, as in the case in hand, the question of minority was not controlling, and the case would come under the general provision relating to dependence. The judgment of the lower court was therefore affirmed.

Going beyond the narrower bounds of relationship was a ruling of the industrial commission of Ohio to the effect that an invalid father and the stepmother and half brothers and sisters were wholly dependent on the earnings of a 19-year old son of the father by a prior marriage. So also in a case passed upon by the Wisconsin commission, where the employee had been reared by the claimants, but was not their child nor had she been legally adopted. She had, however, regularly turned over a part of her weekly wages for their support, and they were held to be proportionately dependent. An award was made accordingly.

The attorney general of Minnesota ruled on a case in which a child by the first marriage of the deceased had not lived with the family for the past five years though she had not been adopted by others and might be returned any time. The fact of separate residence was held not to bar her dependence under the act, since it was only necessary that she be unmarried and under 18, or incapable of self-support over that age. The child was but 10 years old and compensation was directed in her behalf. Quite similar to the Herrick case above was a decision by the Supreme Court of Minnesota (*State v. District Court of Ramsey County*, 158 N. W. 798), applying the law of Minnesota as amended by chapter 209, acts of 1915. In this case a widowed daughter was held to be partially dependent on her father where she lived with him and derived part of her support from him, the law providing for such an award without regard to age or inability to earn.

The law of Pennsylvania provides for payments to the widow or dependent widower alone, with additional sums where there is one child, where two children, etc., the phraseology suggesting payments to the head of the family only, if there be one. It was held by a court of common pleas (*Irvin v. William M. Frost & Co.*) that children are entitled to compensation in their own right no less when there is a parent surviving than where there is none. In the case in hand a posthumous child was held entitled to the award made in its behalf by the State board.

BASIS OF AWARDS.

In practically every law compensation awards are based on the amount of wages received. What shall be considered as the proper wages or earnings comes up for decision in several cases for which reports are available. In a California case passed upon by the State commission the amount of tips or gratuities additional to the salary was held not to be a part of the earnings on which compensation could be based, the ground being taken that if that were allowed there would be room for fraudulent claims. On the other hand, the industrial accident board of Texas took as the basis of an award for a porter in a hotel the amount of his income from tips, he being entirely dependent upon this source of revenue. This accords also with the decision of the industrial accident board of Massachusetts, where tips to a waiter formed a part of his income, allowance being made therefor as included in his regular earnings.

The Pennsylvania compensation board ruled 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.

Another case before the California commission was that of a 7-day employee, as to whom it was ruled that the general computation of a 6-day week would not apply, and the commission fixed upon 332 days as the average for a year's work as against 300 days allowed for the 6-day worker.

The converse of the foregoing was passed upon by the New York Court of Appeals, where a bricklayer had been given an award based on 300 working days per year. This was reversed on a showing that the average employment in the trade was 30 weeks annually, and an award directed, based on the "actual annual earning capacity" (*Littler v. Geo. A. Fuller Co.*, 119 N. E. 554).

Where the occupation in which the man is engaged at the time of his injury differs from his usual occupation it was held by the commissions of California and Connecticut that the award must be based on the amount of the earnings in the occupation in which the man was engaged at the time of the injury. In the California case a lineman earning \$4.50 per day was injured while in camp with the National Guard, where he received 70 cents per day and board. Compensation was awarded, not on the basis of his earnings as a lineman, but the minimum rate fixed by law was allowed, his employment being considered at the time as in the National Guard. Somewhat similar was the question decided by the Supreme Court of Wisconsin, involving the case of a citizen killed while obeying a summons to aid an official in making an arrest. Compensation was awarded not on the basis of his occupational earnings but on the

customary pay for police services in the locality (*Village of West Salem v. The Industrial Commission*, 155 N. W. 929).

On the other hand, it was held by the industrial board of Massachusetts that where a man's average wages were greater than those ordinarily paid for work of the kind on which he was temporarily employed at the time of his injury, the award should be based on such average, the evidence being to the effect that the injured man was competent to earn the higher rate of pay in work for the same employer.

Where an employee is rendering part-time services for one employer, with the privilege of serving other employers, the basis of a compensation award will be the average weekly earnings which he receives from all sources, and not merely the amount received from the employer in whose service he is at the time of the injury (*Maryland Industrial Accident Commission*).

The same principle was involved in a California case (*Western Metal Supply Co. v. Pillsbury*, 156 Pac. 491), where a night watchman employed by several parties independently was killed by a burglar on the premises of one, and his beneficiaries were held to be entitled to an award based on his entire earnings but payable by the person on whose premises he was at the time of the fatal injury. This differs in no respect from the question which was considered by the Supreme Judicial Court of Massachusetts in a case (*Gillen v. Ocean Accident & Guarantee Corporation*, 102 N. E. 346), in which the claimant was a longshoreman employed by a company which was insured with the insurance corporation named. His employment being irregular, the question arose as to the amount of compensation payable under the Massachusetts law, the basis provided by the statute being the average weekly wages, for the determination of which various methods are indicated. Owing to the circumstances of the company's business, Gillen while working for it received not more than \$8 weekly, while with employments at other jobs his average earnings were \$13 per week, which was the average weekly wage earned by other longshoremen in the same class of employment and in the same district. Benefits payable being 50 per cent of the average wages, the insurance company contended that they were liable only to the amount of \$4 per week, while the plaintiff Gillen claimed \$6.50 per week as being one-half his average weekly earnings as longshoreman from all sources. The latter view was the one adopted by the lower court and sustained by the supreme judicial court, this court holding that the law does not restrict consideration of what constitutes weekly wages to a single employer, but takes into consideration the custom of the employment and has regard for all the wages which the employee received. It was held that this was a case where the condition of the workman is one of continuous labor

in regular employment with different employers. "The loss of his capacity to earn, as demonstrated by his conduct in such regular employment, is the basis upon which his compensation should be based."

While this decision apparently works for liberality toward the injured man, the opposite situation certainly works for hardship; and this is the practical result of the findings in a case where a printer was regularly employed for a 5½-day week at \$28 per week. He worked Saturday nights for another employer at \$9.20 per night and while so employed was fatally injured. Instead of finding that the basis for awards was the total weekly wage, or even the regular weekly wage, the Supreme Court of Massachusetts ruled that the basis must be the wages earned in the employment where the injury happens (King's case, 125 N. E. 153). This was distinguished from Gillen's case, above, on the ground of the difference in the nature of the employment, which brought the cases under different provisions of the law. This rule was also applied to a shipyard worker, killed while in an outside employment. He had been engaged by the owner of a building to wax the floor, for which he was to receive a dollar every two weeks. His widow was awarded the minimum benefit of \$4 per week, the court ruling that his average wage was 50 cents per week, his main employment not coming into consideration (Marvin's case, 125 N. E. 154).

Where a workman suffers an injury while receiving compensation for partial disability incurred in a previous employment, and is injured a second time, resulting in total disability, the Supreme Court of Michigan ruled that the combined awards could not exceed the statutory maximum of \$10 per week, this rule applying whether there was one employer or several (*O'Brien v. A. A. Albrecht Co.*, 172 N. W. 601).

The inclusion of overtime earnings was passed upon by the commissioner of labor of Minnesota and the industrial commission of Ohio, both holding that such earnings should be considered as a part of the total income on which awards should be based; so also, of the inclusion of the value of board and room, as decided by the commissioner of labor of Minnesota.

There is a wide divergence of opinions expressed on the subject of the anticipation of an increase in earnings of minors, the Supreme Court of New York, appellate division, stating that the law of that State provided for such anticipation, and where a boy of 16 was then earning \$5.50 per week, it was estimated that in two years he would be earning \$12 per week, and in five years from \$12 to \$18, and an award made on this basis was affirmed (*Kilberg v. Vitch*, 156 N. Y. Supp. 971); on the other hand, the industrial accident board of Vermont ruled that where a learner was injured the award

should be based on his earning capacity at the time, without taking into consideration what he would earn with the increased pay that continuance in his trade would bring.

The Massachusetts Supreme Court ruled that where a man's wage loss for partial disability has been increased on account of business depression, the award should be based on the earnings that would have been possible for the injured man if business had continued as at the time of the injury, and not on the wages he was actually able to earn (In re Durney, 111 N. E. 166), the proper test being the physical condition of the injured man and not the prevalent industrial conditions.

The computation of earnings for seasonal employments is regulated by the law of Pennsylvania by a provision that in such employments the total earnings of the previous year, omitting overtime pay, shall be divided by 50 to determine a week's average earnings; while for regular employments the determination is arrived at by multiplying the average daily earnings by $5\frac{1}{2}$. A mining company gave notice of its intention to pay compensation on the basis of a seasonal occupation, which would effect quite a reduction in the amounts payable; the compensation board of the State ruled against the proposition, however, and declared the employment continuous within the meaning of the act.

The Supreme Court of Iowa in passing on the question of the wage basis in a case involving the earnings of miners, from whose gross earnings deductions are made to pay the cost of powder and of blacksmithing, held that these charges were not to be considered in deciding the amount of weekly earnings as a basis for determining the amount of compensation, but that the award should be made on the amount earned without such deductions (*Richards v. Central Iowa Fuel Co.*, 159 N. W. 696).

SETTLEMENTS.

Various points are involved in the question of settlements and vested rights, and also in the powers of the parties under the act to conclude agreements. Under the last head may be noted the ruling of the industrial commission of Ohio in a case in which a widow made formal claim for compensation, and subsequently undertook to withdraw the claim, alleging that the insurance company had paid her the sum of \$2,000 in full settlement. The commission insisted on evidence in the case, and a ruling was made that proceedings brought under the act can not be settled without the consent and approval of the commission. The award finally made was for a sum practically double the amount of the original settlement by the company.

The workmen's compensation board of Pennsylvania passed upon 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).

The Ohio commission considered the status of a claim in which an award was made, but at the time of the award the claimant had disappeared without giving information as to his whereabouts. He had undertaken, however, to assign the anticipated award as payment for a board bill; and though the assignment was made in writing for this specific purpose, it was held that it was invalid, since compensation must be paid to the employee only.

Another case involving restricted application of compensation settlements was passed upon by the California commission, in which the employer sought to secure an order deducting a certain indebtedness from the employee to himself from the award of the commission; this the commission denied as being outside its powers.

The effect of a settlement under the Massachusetts statute where the injured person was a minor was considered by the supreme court of that State, the decision being reached that such settlement did not bar the right of a parent to sue under the common law for the loss of the minor's services (*King v. Viscoloid Co.*, 106 N. E. 988).

Whether or not compensation rights are vested so as to survive death or a change of status of the beneficiary is a question that has received conflicting answers from the authorities passing upon it. Thus the Massachusetts board ruled that where an award for a specified time was payable to a widow and her death occurred within the period fixed, the estate had a vested interest, so that the remaining payments should be made to the administrator; and the remarriage of a widow was held by the supreme court of the State not to terminate payments under an award, dependence having been determined as a status at the time of the injury, even though actually relieved by the remarriage (*Bott's case*, 119 N. E. 755). The Supreme Court of Rhode Island ruled similarly (*Newton v. Rhode Island Co.*, 105 Atl. 363).

However, where a mother was the sole dependent at the time of her son's death an award in her behalf, made by a committee of arbitration, could not be transferred by the board to her heirs in event of her death during the proceedings (*In re Murphy*, 113

N. E. 283). It was said that the law of Massachusetts differed from that of Ohio, under which an award to a sole dependent, once made, was held to be a vested right and payable without regard to the subsequent death or other change of status of the beneficiary (see *State ex rel. Munding v. Industrial Commission*, 111 N. E. 299).

A ruling of the Ohio commission also confirmed the right of a widow, whose husband had died before an award was made for an industrial injury, and from another cause than the injury, to receive such disability payments as the injured man might have received if an award had been agreed upon before his death; and it would seem that equity would warrant a readjustment of benefits in cases where a recipient died or from any cause ceased to be eligible for further payments. Lump-sum payments once made have obviously passed beyond the control of the payer, and to cut off continuing payments, as was done in the *Murphy* case above, places a premium on the lump-sum method of settlement, from the point of view of the recipient. But this is not without its exceptions, as appears from a ruling by the Supreme Court of Massachusetts that such a settlement with full release is binding, even though unanticipated blindness subsequently developed from the injury (*In re McCarthy*, 115 N. E. 764).

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 within the term indicated. It was held (*Erie R. Co. v. Callaway*, 102 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.

A unique decision comes from a trial court in Pennsylvania, holding that the employer is entitled to some protection where the widow has secured a commutation to a lump sum and remarries after receipt of the same. It is admitted that the law does not cover the point, but relief is said to be a matter of right.

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. However, the Court of Civil Appeals of Texas ruled against the claim of a widow when she attempted to recover the unpaid portion of an award to her husband on account of injuries, his death occurring from other causes, while he was in receipt of benefits (*United States Fidelity & Guaranty v. Salsar*, 224 S. W., 557).

Under the law of Washington an injured man dying without heirs after an award has been made but not paid leaves nothing to his administrator (*Ray v. Industrial Insurance Commission*, 168 Pac. 1121).

In a number of States provision is made for the cessation of payments, either at once or with a commutation for a fixed period, in case of the remarriage of a widow receiving benefits, while in others the matter is left open. Under the Ohio law the industrial commission ruled that benefits are a vested right after an award, and a widow remarrying is entitled to their payment according to the original award, citing the *Munding* case above. The New Jersey Court of Common Pleas, on the other hand, held that as the law is for the benefit of dependents, payments would cease on the remarriage of a widow, as it would be presumed that she was no longer a dependent, and it was not fair to burden industry for the benefit of such persons. When the question came to the supreme court of the State it ruled that payments should continue as a vested right, having been awarded for the period of 300 weeks without limitation (*Hansen v. Brann & Stewart Co.*, N. J. L. 444, 103 Atl. 696). The fact that the law had in the meantime been amended so as to establish a different rule was held not to affect prior awards. A like position was taken on the question by the Supreme Court of Illinois (*Wangler B. & S. Metal Works Co. v. Industrial Commission*, 122 N. E. 366), though in this case there had been no change in the law.

Under the law of Maryland, benefits to a widow cease on her remarriage, other beneficiaries receiving benefits for eight years. Under this provision, the accident commission of the State held that the award to a sister became a vested right on its being made, so that her marriage would not terminate it, a ruling which shows an obvious inconsistency of legislation. The trial court to which the case was taken ruled against the continuance of payments, but the court of appeals of the State found nothing in the law that would warrant such action and the right was held to survive (*Adleman v. Ocean Ac. & G. Corp.*, 101 Atl. 529).

The mutual exclusiveness of classes of awards was passed upon by a compensation commissioner of Connecticut in a case in which

the disabled workman received compensation during the period of his incapacity, and on his subsequent death the claim was made that this amount should be deducted from the compensation awarded the widow; this contention the commissioner rejected, saying that the rights of the widow are separate and distinct from the rights of the deceased, and the two forms of compensation should be kept separate. This was the position taken by the Supreme Court of Massachusetts in a like case (*In re Nichols*, 104 N. E. 566). So also of a release by an injured man who subsequently died of the injury, the Supreme Court of Wisconsin holding that this was no bar to the widow's claim, which was an independent right, not in being during her husband's lifetime, and not capable of being affected by his acts, and her claim was allowed accordingly (*Milwaukee Coke & Gas Co. v. Industrial Commission*, 151 N. W. 245).

The law of Oklahoma applies to nonfatal injuries only, and where an injured man had received an award and subsequently died as a result of his injuries, it was held that payments under the award terminated at his death, and any rights that his heirs or dependents might have must be determined by suit under the laws governing recovery on account of death (*Lahoma Oil Co. v. Industrial Commission*, 175 Pac. 836).

The law of Michigan is construed by a recent decision of the supreme court of the State (*Foley v. Detroit United Ry.*, 157 N. W. 45), in which it was held that an approval by the State board of an agreement between employer and employee covering the period of total incapacity was no bar to a reopening of the case to determine what was a proper award for permanent partial incapacity, and the release given by the injured man as a full discharge against the employer, at the end of total disability payments, not having been approved by the board, was no bar to the claim. Likewise the Supreme Court of Minnesota refused to recognize a release procured by an insurance company, without consideration, and without the approval of the district court (*Clarkson v. N. W. Consol. Milling Co.*, 175 N. W. 997). An award for temporary disability had been made in due order in this case, and payments made, but disability recurred, and the unapproved release was set up as a bar to further claim, but was rejected by the court.

The industrial accident board of Michigan ruled that the employer had no power to regulate the contract for burial expenses under the provision of the law of that State, which limits such expenses to \$200 in cases in which the injured man left no dependents, the board pointing out that he could not be required to pay more than \$200, but had no right to undertake the control of matters that properly belonged to the next of kin or the relatives or friends.

A very common provision of the laws arranges for the commutation of payments to a lump sum. Under the Massachusetts statute it was held that this matter rested with the parties affected, and in the absence of a submitted agreement the court had no power to act, though it might approve or reject any proposition made by the parties. A case involving this question was before the Supreme Court of Kansas (*McCracken v. Missouri Valley Bridge & Iron Co.*, 150 Pac. 832). There had been an award for death, and the court took the view that the insurer was seeking to prevent commutation and continue periodical payments with the hope that the death of the beneficiary would end the obligation before it was completely discharged. It was said that the insurer was not entitled to raise such an objection, ruling that the mode of payment is in the discretion of the trial court under the law of that State. The Supreme Court of Michigan likewise ruled that lump-sum awards may be ordered without the employer's consent if the board decides that circumstances warrant (*McMullen v. Gavette Const. Co.*, 175 N. W. 120).

An award of a lump sum by the industrial board of Illinois was overthrown by the supreme court of the State where it was not shown that it would be for the best interests of the parties, the request being supported only by a statement by the claimant's attorneys (*Goelitz Co. v. Industrial Board*, 115 N. E. 855).

The Texas statute authorizes lump-sum settlements in cases of death or of total permanent disability, and the accident board of the States rules that such settlements for temporary or partial disabilities are null as outside the scope of the act.

The compensation commission of Pennsylvania took the view that lump-sum payments should not be favored, refusing its sanction in a case where a widow with children had secured the consent of her former husband's employer to pay in a lump the amount of \$6,015 in settlement of an award, which sum she wished to invest. Installment payments as provided by the law were ordered, since "it is well to protect her against herself and an uncertain investment."

The status of an award in case of bankruptcy was decided by a Federal court (*Wood v. Camden Works*, 221 Fed. 1010), in a ruling to the effect that compensation payments were a charge against the operation of the business, to be paid the same as wages.

Insurance carried by an employer without cost to the workman, payable only in the absence of a recovery of compensation or damages, was held by the Supreme Court of Nebraska to be deductible from the amount of compensation awarded when it had been paid before the right to benefits had been determined (*Am. Smelting & Refining Co. v. Cassil*, 175 N. W. 102).

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.

The refusal of an employee 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*, 280 Ill. 148, 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.

The constitutionality of the provision requiring submission to medical examinations was upheld by the Texas Court of Civil Appeals (*Texas Employers' Ins. Assn. v. Downing*, 218 S. W. 112), citing a decision of the Supreme Court of the United States sustaining the validity of an act of the New Jersey Legislature (1896) authorizing such examinations in cases of suits for damages (*Camden & Suburban R. Co. v. Stetson*, 177 U. S. 172, 20 Sup. Ct. 617). No inherent right to order such examinations exists under the common law, however (*Union Pac. Ry. v. Botsford*, 141 U. S. 250, 11 Sup. Ct. 1000).

Where the employee refuses to accept or act on the advice of the physician the question of actual or estimated consequences comes up for consideration. Thus where the neglect of a fracture led to infection and amputation the commission of California reckoned that recovery would have taken place in five weeks with proper

care and allowed compensation only for a temporary total disability for that period and nothing for the loss of the limb. The ruling in another case was that the commission may bar absolutely all claims for compensation for the remaining disability if a probably advantageous operation of comparatively inconsiderable risk is refused; while in a third case payments were suspended until the injured man should consent to undergo a minor operation which medical testimony indicated to be necessary to a recovery of the use of the injured member.

Such, also, was the position of a commissioner of Connecticut in a case where an operation was indicated for the recovery of the use of a fractured limb; but where the testimony was only as to a possible benefit and the injured man declined, it was held that he would not be penalized for the refusal. So also in a case that was before the Supreme Court of Massachusetts, an operation was not required where the evidence of prospective benefit was said to be too slight to warrant an insistence thereon (*Floccher v. Fidelity & Deposit Co.*, 108 N. E. 1032). Serious danger attendant on the operation was held to be ground for a refusal to undergo it, especially as the result might not be of curative effect in the case in hand (accident board of Massachusetts); though in a case where there was no such risk the man was required to decide within a period of six days what course he would pursue, at the end of which time, if refusal persisted, compensation would be suspended during its continuance. The industrial commission of Oklahoma also ruled that refusal to observe instructions, leading to the prolongation of disability, did not afford a basis for the extension of the compensation period; and in a case before the industrial commission of Wisconsin the refusal of an injured man to accept the advice of both his employer's and his own physician, causing, as was alleged, a prolongation of the term of incapacity, was held to warrant the rejection of his claim for such excess of time.

The attitude of the Supreme Court of New Jersey differed from the foregoing (*Feldman v. Braunstein*, 87 N. J. L. 20, 93 Atl. 679). An injury to the eye was found to be permanent, causing a 90 per cent disability, unless an operation was performed, when the injury would be only temporary. The court ruled that the proper award would be the schedule rating of 100 weeks' benefits, as for the loss of an eye; but if a successful operation was had within the 100 weeks a modification of the decree might be secured, reducing the period of compensation. Likewise, when a claimant declined to submit to an operation for hernia, it was held that he should not be deprived of his award, where it was in evidence that, of 230,000 operations, 48 had been unsuccessful or resulted in death. It was held that the injured man was not required to take even this slight

risk of an operation classed as major, and that the award should be for permanent disability, with leave to modify in case of a successful operation, and not for six months and then to terminate unless there was an operation that proved unsuccessful (*McNally v. Hudson, etc., R. Co.*, 87 N. J. L. 455, 95 Atl. 122).

The effect of deferring consent to a serious surgical operation was before the Supreme Court of Michigan in *Jendrus v. Detroit Steel Products Co.* (144 N. W. 563), the physician employed in the case having urged an immediate operation as offering the only opportunity for saving the injured man's life. Assent was refused, but given the next day. The injury was to the intestines, and peritonitis had set in at the time the advice to operate was first given. Vomiting followed, becoming fecal in its nature. Pneumonia next developed, caused, as claimed by all the surgeons who testified, by the entrance into the lungs of this fecal matter. The operation was apparently followed by a measure of favorable results, but death ensued in a few days, chiefly due to the pneumonia. Under these circumstances the employer contended that the action of the injured man in delaying the operation was so unreasonable and persistent as to defeat the claim to compensation made by his widow. In affirming an award of the arbitration committee, approved by the industrial accident board, the court took into consideration the fact that the injured man was a foreigner, little able to understand what was being said, in great pain, and unacquainted with his surroundings, and decided that it could not be held, as a matter of law, either that the conduct of Jendrus was so unreasonable and persistent as to defeat the claim for compensation by his widow, or that in his delay in assenting to the operation he was guilty of intentional and willful misconduct. When, however, a simple operation (loosening the tissue on an injured leg), involving little danger or suffering, is reasonably likely to relieve or terminate the disability, refusal to submit thereto will warrant a suspension of compensation payments (*Kricinovitch v. American Car & Foundry Co.*, 192 Mich. 387, 159 N. W. 302); and this doctrine was carried so far as to withhold benefits unless an operation for hernia be resorted to, requiring the use of a general or local anesthetic, where the physicians representing both parties agreed that an operation was advisable (*O'Brien v. A. A. Albrecht Co.*, 172 N. W. 601).

The Supreme Court of Wisconsin makes a lucid statement of the principles involved in its discussion of a case in which it was found by the State commission on the testimony of three physicians and surgeons that disability subsequent to a date fixed "resulted directly from the injured man's willful refusal to submit himself to safe and simple medical treatment," and rejected his application for permanent disability benefits. The court sustained this view, saying that

“where the disability is so related to the accident that it is the natural consequence thereof, then compensation should be awarded”; but holding further when there is an unreasonable refusal to accept a safe and simple operation, fairly certain to remove the difficulty, subsequent disability “is not proximately caused by the accident, but is the direct result of such unreasonable refusal.” The duty of society to carry the burden of a man in such a case was emphatically denied, the court saying that to prolong or probably even increase his disability by such refusal, “and thereby cast the burden of his wrongful act upon society in general, is not only repugnant to all principles of law, but is abhorrent to that sense of justice common to all mankind” (*Lesh v. Illinois Steel Co.*, 157 N. W. 539). It was pointed out that no question of compelling the man to submit to an operation was involved, but only his status as a claimant under the law.

The appellate court of Indiana refused to bar a claim for a serious disability resulting from the claimant's insistence that a finger be not amputated until further efforts to save it, with the result of a spread of infection and an increased disability, such insistence being declared not unreasonable or willful misconduct (*Enterprise Fence & Foundry Co. v. Majors*, 121 N. E. 6).

What constitutes a sufficient compliance with the law requiring medical treatment to be furnished was considered by the California commission in a ruling that set forth that (1) the physician most quickly obtainable should be summoned; (2) the employer should furnish instruction as to further treatment; (3) if insured, the insurer should furnish the employer with definite instructions to be followed in case of accident. It was also said that the commission will not favor the policy of procuring the cheapest physician. A request by the employee is not required, as the duty of an active compliance with the law rests upon the employer; if he has knowledge of an injury and a reasonable opportunity to furnish the needed service, that is sufficient to charge him with the reasonable expense of any service obtained by the employee in default of the employer's action. Where, however, the employee has secured emergency treatment, and the employer afterwards offers the services of his physician, they must be accepted, as a general proposition, and subsequent services rendered by the employee's physician will be at his risk and cost; but if there has been a capital operation, the physician originally taking charge will not be dismissed unless shown to be wholly unfit to continue the treatment.

In a case in which there was a wrong diagnosis of an injury, this commission ruled that the mistaken advice of the employer's physician could not be used to deprive the injured man of his rights, but was rather an injury to the employer himself. However, where the wrong diagnosis was not corrected until after the expiration of the

90 days during which medical aid was to be furnished, it was held too late to require such treatment, though disability payments must be made; but if the employer tender the necessary treatment, the employee must accept it or forfeit such payments. Where a man suffered from a hernia and chose to take a truss, not desiring an operation at the time for family reasons, he asked to have an award in order to hold the case open for future review. This the commission declined to do, as there had not been a disability of 14 days' duration. It ruled, however, that as hernia was a permanent disability, an award would be considered on that basis unless an operation was tendered, together with temporary disability payments for the time required for recovery therefrom, saying that a cure offers the best service to the community, and accords with the purpose of the law. The discontinuance of medical service was held not to be warranted by the disobedience of hospital rules by an injured man who absented himself without permission and drank several glasses of beer during his absence.

An opinion by the Supreme Court of Massachusetts declares that the mere posting of lists of physicians to whom injured men may go is not a compliance with the requirement to furnish treatment, and in the absence of positive instructions as to the proper course to be taken, the employee may select his physician, and the board will have jurisdiction of the question of the employee's right to recover the costs of the treatment (*In re Panasuk*, 105 N. E. 368). In a case in which the injured man had been furnished a physician, but called in his own doctor on account of pain during the first night, and continued to have him, the accident board of the State allowed the payment of a fee for the call for relief during the first night, but held that as the employer had furnished a physician, resort should have been had to him for subsequent treatment, and bills therefor were disallowed; and so generally where the employer is prompt to make provision of medical treatment, it can not be rejected unless for sufficient cause shown, except at the employee's own cost. Therefore, 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 law of Kansas was construed by the attorney general of the State to authorize an injured man to employ his own physician and send the bill to his employer, restricted, of course, by the statutory limitations as to amount and period.

The question of the expense of medical and surgical services was involved in the case of *City of Milwaukee v. Miller* (144 N. W. 188), in which the Supreme Court of Wisconsin disallowed a claim for services rendered by a physician employed by the claimant, Miller, who gave no notice to the city of his desire for medical attendance, and continued the employment of his physician after the city had voluntarily offered the services of a competent physician. The time during which the claimant could properly employ a physician was held to be limited to such reasonable time as necessarily intervened between his injury and reasonable opportunity, after due notice, for the city to exercise its privilege of furnishing a physician. The injury was a comparatively slight one, and the industrial commission had regarded the charges as quite large, but accepted the attending physician's evidence as controlling in the matter, on account of his greater experience as compared with that of the city's physician, who had testified that practically one-fourth the amount of the claim would have been adequate as the cost of medical attendance. As to balancing the evidence in such a case the court said that where there were great doubts as to the amount, and the truth of the matter rested solely on the word of the interested party, opposed by the evidence of a competent witness who had little or no interest in the result, there should be much hesitation and generally a refusal to decide the matter wholly against the defendant; adding that one who, by reason of special knowledge, might be competent to give opinion evidence might deal in such exaggerations, especially when they favor his selfish interests, as in this case, as to render his evidence of little or no value. It was also said that it did not devolve upon the city to exercise active vigilance to discover the necessities of injured employees, since the language, "neglect or refusal seasonably to do so," was held to necessarily imply that reasonable notice should be given of the employee's needs and of his desire for treatment.

It was held, therefore, that the act did not authorize the payment of medical and surgical costs incurred under the circumstances, and the compensation awarded was confirmed only as to the actual compensation benefits approved by the industrial commission plus the cost of bandages and supplies.

To the same effect was a decision of the Supreme Court of New York, appellate division, holding that where suitable provision of medical service is made by the employer, the employee can not refuse the same and claim payment for a physician of his own choosing (*Keigher v. General Electric Co.*, 158 N. Y. Supp. 939).

The Indiana statute provides for medical, etc., services for 30 days immediately following the injury. The appellate court of the State held that where the disability developed sometime 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). This also is the position taken by a Connecticut commissioner. 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 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). This agrees with the position taken by the Supreme Court of Maine, the injury being held to be contemporaneous with the accident, even if not immediately developing (*In re McKerna*, 103 Atl. 69).

Another Indiana case involved an additional factor, immediate medical treatment being afforded, but after a lapse of seven months new disability developed from the injury. However, the appellate court held that inasmuch as service had been rendered within the period fixed from the receipt of the injury, the new disability could not be treated under the act (*Schumaker Co. v. Kendrew*, 120 N. E. 722). This case was differentiated from the *McCaskey* case, in which no disability was immediately developed. The payment for medical services in excess of the statutory 30 days was held to be a proper charge against the insurer where the employer furnished the same in order to save the life of the injured man (*In re Kelley*, 116 N. E. 306). The law permits the employer to furnish additional attendance at his option, and the court pointed out that this might be to the advantage of the employer and the insurer no less than of the injured employee.

Some cases in hand involve the question of the status of the physician himself. Thus an employer in Connecticut disputed a fee on the ground that the services were rendered by a "bonesetter," and not by a regularly qualified physician. A commissioner of the State dis-

allowed the contention on the ground that the services had been rendered at the desire of both parties, with a knowledge of his status, so that any complaint on that point was of no avail. The industrial commission of Ohio, on the other hand, refused any payment to a "bonesetter," on the ground that the law of that State contemplated payments on this account only to persons who have been regularly admitted to practice medicine. Similarly, the Iowa commission ruled that an osteopath does not furnish "medical or surgical service" within the meaning of the act of that State.

The Supreme Court of Wisconsin ruled that an employer was liable for the malpractice of a physician furnished by him during the period of service required by law (*Pawlak v. Hayes*, 156 N. W. 464); while that of Minnesota held that there was no other duty owed by an employer who collected hospital money than to select a competent physician. However, the release to him on settlement for compensation was declared not a bar to an action against the physician for malpractice (*Viita v. Dolan*, 155 N. W. 1077).

The Pennsylvania statute requires the employer to furnish medical and hospital services during the first 14 days of disability of the injured employee, and also that, in case of death, expenses of last sickness and of burial be met by the employer, the amount not to exceed \$100, this sum to be in addition to any benefits payable to the dependents of the deceased. The compensation board of the State held that where payments had been made for medical services during the 14 days succeeding the injury, and death occurred after the expiration of this period, the employer is authorized to deduct the value of the amount so paid from the sum payable as expenses of last sickness and burial.

Nursing is, of course, a part of the provision to be made by the employer in cases requiring the same, and a Connecticut commissioner allowed a man's wife \$10 per week for nursing him, estimating this sum to be the cost of nursing in a semiprivate ward in a hospital. The California commission, on the other hand, refused to make allowances for home nursing, on the presumption that the family would render such services without cost, qualifying the rule in another case by saying that allowance would not be made for nursing by members of the family not professional nurses. The Ohio commission also refused to make allowance for nursing by members of the family where no loss of time or wages is involved, as did the Supreme Court of Wisconsin, where a niece voluntarily nursed an injured man and a claim for nursing was afterwards made (*City of Milwaukee v. Miller*, *supra*).

Paying for home nursing was considered also 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.

The matter of fees was involved in the Ohio case last noted, and the ruling was representative of others that have been made by other authorities, taking the ground that there will be a scrutiny of bills submitted, since there is a real discretion in the commission in this matter, and it is not obligated to honor all claims presented, and will only allow rates ordinarily charged for such services in the locality for persons of the station of the persons treated—not of the employer nor of those having the financial resources of the insurer. (See also the case of *City of Milwaukee v. Miller*, p. 239.)

The Texas board considered railroad fare in transporting an injured employee to a hospital for treatment as a proper charge on account of medical aid, etc., if expended during the statutory first week following the injury.

Bills for dental services are allowed under rulings of the accident board of Massachusetts and the labor commissioner of Minnesota. The attorney general of Iowa said that no disability payments as such would be allowed for injury to the teeth, but that dental work might properly be allowed for under the head of surgical and medical attention. The public service commission of West Virginia refused to allow for gold crowns made necessary by the breaking of two teeth in an accident, holding that the act does not provide for the payment of dental bills.

A question involving fees in another field was passed upon by the commission of the State of New York when it declined to consider any agreement for fees for legal services in advance of the rendering of the services, saying that in all cases claims will be considered solely with reference to the actual service rendered, upon a statement submitted to the commission upon the conclusion of the service.

Some laws specify the supply of artificial limbs, appliances, etc., where of course there is no occasion for construing the law. The Connecticut law calls for such medical and surgical aid as the physician or surgeon shall deem reasonable or necessary, and this was construed by the supreme court of the State to warrant the furnishing of artificial members (*Olmstead v. Lamphier*, 104 Atl. 488). Doubtless going beyond the law, or at least not provided for by it, was a case approved by a Minnesota judge, where an insurance company settled with an employee whose artificial leg was broken in an accident, by paying for loss of time until a new member could be procured.

ELECTION.

As already noted, election, either passive or active, is required by the laws of a number of States to bring parties within the provisions of the acts. In a Connecticut case it appeared that as employer had mailed a notice, on the prescribed blank, electing not to accept the terms of the law of the State. This was sent by ordinary mail, not by registered mail or served in person, as prescribed by the act. The claimant received the notice and read it, but did not preserve it. It was held by a commissioner of compensation that his claim to compensation was barred, as he was said to have sufficient notice of the employer's rejection; he was accordingly remitted to his rights, if any, in a suit at law. In a case in which the employer contested a claim on the ground that, though he had elected to accept the act, he had not taken the required steps to prove his ability to make compensation payments, the supreme court of this State held that such failure on the part of the employer to comply with the provisions of the act would not deprive the employee relying upon the law of his rights under it (*Bayon v. Buckley*, 93 Atl. 139). The Supreme Court of Iowa, on the other hand, held the employer liable in a suit for damages where he had failed to procure insurance of his liabilities under the compensation act, the law stating that such failure is to be construed as a rejection of the compensation system (*Elks v. Conn.*, 172 N. W. 173).

The Supreme Court of Kansas held that the employer defending against a claim could not require the claimant to offer proof of the employer's acceptance or rejection of the act; but if he wished to make his alleged rejection a defense he himself should be required to prove it (*Gorrell v. Battelle*, 144 Pac. 244).

In a case arising under the Wisconsin statute it appeared that the employer had elected to accept the act, while the employee rejected it but subsequently made claim for compensation, which was denied. He then brought suit and recovered damages at law. But on appeal the supreme court reversed the decision of the trial court, since the employer having elected was entitled to all the common-law defenses and the injury was not shown to have been due to the negligence of the employer, while the employee had assumed the risks (*Karny v. N. W. Malleable Iron Co.*, 151 N. W. 786). Another provision of this act allows employees 30 days within which to make their decision following the employer's election to accept the act. It was held by the supreme court (*Green v. Appleton Woolen Mills*, 155 N. W. 958) that an injury to the employee before the expiration of his 30 days' option is not compensable, but must be passed upon in accordance with the provisions of the liability laws of the State, since, unless the employee has taken action, he may reject within the time fixed.

EXCLUSIVENESS OF REMEDY.

While most of the States provide for the voluntary acceptance of the laws before they are binding, after which it is generally held that suits can not be brought, the law of Washington is explicit in declaring the abrogation of all suits for injuries of employees. This provision was held to reach so far as to bar an action by a brewery employee who was injured by the negligence of a railway company moving cars in the yard of the brewery, so that even the liability of the third person who caused the injury could not be made the basis of an action by the injured workman (*Northern Pacific Ry. Co. v. Meese*, 36 Sup. Ct. 223). A Federal court (district) ruled that an action for wrongful death would lie where it was caused by a third party, away from the plant of the employer, if the dependent should elect to sue instead of proceeding under the compensation act (*Martin v. Matson Navigation Co.*, 244 Fed. 976). The supreme court of the State also construed the statute to cover incidental suits, as well as those arising directly from the injury, as where an injured man who had received compensation under the act undertook to sue for the malpractice of the physician engaged by the employer but paid by deductions from the employee's wages, such suit not being allowed (*Ross v. Construction Co.*, 155 Pac. 153).

In another case arising in the same State (*Peet v. Mills*, 136 Pac. 685), a railway employee sought to hold the president of a railway company personally liable for his injuries, claiming that, though actions against the employing company were abrogated, the president could be sued on an individual liability. This the court denied, emphasizing its ruling as to the constitutionality of the law given in the case, *State v. Clausen* (65 Wash. 156 117 Pac. 1101) and declaring the new remedy to be exclusive. A provision of the same statute permitting employees to sue an employer who is delinquent in premium payments was held not to warrant such a suit where the delinquent employer makes good his shortage within the period allowed by the rules of the State insurance commission for such payments after notice of delinquency (*Barrett v. Grays Harbor Commercial Co.*, 209 Fed. 95).

If the law of Washington is thus exclusive and other remedies are not available, it may be noted as a complementary fact that it is of broad application, the supreme court of the State calling it a provision for a kind of pension given the workman in exchange for absolute insurance on his master's premises (*Stertz v. Industrial Insurance Commission*, 158 Pac. 256), thus covering injuries not classed in other jurisdictions as within the scope of acts containing more restrictive terms.

The Supreme Court of New York in special term denied the right of a plaintiff to sue for damages for pain and disfigurement, after

having received compensation under the act of the State providing therefor, holding the remedy offered by the statute to be complete and exclusive and enacted with a view to afford certain relief and obviate litigation (*Connors v. Semet-Solvay Co.*, 159 N. Y. Supp. 431).

A similar view of this point was taken by the Supreme Court of Oklahoma in a case in which there was serious disfigurement as well as permanent total disability for the regular employment of the injured man. The claim for additional damages for the disfigurement was met by the court's remark that the law was meant to be exclusive in cases of injury in employment, not dividing up injuries and forms of relief, but abolishing the right of action in the courts (*Adams v. Iten Biscuit Co.*, 162 Pac. 938). Where the disability caused is secondary and the disfigurement much the larger factor, the Louisiana compensation law was held not to be the proper means of redress, but a suit for damages (*Boyer v. Crescent Paper Box Factory*, 78 So. 596). But the law of this State was held to be exclusive over the contention of a widow that she was in no contractual relationship with the employer of her husband, and was therefore not bound by the latter's election (*Colorado v. Iron Works*, 83 So. 381).

Election is presumed under the law of Nebraska, and where an employer was sued for damages and answered that he was operating under the compensation act, the jury was discharged, and the court proceeded to make an award of compensation, from which it deducted the costs to which the employer had been put by the unwarranted bringing of the suit by the employee (*Beideck v. Acme Amusement Co.*, 166 N. W. 193).

The constitution of Arizona requires the enactment of a compulsory compensation statute, retaining, however, to the employee the option of suing under the liability law or choosing his right under the compensation statute. The supreme court of the State held (*Consol. Arizona Smelting Co. v. Ujack*, 139 Pac. 465) that this election may be made after the injury has been received, and the remedy becomes exclusive only by the institution of an action in the chosen form. This option is held to extend only to the employee, however, the personal representative in the case of death having only the right to sue (*Behringer v. Copper Co.*, 149 Pac. 1065).

This is in contrast with the situation in New York, where the court of appeals holds (*Shanahan v. Monarch Engineering Co.*, 219 N. Y. 469, 114 N. E. 795) that the law takes away the right of the next of kin of a deceased workman to sue under the former statute allowing suits for damages on fatal cases, the compensation law being held to cover the entire field of remedy for the death of an employee. There were no dependents in the case in hand. In so holding, this court reversed the supreme court, special term (92 Misc. 466), and appellate division (172 App. Div. 221), both of which had held that the law

fixed the rights of certain classes of persons only, leaving the rights of others as they were before its enactment. An amendment of 1916 declared the contrary, and the court of appeals likewise took the view above set forth.

Under the laws of most of the States election is made at the time the contract is entered into either actively or passively, and such election is binding until other action is taken disavowing the same. The supreme court of Kansas held that under its law the remedy by compensation is exclusive, and if one desires to retain the right to sue for damages he must reject the compensation law in advance (*Shade v. Ash Grove Lime, etc., Co.*, 144 Pac. 249). So also the supreme court of Rhode Island held that an employee making a contract in the State of Massachusetts and accepting the compensation law of that State extinguishes his right to sue for damages at common law in that State, and, having lost that right, he can not sue at common law in any other State in which he may reside (*Pendar v. H. B. Am. Mach. Co.*, 87 Atl. 1). Applying the same principle of the control of local law, it was held by the Washington supreme court that its statute, though exclusive where applicable, as already noted, does not bar suits for damages in that State where the cause of action arose in a State permitting such suits, the law of the locality being enforceable in whatever jurisdiction it might be brought (*Reynolds v. Day*, 140 Pac. 681).

The New York Court of Appeals took the same view of this point in the case of a New Jersey employee of a New Jersey corporation who was killed while in his employment in New York State. His administratrix sued for damages, and recovered in the trial court, but the judgment was declared erroneous, since the right of the employee under the New Jersey law was contractual, and the agreement was enforceable in the courts of New York, so that no right to sue for damages remained (*Barnhart v. Am. Concrete Steel Co.*, 125 N. E. 675).

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 con-

struing 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 neglected in the matter of notice to supply evidence and secure a finding that no 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 presumption could be indulged (*Bloomfield v. November*, 119 N. E. 705).

This question was again before the Supreme Court of Michigan in a case in which the foreman of a plant had knowledge of the original injury, but no serious disability developed for several months. The accident board awarded compensation, but this was reversed by the supreme court which found that "unless we resort to judicial legislation" notice of a claim must be given within three months from the injury, meaning thereby the accident and not the developed disability (*Cooke v. Holland Furnace Co.*, 166 N. W. 1013). This is in contrast with the decision of the Supreme Court of Nebraska, whose law requires claims for compensation to be presented within six months "after the injury occurred." Where a man was the victim of an accident which did not result in noticeable injury for some time afterwards, and gave notice within six months from the later date, but more than six months from the date of the accident, it was held that the law had been complied with (*Johansen v. Union Stockyards Co.*, 156 N. W. 511).

A provision common to several of the laws is that want of or defect in the notice shall not be a bar to a claim unless the employer is prejudiced in his rights thereby. Such a provision is found in the Kansas statute, and the supreme court of that State (*Knoll v. City of Salina*, 157 Pac. 1167) sustained an award to a claimant in a case where written notice had not been given within the period

named in the law, but oral notice had been given, and no right of the employer had been affected. It was also held in this case that an oral demand for compensation was a sufficient claim.

A case involving multiple injuries was before the Supreme Court of California (*Ehrhart v. Industrial Accident Commission*, 158 Pac. 193), in which an award by the commission was reversed. The injured man had submitted a claim for injuries to a leg, compensation being allowed. Some months later he asked compensation on account of injuries to the chest alleged to have been received at the same time, which the commission allowed on the ground that it had continuing jurisdiction over the case for the period of 245 weeks fixed by law, taking this to cover all injuries received by the injured man at the time of the accident. This contention the court rejected, holding that the commission had jurisdiction of only such injuries as had been called to its attention within the period of six months prescribed as a limitation by the act. This view was held to be necessary to the realization of the intention of the legislature that all injuries for which claims were to be submitted should be subjected to timely investigation, both to prevent the encouragement of false claims and to enable the proper steps to be taken to give remedial treatment.

The Connecticut law made want of notice within the time fixed a bar to the claim to the extent that the employer should be shown to be prejudiced thereby. The phrase "want of notice" was construed by the supreme court of that State to mean absolute lack of notice. It was said, however, that this was not intended by the act to be an absolute bar to the claim, but only a ground for diminution of the award to the extent that the employer should be shown to be prejudiced by the failure to receive notice (*Schmidt v. Baking Co.*, 96 Atl. 963). Where there has been a delay beyond the period fixed by statute, provision is made in the Massachusetts law that the claim may still be renewed if the delay was due to reasonable cause. The supreme court of the State held (*In re Fierro*, 111 N. E. 957) that the industrial board should not assume that there was reasonable cause or act on a supposed reason, but that it must be positively shown that there was ground for the delay. What was a sufficient notice under the Massachusetts law was passed upon by the industrial accident board, and, where it was shown that oral notice had been given to the manager and also to one of the partners in the business, it was ruled that the employing association had knowledge of the injury under the law, even though no written notice had been given either to the employer, the insurance company, or the board; and the supreme court of the State ruled similarly where the injured man had told a foreman and a timekeeper of the injury (*In re Bloom*, 111 N. E. 45).

Oral inquiry of the manager of a firm as to "what he was going to do" in the matter of compensating an injury was held by the Supreme Court of Kansas to be sufficient notice (*Gailey v. Peet Bros. Mfg. Co.*, 157 Pac. 431). The effect of such informal but actual notice was discussed by the Supreme Court of Wisconsin (*Pellett v. Industrial Commission*, 156 N. W. 956), the court saying that the employer would be estopped to plead the lack of statutory notice unless actual prejudice could be proved; in this case the injured workman told one of his employers of the fall causing the injury, and they agreed to pay the doctor's bill, and also made a payment for time lost within the 30 days during which notice might be given, the law of this State providing that such payment shall be equivalent to notice.

A claim was held by the Supreme Court of Michigan not to be barred in a case in which notice of the death of an alien had been timely given, and steps had also been taken to procure letters of administration, though these did not arrive until after the expiration of the prescribed six months' period; it was held that the claim had not been outlawed, as the employer had had opportunity to investigate the facts and had not been prejudiced by the delay, the court ruling that the law ought not to be technically construed (*Matwiczuk v. American Car & Foundry Co.*, 155 N. W. 412). More technical was the ruling in the case of a claim preferred by the Austrian consul at Pittsburgh for compensation under the law of West Virginia, the public service commission ruling that it could not be considered on the ground that the application must be made in due form within six months from the date of the death, as provided by the act.

Another limitation contained in this law barred a claim in the case of the death of a man as the result of an injury, the death not occurring until after expiration of 90 days from the date of the accident causing it. The law provides that compensation is payable only where death supervenes, as a result of the injury, within 90 days after the accident.

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.

This principle was applied by the appellate court of Indiana to a case in which a mine employee suffered an injury to his eye, which was known to his superior and to the company's physician, who pronounced the injury slight. After the time for giving formal

notice had expired the injured man learned that he had lost the sight of his eye. His claim was allowed, however, and sustained by the court, on the ground that the company's agents and representatives had knowledge of the injury, and that his reliance on the advice of the physician had influenced him to disregard the injury (*Vandalia Coal Co. v. Holtz*, 120 N. E. 386). A similar view of this question was adopted by the Supreme Court of Maine, where a foreman knew of an injury at the time it occurred, though the infection and loss of use were subsequent (*In re Simmons*, 103 Atl. 68).

DISPUTES.

There is a considerable variety in the method of determining disputes or reviewing awards on appeal or otherwise, the laws of some States being much more stringent in this respect than others. The power of the industrial commission of Colorado to make awards was passed upon in a case (*Industrial Commission v. London Guarantee & Accident Co.*, 185 Pac. 344) in which the supreme court of the State held that a district court had power to set aside the orders of the commission only where there was fraud, lack of jurisdiction, or lack of evidence. The court was without power, therefore, to render judgment on an agreed settlement for a sum less than the commission's award. The contention that the claimant and the insurer are the only parties in interest, so that they are entitled to submit an agreement to the court without the intervention of the commission, was said to ignore the public interest expressed by the law and represented by the commission, whose participation was therefore essential.

The Kansas statute permits the bringing of suits to determine awards under the law "in default of agreement and arbitration." This was held by the supreme court of the State (*Halverhout v. S. W. Milling Co.*, 155 Pac. 916) not to make an attempt to agree or to secure arbitration a condition precedent to the bringing of the suit, but that either in the absence of such action or upon its failure, suit might be brought.

Many of the provisions of the acts indicate a desire to secure the prompt determination of the points in issue, the law of Massachusetts providing that no second hearing shall be had as a matter of right on any question of fact. The supreme court of the State (*In re Fierro*, 111 N. E. 957) ruled that on an appeal, if there was a full trial of the question in issue there shall not be a rehearing ordered, but a final decree shall be entered. The right of appeal was denied to a railroad company under the New York law in a case in which an award had been made to the injured employee, the supreme court of the State, appellate division, holding that since the employer is protected from all liability by the insurance fund, he has no

interest in the award that would give him a right to appeal, the possibility of an increase of the premium rates being too remote to confer such a right (*Crockett v. State Insurance Fund*, 155 N. Y. Supp. 692).

A provision of the New Jersey law requires the determination of cases before the court within 30 days after final hearing. This was held by the supreme court of the State to be directory only, and not mandatory, so that no invalidity was attached to later decisions (*Diskon v. Bubb*, 96 Atl. 660).

EVIDENCE.

Procedure under the compensation laws naturally differs largely from the technical court procedure in damage suits, though the courts differ largely as to the real extent of such departure that is proper. The Supreme Court of California (*Englebretson v. Industrial Accident Commission*, 151 Pac. 421) held that evidence that a certain act might have been a sufficient cause of the injury suffered would not support the claim, being only hearsay, saying that though the commission was not bound by technical rules the rule excluding hearsay was not technical. On the other hand, the Supreme Court of New York, appellate division (*Carroll v. Knickerbocker Ice Co.*, 155 N. Y. Supp. 1), said that the spirit of the statute is that the commission shall be "wholly unfettered by any law previously invented by man." In the case in hand there was slight evidence of internal injury and some evidence supporting the inference that the man strained himself in his work, which was, however, mainly hearsay and partly "hearsay on hearsay." It was said that "no court would have hesitated a moment to reject it," but that "all the rules of evidence, the accumulation of centuries of experience and wisdom, were ignored by the commission." The decision was affirmed as carrying out the purpose of the legislature in enacting the law. When the case came to the court of appeals, however, it was said that while the law does provide that the commission is "not bound by common law or statutory rules of evidence or by technical or formal rules of procedure," it must be borne in mind that this provision of the statute is meant to enable the commission "to ascertain the substantial rights of the parties." The presumption that the claim comes within the provisions of the act, as the law provides, can not prevail against substantial evidence to the contrary; and while the commission "may in its discretion accept any evidence that is offered, still in the end there must be a residuum of legal evidence to support the claim before an award can be made." Persons present testified that they saw no injury inflicted or accident take place, nor were there any marks as of bruises or abrasions, such as would have existed had the statements of the decedent been correct; so that the reported

remarks of a man in a highly nervous condition, verging on delirium tremens, which subsequently developed, were held not sufficient to support an award, and the judgment was reversed with costs against the commission (218 N. Y. 435, 113 N. E. 507).

The industrial commission of Ohio went almost as far as the New York commission and Supreme Court in the above case in making an award for the death of a man from blood poisoning, where there was no one who saw the injury inflicted which was regarded as responsible for the death, and the evidence as to causation was contradictory. A large amount of evidence was considered, both direct and hearsay, but since the commission was not bound by statutory rules of evidence or of procedure it was able to reach the conclusion that the injury should be regarded as the proximate cause of the death, and compensation was awarded accordingly.

Where a car carpenter was seen to fall and was found to be dead it was held that the burden of proof that there was injury in the course of the employment was on the claimant. This demand was said by the Supreme Court of Illinois to be met by the showing that the deceased was a steady workman, in perfect physical condition, and that the circumstances pointed to a fatal electric shock from an exposed end of a cable near his working place (*Bloomington, D. & C. R. Co. v. Industrial Board*, 114 N. E. 939).

The Supreme Court of Wisconsin sustained presumptions in favor of the claimant in a case in which the trial court had decided that in the absence of witnesses the theory of accident was only equally plausible with that of suicide. The decision of the lower court was reversed on the ground that the burden of proof rested on those advocating the suicide theory, and compensation was allowed (*Milwaukee Western Fuel Co. v. Industrial Commission*, 150 N. W. 988). This accords with the position taken in a very similar case by the accident board of Michigan, where it was said that the lack of direct evidence would not be allowed to defeat the applicant's claim if the facts and circumstances justify and reasonably require the inference that death was due to drowning as the workman was leaving a lumber dock for dinner. Similar to the foregoing was the conclusion of the Supreme Court of California in a case (*Western Grain & Sugar Products Co. v. Pillsbury*, 159 Pac. 423) in which an award for the death of a night watchman was allowed, the body not having been found, but evidences of a struggle and other circumstances suggesting murder being disclosed.

The Supreme Court of New York, appellate division, likewise refused to indulge in presumptions unfavorable to the claimant, as being impossible under the law where there was an absence of proof as to the exact cause of the injury, though "many reasons might have made it proper" for the injured man to go to the place where

he was injured (*Chludzinski v. Standard Oil Co.*, 162 N. Y. Supp. 225).

On the ground that questions of negligence had nothing to do with the right of the claimant under the compensation act, the Supreme Court of Kansas (*Ruth v. Witherspoon-Englar Co.*, 157 Pac. 403) declared that evidence as to the misconduct of a foreman in ordering the workman into a place of danger was prejudicial to the rights of the company where there was a trial before a jury. But if the findings of the jury are not in reality affected by such evidence, its erroneous admission will not necessitate the reversal of the judgment (*Oliver v. Christopher*, 159 Pac. 397).

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 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 employee's 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.

The purpose of the law to eliminate technicalities was given by the appellate court of Indiana as a reason why a motion for a new trial was not an essential preliminary to an appeal under the rules of procedure in that State. A review by the full board was said to safeguard all rights, so that the appeal could properly be taken directly (*Union Sanitary Mfg. Co. v. Davis*, 114 N. E. 872).

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.

Naturally stock companies writing insurance of this kind are opposed to the idea of a State monopoly, the situation being particularly acute in the State of Ohio, where the question of monopoly was in discussion between the insurance companies and the State authorities, the law being differently interpreted by the two parties. The commission took the view that the intent of the law was that insurance should be taken in the State fund and not elsewhere. The Supreme Court of the State considered the law as permitting stock companies to write insurance, and requiring all employers of five or more workmen regularly in the same business, other than employers providing self-insurance to pay into the State insurance fund the amount of premium determined and fixed by the State authorities. Self-insurers were, moreover, held to be legally required by the law to contribute to the surplus fund, which is a guaranty fund for the State insurance fund. The existing provision of the general code conferring upon employees the rights of the employer under any insurance policy which he may carry after the employee

has secured a judgment against his employer for injuries due to the latter's negligence was held not to be repealed by the compensation law but to remain subject to construction in connection with the provisions of the compensation law. Contracts providing indemnity for employers in all cases in which they are required to pay compensation in accordance with the provisions of the compensation act may be written by any insurance company, stock or otherwise. The question as to whether or not employers can insure against other liabilities than those established by the compensation law was left undecided, reargument to be had thereon when the court should again convene.

On the final consideration it was held that civil liability for willful acts or failure to observe safety laws could not be covered by any such policy; also that contracts for insurance could be written only in behalf of contributors to the compensation fund, or legal self-insurers. The right of insurance companies to write any policy other than as should be in line with these rulings was terminated.

These findings are in effect embodied in an opinion handed down in January, 1917 (*State v. Employers' Liability Assurance Corp.*, 95 Ohio St. 289, 116 N. E. 513). They clearly left to insurance companies the power to write policies covering compensation liabilities, but only where there is also a contribution made to the State fund or in behalf of self-insurers.

It was undertaken to withdraw even this permission by an initiated act amending the law so as to declare void all insurance contracts covering compensation or liability obligation (act of Feb. 19, 1917). In the meantime the constitutionality of the law permitting self-insurance was again challenged, the case involving also the right of insurance companies to write policies to indemnify such self-insurers in case of loss (*State v. United States Fidelity & Guaranty Co.*, 117 N. E. 232). It was held that the provision was constitutional, even though it permitted two forms of insurance to exist side by side—one through the fund, and one by direct payment from the employer. Since both are supervised by the commission, it can not be said that there is any inequality, or that all do not have protection of the laws, the standards of benefits being identical in the two classes. The right of the insurance companies to act was not denied, this case coming up prior to the amendment of February 19, 1917.

A further amendment of March 20, 1917, provided that only such persons should be allowed to be self-insurers as "do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof." The power to enact such legislation was challenged by an employer who was a self-insurer, but carried a policy to protect himself, and injunction was sought to restrain the industrial commission from revoking his permit to act as

a self-insurer. The court held that a contract previously entered into and continuously maintained was no bar to legislation, and could have no right of existence contrary to a new law; also that the right to withdraw approval of a self-insurer was properly provided for by the law, and that a duty to do so devolved upon the commission as a result of the amendment. Such amendment being within the power of the legislature, and in line with "the purpose and intent of the constitution and the law to create and maintain one insurance fund, to be administered by the State," no injunction would issue (*Thornton v. Duffy*, 124 N. E. 54). This apparently ends the conflict arising from the effort to establish exclusive State insurance in Ohio.

Other States offer a variety of options, even specifically saying, as in Michigan, that the purpose is to make a comparative test as to the value and desirability of the different forms. 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 "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 in-

terfered 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).

The industrial commission of Utah (as in several other jurisdictions) is authorized to fix the premium rates for companies writing compensation insurance. The power of the legislature to pass such a law was denied by an employer, who claimed that the act was unconstitutional in this respect; that the legislature could not delegate the rate-fixing powers to a commission; and that in any case there was no power under the act to fix rates for private companies. The supreme court of the State overruled all these contentions, relying on a decision of the United States Supreme Court relative to the power of a State agency to fix fire insurance rates (*German Alliance Ins. Co. v. Kansas*, 233 U. S. 409, 36 Sup. Ct. 618), adding that the case is even stronger here, inasmuch as compensation insurance is affected with a public interest. Too low a rate would jeopardize safety, while too high a rate would be an imposition. A proposed participating policy was also ruled out as being a method for avoiding the rates prescribed by the commission (*Scranton Leasing Co. v. Industrial Commission*, 170 Pac. 976).

The same court had before it the question of the nature of the act as compulsory or elective, and whether the industrial commission could compel an employer to insure his liabilities under the act, or otherwise comply with its provisions. It was held that the act was compulsory, and that the commission was acting within its powers when it sought a mandate to compel conformity to its provisions (*Industrial Commission v. Daly Mining Co.*, 172 Pac. 301). Suing to recover the premiums due was not the proper procedure, as contended by the company, but the commission was entitled to a mandate to compel insurance, where in its discretion it concludes that such security of the employees' right is needed.

The California commission ruled an insurance policy in effect on its delivery and during its existence, even though no premium is paid thereon. The law makes the employer and insurer jointly liable for compensation payable under any policy, and a failure of the former to pay and of the latter to collect his premium is a personal matter between the two parties and does not bar the employee's rights. Quite similar is a ruling construing the Iowa statute to the effect that under the law of that State the employer is primarily liable to the injured employee regardless of any arrangement which he may have with the insurer to carry the risk. He may protect himself by insurance, and, indeed, is required to do so; but if for any reason

the insurance company is not able to carry out its contract, the injured person or his beneficiaries still have direct recourse to the employer for the amount of compensation due.

Subject to mention either under this heading or under that of course of employment is a case (*Bayer v. Bayer*, 158 N. W. 109), in which an employee of a carpenter was injured while doing some work for the latter's brother in an undertaking in no way connected with the business of the injured man's employer. The employer was insured against the risks of his business, and the insurance company was joined in the defense against the enforcement of an award made by a committee of arbitration and approved by the industrial accident board of Michigan. The arbitrators had said that the only question involved was whether the employee was under the employer's control and was paid by him; but the court ruled that the policy was expressly and effectively limited to cases of employment "in the operation of and in connection with the business herein stated." The order of the board for the payment of the award was therefore vacated.

The relation of accident insurance, carried by the injured man, to insurance in the State fund, was considered in a Washington case, the supreme court of the State holding that accident insurance was a matter of private contract, and the law fixing an amount of compensation payable for industrial injury neither affected such a contract nor was affected by it (*Ross v. Erickson Construction Co.*, 89 Wash. 634, 155 Pac. 153).

Incidental questions relating to State funds were passed upon by the Attorney General of the United States, who held that policies issued by a State fund are exempt from the special tax levied by the war-revenue act of October 3, 1917; also that State funds are not subject to the law requiring the payment of an income tax (31 Op. A. G., 308).

WORKMEN'S COMPENSATION LAWS OF CANADA.

PROGRESS OF LEGISLATION.

Compensation legislation in Canada has an earlier origin than in the United States, due undoubtedly to the influence of Great Britain. The British act of 1897, extended in 1900, and replaced by an act of 1906 is of a type quite distinct from that adopted by any of the United States. However, it very naturally furnished a model for the earlier legislation of the Provinces which first took action of this kind. Following is a list of the Provinces having laws of this type, arranged in chronological order of the enactment of the original law:

| | |
|-----------------------|------|
| British Columbia..... | 1902 |
| Alberta..... | 1908 |
| Quebec..... | 1909 |
| Manitoba..... | 1910 |
| Nova Scotia..... | 1910 |
| Ontario..... | 1914 |
| Yukon Territory..... | 1917 |
| New Brunswick..... | 1918 |

The act of British Columbia of 1902 continued in force until 1916, and that of Alberta of 1908 was not superseded until 1918. New laws were enacted in Nova Scotia and Manitoba in 1915 and 1916, respectively.

Arbitrators and judges of courts were the recourse for the settlement of disputes under the older laws, and the very limited recoveries provided fell far short of the liberality of the law of Ontario, for instance, which Province first came into line in 1914 with a law patterned after the United States type rather than that of Great Britain. Some of the Provinces appointed commissions to investigate the workings of statutes in the States before revising existing legislation or enacting new laws. This has been influential in establishing throughout the two adjacent countries a system of legislation closely comparable in many aspects. The later laws are administered by special boards in most instances, Yukon Territory being an exception. The statute of Quebec has remained without essential revision since its enactment in 1909, and therefore does not represent the more recent compensation practices. Prince Edwards Island and Saskatchewan are as yet without any compensation legislation, the so-called compensation law of the latter Province being in fact a liability statute.

Beginning with the year 1914, when the Province of Ontario enacted its first law, there is a notable uniformity of legislation throughout the Dominion. Except in Yukon Territory the scope of the laws is determined by the enumeration of the classes of employments to which they apply, though provision is made in most of the laws for the addition of other classes by the action of the boards. The laws are compulsory in their application, and all except Manitoba, Quebec, and Yukon maintain exclusive insurance funds for the payment of benefits, for which the Province assumes liability. All except Quebec and Yukon compensate for enumerated industrial diseases. Administrative boards are of long tenure (during good behavior until retirement for age at 75, except in British Columbia, where the term is 10 years), and have practically full and final power for the determination of cases arising under the acts. The boards are distinctively compensation boards, and not general industrial commissions, though they are given certain powers for accident prevention in British Columbia, Manitoba, Nova Scotia, and Ontario, and of inspection of premises in the foregoing and in Alberta and New Brunswick as well.

An act of the Dominion Parliament of 1918 provides that employees of the Federal Government killed or injured in their work shall come under the compensation law of the Province in which the accident occurred.

On the following pages will be found analyses of the various laws of the same form as for the laws of the various States. The full text of the laws also appears following those of the various States.

ANALYSIS OF THE PRINCIPAL FEATURES OF THE LAWS.

ALBERTA.

Date of enactment.—March 5, 1908; in effect January 1, 1909. New act, April 13, 1918; amended, 1919.

Injuries compensated.—Injuries by accident arising out of and in the course of the employment which cause disability for at least four days or death. Those due to the serious and willful misconduct of the workman excepted, unless death or serious injury results. If disability lasts over 10 days, compensation dates from the injury. Enumerated occupational diseases included.

Industries covered.—Enumerated hazardous employments. Itinerant occupations and railroads are excepted. The board may add to, withdraw from, or rearrange the schedule of hazardous employments contained in the act.

Persons compensated.—Workmen engaged in the employments covered, including employers and members of their families if they are occupied as workmen. Traveling salesmen, clerks, outworkers, and casual employees not in the usual course of the employer's business, are excluded.

Government employees.—Covered if employed in establishments or undertakings to which the law applies.

Burden of payment.—Rests upon employer, but employee may be required to contribute to the medical aid under plans approved by the board.

Compensation for death:

- (a) Burial expenses, maximum \$100, and, in the case of no dependents, reasonable expenses of the last sickness.
- (b) To widow or invalid husband \$20 monthly, with \$5 additional for each child under 16 years; to orphan children, \$10 each; maximum monthly, \$40; to parents, \$20 monthly; to parents and other dependents, maximum monthly, \$30; total maximum, \$2,500.
- (c) To partial dependents a sum proportionate to the pecuniary loss; maximum monthly, \$30, during the period of reasonably expected assistance.
- (d) Payments to children cease at age 16, unless invalid, and to a widow upon remarriage, but she shall receive a lump sum equal to the monthly payments for two years.

Compensation for disability:

- (a) Such special medical and surgical treatment and apparatus as the board may deem necessary.
- (b) For total disability, if permanent, \$10 weekly, with \$2 additional for first and \$1 additional for succeeding dependents; maximum weekly, \$16; total maximum, \$2,500. If temporary, same as for permanent, except that weekly maximum of workmen under 21 years without dependents is fixed at \$7.50.
- (c) For partial disability, if permanent, fixed sums for certain injuries as listed in schedule, payments ranging from \$50 to \$1,000. If temporary, and wage loss exceeds 10 per cent, 55 per cent of wage loss during disability.

Awards may be commuted in whole or in part to lump-sum payments.

Revision of compensation.—Awards may be reviewed by board on its own motion or on motion of workman.

Insurance.—All employers covered by act contribute to provincial accident fund.

Security of payments.—If accident fund is exhausted, advances may be made from general funds of the Province. Payments can not be assigned or attached, nor are they liable to set-off.

Settlement of disputes.—Workmen's compensation board has exclusive and final jurisdiction.

BRITISH COLUMBIA.

Date of enactment.—May 31, 1916; in effect, January 1, 1917; amended, 1918, 1919.

Injuries compensated.—Injuries by accident arising out of and in the course of the employment causing disability for more than three days or death; those due to serious or willful misconduct excepted, unless death or serious and permanent disability results. Includes facial disfigurement and designated occupational diseases.

Industries covered.—Enumerated list; voluntary as to other industries or workmen. Farm labor and domestic service excluded.

Persons compensated.—Workmen engaged in industries and occupations covered by act, not including traveling salesmen, clerks, persons not subject to hazards of industry, or whose work is casual and not for the purpose of the employer's business, outworkers, or members of employer's family.

Government employees.—Included if from the nature of their work they would be covered if working for a private person.

Burden of payment.—On employer, except that employees must contribute to the medical aid.

Compensation for death:

(a) Burial expenses, maximum, \$75.

(b) To widow or invalid widower for life, \$20 monthly, with \$5 additional for each child; to orphan children, \$10 each; maximum, \$40 monthly; to parents, \$20 monthly, or to parents and other dependents, \$30 monthly maximum.

(c) To partial dependents a sum proportionate to the pecuniary loss, maximum \$30 monthly, during the period of reasonably expected assistance.

(d) Payments to children cease at age 16 unless invalid, and to a widow upon her remarriage, but she shall receive a lump sum equal to the monthly payment for two years.

Compensation for disability:

(a) All reasonable and necessary medical, surgical, etc., aid.

(b) For total disability, during disability, 55 per cent of the average wages; minimum, \$5 per week, unless wage is less, then full wages.

(c) For partial disability, during disability, 55 per cent of wage loss; minimum, \$5 per week, unless wage is less, then full wages.

Periodical payments may be commuted into lump-sum payments; lump sum also allowable for facial disfigurement.

Revision of compensation.—Awards may be reopened and reviewed at any time for sufficient cause.

Insurance.—All employers under the act must contribute to a provincial accident fund.

Security for payments.—Province is liable for safekeeping of fund. Payments can not be assigned, attached, subjected to set-off, nor shall they pass by operation of law except to personal representatives.

Settlement of disputes.—Workmen's compensation board, a body corporate, has exclusive and final jurisdiction.

MANITOBA.

Date of enactment.—March 16, 1910; in effect January 1, 1911. New act 1916; amended 1917, 1918, 1919.

Injuries compensated.—Injuries by accident arising out of and in course of employment, causing disability for at least six days or death; those due solely to the serious and willful misconduct of the workman excepted, unless death or serious disability results. Includes enumerated occupational diseases. All compensation dates from the injury.

Industries covered.—Enumerated list, which the board may add to or take from. Other establishments may be included by election of the employer and approval of the board. Farm labor and domestic service are excluded.

Persons compensated.—Workmen in the industries covered except casual employees for other purposes than the employer's trade or business.

Government employees.—Included if from the nature of their work they would be included if working for a private employer.

Burden of payment.—On employer.

Compensation for death:

- (a) Burial expenses not exceeding \$75; if no dependents, reasonable expenses for medical aid, nursing, maintenance, and burial.
- (b) To widow or invalid husband, \$20 monthly, and \$5 for each child under age of 16; orphans, \$10 each; the total in no case to exceed \$40 monthly nor 55 per cent of the workman's average earnings. To others, in proportion to the pecuniary loss, not over \$20 to parents, nor over \$30 in all, during the period of reasonably expected assistance.
- (c) Payments to children cease at age of 16, and to a widow on remarriage, when she receives two years' payment in a lump sum.

Compensation for disability:

- (a) Medical attendance, care, and maintenance, not to exceed \$100 in value.
- (b) For total disability, 55 per cent of the average weekly earnings; during disability, not less than \$6 unless earnings are less, then full wages.
- (c) For partial disability, 55 per cent of the wage loss, during such disability; if impairment does not exceed 10 per cent, an equivalent lump sum shall be paid, unless thought not of advantage to the workman.

Earnings in excess of \$2,000 are not considered as basis for awards.

Any periodical payment may be commuted to a lump sum.

Revision of compensation.—The board may at any time rescind, alter, or amend any decision or order made by it.

Insurance.—All employers covered by the act contribute to a provincial accident fund. Insurance in an approved company is required, unless self-insurance is permitted.

Security of payments.—Insurance companies and self-insurers maintain deposits for the prompt payment of compensation. Benefits are a preferred claim in bankruptcy, and are exempt from assignment, attachment, etc. All benefits are to be paid through the board.

Settlement of disputes.—Workmen's compensation board has full and final jurisdiction of all questions under the act.

NEW BRUNSWICK.

Date of enactment.—Law enacted April 26, 1918; in effect—; amended in 1919.

Injuries compensated.—Injuries by accident arising out of and in course of the employment causing disability for more than seven days or death, not due to willful misconduct, intoxication, or a fortuitous event not connected with the industry. Includes occupational diseases.

Industries covered.—Industries listed in law or which may be added by orders in council. Farm labor and domestic service excluded. Voluntary as to excluded industries and occupations.

Persons compensated.—Workmen engaged in the included industries and occupations except traveling salesmen, fishermen, clerks, and office workers not subject to the hazards of the industry, outworkers, casual employees employed otherwise than for the purposes of the industry, and members of an employer's family.

Government employees.—Included if engaged in employments such as those included under act, except municipal firemen and policemen.

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

Compensation for death:

- (a) Burial expenses, maximum \$75.
- (b) To widow or invalid widower, \$20 per month for life, with \$5 additional for each child under 16 years; not over 55 per cent of average wages, with maximum basic wage of \$125; total maximum, \$3,500.
- (c) To partial dependents a sum proportionate to the pecuniary loss during the period of reasonably expected assistance.
- (d) Payments to children cease at 16, and to widow upon her remarriage, but she shall receive a lump sum equal to two years' monthly payments.

Compensation for disability:

- (a) Such special medical and surgical aid as may reduce the disability and such first aid and hospital service as the board may require.
- (b) For total disability, 55 per cent of the average wages during disability. Basic salary, minimum \$6 per week and maximum \$125 per month; total maximum, \$3,500.
- (c) For partial disability, if temporary, 55 per cent of wage loss; if permanent, according to a schedule to be adopted by the board; total maximum, \$1,500. Wage loss must exceed 10 per cent. Maximum monthly basic salary, \$125. Periodical payments may be commuted to lump-sum payments, and lump-sum payments may be made subject to periodical payment.

Revision of compensation.—The board may reopen and review awards on its own motion.

Insurance.—All employers covered by the act must contribute to a provincial accident fund. Board may make or sanction arrangements for reinsurance.

Security of payments.—Accident fund under government control; payments may not be assigned, attached, or made subject to pass by operation of law except to a personal representative.

Settlement of disputes.—Workmen's compensation board has exclusive and final jurisdiction over all matters, but appeal may be had to supreme court on questions of law and jurisdiction if permission is secured from a judge of the supreme court.

NOVA SCOTIA.

Date of enactment.—April 23, 1915; in effect January 1, 1917; amended in 1916, 1917, 1918, and 1919.

Injuries compensated.—Injuries by accident arising out of or in the course of the employment causing disability for seven days or death. Those due to willful misconduct are excepted unless death or serious permanent disablement results. When compensation is payable it dates from disability. Enumerated occupational diseases are included.

Industries covered.—Compulsory as to all employments listed in act. Voluntary as to excluded industries and workmen, except farm labor and domestic service, which are outside law.

Persons compensated.—Workmen engaged in the included industries and occupations, not including traveling salesmen, casual workers employed otherwise than for the purpose of the employer's business, outworkers, and members of an employer's family.

Government employees.—Included if engaged in occupations such as are included in the act, municipal policemen and firemen excepted.

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

Compensation for death:

- (a) Burial expenses, maximum \$75.
- (b) To widow or widower, \$20 per month for life, with \$5 additional for each child under 16 years; to orphan children, \$10 each per month; maximum monthly, \$40, not over 55 per cent of average wages. To parents, \$20 per month; to parents and others, maximum \$30 per month.
- (c) To partial dependents a sum proportionate to the pecuniary loss, not over \$30 per month, during the period of reasonably expected assistance.
- (d) Payments to children cease at 16 unless invalid, and to widow upon remarriage, when she receives continued payments for two years or an equivalent lump sum.

Compensation for disability:

- (a) All necessary medical, surgical, hospital, etc., treatment for 30 days. Additional special treatment may be allowed by board if necessary to reduce disability.
- (b) For total disability, 55 per cent of the average wages during disability. Minimum, \$5 weekly, unless wage is less, then full wages.
- (c) For partial disability, 55 per cent of the wage loss during disability. Impairment of capacity without actual wage loss may also be compensated. In no case are wages in excess of \$1,200 per annum considered. Periodical payments may be commuted to lump-sum payments and lump-sum payments may be made subject to periodical payment.

Revision of compensation.—Board may reopen and review awards on its own motion.

Insurance.—All employers covered by the act must contribute to the provincial accident fund.

Security of payments.—Accident fund under Government control. Payments may not be assigned, attached, be liable to set-off, nor made subject to pass by operation of law except to a personal representative.

Settlement of disputes.—Workmen's compensation board has exclusive and final jurisdiction over all matters, but appeal may be had to the supreme court on questions of law and jurisdiction if permission is secured from a judge of the supreme court.

ONTARIO.

Date of enactment.—May 1, 1914; in effect January 1, 1915; amended 1915, 1916, 1917, 1919.

Injuries compensated.—Injuries by accident arising out of and in course of employment which cause death or disable a workman for at least seven days; those due to the serious and willful misconduct excepted, unless resulting in death or serious disablement. Where compensation is payable it dates from disability. Enumerated industrial diseases included.

Industries covered.—Extensive list; includes manufacturing, construction, lumbering, mining, quarrying, transportation, navigation, operation of public utilities, etc. Farm labor and domestic service are excluded.

Persons compensated.—All employees in industries covered other than those whose employment is casual and not for the purposes of the employer's trade or business.

Government employees.—Included in so far as their employments would be covered if under private employers.

Burden of payment.—Cost rests entirely on the employer.

Compensation for death:

- (a) Necessary burial expenses, not exceeding \$75.
- (b) To a widow or invalid widower, \$30 per month until death or remarriage, with \$7.50 additional for each child under 16 years of age; orphan children, \$10 per month each; no total to exceed \$60.
- (c) To other dependents, not over \$20 to the parent or parents, and not over \$30 per month in all, for not longer than support might be reasonably expected.
- (d) If no dependents, reasonable allowance may be made for medical attendance, care, maintenance, and burial.

The aggregate compensation, except for burial expenses, may not exceed 55 per cent of the monthly wages of the deceased.

Payments to children cease at 16 unless invalid, and to widow on remarriage, when she receives two years' benefits.

Compensation for disability:

- (a) Necessary medical and surgical aid, with transportation to hospital or home if needed.
- (b) For total disability 55 per cent of the average weekly earnings, during disability.
- (c) For partial disability, 55 per cent of the weekly wage loss, payable during the continuance of such disability.

Periodical payments may be commuted to a lump sum after six months, or earlier with the consent of the workman and the approval of the board.

In computing compensation no earnings in excess of \$2,000 are to be considered in any case.

Revision of compensation.—Awards may be reviewed on the motion of either party in interest; also on the board's own motion if payments are being made from the accident fund.

Insurance.—Payments under the main schedule are made from an accident fund compulsorily maintained by employers under schedule I of the act. Board may require employers under schedule II to insure in an approved company.

Security of payments.—State board administers the accident fund and is required to maintain a reserve. Employers not contributors to the fund may be required to deposit a capital sum to secure payments, or furnish other security. Payments are exempt from assignment, attachment, or set-off, except with the approval of the board; nor may they pass by operation of law to other than a personal representative.

Settlement of disputes.—All disputes are to be settled by the board, suits at law being forbidden except in defined classes of cases of liability for negligence of employers not under schedule I.

QUEBEC.

Date of enactment.—May 29, 1909; in effect January 1, 1910. Amended 1914, 1918.

Injuries compensated.—All injuries happening to workmen by reason of or in the course of their work causing death, or disability lasting over seven days. Injuries intentionally caused by the person injured are not compensated.

Industries covered.—Building, manufacturing, transportation, engineering, and construction work, mining, quarrying; stone, wood, and coal yards; any industrial enterprise using machinery operated by power. Agriculture and navigation of sailing vessels are excluded.

Persons compensated.—Workmen, apprentices, and employees earning not more than \$1,200 per annum. Foreign workmen or their representatives are compensated only if and so long as they reside in Canada.

Government employees.—Government employees are not mentioned in the act.

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

Compensation for death.

(a) Medical and funeral expenses not in excess of \$25, unless same are provided by an association of which the deceased was a member.

(b) Four times average yearly wages, but not less than \$1,000 nor more than \$2,500 payable to surviving consort, to children under 16 years of age, and dependent ascendants, shares to be agreed upon or determined by court.

All amounts may be decreased or increased by court on account of inexcusable fault of employee or employer.

Payments to children cease at 16, unless invalids.

Payments made for disability before death are deducted.

Compensation for disability:

(a) For permanent total disability, a pension equal to 50 per cent of the yearly wages.

(b) For permanent partial incapacity, a pension equal to 50 per cent of the amount by which the wages have been reduced because of the injury.

(c) For temporary incapacity lasting over seven days, compensation equal to one-half the daily earnings received at the time of the accident, beginning with the eighth day, not less than \$4 per week.

(d) In computing pensions only one-fourth the excess of the annual earnings between \$800 and \$1,200 is considered; the capital of any pension shall not exceed \$2,500, unless higher because of accidents due to inexcusable fault of the employer.

All periodical payments may be commuted to lump sums.

Revision of compensation.—Demands for change of amount of compensation may be made within four years.

Insurance.—No reference concerning the insurance of risks under the law is contained in the act, except as to the payment of pensions due, which may be transferred to insurance companies. No release from liability is obtained by the employer by such transfer.

Security of payments.—Claims for compensation or pensions form a lien on the real and personal property of the employer so long as they remain unpaid.

Settlement of disputes.—Superior and circuit courts have jurisdiction over all disputes arising under this act. All proceedings are summary, no trial by jury being allowed.

YUKON TERRITORY.

Date of enactment.—April 24, 1917.

Injuries compensated.—Injuries by accident arising out of and in course of employment, causing disability for at least 14 days, or death, not due to willful misconduct or intoxication. Where compensation is payable, it dates from the disability.

Industries covered.—All, where five or more workmen are employed.

Persons compensated.—All in industries covered except outworkers and casual employees in other than the employer's trade or business.

Government employees.—Included.

Burden of payment.—Rests on employer.

Compensation for death.—If dependents survive, \$2,500; if none, burial and medical expenses, nursing, etc., not to exceed \$500, of which not over \$150 may be for burial expenses.

Compensation for disability:

(a) For permanent total disability, \$3,000.

(b) For permanent partial disability, fixed sums for injuries scheduled; others in proportion to degree of disability.

(c) For temporary disability, 50 per cent of wages, payable weekly for not more than six months.

Revision of compensation.—Weekly payment awards may be reviewed at the request of either party.

Insurance.—No provision.

Security of payments.—Claims are not assignable, and awards are exempt from execution, attachment, etc. Judge may order award to be invested or otherwise applied for the benefit of the person entitled thereto.

Settlements of disputes.—If parties do not agree to settlement, application may be made to a judge of the Territorial court, whose decision is final.

**APPENDIX.—TEXT OF WORKMEN'S COMPENSATION LAWS
OF THE UNITED STATES AND CANADA.**

UNITED STATES.

ALABAMA.

ACTS OF 1919.

No. 245.—Compensation of workman for injuries.

PART 1.—COMPENSATION BY ACTION AT LAW.

SECTION 1. When personal injury or death is caused to an employee by an accident arising out of and in the course of his employment, of which injury the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he, or in case of death, his personal representative, for the exclusive benefits of the surviving spouse and next of kin, shall receive compensation by way of damages therefor from the employer, provided the injury or death was not caused by the willful misconduct of the employee or was not due to misconduct on his part as hereinafter in section 9 hereof defined. Actions for damages.

SEC. 2. In all cases brought under part 1 of this act it shall not be a defense (a) that the employee was negligent, unless and except it shall also appear that such negligence was willful, or that such employee was guilty of willful misconduct as hereinafter in section 9 hereof defined; (b) that the injury was caused by the negligence of a fellow employee; (c) that the employee had assumed the risks inherent in, or incidental to the work, or arising out of his employment or arising from the failure of the employer to provide and maintain safe premises and suitable appliances which grounds of defense are hereby abolished except as provided in section 4. Defenses abolished.

SEC. 3. If the employer elects not to come under part 2 of this act, he loses the right to interpose the three defenses named in section 2 in any action against him for personal injury or death of an employee. Same.

SEC. 4. If the employee elects not to become subject to part 2 of this act, in any action brought to recover damages for personal injury or death by accident against an employer who has elected to come under part 2 of this act, said employee or his personal representative shall proceed as at common law only, and such employee shall have no right of action under sections 3912, 2485, 2486, 3910, 2484 of the Code of 1907 or any other right given by statute, and the employer in such suit may avail himself of all defenses as provided by statute in effect at the adoption of this act or at common law. When available.

SEC. 5. The provisions of sections 1, 2, 3, and 4 shall apply to any claims for death of an employee as covered by sections 3912, 2485, and 2486 of the Code of 1907, and to personal injuries arising under sections 3910 and 2484. Application.

SEC. 5a. The provisions of this act shall apply to employees who are minors and who have been employed in accordance with or contrary to laws regulating the employment of minors. Minors unlawfully employed.

SEC. 5b. When an accident occurs while the employee is employed elsewhere than in this State which would entitle him or his dependents to compensation had it happened in this State, the employee or his dependents shall be entitled to compensation under this act if the contract of employment was made in this State unless otherwise expressly provided by said contract, and such compensation shall be in lieu of any right of action and compensation for injury or death by the laws of any other State. Extraterritorial effect.

Burden of proof. SEC. 6. In all actions of law brought pursuant to part 1 of this act, the burden of proof to establish willful misconduct (or other misconduct as hereinafter in sec. 9) hereof defined of the injured employee shall be upon the defendant.

Attorney's fees. SEC. 7. No part of the compensation payable under this act shall be paid to attorneys for the claimant for legal services unless upon the application of a claimant to a judge of the circuit court such judge shall order or approve of the employment of an attorney by the claimant and in such event the judge upon the hearing of the petition for compensation shall fix the fee of the attorney for the claimant for his legal services, and the manner of its payment, but such fee shall not exceed ten (10) per cent of the compensation awarded or paid.

PART 2.—ELECTIVE COMPENSATION.

Scope of act. SECTION 8. This act shall not be construed or held to apply to any common carrier (doing an interstate business) while engaged in interstate commerce, or to domestic servants, farm laborers or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession, or occupation of the employer, or to any employer who regularly employs less than 16 employees in any one business, or to any county, city, town, village, or school district: *Provided, however,* That any employer who regularly employs less than 16 employees in any one business or any county, city, town, village, or school district may accept the provisions of this act by filing written notice thereof with the probate judge of each county in which said employer is located or does business, said notice to be recorded by the judge of probate for which he shall receive the usual fee for recording conveyances, and copies thereof to be posted at the places of business of said employers: *And provided further,* That said employers who have so elected to accept the provisions of this act may at any time withdraw the acceptance by giving like notice of withdrawal: *Provided further,* That in no event nor under any circumstances shall this bill apply to farmers and their employees.

Effect of agreement. SEC. 9. If both employer and employee shall by agreement expressed or implied or otherwise as herein provided become subject to part 2 of this act, compensation, according to the schedules hereinafter contained, shall be paid by every such employer in every case of personal injury or death of his employee caused by an accident arising out of and in the course of his employment, without regard to any question of negligence, except no compensation shall be allowed for an injury or death caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another or due to his own intoxication or his willful failure or willful refusal to use safety appliances provided by the employer or due to the willful refusal or willful neglect of the employee or servant to perform a statutory duty or due to any other willful violation of the law by the employee or his willful breach of a reasonable rule or regulation of his employer of which rule or regulation the employee has knowledge. If the employer defends on the ground that the injury arose in any or all of the last above-stated ways the burden of proof shall be on the employer to establish such defense.

Willful misconduct.

Remedy exclusive. SEC. 10. Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form, or amount of compensation or damages for any injury occasioned by an accident proximately resulting from and while engaged in the actual performance of the duties of his employment, and from a cause originating in such employment, or determination thereof than as provided in part 2 of this act, and shall be an acceptance of all the provisions of part 2 of this act, and shall bind the employee himself, and for compensation of his death shall bind his personal representative, the surviving spouse and next of kin, as well as the employer and those conducting his business during bankruptcy or insolvency, for compensation for death or injury, as provided for by part 2 of this act.

Same. SEC. 10½. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of said employee, his personal representative, parent, dependents, or next of kin, at common law, by

statute or otherwise on account of said injury, loss of services or death; and except as herein provided in part (1) and part (2), (as the case may be) of this act, no employer included within the terms of this act shall be held civilly liable for any personal injury to or death of any workman due to accident while engaged in the service or business of the employer, the cause of which accident originates in the employment; but nothing in this section shall be construed to relieve any employer from criminal prosecution for failure or neglect to perform any duty imposed by law.

Sec. 11. All contracts of employment made after the taking effect of this act shall be presumed to have been made with reference to, and subject to, the provisions of part 2, unless otherwise expressly stated in the contract, in writing, or unless written or printed notice has been given by either party to the other, as hereinafter provided, that he does not accept the provisions of part 2. Every employer and every employee is presumed to have accepted and come under part 2 hereof, unless thirty (30) days prior to accident he shall have signified his election not to accept or be bound by the provisions of part 2, but for an accident occurring within the first 30 days after employment notice not to accept given at the time of employment shall be sufficient, and in such event unless such notice has been given at the time of employment, the acceptance and coming under part 2 hereof is conclusively presumed. The notice of election not to accept part 2 shall be given as follows: Any employer and any employee who are parties to a contract of service or employment existing at the time this act goes into effect is conclusively presumed to have accepted and come under part 2 hereof, and said contract of service or employment shall be conclusively presumed to continue under the provisions of part 2 of this act from and after the day it goes into effect unless otherwise expressly stated in writing in the contract of employment, or unless at least thirty (30) days prior to the time this act goes into effect, written or printed notice have been given by either party to the other as hereinafter provided that he does not accept the provisions of part 2. The employer in case he elects not to be bound by the provisions of part 2 hereof shall post and keep posted in his shop or place of business a written or printed notice of his election not to be bound by part 2 hereof and file a duplicate thereof with the probate judge of each county in which the employer does business. Said notice to be recorded by the judge of probate, for which he shall receive the usual fee for recording conveyances. The employee in case he elects not to be bound by the provisions of part 2 hereof shall give written or printed notice to the employer of his election not to be bound by part 2, and file a duplicate with proof of service attached thereto with the probate judge of one county in which the employer does business. A certified copy of said notice so required to be recorded shall be presumptive evidence in any court or proceedings that said employer or employee, as the case may be, has elected not to come under part 2 hereof.

Election presumed.

Notice of non-acceptance.

Sec. 12. Either party may terminate his acceptance, or his election, not to accept the provisions of part 2 by thirty (30) days' written notice to the other, such notice to be given as provided in section 11. A duplicate of such notice with proof of service attached thereto shall be filed with the probate judge of the county in which the employee is performing service at the time such notice is given, and shall be recorded, and the time shall not begin to run until such notice is so filed.

Termination of acceptance.

Sec. 12a. Minors shall, for the purposes of part 2 of this act, have the same power to contract, make election of remedy, make settlements, and receive compensation as adult employees; subject, however, to the power of the court, in its discretion at any time to require the appointment of a guardian to make such settlement and to receive moneys thereunder or under an award, and payments or awards made to such minors or their guardians shall exclude any further compensation either to the minors or to their parents for loss of services or otherwise.

Minors.

Sec. 12b. The interested parties shall have the right to settle all matters of compensation and all questions arising hereunder between themselves: *Provided*, That all settlements made hereunder must be in amount substantially the same as the amounts or benefits stipulated

Settlements.

in this act, unless a judge of the circuit court of the county where the claim for compensation under this act is entitled to be made or upon the written consent of the parties a judge of the circuit court or a judge of the probate court of any county determines that it is for the interest of the employee to accept a lesser sum and approves such settlement. Any settlements hereunder may be vacated for fraud, undue influence or coercion upon application made to the judge approving the settlement at any time not later than six months after the date of the settlement. Upon such settlements being approved judgment shall be rendered thereon and duly entered on the records of said court in the same manner and to have the same effect as other judgments or as an award if the settlement is not for a lump sum. The costs of the proceedings which shall not exceed two dollars, shall be borne by the employer. All moneys voluntarily paid by the employer or insurance carrier to an injured employee in advance of agreement or award or under an approved or vacated agreement or award shall be treated as advance payments on account of the compensation due.

Temporary to-
tal disability.

SEC. 13. Following is the schedule of compensation: (a) For injury producing temporary total disability, fifty (50) per centum of the average weekly earnings received at the time of injury, subject to a maximum compensation of twelve dollars (\$12) per week, except as otherwise provided herein and a minimum of five dollars (\$5) per week: *Provided*, That if at the time of injury the employee receives average weekly earnings of less than five dollars (\$5) per week, then he shall receive the full amount of such average weekly earnings per week. This compensation shall be paid during the time of such disability, not, however, beyond three hundred weeks. Payments to be made at the intervals when the earnings were payable, as nearly as may be.

Partial disabili-
ty.

(b) In all cases of temporary partial disability the compensation shall be fifty (50) per centum of the difference between the average weekly earnings of the workmen at the time of the injury and the average weekly earnings he is able to earn in his partially disabled condition. This compensation shall be paid during the period of such disability, not, however beyond three hundred weeks, payments to be made at the intervals when the earnings were payable as nearly as may be and subject to the same maximum as stated in clause (a). If the injured employee who is receiving such compensation for temporary partial disability should leave the employment of the employer by whom he was employed at the time of the accident for which such compensation is being paid, he shall, upon securing employment elsewhere, give to such former employer an affidavit in writing containing the name of his new employer, the place of the employment and the amount of wages being received at such new employment and until he gives such affidavit the compensation for temporary partial disability shall cease. The employer by whom such employee was employed at the time of the accident for which such compensation is being paid may also at any time demand of such employee, additional affidavit in writing containing the name of his employer, the place of his employment and the amount of wages he is receiving and if the employee, upon such demand, fails or refuses to make and furnish such affidavit his right for compensation for temporary partial disability shall cease until such affidavit is made and furnished.

Schedule for
specified injuries.

(c) For permanent partial disability the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to-wit: For the loss of a thumb, fifty per centum of the average weekly earnings during sixty (60) weeks. For the loss of a first finger, commonly called index finger, fifty per centum of the average weekly earnings during thirty-five weeks (35) weeks. For the loss of a second finger, fifty per centum of the average weekly earnings during thirty (30) weeks. For the loss of a third finger, fifty per centum of the average weekly earnings during twenty (20) weeks. For the loss of a fourth finger, commonly called little finger, fifty per centum of the average weekly earnings during fifteen (15) weeks. The loss of the first phalange of the thumb, or of any finger, shall be considered as equal to the loss of one-half of such thumb or finger, and

compensation shall be paid at the prescribed rate during one-half of the time specified above for such thumb or finger. The loss of two or more phalanges 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 centum of the average weekly earnings during thirty (30) weeks. For the loss of one of the toes other than the great toe, fifty per centum of the average weekly earnings during ten (10) 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 paid at the prescribed rate during one-half the time prescribed above for such toe. The loss of two or more phalanges shall be considered as the loss of the entire toe. For the loss of a hand, fifty per centum of the average weekly earnings during one hundred and fifty (150) weeks. For the loss of an arm, fifty per centum of the average weekly earnings during two hundred (200) weeks. For the loss of a foot, fifty per centum of the average weekly earnings during one hundred and twenty-five (125) weeks. For the loss of a leg fifty per centum of the average weekly earnings during one hundred and seventy-five (175) weeks. For the loss of an eye, fifty per centum of the average weekly earnings during one hundred (100) weeks. For the complete and permanent loss of hearing in both ears, fifty per centum of the average weekly earnings during one hundred and fifty (150) weeks. For the loss of an eye and a leg, fifty per centum of the average weekly earnings during three hundred and fifty (350) weeks. For the loss of an eye and an arm, fifty per centum of the average weekly earnings during three hundred and fifty (350) weeks. For the loss of an eye and a hand fifty per centum of the average weekly earnings during three hundred and twenty-five (325) weeks. For the loss of an eye and a foot, fifty per centum of the average weekly earnings during three hundred (300) weeks. For the loss of two arms other than at the shoulder, fifty per centum of the average weekly earnings during four hundred (400) weeks. For the loss of two hands, fifty per centum of the average weekly earnings during four hundred (400) weeks. For the loss of two legs fifty per centum of the average earnings during four hundred (400) weeks. For the loss of two feet, fifty per centum of the average weekly earnings during four hundred (400) weeks. For the loss of one arm and the other hand, fifty per centum of the average weekly earnings during four hundred (400) weeks. For the loss of one hand and one foot, fifty per centum of the average weekly earnings during four hundred (400) weeks. For the loss of one leg and the other foot, fifty per centum of the average weekly earnings during four hundred (400) weeks. For the loss of one leg and one hand, fifty per centum of the average weekly earnings during four hundred (400) weeks. For the loss of one arm and one foot, fifty per centum of the average weekly earnings during four hundred (400) weeks. For the loss of one arm and one leg, fifty per centum of the average weekly earnings during four hundred (400) weeks. Where an employee sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which produced the longest period of disability, but this section shall not affect liability for the concurrent loss of more than one member for which member, compensation is provided in the specific schedule in subsection (d) below. In all cases the permanent and total loss of the use of a member shall be considered as equivalent to the loss of that member, but in such cases the compensation in and by said schedule shall be in lieu of all other compensations. In cases of permanent disability due to injury to a member resulting in less than total loss of use of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member, which the extent of the injury to the member bears to its total loss. If an injured employee refuses employment suitable to his capacity, offered to or procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal, unless at any time in the opinion of the

Concurrent injuries.

Loss of use.

Refusing employment.

judge of the circuit court of the county of his residence such refusal is justifiable. All compensations provided in clause (c) of this section for loss of members, or loss of use of members, are subject to the same limitations as to maximum and minimum as are stated in clause (a). In all other cases of permanent partial disability not above enumerated, the compensation shall be fifty per centum of the difference between the average weekly earnings of the workman at the time of the injury and the average weekly earnings he is able to earn in his partially disabled condition, subject to a maximum of twelve (\$12) per week as otherwise provided herein. Compensation shall continue during disability, not, however, beyond three hundred (300) weeks. In case the injured employee leaves the services of the employer for whom he was working at the time of the accident and accepts employment elsewhere he shall make and furnish affidavit as to his new employment in the manner as required in subsection (b) of section 13 hereof.

Permanent to-
tal disability.

(d) For permanent total disability as defined in subsection (e) below, fifty per centum of the average weekly earnings received at the time of the injury subject to a maximum compensation of twelve dollars (\$12) per week except as otherwise provided herein and a minimum compensation of five dollars (\$5) per week: *Provided*, That if at the time of injury the employee was receiving earnings of less than five dollars (\$5) per week, then he shall receive the full amount of his earnings per week. This compensation shall be paid during such permanent total disability, not exceeding five hundred and fifty (550) weeks; but in all such cases drawing more compensation than five dollars (\$5) per week, the payment after the first four hundred (400) weeks shall be reduced to five dollars (\$5) per week for the remainder of the five hundred and fifty weeks (550) weeks, while the permanent total disability continues; payment to be made at the intervals when the earnings was payable as nearly as may be: *Provided, however*, Such payments with the approval of the circuit judge may be made monthly or quarterly. The total amount of compensation payable under this subsection shall not exceed five thousand (5,000) in any case: *Provided, however*, That in case an employee, who is permanently and totally disabled becomes an inmate of a public institution, then no compensation shall be payable unless he has wholly dependent on him for support a person or persons named in subsection (1), (2), and (3) of section 14 (whose dependency shall be determined as if the employee were deceased), in which case the compensation provided for in this subsection shall be paid for the benefit of such person so dependent, during dependency, in the manner ordered by the court, while the employee is an inmate of such institution.

(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, which totally incapacitates the employee from working at an occupation which brings him an income shall constitute permanent total disability.

Second injuries.

(e) 1. If an employee has a permanent disability or has previously sustained another injury than that in which he received a subsequent permanent injury by accident such as is specified in the sections herein defining permanent injury he shall be entitled to compensation only for the degree of injury that would have resulted from the latter accident if the earlier disability or injury had not existed.

(e) 1½. If an employee has previously lost the sight of one eye or lost one leg or lost one arm, and thereafter in the same employment or in the employment of another he should by accident receive additional injuries so as to proximately cause the loss of the sight of both eyes or the loss of both legs or the loss of both arms said employee shall receive three-fourths of the amount provided hereunder for one who has received a permanent total disability and there shall be credited on said three-fourths amount any payments which said employee had received or may receive for his first disability.

(e) 2. For permanent total disability other than as defined in subsection (e) fifty per centum of the average weekly earnings received at the time of injury subject to a maximum compensation of twelve dollars (\$12) per week and a minimum compensation of five dollars

($\$5$) per week: *Provided*, That if at the time of injury the employee was receiving earnings of less than five dollars ($\$5$) per week, then he shall receive the full amount of his earnings per week. This compensation shall be paid during the period of such permanent disability not exceeding four hundred (400) weeks; payments to be made at the intervals when the earnings were payable as nearly as may be: *Provided, however*, Such payments with the consent of the circuit judge may be made monthly or quarterly.

(e) 3. 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 13; 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.

(e) 4. If an employee receives a permanent injury as specified in section 13 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.

(f) In case a workman sustains an injury occasioned by an accident arising out of and in the course of his employment and during the period of disability caused thereby death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of death. Subsequent death.

(f) 1. In all claims for compensation for hernia resulting from injury by an accident arising out of and in the course of his employment it must be definitely proved to the satisfaction of the court: Hernia.

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 proved to be the result of an injury by accident arising out of and in the course of the employment shall be treated in a surgical manner by radical operation. 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 court considers it unsafe for the employee to undergo said operation, the employee shall be paid as otherwise provided herein.

(g) Compensation hereunder shall be computed on the basis of the average weekly earnings. "Average weekly earnings" 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 which the employee earned wages shall be followed, provided results just and fair to both parties will thereby be obtained. Where by reason of the shortness of the time Wage basis

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 the average weekly earnings as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks prior to the injury was being earned by a person in the same grade, employed at the same work by the same employer, and if there is no such person so employed, by a person in the same grade employed in the same class of employment in the same district. Wherever allowance 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.

Additional allowance for children.

(h) Wherever in this section there is a provision for fifty (50) per centum such per centum shall be increased five (5) per centum for each totally dependent child of the employee under the age of eighteen years at the time of the injury to the employee until such per centum shall reach a maximum of sixty (60) per centum. (2) Wherever in this section a weekly maximum compensation of twelve dollars (\$12) is provided such maximum compensation shall be increased in the following cases to the following amounts: Thirteen (\$13) dollars in case of an employee with one totally dependent child under the age of eighteen years at the time of the injury to the employee. Fourteen (\$14) dollars in case of an employee with two totally dependent children under the age of eighteen years at the time of the injury to the employee. Fifteen (\$15) dollars in case of an employee with three or more totally dependent children under the age of eighteen years at the time of the injury to the employee. The increase in the above per centum and in the maximum amount shall be paid only so long as the child upon which the increase is based remain under the age of eighteen years.

Dependents.

Sec. 14. (1) Wife and children conclusively presumed wholly dependent; when. For the purposes of this act the following described persons shall be conclusively presumed to be wholly dependent:

(a) Wife, unless it be known that she was voluntarily living apart from her husband at the time of his injury or death or unless it be shown she was not married to the deceased at the time of the accident or for a reasonable period prior to his death, or unless it be shown that the husband was not in any way contributing to her support.

(b) 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.

Total dependents.

(3) Wife, child, husband, mother, father, grandmother, grandfather, sister, brother, mother-in-law and father-in-law 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 total dependents, and payment of compensation shall be made to them in the order named.

Partial dependents.

(3A) Any member of a class named in subdivision (3), who regularly derived part of his support from the earnings 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 dependent and payment of compensation shall be made to such partial dependents in the order named.

Death benefits.

(4) In death cases where the death results proximately from the accident within three years compensation payable to dependents shall be computed on the following basis and shall be paid to the persons entitled thereto without administration.

(5) If the deceased employee leave a dependent widow or dependent husband and no dependent child, there shall be paid to the widow thirty per centum of the average weekly earnings of deceased.

(6) If the deceased employee leave a dependent widow or dependent husband and one dependent child, there shall be paid to the widow for the benefit of herself and such child forty per centum of the average weekly earnings of the deceased.

(7) If the deceased employee leave a dependent widow or dependent husband and either two or three dependent children, there shall be paid to the widow for the benefit of herself and such children fifty per centum of the average weekly earnings of the deceased.

(8) If the deceased employee leave a dependent widow or dependent husband and four or more dependent children, there shall be paid

to the widow for the benefit of herself and such children sixty per centum of the average weekly earnings of the deceased.

(8A) In all cases where compensation is payable to a widow for the benefit of herself and dependent child or children the court shall have power to determine in its discretion what portion of the compensation shall be applied for the benefit of any such child or children and may order the same paid to a guardian.

(9) In case of remarriage of a widow of an employee who had dependent children, the unpaid balance of compensation, which would otherwise become due to her, shall be paid to such children.

(10) If the deceased employee leave a dependent orphan, there shall be paid thirty per centum of the average weekly earnings of deceased, with ten per centum additional for each additional orphan with a maximum of sixty per centum of such wages.

(11) If the deceased employee leave a dependent husband and no dependent child, there shall be paid to the husband twenty-five per centum of the average weekly earnings of the deceased.

(12) If the deceased employee leave no widow or child or husband entitled to any payment hereunder, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid if only one parent, twenty-five per centum of the average weekly earnings of the deceased and if both parents, thirty-five per centum of the average weekly earnings of the deceased to such parent or parents.

(13) If the deceased leave no dependent widow or dependent child or husband or parent entitled to any payment hereunder, but leaves a grandparent, brother, sister, mother-in-law or father-in-law wholly dependent on him for support, there shall be paid such dependent, if but one, twenty per centum of the average weekly earnings of the deceased, or if more than one, twenty-five per centum of the average weekly earnings of the deceased, divided between or among them share and share alike.

(14) If compensation is being paid under part 2 of this act to any dependent, such compensation shall cease upon the death or marriage of such dependent, and the dependency of a child shall terminate with the age of 18 unless otherwise provided herein.

(15) Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of the earnings regularly contributed by the deceased to such partial dependent, at and for a reasonable time immediately prior to the injury bore to the total income of the dependent during the same time.

(16) In all cases where death resulted to an employee caused by an accident arising out of and in the course of his employment the employer shall pay, in addition to the medical and hospital expenses provided for in section 18 the expense of last sickness, and burial, not exceeding in amount one hundred dollars (\$100), except in cases where an insurer of the deceased or a benefit association is liable therefor, or for a part thereof, in such case the employer shall not be required to pay any part of such expense, for which such insurer or benefit association is liable unless such non-payment by the employer would diminish the benefits received by the dependent of the deceased from any such insurer or benefit association. In case dispute arises as to the reasonable value of the services rendered in connection with the last sickness and burial, the same shall be approved by the court before payment, after such reasonable notice to interested parties as the court may require. If the deceased leaves no dependents no compensation shall be payable, except as provided by this subsection.

(17) The compensation payable in case of death wholly dependent shall be subject to maximum compensation of twelve dollars (\$12) per week and a minimum of five dollars (\$5) per week: *Provided*, That if at the time of injury the employee receives earnings of less than five dollars (\$5) per week, then the compensation shall be the full amount of such earnings per week. The compensation payable to partial dependents shall be subject to a maximum of twelve dollars (\$12) per week and a minimum of five dollars (\$5) per week: *Provided*, That

if the income loss of the said partial dependents by such death is less than five dollars (\$5) per week, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency not exceeding three hundred (300) weeks, payments to be made at the interval when the earnings were payable as nearly as may be.

(18) In computing and paying compensation to orphans or other children, in all cases, only those under eighteen years of age, or those over eighteen years of age, who are physically or mentally incapacitated from earning, shall be included; the former to receive compensation only during the time they are under eighteen, the latter for the time they are so incapacitated, within the period of three hundred (300) weeks.

(19) Total dependents shall be entitled to take compensation in the order named in subsection (3) above, until the per centum of the average weekly earnings of the deceased during the time and as specified in subsection (17) shall have been exhausted; but the total compensation to be paid to all total dependents of a deceased employee shall not exceed in the aggregate twelve dollars (\$12) per week, except as otherwise provided herein.

Preexisting conditions.

(20) If the degree or duration of disability resulting from an accident is increased or prolonged because of a preexisting injury or infirmity the employer shall be liable only for the disability that would have resulted from the accident had the earlier injury or infirmity not existed.

Additional allowance for children.

(21) Wherever in this section there is a provision for fifty (50) per centum such per centum shall be increased five (5) per centum for each totally dependent child of the deceased employee under the age of eighteen years at the time of the death of the employee until such per centum shall reach a maximum of sixty (60) per centum. Wherever in this section a weekly maximum compensation of twelve (\$12) dollars is provided such maximum compensation shall be increased in the following cases to the following amounts: Thirteen (\$13) dollars in case the deceased employee leaves one totally dependent child under the age of eighteen years at the time of the injury to the deceased employee. Fourteen (\$14) dollars in case the deceased employee leaves two totally dependent children under the age of eighteen years at the time of the injury to the deceased employee. Fifteen (\$15) dollars in case the deceased employee leaves three or more totally dependent children under eighteen years of age at the time of the injury to the deceased employee. The increase in the above per centum and in the maximum amount shall be paid only so long as the child upon which the increase is based remains under the age of eighteen years.

Limit on payments.

SEC. 14½. In no case hereunder except as otherwise provided herein shall the compensation paid hereunder be more than twelve (\$12) dollars per week, nor (except as herein otherwise provided), less than five (\$5) dollars per week, and in no case shall the total amount of compensation exceed five thousand (\$5,000) dollars.

Payments.

SEC. 15. If compensation is being paid under this act to any dependent, such compensation shall cease upon the death or marriage of such dependent. Where compensation is being paid under this act to any dependent, in no event shall such dependents receive more than the proportion which the amount received of the deceased employee's income during his life bears to the compensation provided hereunder.

Joint employers.

SEC. 16. In case any employee for whose injury or death compensation is payable under part 2 of this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, such employers shall contribute the payment of such compensation in the proportion of their several earnings liability to such employee. If one or more but not all of such employers should be subject to part 2 of this act, and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject, shall be to pay the proportion of the entire compensation which their proportionate earnings liability bears to the entire earnings of the employee: *Provided, however,* That nothing in this section shall prevent any arrangement between such employers for a different dis-

tribution, as between themselves, of the ultimate burden of such compensation.

Sec. 17. In case of temporary total or temporary partial disability no compensation shall be allowed for the first two weeks after disability except as provided by section 18, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 19. Compensation shall begin with the third week and in the event the disability from the injury exists for a period as much as four weeks compensation for the first two weeks after the injury shall be added to and payable with the first installment due the employee after the expiration of the four weeks.

Waiting time.

Sec. 18. In addition to the compensation herein provided the employer shall pay the actual cost of reasonably necessary medical and surgical treatment and attention, medicine, medical and surgical supplies, crutches and apparatus, as may be obtained by the injured employee during the first sixty (60) days of disability (or in case of death within said sixty (60) days, obtained during the period occurring between the time of the injury and his death therefrom): *Provided, however*, That the total liability of the employer under this section shall not exceed the aggregate of one hundred dollars, and further, that the pecuniary liability of the employer for such services rendered the employee shall be limited to such charges as prevail for similar treatment in the community where the injured employee resides. All cases of dispute as to the value of such services shall be determined by the tribunal having jurisdiction of the claim of the injured employee for compensation: *And provided, further*, That (except in an emergency it is necessary; or in the event medical and surgical service and attention is not readily obtainable, under contract for same; or the employer does not promptly furnish the same, as hereinafter provided), if the employer shall furnish, free of charge to the injured employee such medical and surgical treatment and attention, medical and surgical supplies, crutches and apparatus, he shall not be liable under this section, except for that he may fail to furnish: *And provided, further*, In the event the injured employee obtains the same under a contract between him and another (or the employer), existing at the time of the injury, the employer shall be liable to pay (or repay, as the case may be), only the cost of the same under the terms of said contract, but in no event to exceed the aggregate of one hundred dollars as hereinabove provided: *Provided, further*, That the employer may, if he so elects, furnish proper and efficient medical and surgical treatment and attention and services herein provided for free of charge to the injured employee during such sixty (60) days or such time thereafter as he desires to furnish the same, and such employees shall accept the same. The injured employee must submit himself to the examination by the employer's physician at all reasonable times if requested to do so by the employer, but the employee shall have the right to have a physician of his own selection present at such examination, in which case the employee shall be liable to such physician for his services. The employer shall pay for the services of the physician making the examination at the instance of the employer. And in case of dispute as to the injury, the court may, at the instance of either party or of its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured person and report his findings to the court, the expense of which examination shall be borne equally by the parties. If the injured employee refuses to comply with any reasonable request for examination, or refuses to submit to medical and surgical treatment and attention or refuses to accept the medical service which the employer elects to furnish under the provisions of this act, his right to compensation shall be suspended, and no compensation shall be payable for the period of such refusal. Any physician whose services are furnished or paid for by the employer, or any physician of the injured employee, and who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge by him in the course of such treatment or examination as same relates to the injury or disability arising therefrom. In all death claims where the cause of death is obscure or is disputed, any

Medical, etc., aid.

Physical examination.

- interested party may require an autopsy, the cost of which is to be borne by the party demanding the same.
- Notice of accident.** Sec. 19. Every injured employee or his representative shall within five days after the occurrence of an accident give or cause to be given to the employer written notice of the accident and the employee if he fails to give such notice shall not be entitled to physicians or medical fees nor any compensation which may have accrued under the terms of this act, unless it can be shown that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity, other than minority, or fraud or deceit, or equal good reason, but no compensation shall be payable unless such written notice is given within ninety days after the occurrence of the accident, or where death results within ninety (90) days after the death.
- Form, etc.** Sec. 20. The notice referred to in section 19 may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in civil action, or by sending it by registered mail to the employer at the last known residence or business place thereof within the State, and shall be substantially in the following form: Notice—You are hereby notified that an injury was received by (name) who was in your employ at (place) while engaged as (kind of work) under the superintendency of on or about the day of, 19 . . at about . . . o'clock . . m., and who is now located at (give town, street and number) that so far as now known, the nature of the injury was and that compensation may be claimed therefor. (Signed) (Giving address) Dated, 19 But no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received a specified injury in the course of his employment on or about a specified time, at or near a certain place specified.
- Action in one year.** Sec. 20a. In case of a 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 payable under this act or unless within one year after the accident one of the parties shall have filed a verified complaint as provided in section 28 hereof. In case of death all claims for compensation shall be forever barred unless within one year after death, when the death results proximately from the accident within three years, the parties shall have agreed upon the compensation under this act or unless within one year after such death one of the parties shall have filed a verified complaint as provided in section 28 hereof. Where, however, payments of compensations have been made in any case, said limitations shall not take effect until the expiration of one year from the time of making the last payment. In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act required within the time in this section specified the period of limitation in any such case shall be extended to become effective one year from the date when such incapacity ceases.
- Settlement of disputes.** Sec. 21. (1) In case of a dispute between employer and employee or between the dependents of a deceased employee and his employer with respect to the right to compensation under this act or the amount thereof either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil case in tort between the same parties. Such controversy shall be heard and determined by such judge or judges of said court as would hear and determine a civil action between the same parties arising out of tort and in case there is more than one judge of such court such controversies shall be set and assigned for hearing under the same rules and statutes that civil actions in tort are set and assigned; such court is empowered to hear and determine such controversies in a summary manner, that the decision of the judge hearing the same shall be conclusive and binding between the parties, subject to the right of appeal in this act provided for. When willful misconduct on the part of the employee is set up by the employer as it is provided for herein, the employer may, upon appearing, demand a jury to hear and determine, under the direction of the court, the issues involved in this defense. If the employer fails to demand a jury upon appearing, the employee may demand a jury to try such issues by filing his demand within five days after the appearance of the

employer. When a jury is demanded by either party the court must submit the issue of fact as to willful misconduct set up by the employer to the jury, for a special finding of the facts subject to the usual powers of the court over verdicts rendered contrary to the evidence or the law, but the judge must determine all other questions involved in the controversy without a jury. Upon setting up such defense the employer must serve a copy of the plea or answer setting up the defense upon the employee or his attorney of record. For the purpose of hearing and determining controversies between employer and employee or the dependents of a deceased employee and the employer, arising under this act, the circuit court shall be deemed always in session. (2) If at any time there are adverse claimants to compensation hereunder the employer in submitting said claim to said circuit court may suggest in writing said claimants and they shall be required to interplead and said court shall determine and decree to which claimant or claimants such compensation is justly due and said employer upon complying with the order of such judge shall be released from the claims of any other claimants thereto. From such decree any party aggrieved may by certiorari within 30 days thereafter appeal to the Supreme Court of Alabama.

SEC. 22. Compensation for the death of an employee shall be paid only to dependents who at the time of the death of the injured employee were actually residents of the United States. No right of action to recover damages for the death of an employee shall exist in favor or for the benefit of any person who was not a resident of the United States at the time of the death of such employee.

Alien beneficiaries.

SEC. 23. The amounts of compensation payable periodically hereunder, either by agreement of the parties, approved by the court, or by decision of the court, may be commuted to one or more lump sum payments, except compensation due for death or permanent total disability, or for permanent partial disability resulting from total loss of hearing or from the loss of an arm or a hand or a foot or a leg or an eye or of more than one such member. These may be commuted only with the consent of the circuit court. In making such commutations, the lump sum payments shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a six per cent basis.

Lump sums.

SEC. 24. All amounts paid by the employer and received by the employee or his dependents under settlements made under section 12b, shall be final; but the amount of any award payable periodically for more than six months may be modified as follows: (a) At any time by agreement of the parties and approved by the court. (b) If the parties cannot agree, then at any time after six (6) months from the date of the 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. In such case the same procedure shall be followed as in section 28 in case of disputed claim for compensation.

Review of awards.

SEC. 25. At any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum equal to the present value of all future installments of compensation calculated on a six per cent basis, 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 to any savings bank or trust company of this State or any national bank doing business in this State to be approved and designated by the court, 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 receipts in duplicate of the trustees, one of which shall be filed with the probate judge of the county in which the injury or death occurred, and the other filed with the clerk of the circuit court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by 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 de-

Payment to trustee.

ceased employee, as the case may be: *Provided, further,* That in the event the right to receive compensation should terminate on account of death, becoming of age, or marriage or for any other cause as provided in this act the balance remaining in said bank or trust company after such termination shall be returned by them to the employer, his successors or assigns.

Security of pay-
ments.

Sec. 26. In all cases in which the award or judgment is payable in installments and default has been made in the payment of any installment, the owner or interested party may, upon the expiration of thirty days from said default and upon five days' notice to the defaulting employer or defendant, move for a modification of the judgment or award by ascertaining the cash or present value of same, under the rule of computation contained in section 25, and upon which execution may issue unless the defaulting employer enter into a good and sufficient bond, to be approved by the circuit judge, securing the payment of all future installments, and forthwith pay all past due ones with interest thereon since due. Said bond to be recorded upon the minutes of the circuit court. Claims for compensation or awards, or judgments or agreements to pay compensation owned by an injured employee or his dependents shall not be assignable and shall be exempt from seizure or sale or garnishment for the payment of any debt or liability. There shall be no right to waive this exemption.

Payments pre-
ferred.

Sec. 27. The right to compensation and of compensation awarded any injured employee or for death claims to his dependents shall have the same preference against the assets of the employer as other unpaid wages for labor; but such compensation shall not become a lien upon the property of third persons by reason of such preference.

Procedure.

Sec. 28. Procedure in cases of dispute shall be as follows: Either party to a controversy arising under this act may file a verified complaint in the circuit court of the county which would have jurisdiction of an action between the same parties arising out of tort which shall set forth the names and residences of the parties and the circumstances relating to the employment at the time of the injury with a full description of the injury, its nature and extent, the amount of the average earnings received by the employee which would affect his compensation under this act, the knowledge of the employer of the injury or the notice to him thereof, which must be of the kind provided for in this act, and such other facts as may be necessary to enable the court to determine what, if any, compensation the employee, or in case of a deceased employee, his dependents, are entitled to under this act. The complaint shall be filed with the clerk of the court and upon service of such complaint, as hereinafter provided for, any judge of such court shall make an order fixing the time and place for the hearing thereof, which time shall be not less than thirty days after the service of summons to the employer as hereinafter provided for. Summons to answer such complaint shall be issued by the clerk, accompanied by a copy of the complaint, both of which shall be served by the sheriff upon the employer. Within five days prior to the date fixed for the hearing of the controversy the employer shall file a verified answer to the complaint setting up the facts which he relies on in defense thereof. At the time fixed for hearing, or any adjournment thereof, the court shall hear such witnesses as may be presented by each party, and in a summary manner without a jury, unless one is demanded to try the issue of willful misconduct on the part of the employee decide the controversy. This determination shall be filed in writing with the clerk of the said court, and judgment shall be entered thereon in the same manner as in causes tried in the said circuit court, and shall contain a statement of the law and facts and conclusions as determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due: *Provided,* That nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court or Court of Appeals to review questions of law by certiorari. Costs may be awarded by said court in his discretion, and when so awarded the same costs shall be allowed, taxed and collected as for like services and proceedings in civil cases: *Provided,* That if it shall appear that the employer, prior to the commencement of

the action, made to the person or persons entitled thereto a written offer of compensation in specific terms, which terms were in accordance with the provisions of this act, then no costs shall be awarded or taxed against such employer. Whenever any decision or order is made and filed by the court upon any matter arising under part 2 of this act, the clerk of the court shall forthwith make and forward to the judge of probate of the county in which the complaint was filed a certified copy of such decision or order with any memorandum of the judge and of any judgment entered. No fee or other charge shall be collected therefor: *Provided*, The plaintiff or owner of any judgment so certified may have the same registered by the probate judge upon the payment of the fee now fixed by law for registering judgments, and the same shall become a lien in like manner as other registered judgments, unless the same is made a preferred lien by other provisions of some law. When the judgment, however, is for a sum not due, that is payable periodically, the defendant may discharge the registered lien by giving a bond for the payment of same to be approved by the probate judge and recorded and for which he shall receive the same for registration: *And provided further*, That no execution shall issue where such judgment is payable periodically unless default is made in the payment of one or more of said periodical payments.

Sec. 28A. Any judgment rendered under the provisions of this act, either by award or by settlement, and entered on the minutes of any court shall be by said court discharged and marked satisfied upon presentment to said court or the clerk thereof of a release or discharge of said judgment executed by the party in whose favor the same runs, and acknowledged in the same manner as conveyances are acknowledged, or, upon presentment by the employer or his representative, of an affidavit that said judgment has been in accordance with its terms fully satisfied and discharged, together with satisfactory proof in the way of vouchers or checks duly endorsed by the party in whose favor said judgment ran.

Judgments.

Sec. 29. Every right of action for death by wrongful act or for injury by negligence accruing to an injured employee prior to the taking effect of this act is continued and preserved under the existing law.

Existing rights of action.

Sec. 30. Every employer who accepts the provisions of this act relative to the payment of compensation may at his option insure and keep insured his liability thereunder in some insurance corporation, association, organization or insurance association or corporation or association formed of employers and workmen or formed by a group of employers to insure the risks under part 2 of this act operating by the mutual assessment or other plans or otherwise: *Provided*, Such insurance association, organization or corporation shall have first had its contract and plan of business approved in writing by the commissioner of insurance of Alabama and have been authorized by said insurance commissioner to transact the business of workman's compensation insurance in this State and under such charter or plan. Those writing such insurance shall in every case be subject to the conditions of this section hereinafter named. Nothing herein contained shall prevent an employer from insuring only a particular class or classes of employees or class, form or kind of risks all or any part thereof or from limiting such insurance either as to maximum or taking out insurance policies with such other limitations as are authorized by law, or from carrying catastrophe insurance. Such policies shall contain a clause to the effect that as between the workman and the insurer, notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for the purposes of this act shall be jurisdiction of the insurer, and that the insurer will in all things be bound by and subject to the awards, adjudgment or judgment rendered against such employer upon the risks so insured. Such policies must provide that the workman shall have equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer, and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to the said workman or

Insurance.

dependents, thereby discharging all obligations under the policy to the employer and all of the obligations of the employer and the insurer to the workman, but such policies shall contain no obligations relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in force, if the compensation remains owing. The insurer must be one authorized by law to conduct such business in the State of Alabama, and authority is hereby granted to all insurance companies writing such insurance to include in their policies, in addition to the requirements now provided by law, the additional requirements, terms and conditions in this section provided. Every insurance corporation, mutual corporation, reciprocal exchange or association authorized to transact the business of workmen's compensation insurance in this State and which insures employers against liability for compensation under the provisions of this act shall file with the insurance commissioner its classification of risks and premiums relating thereto and any subsequent proposed classification of risks and premiums, together with the basic rates and merit rating schedules, if a system of schedule rating or merit rating be used by such insurance corporation, exchange or association, none of which shall take effect until the insurance commissioner shall have approved the same as reasonable, adequate and not excessive. And within ten days after such approval of said rates, schedules and system of schedule merit rating by said insurance commissioner, he shall make or cause to be made, a sufficient number of printed or typewritten copies of same, for such purpose, and shall mail at least one copy of each of the same to every insurance carrier writing workmen's compensation business in the State of Alabama, at its last address, or at the last address of its designated agent to receive the same, left in writing by such carrier with said insurance commissioner. And every such insurance carrier shall (or if such insurance carrier be a member of or associated with a rating or inspection bureau, either or both of them or a concern or aggregation of like character, it shall cause such rating and inspection bureau, either or both, or concern or aggregation of like character with which it is affiliated to do so) file with the insurance commissioner a full and complete statement of the actuarial and underwriting experience, data and the like in its possession, from which and upon which said rates, schedules and systems so filed were ascertained, calculated and constructed, and within six months after the expiration of each succeeding six months, file a like statement of all actuarial and underwriting data and the like, pertaining to such rates, schedules and system, accumulated or acquired by it during the preceding six months. Upon failure to file said statement within the time specified above, said rates, schedules or systems may be presumed by the insurance commissioner, without more [examination] to be excessive, unreasonable or inadequate to prove the necessary reserves, or discriminatory as the case may be. The insurance commissioner may withdraw his approval of any premium rate or schedule made by any such insurance corporation, association, mutual corporation or reciprocal exchange if in his judgment such premium rate or schedule is excessive or unreasonable or discriminatory or is inadequate to provide the necessary reserves. Nothing in this act contained or in any other law of this State shall affect the right of any insurance corporation, or any mutual or reciprocal insurance corporation or association to issue participating policies or contracts and to pay savings, refunds or dividends upon such policies or contracts. No agreement by an employee to pay to an employer any portion of the cost of insuring his risk under this act shall be valid unless such agreement between the employer and employee the plan of which is part of a contract [is] approved in writing by the commissioner of insurance of the State of Alabama. But it shall be lawful for the employer and the workman to agree to carry the risks covered by part 2 of this act in conjunction with other and greater risks and providing other and greater benefits such as additional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the commissioner of insurance of Alabama. Any employer who shall make any charge or

deduction prohibited by this section shall be guilty of a misdemeanor. If the employer shall insure to his employees the payment of the compensation provided by part 2 of this act and according to the full benefits thereof and with full coverage under this act in a corporation or association authorized to do business in the State of Alabama and approved by the commissioner of insurance of the State of Alabama, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is insured and by whom insured, and if the employer shall further file a copy of such notice with the commissioner of insurance, then, and in such case, any suits or actions brought by an injured employee or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability: *Provided*, That in case of insolvency or bankruptcy of such insurance company or in case it can not be reached by due diligence by process in this State, the employer shall not be released from liability under the provisions of this act: *And provided further*, That should any recovery had in excess of the amount of the insurance carried the employer shall be liable for such excess. The return of any execution upon any judgment of an employee against any such insurance company unsatisfied in whole or in part shall be conclusive evidence of the insolvency of such insurance company for the purpose of this act and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction, proceedings may be brought by the employee against the employer in the first instance or against such employer and insurance company jointly or severally or in any pending proceeding against any insurance company, the employer may be joined at any time after such adjudication.

SEC. 31. (1) Any person who creates or carries into operation any fraudulent scheme, artifice or device to enable him to execute work without himself being responsible to the workman for the provisions of this act, shall himself be included in the term "employer," and be subject to all the liabilities of employers under this act. But this section shall not be construed to cover or mean an owner who lets a contract to a contractor in good faith, nor to a contractor who, in good faith, lets to a subcontractor a portion of his contract: *Provided, however*, That no person shall be deemed a contractor or subcontractor so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employer's premises, and with the employers' tools or appliances and under the employer's direction; nor one who does what is commonly known as "piecework," or in any way where the system of employment used merely provides a method of fixing the workman's wages. (2) When compensation is claimed from, or proceedings taken against, a person under subdivision 1 of this section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury. (3) The employer shall not be liable or required to pay compensation for injuries due to the acts or omissions of third persons not at the time in the service of the employer, nor engaged in the work in which the injury occurs, except as provided in section 32.

SEC. 32. (1) Third party under part 2. Where an injury or death for which compensation is payable under part 2 of this act is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party also being subject to the provisions of part 2 of this act, the employee in case of injury, or his dependents in case of death, may, at his or their option, proceed either at law against such party to recover damages, or against the employer for compensation under part 2 of this act, but not against both. If the employee in case of injury, or his dependents in case of death, shall bring an action for the recovery of damages against such party other than the employer or his insurance carrier, the amount thereof, manner in which, and the person to whom the same are payable, shall be as provided for in part 2 of this act and not otherwise: *Provided*, That in no case shall such party be liable to any person other than the employee or his dependents for any damages growing out of or resulting from such injury or death. If the employee or his dependents shall

Evading provisions of act.

Liability of third parties.

elect to receive compensation from the employer, then the latter or his insurance carrier shall be subrogated to the right of the employee or his dependents, to recover against such other party, and may bring legal proceedings against such party and recover the aggregate amount of compensation payable by him to such employee or his dependents hereunder, together with the costs of such action and reasonable attorney's fees expended by him therein. (2) Third party not under part 2.—Where the injury or death for which compensation is payable under part 2 of this act was caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party not being subject to the provisions of part 2 of this act, legal proceedings may be taken by the employee or dependents against such other party to recover damages, notwithstanding the payment by the employer, or his liability to pay compensation hereunder. But in such case, if the action against such other party is brought by the injured employee, or in case of his death by his dependents, and judgment is obtained and paid, or settlement is made with such other party, either with or without suit, the employer shall be entitled to deduct from the compensation payable by him the amount actually received by such employee or his dependents: *Provided*, That if the injured employee, or in case of his death his dependents, shall agree to receive compensation from the employer or shall institute proceedings to recover the same, or accept from the employer any payment on account of such compensation, such employer or his insurance carrier shall be subrogated to all the rights of such employee, or dependents, and may maintain, or in case an action has already been instituted, may continue the action either in the name of the employee or dependents, or in his own name against such other party for the recovery of damages, but such employer shall nevertheless pay over to the injured employee or dependents all sums collected from such other party by judgment or otherwise in excess of the amount of such compensation payable by the employer under part 2 of this act, and costs, attorney's fees, and reasonable expenses incurred by such employer in making such collection or enforcing such liability: *Provided*, That in no case shall such party be liable to any person other than the employee or his dependents for any damages growing out of or resulting from such injury or death.

Rules to be uniform.

Sec. 33. It shall be the duty of the chief justice of the Supreme Court of Alabama, from time to time, as he deems it is necessary, to prepare uniform rules for the circuit judges and circuit courts, which may be necessary for carrying out the provisions of this act including such forms for orders and decrees as said chief justice of the Supreme Court of Alabama deems best, such rules and forms when so prepared and promulgated by the chief justice of the Supreme Court of Alabama shall be followed and used by the said judges and courts.

Commissioner.

Sec. 33a. For the purpose of gathering statistics and performing the duties hereinafterwards required there is hereby created an office known and designated as the compensation commissioner of the State Alabama. The director of the department of archives and history of the State of Alabama shall be ex officio the compensation commissioner of the State of Alabama.

Duties.

Sec. 34. The compensation commissioner of the State of Alabama shall prepare and cause to be printed, at the expense of the State and to be paid for as other supplies are paid for, and upon request furnish free of charge to any employee or employer such blank forms and literature as he shall deem requisite to facilitate or promote the efficient administration of this act other than the papers relating to court proceedings, which as set forth in the section 33 are to be prepared by the chief justice of the Supreme Court of Alabama.

Records of accidents.

Sec. 35. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, for which compensation is claimed or paid, received by his employees in the course of their employment, on blanks approved by the compensation commissioner of the State of Alabama. Within fifteen days after the occurrence and knowledge thereof by the employer of an injury to an employee, causing his absence from work for more than fourteen days, for which compensation is claimed or paid a report shall be made in writing and mailed to the compensation com-

missioner of the State of Alabama on blanks to be procured from such commissioner for this purpose.

SEC. 36. Such employer shall within ten days after the settlement of any cause make a report in writing giving the details of such settlement and mail the same to the compensation commissioner of Alabama on blanks to be procured from the commissioner for such purpose.

Settlements to be reported.

SEC. 37. The clerk of the circuit court shall within ten days after the disposition of any case in his court make a report in writing, giving the details of such disposition, and mail the same to the compensation commissioner of Alabama on blanks to be procured from the commissioner for such purpose.

Courts to make reports.

SEC. 38. Upon the termination of the disability of the injured employee or if the disability extends beyond a period of 60 days then also at the expiration of such period the employer shall make a supplementary report to the compensation commissioner of the State of Alabama on blanks to be procured from the commissioner for such purpose.

Supplementary reports.

SEC. 39. It shall be the duty of the compensation commissioner of the State of Alabama from the records of the insurance commissioner of Alabama and from the reports furnished to him and from such other information as he may obtain, to prepare and submit to the next regular session of the legislature of Alabama upon its convening a detailed and statistical report showing the results, as fully as the same can be shown, of the operation of this act, the number of employers carrying their own insurance, the number of employers insuring their risks with insurance companies, the number of insurance companies, association, or corporations engaged in the business of workmen's compensation insurance in the State of Alabama, the extent of such business, the premium rates charged therefor and a comparison of such premium rates with rates charged in other States, and with such recommendations as he desires to make in reference to the amendment or improvement of this act. For preparing said report, printing the same, and furnishing same such compensation commissioner shall be paid out of the State treasury the necessary reasonable expense therefor and in addition such sum of money as may be approved by the governor of the State of Alabama for his services.

Reports to legislature.

SEC. 40. (1) Whoever makes in the verified complaint in section 28 hereof provided for or in any claim for compensation hereunder any statement knowing it to be false shall be guilty of perjury and must, on conviction, be imprisoned in the penitentiary for not less than three or more than twenty years. (2) Any person entitled to compensation under this act whose compensation by the terms of this act ceases upon marriage or upon his becoming over the age of eighteen years, or for any other cause herein provided for, knowingly accepts any payments or compensation after marriage, or after he becomes over eighteen years of age, or after the disability for which he is receiving compensation has ceased, shall be guilty of a misdemeanor, and on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months, and must also be fined not more than five hundred dollars. (3) Any person knowingly guilty of doing an act amounting to fraud in making or perfecting a settlement under the authority of this act, or by means of fraudulent representation obtaining a settlement from any employee shall be guilty of a misdemeanor and on conviction may be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months, and must also be fined not more than five hundred dollars. (4) Any person who knowingly presents a false or fictitious claim of injury for compensation hereunder or who aids or assists in the presentation of such false or fictitious claim, knowing the same to be false or fictitious, shall be guilty of a misdemeanor, and on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months, and must also be fined not more than five hundred dollars. (5) Any person, upon any hearing before the judge of the circuit court or before the circuit court in reference to any compensation claimed or paid hereunder, who knowingly testifies falsely as to any material fact shall be guilty of perjury and must, on conviction, be imprisoned in the penitentiary for not less than three nor more than twenty years. (6) Any physician who makes any

Violations.

statement or certificate as to any compensation claimed or paid hereunder, knowing it to be false, shall be guilty of a misdemeanor, and on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months and must also be fined not more than five hundred dollars. (7) Any attorney who in person solicits employment to collect for a consideration any claim of any employee for compensation hereunder or solicits for a consideration employment to defend such claims or who knowingly accepts such claim after it has been solicited by some other person or who employs any other person for the purpose of soliciting or obtaining such claim or claims shall be guilty of a misdemeanor, and on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months and must also be fined not more than five hundred dollars. Any attorney convicted hereunder must be removed and disbarred from the practice of law in this State and the record of his conviction is conclusive evidence thereof. The commission by any attorney of any of such acts shall also be a cause for the removal and disbarment of such attorney. (8) Any person who is not authorized by law to practice the profession of law within this State who solicits for a consideration or traffics in for a consideration or represents for a consideration any claimant, claimants, or claim for compensation hereunder shall be guilty of a misdemeanor, and on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months and must also be fined not more than five hundred dollars. (9) Whoever makes in any affidavit required to be filed hereunder any statement knowing it to be false shall be guilty of perjury and must, on conviction, be imprisoned in the penitentiary for not less than three nor more than twenty years. (10) Any insurance corporation, organization, or association, or any officer, employee, or agent of such insurance corporation, organization, or association, who solicits or writes any workmen's compensation insurance in this State without complying with the law as herein set forth in reference to filing with the insurance commissioner its classifications of risks and premiums relating thereto or without having received from said insurance commissioner approval of its plan of business or who fails to comply with any other requisites herein set out for the doing of such insurance business in the State of Alabama, shall be guilty of a misdemeanor, and on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months and must also be fined not more than five hundred dollars. (11) Any person required hereunder to make reports in writing who willfully fails to make such reports shall be guilty of a misdemeanor, and on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months and must be fined not more than five hundred dollars. (12) Any person other than a beneficiary under this act who for a consideration takes or accepts from an employee an assignment of his claim or award or judgment for, or agreement to pay, compensation, or who accepts or takes same as security for a loan or a debt, or who takes a power of attorney to collect the same, retaining any interest in the amount to be collected, shall be guilty of a misdemeanor, and on conviction may be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months and must also be fined not more than five hundred dollars.

Definitions.

Sec. 36 [41]. Throughout this act the following words and phrases as used therein shall be considered to have the following meaning, respectively, unless the context shall clearly indicate a different meaning in the connection used. (a) The word "compensation" has been used both in part 1 and part 2 of this act to indicate the money benefits to be paid on account of injury or death. Strictly speaking, the benefit which an employee may receive by action at law under part 1 of this act in [is] damages, and this is indicated in section 1. To avoid confusion, the word "compensation" has been used in both parts of the act, but it should be understood that under part 1 the compensation by way of damages is determined by an action at law. (b) "Child" or "children" includes posthumous children and all other children entitled by law to inherit as children of the deceased, also step children who were

members of the family of the deceased at the time of his accident and dependent upon him for support. (c) A dependent child or orphan shall be considered to mean an unmarried child under the age of eighteen years, or one over that age who is physically or mentally incapacitated from earning. (d) The term "employer" as used herein shall mean every person not excluded by section 8, who employs another to perform a service for hire and to whom the "employer" directly pays wages, and shall include any person or corporation, copartnership, or association, or group thereof, and shall, if the employer is insured, include his insurer as far as applicable and shall not include one who employs a less number than sixteen in any one business. (e) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession within one of the United States and in good standing in his profession at the time. (f) The term "workman" shall include the plural and all ages and both sexes. (g) The term "employee" and "workman" are used interchangeably and have the same meaning throughout this act, and shall be construed [so] to mean. (h) The terms "wages," "weekly wages" and such expressions shall in all cases, unless the context clearly indicates a different meaning, be construed to mean "average weekly earning."

(2) Every person not excluded by section 8, in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the State. Any reference herein to a workman or employee shall where the employee is dead include a reference to his dependents as herein defined if the context so require. (i) The word "accident" as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" 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 and violently, with or without human fault, and producing at the time injury to the physical structure of the body, by accidental means. (j) Personal injuries, etc.—Without otherwise affecting either the meaning or interpretation of the abridged clause, injuries by an accident arising out of and in the course of his employment, it is hereby declared: Not to cover workmen except while engaged in, on, or about the premises where their services are being performed, or where their service requires their presence as a part of such service at the time of the accident, and during the hours of service as such workmen, and shall not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him, and not directed against him as an employee, or because of his employment, and it shall not include a disease unless the disease results proximately from the accident. (k) Wherever 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. (l) Amputation.—Amputations between the elbow and wrist shall be considered as the equivalent to the loss of a hand, and the amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. (m) "The court" as used herein shall mean the circuit court which would have jurisdiction in an ordinary civil case involving a claim for the injuries or death in question, and "the judge" shall mean a judge of said court. (n) As to constitutionality.—In case for any reason any paragraph or any provision of this act shall be questioned in any court of last resort and shall be held by such court to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that parts 1 and 2 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 1 of this act shall not apply in cases where part 2 becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension or modification of the common law.

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- Title. SEC. 36½ [41½]. For the purposes of reference in other statutes and in court proceedings this act may be, with legal effect, referred to as the "Workmen's compensation act."
- Repealer. SEC. 37 [42]. All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.
- Act in effect. SEC. 38 [43]. This act shall take effect from and after the first day of January, 1920: *Provided*, That those sections of the act which provide for the making and issuance of forms shall take effect on the first day of December, 1919.
- Approved August 23, 1919.

ALASKA.

ACTS OF 1915.

CHAP. 71.—*Compensation of workmen for injuries.*

SECTION 1. Any person or persons, partnership, joint-stock company, association, or corporation employing five or more employees in connection with mining operations carried on in this Territory, who shall not have given notice of his, her, their, or its election to reject the provisions of this act in the manner hereinafter provided, or who having given such notice shall, prior to the time that an employee is injured, as hereinafter referred to, have waived the same in the manner hereinafter provided, shall be liable to pay compensation, in accordance with the schedule herein adopted, to each of his, her, their, or its employees who receives a personal injury by accident arising out of and in the course of his or her employment, or to the beneficiaries named herein, as the same are hereinafter designated and defined, in all cases where the employee shall be so injured and such injuries shall result in his or her death: *Provided*, The employee so injured had not, prior to the time of being so injured, given notice of his or her election to reject the provisions of this act in the manner hereinafter provided, or having given such notice had prior to such time waived the same in the manner hereinafter provided.

Employees in mining operations.

The compensation to which such employee so injured, or in case of his or her death, if death results from such injury, such beneficiaries, shall be entitled, and for which such employer shall be legally liable, shall be as follows:

Compensation for—

(A) In the event of the death of any such employee resulting from such injury, where such employee at the time of his death was married, his widow shall be entitled to receive the sum of three thousand (\$3,000) dollars.

Death;

(B) (as amended by chapter 44, Acts of 1917). 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).

(C) In those cases where such employee left either father or mother or both, dependent upon him for support at the time of his death, the sum of six hundred (\$600) dollars shall be paid to such father or mother or both, in addition to the sum provided for and made payable to the widow. In no case, however, is the total sum to be paid hereunder to exceed the sum of six thousand (\$6,000) and the payments to which the widow and children may be entitled shall be first paid out of said sum of six thousand (\$6,000) dollars.

(D) In those cases where such deceased employee was unmarried at the time of his or her death survived by either his or her father or mother, who was at the time of his or her death dependent upon him or her for support, such father or mother shall be paid the sum of one thousand two hundred (\$1,200) dollars.

(E) Where such deceased employee was survived by his or her father and mother, both dependent upon him or her for support at the time of his or her death, such father and mother dependent upon him or her for support shall be paid the sum of one thousand two hundred (\$1,200) dollars each.

(F) In those cases where such deceased employee was a widower at the time of his death, but left one or more minor orphan children, there shall be paid the sum of three thousand (\$3,000) dollars, and the further sum of six hundred (\$600) dollars for each orphan child under the age of sixteen (16) years: *Provided*, The total amount paid shall not exceed six thousand (\$6,000) dollars; and the judge of the probate court of the

precinct wherein such accident or injury occurred shall appoint a guardian for all said children, who shall be entitled to and who shall be paid the amount specified in this paragraph for the benefit of said orphan children, and shall divide three thousand (\$3,000) dollars thereof equally among such children and divide the surplus, if any, among the children under sixteen (16) years of age.

(G) In those cases where such deceased employee is at the time of his or her death unmarried, and leaves no children nor father nor mother dependent upon him or her as above specified, the employer shall be required to pay the funeral expenses of the deceased, not to exceed the sum of one hundred fifty (\$150) dollars, and such other expenses, if any, arising after the injury and before the death, not to exceed the further sum of one hundred fifty (\$150) dollars.

Permanent total disability; Where any such employee receiving an injury arising out of and in the course of his or her employment as the result of which he or she is totally and permanently disabled, he or she shall be entitled to receive compensation as follows:

(a) If such employee was at the time of his injury married, he shall be entitled to receive four thousand eight hundred (\$4,800) dollars, with six hundred (\$600) dollars additional for each child under the age of sixteen (16) years, but the total to be paid shall not exceed six thousand (\$6,000) dollars.

(b) If such employee at the time of his injury had no wife or children, but had a mother or father dependent upon him, four thousand two hundred (\$4,200) dollars.

(c) In case where such employee who at the time of his injury had both father and mother dependent upon him, four thousand eight hundred (\$4,800) dollars.

(d) In those cases where such employee was at the time of his injury a widower or was divorced, but had minor children, he shall receive the sum of three thousand six hundred (\$3,600) dollars, with an additional sum of six hundred (\$600) dollars for each child below the age of sixteen (16) years: *Provided*, That the total sum to be paid such employee shall not in any case exceed the sum of six thousand (\$6,000) dollars.

(e) In those cases where such employee so injured at the time of his injury was unmarried and had no children nor father nor mother dependent upon him, he shall receive the sum of three thousand six hundred (\$3,600) dollars.

Permanent partial disability; Where any such employee receives an injury arising out of or in the course of his or her employment, resulting in his or her partial disability, he or she shall be paid in accordance with the following schedule:

For the loss of a thumb:

(a) In case the employee was at the time of the injury unmarried, \$480.

(b) In case the employee was married but had no children, \$600.

(c) In case the employee was either married or a widower, but had one or more children, \$720.

For the loss of an index finger:

(a) In case the employee was at the time of the injury unmarried, \$300.

(b) In case that the employee was married but had no children, \$390.

(c) In case the employee was either married or a widower, but had one or more children, \$480.

For the loss of any other finger than the index finger and thumb, \$180.

For the loss of a great toe, \$300.

For the loss of any other toe than the great toe, \$120.

For the loss of a hand:

(a) In case the employee was at the time of the injury unmarried, \$1,440.

(b) In case the employee was married but had no children, \$1,920.

(c) In case the employee was either married or a widower and had one child, \$1,920 and \$240 additional for each of said children, not to exceed, however, the total sum of \$2,400.

For the loss of an arm:

(a) In case that the employee was at the time of the injury unmarried, \$1,800.

(b) In case the employee was married but had no children, \$2,400.

(c) In case the employee was either married or a widower and had one child, \$2,400 and \$300 additional for each additional child, the total amount not to exceed, however, \$3,000.

For the loss of a foot:

(a) In case that the employee was at the time of the injury unmarried, \$1,440.

(b) In case the employee was married but had no children, \$1,800.

(c) In case the employee was either married or a widower and had one child, \$1,920 and \$240 additional for each additional child, but not to exceed the total sum of \$2,400.

For the loss of a leg:

(a) In case the employee was at the time of the injury unmarried, \$1,800.

(b) In case the employee was married but had no children, \$2,400.

(c) In case the employee was either married or a widower and had but one child, \$2,400 with \$300 for each additional child, not to exceed the total sum of \$3,000.

For the loss of an eye:

(a) In case the employee was at the time of the injury unmarried, \$1,440.

(b) In case the employee was married but had no children, \$1,920.

(c) In case the employee was either married or a widower and had one child, \$1,920, plus \$240 for each additional child, not to exceed, however, the total sum of \$2,400.

For the loss of an ear, \$240.

For the loss of the nose, \$480.

For all other injuries causing temporary disability the employer shall pay the employee during the period of such disability fifty per cent (50%) of his daily average wages: *Provided, however,* That the period for the payment for temporary disability shall not exceed six (6) months. And in all cases where the injury develops or proves to be such as to entitle the employee to compensation under some provision in this schedule, relating to cases other than temporary disability, and the employee has been paid compensation for temporary disability, the amount so paid him shall be deducted from the amount to which he shall be entitled under such provision in this schedule. Temporary disability.

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 disability and be compensated according to the provisions of this act with reference to total and permanent disability.

Amputation between the elbow and the wrist shall be considered equivalent to the loss of a hand, and amputation between the knee and the ankle shall be considered equivalent to the loss of a foot.

Whenever such employee receives an injury, arising out of and in the course of employment, as a result of which he or she is partially disabled, and the disability so received is such as to be permanent in character and such as not to come wholly within any of the specific cases for which provision is herein made, such employee shall be entitled to receive as compensation a sum which bears the same relation to the amount he or she would be entitled to receive hereunder if he or she were totally and permanently disabled that the loss of earning capacity of such employee, by reason of the accident, bears to the earning capacity such employee would have had had he or she not been injured, the amount to be paid in no case to exceed four thousand eight hundred (\$4,800) dollars. Proportionate awards.

To illustrate: If said employee were of a class that would entitle him or her to four thousand eight hundred (\$4,800) dollars under this schedule, if he or she were totally and permanently disabled and his or her injury would be such as to reduce his or her earning capacity twenty-five (25%) per cent, he or she would be entitled to receive one thousand two hundred (\$1,200) dollars, it being the amount that bears the same relation to four thousand eight hundred (\$4,800) dollars that twenty-five (25%) per cent does to one hundred (100%) per cent. Should such employee receive an injury that would impair his or her earning capacity seventy-five (75%) per cent, he or she would be entitled to receive three thousand six hundred (\$3,600) dollars, it

- being the amount that bears the same relation to four thousand eight hundred (\$4,800) dollars that seventy-five (75%) per cent does to one hundred (100%) per cent.
- Right to higher awards. SEC. 2. If an injured employee entitled to compensation hereunder shall be paid compensation under any subdivision or part of this schedule [schedule], and it shall afterwards develop that he or she is or was entitled to a higher rate of compensation under some other part or subdivision of this schedule, then and in that event he or she shall receive such higher rate, after first deducting the amount that has already been paid him or her: *Provided, however,* That no compensation under such increased rate shall be paid unless the disability entitling the employee thereto shall develop within two (2) years after the injury.
- Settlement by agreement. SEC. 3. At any time subsequent to the injury the employer and the employee shall have the right to compromise and settle any claim for injury hereunder in accordance with schedule herein, and the employee shall have the right to give full satisfaction and acquittance therefor and thereby discharge the employer from further liability, and such satisfaction and acquittance shall be binding upon the said employer, employee beneficiaries under this act, and all other persons whatsoever.
- Willful intention. SEC. 4. No compensation shall be allowed or paid for the injury or death of an employee in any case where such injury or death was occasioned by his or her willful intention to bring about the injury or death of himself or herself or of another, or where the employee's intoxication was the proximate cause of the injury.
- Waiting time. SEC. 5. No compensation shall be paid under this act for an 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 on 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 the injury.
- Proviso. SEC. 6. No contractor or subcontractor shall be entitled to receive compensation under this act, but shall be deemed to be an employer.
- Contractors. SEC. 7. The right to compensation for an injury and the remedy therefor granted by this act shall be in lieu of all rights and remedies as to such injury now existing either at common law or otherwise, and no rights or remedies, except those provided for by this act, shall accrue to employees entitled to compensation under this act, while it is in effect, nor shall any right or remedy, except those provided for by this act, accrue to the personal or legal representatives, dependents, beneficiaries under this act, or next of kin of such employees.
- Remedy exclusive. SEC. 8. Step-parents shall be regarded in this act as parents; and an adopted child, or adopted children, or a stepchild, or children, shall be regarded in this act as issue of the body.
- Step - parents, etc. SEC. 9. Every employee coming within the provisions of this act shall, either at the time he or she is employed or thereafter, furnish his or her employer with a written statement showing the name or names of each and all persons that would be entitled to benefits under the provisions of this act in case such employee should become deceased as a result of an injury received by him or her arising out of and in the course of his or her employment; such written statement shall bear the date upon which the same shall be furnished to the employer and shall be signed by the employee: *Provided,* That in cases where such employee is unable to write his or her name, his or her name may be affixed to such statement by another, and such employee shall make his or her mark in the manner customary in such cases, and such mark shall be made in the presence of at least one witness, who shall subscribe such statement as a witness.
- Statement as to dependents. In all cases where there shall be a change of beneficiaries, or a change in the address of any beneficiary, the employee may furnish the employer with a new statement showing such change; such new statement to be so furnished shall in all respects conform and comply with the provisions hereof with reference to the original statement to be furnished.
- In all cases where such statement or statements is or are furnished the employer by the employee, the employer shall, if such employee

became deceased as a result of an injury received in the course of his or her employment, notify each beneficiary named in the last statement of that fact; such notice shall be given by sending each beneficiary at the address given in the last statement furnished a copy of such notice by registered mail, and an envelope containing such notice addressed to each beneficiary at the address given in said last statement furnished shall be deposited in the post office and registered within ten days after such employee shall have become deceased.

The notice to be so given shall be substantially in the following form:

To _____ (giving the name of the beneficiary):

This is to advise you that _____ (giving the name of the deceased person) became deceased on the _____ day of _____, as a result of an injury received while in the employ of _____. You will take notice that all persons entitled to benefits because of the fact that the above-named employee was injured and as a result thereof became deceased, under the laws of Alaska, are required to serve notice upon the employer within one hundred and twenty (120) days after the date on which such employee became deceased, in accordance with the provisions of the laws of Alaska upon that subject, and that a failure to serve such notice within the time specified and in the manner specified will result in depriving the beneficiary failing to give such notice within such time and in such manner of his or her rights to compensation under the laws of Alaska.

Any failure on the part of the employee to supply the employer with a statement as hereinabove provided shall not work a forfeiture of the right of his or her beneficiaries to benefits hereunder, but it shall relieve the employer of all obligation to give to any of the beneficiaries of such deceased employee notice of the fact that such deceased employee became deceased.

In cases where the employer shall have been furnished with such statement or statements and shall fail to notify the beneficiaries therein named as shown by the last statement furnished, within the time and in the manner herein provided, such beneficiaries who have not been so notified shall have the right to notify the employer of their claim to benefits and file claims and prosecute actions or other proceedings for the recovery thereof, notwithstanding the fact that such notice was not served, as hereinafter provided, within the period of one hundred and twenty (120) days from and after the time that the employee became deceased.

Upon the trial of any issue relating to a beneficiary's right to compensation under this act, any statement furnished an employer, as hereinabove provided, may be offered in evidence by such employer, and when so offered shall be received in evidence and shall be held to establish the fact that the persons named in the statement bore to the deceased the relation shown by such statement at the date thereof.

In all cases where any person claims to be a beneficiary under this act entitled to compensation because of an injury to an employee coming within its provisions, which resulted in his or her death, such beneficiary, or some one in his or her behalf, shall within one hundred and twenty (120) days from and after the death of such employee serve a written notice upon the employer, which notice shall contain the name and address of the person claiming to be such beneficiary, the relationship existing between such beneficiary and the deceased; and if such beneficiary shall be either the father or mother of the deceased, such notice shall also contain a statement showing that such person was dependent upon the earnings of the deceased. Such notice shall be liberally construed, and no claim for compensation shall be denied because of any defect in the notice: *Provided*, It appears that a notice was served with a bona fide intention to comply with the provisions of this act. Such notice may be served by any person of legal age by delivering a copy thereof to the employer or the employer's agent in person or by leaving a copy thereof at the employer's principal place of business within the Territory of Alaska with some person over the age of eighteen (18) years in the employ of such employer. If the employer can not be found within the Territory and has no known agent or place of business

Notice.

therein, such beneficiary may serve such notice by publishing the same in one issue of any newspaper of general circulation published in the judicial division where the injury, out of which the right to compensation arose, occurred. Except in the cases in this section otherwise expressly provided, no action or other proceedings to recover such compensation shall be brought or maintained, nor shall any claim for such compensation be filed or allowed, as hereinafter provided, unless such notice shall have been served in the manner and within the time herein provided.

Deposits by employers. SEC. 10. In case one or more beneficiaries serve notice upon an employer, as above provided, of his, her, or their claim to compensation under this act, such employer may at any time during the ten days next following the period of one hundred and twenty (120) days during which such notices could be served, deposit six thousand (\$6,000) dollars with the clerk of the district court for the division within which such employee was injured, or such employer may deposit with such clerk of the court a bond in the sum of six thousand (\$6,000) dollars, signed by such employer as principal and two or more good and sufficient sureties, to be approved by the judge of the court, conditioned that such employer will pay the sum or sums that may be finally awarded as compensation under this act under the judgment of the court to the person or persons entitled thereto according to said judgment, and conditioned further that judgment may be entered on said bond, not only against the principal, but against the sureties, and each of them, jointly and severally, as well as by the court in said proceeding and without bringing a separate action on said bond. No action brought to recover such compensation shall be tried until after the expiration of said period of one hundred and twenty (120) days and said period of ten days.

Notice of deposits. SEC. 11. Upon depositing such sum or such bond, as above provided, the employer shall notify in writing any and all persons who shall have served notice upon such employer as herein provided, claiming to be beneficiaries under this act, of the fact that such sum or bond has been so deposited. Such notice may be served by delivering a copy thereof to the person to be served in person or by sending a copy thereof by registered mail to the address given in the notice served upon the employer by the beneficiary to be served.

Actions to abate. SEC. 12. If prior to the time that such sum or such bond is so deposited an action or actions have been commenced against such employer to recover compensation on account of the death of such employee by a person or persons claiming to be a beneficiary or beneficiaries, such action or actions shall thereupon abate, and all proceedings had therein shall be quashed and set aside, and the plaintiff or plaintiffs shall thereupon be required to establish his, her, or their claims to compensation in the manner hereinafter provided. In case where such action or actions is or are so dismissed, and it is afterwards adjudged that the plaintiff or plaintiffs is or are entitled to compensation in connection with the injury which was the subject matter of the action or actions so dismissed, such plaintiff or plaintiffs shall then be awarded his, her, or their costs in the action or actions so dismissed, which the employer shall be required to pay, in addition to the other sum or sums awarded against the employer.

Publication of notice. SEC. 13. The employer by whom such sum or such bond shall have been deposited shall, upon such deposit having been made, give at least sixty (60) days' notice of the fact that such sum or such bond has been so deposited with the clerk of the district court, which notice shall be published in a newspaper published within the commissioner's precinct within which such employee was injured, or, if no newspaper be published in such precinct, then in a newspaper published nearest the place where such employee was injured. The notice shall be published once a week for four (4) consecutive weeks, and the sixty (60) days' period shall commence to run from the date of the first publication. Such notice shall be substantially in the following form:

Notice to beneficiaries by ————, employer, has deposited with the clerk of the district court for the Territory of Alaska, division number ———, the sum of six thousand (\$6,000) dollars (or a good and sufficient bond in the sum of six thousand (\$6,000) dollars, as

the case may be) in accordance with the provisions of the law relating to employees' compensation, for award and distribution among the beneficiaries thereto entitled because of the death of _____, an employee of said _____, employer; and all persons are notified, cited, and warned to appear before the district court for the Territory of Alaska, division number _____, on or before the _____ day of _____ and make and file their claims, if any, to compensation.

SEC. 14. All beneficiaries shall, within the time fixed by said notice, file his or her or their claim in writing with such district court, which said claim shall be verified by the oath of the claimant or claimants, or some one authorized thereto in his or her or their behalf, and shall set up the facts relied upon as a basis for the claimant's or claimants' claim to such compensation under this act. Two or more claimants may join in the same claim or may file separate claims. A copy of each claim so filed shall be served upon the employer, who shall have twenty days, from and after the time such copy has been so served, to file an answer thereto. Such answer may admit, or deny, the facts set up in said claim, either in whole or in part, or may set up any other defense thereto. And any and all claimants shall have the right within twenty (20) days from and after the date as fixed in the published notice within which claims may be filed, to file an answer thereto admitting or denying the same, either in whole or in part, or setting up any defense whatsoever to the allowance of such claim. The court may, in its discretion and in furtherance of justice, allow the parties to amend the claims or answers filed.

SEC. 15. The court shall upon the application of the employer or any claimant fix a date for a hearing upon the claim or claims so filed, which date shall be not less than thirty (30) days later than the date fixed in the published notice for the filing of such claims. The hearing may be continued at any time by the court for good cause shown as in other cases. Upon the date set for hearing, or at any time prior thereto, the employer or any claimant, who shall have filed his claim, as herein provided, may ask for a jury to try and determine any issue or issues of fact arising upon any of the claims and answers so filed. If no jury is demanded, as above provided, a jury shall be deemed to have been waived, and the trial of all the issues raised shall proceed before the judge of the court as in other cases. Upon a trial, whether before the court or jury, proofs shall be offered by the claimant or claimants in support of his, her, or their claims to compensation under this act in the same manner that proof is heard and received upon the trial of other civil cases. The court shall also hear and receive such proof as may be offered by the employer touching the right of any or all of the claimants to compensation under this act, and the fact that such employer has deposited the sum aforesaid, or the bond as herein provided for, shall not be construed as an admission against such employer.

Upon such trial evidence shall be received in accordance with the rules of evidence touching any issue of fact raised as hereinbefore provided. The order of proof shall rest in the discretion of the court, but such discretion shall be so exercised as to give all parties a full, fair, and complete hearing. Upon the conclusion of such trial the court shall, in all cases tried before the court without a jury, make written findings of fact based upon the evidence before him. And in all cases tried before a jury, the jury shall determine any and all issues of fact under instruction from the court as in other cases. Upon the filing of such findings of fact made by the court, or such verdict rendered by the jury, the court shall, unless a new trial is granted, enter a judgment in accordance therewith.

SEC. 16. If no claim on the part of any dependent be filed with the district court within the time specified by the notice above referred to, or if such claim or claims be filed and it appear from the findings of the court or the verdict of the jury that none of the claimants is entitled to compensation under this act, then the sum deposited by the employer, less the cost of publishing the notice above provided for and the filing, trial, and other fees of court in connection with such proceeding, shall be returned to the employer in cases where such sum was deposited as above provided, and the bond shall be de-

Claims to be filed.

Hearings.

Return of deposits.

clared void and the sureties thereon exonerated in those cases where a bond was deposited, upon the payment by the employer of the filing, trial, and other fees of court and the cost of publishing the notice as herein provided.

SEC. 17. In all cases where a judgment is entered against the employer and in favor of one or more claimants, and where the sum of six thousand (\$6,000) dollars was deposited as aforesaid by the employer, the amount to which each, any, and all claimants shall be so adjudged to be entitled shall be paid to such claimant or claimants out of the sum so deposited without costs and without the allowance of interest thereon. And if any part of said six thousand (\$6,000) dollars so deposited shall remain after such payments have been made to the claimant or claimants entitled thereto, under the judgment of the court, such amount shall be returned to the employer, less the court costs of any claimant or claimants, in any action or actions which have been dismissed because of the deposit by the employer of such six thousand (\$6,000) dollars, as herein previously provided for. Such court costs in such cases so previously dismissed shall be allowed and paid to the claimant or claimants by which the same was or were brought, in addition to the compensation to which such claimant or claimants shall be found entitled, and shall be deducted from the amount deposited in cases where the total amount of the claims allowed plus such court costs does not exceed six thousand (\$6,000) dollars. In other cases such claimant or claimants shall have judgment against such employer for the court costs that shall have accrued in such action or actions so dismissed.

Judgments. SEC. 18. In cases where the employer has deposited a bond as herein provided and judgment is entered in favor of one or more claimants as herein provided, such judgment shall be entered in favor of the claimant or claimants found entitled thereto, and shall specify the amount to which each of such claimants, if more than one, is entitled, and shall be against the employer and each of the sureties on the bond so deposited in such a manner that each and all shall be jointly and severally liable under said judgment. In those cases where any one or more claimants had filed actions which were dismissed because of the deposit of a bond as herein provided and such claimant or claimants shall be adjudged entitled to compensation so as to entitle him, her or them to costs in connection with such action under the provisions hereof, and the total amount of claims allowed plus such costs shall be less than six thousand (\$6,000) dollars, the amount to which any claimant may be entitled to as such costs shall be added to the amount to which such claimant is entitled as compensation, and included within said judgment in his favor and against the employer, and the sureties as above provided. In all other cases separate judgments shall be entered against the employer only for the amount of such costs in favor of the claimant or claimants entitled thereto because of the dismissal of an action previously brought by such claimant or claimants.

Appeals. SEC. 19. One or more claimants may take an appeal from any judgment rendered under this act as to such claimant or claimants, and any employer may take an appeal from any such judgment, either in whole or in part, that is to say, as to any one or more of the claimants. Such appeal shall be to the United States Circuit Court of Appeals for the Ninth Circuit, and shall be taken up on writ of error, sued out and prosecuted as in other cases. When, however, an employer takes an appeal from such judgment or any part thereof against the allowance in favor of any one or more claimants, and the judgment shall be affirmed as to any such claimant, the claimant in whose favor the judgment has been so affirmed shall be entitled to interest at the rate of eight (8%) per cent on the amount of his claim calculated from the date of the judgment and shall also be entitled to costs on appeal.

Actions to be consolidated. SEC. 20. Whenever two or more persons claiming to be beneficiaries of any deceased employee, whose beneficiaries are entitled to compensation under the provisions of this act, bring separate actions to recover such compensation, such actions shall be consolidated and tried as one action upon the application of any party to either or any of such actions.

Actions brought where. SEC. 21. Actions for the recovery of compensation due under this act, may be brought, maintained and determined in and by the courts of this Territory, and when so brought shall be governed by the law of pro-

cedure applicable to other actions for the recovery of money except as herein otherwise expressly provided.

SEC. 22. No action for the recovery of compensation hereunder shall be brought in any court holden outside of the judicial division in which the injury occurred, out of which the right to compensation arises except in cases where service can not be had on the employer in the judicial division where the injury occurred. Any attempt to bring such action in any court outside of the Territory of Alaska shall work a forfeiture of the right of the plaintiff in such action to compensation under this act.

Venue.

SEC. 23. (a) A writ of attachment shall be issued by the clerk of the court in which such action for the recovery of compensation under this act is pending or by the United States commissioner in actions pending in the court of such commissioner. Whenever the plaintiff or anyone in his behalf shall make and file an affidavit showing that he or she is entitled to recover compensation from the defendant, under the provisions of this act, such affidavit must show all the facts necessary to bring the plaintiff within the provisions of this act, and must further set up all the facts necessary to show that a cause of action exists in favor of the plaintiff and against the defendant for the amount sued for and for which the attachment is sought under the provisions of this act.

Procedure.

(b) Upon filing such affidavit in actions pending as aforesaid with the clerk of the court, or the commissioner in actions pending in the court of such commissioner, the plaintiff shall be entitled to have a writ of attachment issued without filing any bond or other security; such writ shall be directed to the marshal, and shall in all respects conform to writs of attachment in other cases and shall be issued, served, executed, and returned in the same manner that writs of attachment in other cases are now issued, served, executed, and returned.

(c) The defendant may, however, file a written undertaking in any pending cause for the benefit of the plaintiff in an amount equal to double the amount sued for, executed by two or more sufficient sureties, to be approved by the judge or commissioner in whose court the action is pending, and conditioned that the defendant will pay any judgment that may be awarded against such defendant in the action. No writ of attachment shall issue after such undertaking has been filed by the defendant, and if such undertaking shall be filed after the writ has been issued such writ shall be quashed, and if property has been attached under such writ at the time of the filing of such undertaking such attachment shall be dissolved and set aside and the property attached returned to the defendant.

SEC. 24. The employee shall, after an injury, at reasonable times during the continuance of his or her disability, if so requested by his or her employer, submit himself or herself to an examination by a physician or surgeon authorized to practice medicine under the laws of the Territory of Alaska, furnished and paid for by the employer. The employee shall have the right to have a physician, provided and paid for by himself or herself, present at such examination or examinations. If any employee refuses to submit himself or herself to any such examination or examinations provided for in this act, or in any way obstructs any such examination or examinations, his or her rights to compensation shall be suspended, and his or her compensation during such period of suspension may, in the discretion of the jury or court determining an action brought for the recovery of compensation under this act, be forfeited.

Medical examinations.

SEC. 25. No agreement by an employee to waive his or her rights to compensation under this act shall be valid, except as herein elsewhere provided, and no employer or employee shall exempt himself, herself, or itself, except in the manner herein elsewhere provided, from the burden or waive the benefits of this act by any contract, agreement, rule, regulation, or device, and any such contract, agreement, rule, regulation, or device shall be absolutely void.

Waivers.

SEC. 26. Any and all claims for compensation under this act shall be barred unless an action for the recovery of the same shall be commenced within two years after the cause of action shall have accrued, or in the event of mental incapacity within two years after the removal of such mental incapacity.

Limitation.

SEC. 27. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some

Liability of third parties.

one other than the employer to pay damages in respect thereof, the employee may take proceedings both against the one so liable to recover damages and against anyone liable to pay compensation under this act, but shall not be entitled to receive both damages and compensation. And if the employee has been paid compensation under this act, the employer by whom the compensation was paid shall be entitled to indemnity from the person, firm, or corporation so liable to pay damages as aforesaid, and to the extent of such indemnity shall be subrogated to the rights of the employee to recover damages therefor.

Election presumed when.

SEC. 28. When five or more employees, as defined by this act, are employed in the same general employment in connection with mining operations carried on in this Territory, and in the usual and ordinary conduct of such operations, it shall be presumed that the employer, as defined by this act, has elected to pay compensation according to the terms, conditions, and provisions of this act to such employees as may sustain personal injury arising out of and in the course of the employment, and in such case the employer shall be relieved from liability for a recovery of damages or other compensation for such personal injuries unless by the terms of this act otherwise provided.

Defenses abrogated.

SEC. 29. If such employer exercise the right to reject the terms, conditions, and provisions of this act, in the manner and form by this act provided, such employer shall not escape liability for personal injury sustained by an employee of such employer when the injury sustained arises out of and in the usual course of the employment because:

(1) The employee assumed the risks inherent to 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;

(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 injury sustained arising out of and in the course of the employment where the employer has elected to reject 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.

Notice of rejection.

SEC. 30. Every such employer shall be conclusively presumed to have elected to 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 and until notice in writing of an election to the contrary shall have been given to the employee by recording said notice with the United States commissioner in whose precinct the employer's operations are carried on; and if such operations are carried on in more than one precinct, then such notice shall be recorded in the office of the commissioner for each precinct in which the same are being conducted, and the notice to reject shall be recorded by the commissioner, who shall be paid a fee of one and one-half dollars therefor, and such notice when so recorded shall be and become a public record. Such recorded notice shall be substantially in the following form, and the signature shall be witnessed by two witnesses:

EMPLOYER'S NOTICE TO REJECT.

To the employees of the undersigned:

You and each of you are hereby notified that the undersigned rejects the terms, conditions, and provisions to pay compensation to employees of the undersigned for injuries received as provided in the act of the Legislature of the Territory of Alaska, known as "An act relating to the measure and recovery of compensation of injured employees in the mining industry of this Territory, and the compensation to desig-

nated beneficiaries where such injuries result in death, defining and regulating the liability of employers to their employees in connection with such industry, and repealing all acts and parts of acts in conflict with this act," and that the undersigned employer elects to pay damages for personal injuries of such employees under the common law and statutes of this Territory, modified by the provisions of the act above referred to and the other laws of the Territory of Alaska.

(Signed) _____

Witnesses:

Sec. 31. The notice so recorded shall apply to the employees subsequently employed by the employer with the same fulness and effect and to the same extent and in like manner as employees in the employ at the time the notice was recorded, except as herein provided.

Future hirings.

Sec. 32. Where the employer and employee have not given notice of an election to reject the terms of this act, this act shall constitute a part of every contract of hire, express or implied, and the same shall be construed as an agreement on the part of the employer to 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 the employment.

Terms of contract.

Sec. 33. All employees affected by this act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions, and provisions of this act until notice in writing shall have been served upon the employer or his agent in person, and shall also have been recorded in the office of the commissioner for the precinct in which the mining operations of the employer, in connection with which the employee is employed, are conducted; and if such operations are carried on in more than one precinct, then the same shall be recorded in the precinct wherein the employer's principal place of business in the Territory is situate, and the commissioner shall record the same, and shall receive a fee of one dollar and fifty cents therefor, and the same shall be and become a public record. Such notice shall be accompanied with an affidavit thereon showing the date upon which the same was served upon the employer.

Rejection by employees.

(b) In the event that such employee elects to reject the terms, conditions, and provisions of this act, the rights and remedies thereof shall not apply where an employee brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his or her employment except as otherwise provided by this act; and in such actions where the employee has rejected the terms of this act the employer shall have the right to plead and rely upon any and all defenses, including those at common law, and the rules and defenses of contributory negligence, assumption of risk, and fellow servant shall apply and be available to the employer, unless otherwise provided in this act: *Provided, however,* That if an employee sustains an injury as the result of the employer's failure to furnish or fails to exercise reasonable care to keep or maintain any safety device required by statute, or violates any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employees, the doctrine of assumed risk in such case growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employee shall be substantially in the following form:

Defenses.

EMPLOYEE'S NOTICE TO REJECT.

To _____ (giving the name of the employer):

You are hereby notified that the undersigned elects to reject the terms, conditions, and provisions of an act for the payment of compensation as provided by an act of the Territorial Legislature of the Territory of Alaska, entitled "An act relating to the measure and recovery of compensation of injured employees in the mining industry of this Territory and the compensation to designated beneficiaries where such injuries result in death, defining and regulating the liability of employers to their employees in connection with such industry, and repealing all acts and parts of acts in conflict with this act," and acts amendatory

thereto, and elects to rely upon the common law, as modified by the provisions of the act last above referred to, for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Dated this _____ day of _____, _____.
(Signed) _____.

United States of America,
Territory of Alaska, ss:

The undersigned being first duly sworn deposes and [says]: That the above and foregoing written notice was on the _____ day of _____ served on the within-named employer of the undersigned by delivering to _____ (here give the name of the employer or his agent) a true, correct, and verbatim copy thereof.

(Signed) _____.
Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public for Alaska. .

My commission expires _____.

- Term of elec- Sec. 34. Where the employer or employee has given notice in compliance with this act electing to reject the terms thereof, such election shall be for one year from the date of becoming effective, and unless renewed within thirty days before the expiration of one year, as herein provided, it shall be conclusively presumed that such party has elected to waive the rejection made and come under the provisions of this act to pay or accept, as the case may be, the compensation here provided until the contrary is shown by the service of notice anew, electing to reject the provisions of this act as herein provided.
- Renewal of no- Sec. 35. Where an employer or employee rejects the terms, conditions, or provisions of this act such party may at any time thereafter elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of this act, and which shall become effective and be recorded with the commissioner or commissioners in like manner that said notice to reject is required to be recorded.
- Waiver of re- Sec. 36. Where the employer and employee elect to reject the terms, conditions, and provisions of this act the liability of the employer shall be the same as though the employee had not rejected the terms and conditions thereof and the employer had rejected the same.
- Rejections by Sec. 37. No claim for compensation due under this act shall be both parties. assignable, and all compensation due hereunder shall be exempt from execution.
- Assignment of Sec. 38. Whenever the term "employer" is used in this act refer- claims. ence is had to any person or persons, partnership, joint stock company, association, or corporation employing five or more employees in connection with mining operations carried on in this Territory. And whenever the term "employee" is used in this act reference is had to an employee employed by an employer as above defined.
- Employer. Sec. 39. The phrase "mining operations," whenever used in this act, shall be held to include all work in connection with underground workings, underground mines, open-cut working, surface working, stamp mills, roller mills, chlorination processes, cyanide processes, coke ovens, all reduction work of any kind or character, and all work performed on or for the benefit of any mine, mining claim, or claims, whether quartz or placer, and the phrase shall be held to include development and construction work as well as work carried on in connection with actual mining or milling.
- Mining opera- Sec. 40. The term "beneficiary," as used in this act, refers to any tions. person entitled to compensation under the provisions hereof.
- Beneficiary. Sec. 41. The masculine gender whenever used herein shall be held to include the feminine and neuter.
- Genders. Sec. 42. If the court before whom any proceedings are brought under this act determines 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 so brought, prosecuted, or defended them.
- Costs.

Approved April 29, 1915.

ARIZONA.

CONSTITUTION.

ARTICLE XVIII.—*Employment of labor—Compensation for injuries to workmen.*

SECTION 8. The legislature shall enact a workmen's compulsory compensation law applicable to workmen engaged in manual or mechanical labor in such employments as the legislature may determine to be especially dangerous, by which compulsory compensation shall be required to be paid to any such workman by his employer, if in the course of such employment personal injury to any such workman from any accident arising out of, and in the course of, such employment is caused in whole or in part, or is contributed to, by a necessary risk of danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its officers, agents, or employee, or employees, to exercise due care, or to comply with any law affecting such employment: *Provided*, That it shall be optional with said employee to settle for such compensation, or retain the right to sue said employer as provided by this constitution.

Compulsory compensation.

REVISED STATUTES—CIVIL CODE—1913.

CHAPTER VII.—*Compensation for injuries to workmen.*

SECTION 3163. This chapter is a workman's compulsory compensation law as provided in section 8 of Article XVIII of the State constitution.

Title.

SEC. 3164. Compulsory compensation shall be paid by his employer to any workman engaged in any employment declared and determined as in the next section hereof (as provided in sec. 8 of Article XVIII of the State constitution) to be especially dangerous, whether said employer be a person, firm, association, company, or corporation, if in the course of the employment of said employee personal injury thereto from any accident arising out of, and in the course of, such employment is caused in whole, or in part, or is contributed to, by a necessary risk of danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its officers, agents, or employee or employees, to exercise due care, or to comply with any law affecting such employment.

Compensation to be paid, when.

SEC. 3165. The employments hereby declared and determined to be especially dangerous (as provided in sec. 8 of Article XVIII of the State constitution) within the meaning of this chapter are as follows:

Especially dangerous employment.

(1) The operation of steam railroads, electrical railroads, street railroads, by locomotives, engines, trains, motors, or cars of any kind propelled by a steam, electricity, cable, or other mechanical power, including the construction, use or repair of machinery, plants, tracks, switches, bridges, roadbeds, upon, over, and by which such railway business is operated.

(2) All work when making, using or necessitating dangerous proximity to gunpowder, blasting powder, dynamite, compressed air, or any other explosive.

(3) The erection or demolition of any bridge, building, or structure in which there is, or in which the plans and specifications require, iron or steel frame work.

(4) The operation of all elevators, elevating machinery or derricks or hoisting apparatus used within or on the outside of any bridge, building or other structure for conveying materials in connection with the erection or demolition of such bridge, building or structure.

(5) All work on ladders or scaffolds of any kind elevated twenty (20) feet or more above the ground or floor beneath in the erection, construction, repair, painting or alteration of any building, bridge, structure or other work in which the same are used.

(6) All work of construction, operation, alteration or repair, where wires, cables, switchboards, or other apparatus or machinery are in use charged with electrical current.

(7) All work in the construction, alteration or repair of pole lines for telegraph, telephone or other purposes.

(8) All work in mines; and all work in quarries.

(9) All work in the construction and repair of tunnels, subways and viaducts.

(10) All work in mills, shops, works, yards, plants, and factories where steam, electricity, or any other mechanical power is used to operate machinery and appliances in and about such premises.

Alternative rights of employees.

SEC. 3166. In case such employee or his personal representative shall refuse to settle for such compensation as provided in section 8 of Article XVIII of the State constitution, and chooses to retain the right to sue said employer (as provided in any law provided for in section 7, Article XVIII of the State constitution) he may so refuse to settle and may retain said right.

Failure to exercise due care.

SEC. 3167. It is hereby declared and determined to be contrary to public policy that any employer conducting any especially dangerous industry, through any of his or its officers, agents, or employee or employees, shall fail to exercise due care, or fail to comply with any law affecting such employment, in such manner as to endanger the lives and safety of employees thereof, without assuming the burden of the financial loss through disability entailed upon such employees, or their dependents, through such failure; and it is further declared and determined to be contrary to public policy that the burden of the financial loss to employees in such dangerous employments, or to their dependents, due to injuries to such employees received through such accidents as are hereinbefore mentioned shall be borne by said employees without due compensation paid to said employees, or their dependents, by the employer conducting such employment, owing to the inability of said employees to secure employment in said employments under a free contract as to the conditions under which they will work.

Liability without fault.

SEC. 3168. The common-law doctrine of no liability without fault is hereby declared and determined to be abrogated in Arizona as far as it shall be sought to be applied to the accidents hereinbefore mentioned.

What injuries to be compensated.

SEC. 3169. When, in the course of work in any of the employments described in section 67 of this title, personal injury by accident arising out of and in the course of such labor, service, or employment, is caused to or suffered by any workman engaged therein, by any risk or failure specified in section 66 hereof, then such employer shall be liable to and must make and pay compensation to the workman injured, and his personal representative, when death ensues, for the benefit of the estate of the deceased, for such injury at the rates and in the manner hereinafter set out in this chapter.

Waiting time.

Provided, That the employer shall not be liable under this chapter in respect of any injury which does not disable the workman for a period of at least two weeks after the date of the accident from earning full wages at the work at which he was employed at the time of the injury, and

Provided, further, That the employer shall not be liable under this chapter in case the employee refuses to settle for such compensation and retains his right to sue as provided in section 68 of this title.

Amount of compensation—

SEC. 3170. When an injury is received by a workman engaged in any labor or service specified in section 67 of this title, and for which the employer is made liable as specified in section 71 hereof, then the measure and amount of compensation to be made by the employer to such workman or his personal representative for such injuries, shall be as follows:

For total disability.

(1) If the injury by accident does not result in death within six months from the date of the accident, but does produce or result in total incapacity of the workman for work at any gainful employment for more than two (2) weeks after the accident, then the compensation to be made to such workman by his employer shall be a semimonthly payment commencing from the date of the accident and continuing during such total incapacity, of a sum equal to fifty (50) per centum of the workman's average semimonthly earnings when at work on full time during the preceding year, if he shall have been in the employment of such employer for such length of time; but if not for a full year, then fifty (50) per centum of the average wages, whether semimonthly, weekly, or daily, being earned by such workman during the time he was at work for his employer before and at the time of the accident.

(2) In case (1) the accident does not wholly incapacitate the workman from the same or other gainful employment; or (2) in case the workman, being at first wholly incapacitated, thereafter recovers so as to be able to engage at labor in the same or other gainful employment, thereby earning wages, then in each case the amount of the semimonthly payment shall be one-half of the difference between the average earnings of the workman at the time of the accident determined as above provided, and the average amount he is earning or is capable of earning, thereafter, semimonthly in the same or other employment—it being the intent and purpose of this chapter, that the semimonthly payment shall not exceed, but equal, from time to time one-half the difference between the amount of average earnings ascertained as aforesaid at the time of the accident, and the average amount which the workman is earning, or is capable of earning, in the same or other employment or otherwise, after the accident, and at the time of such semimonthly payment. Such payments shall cease upon the workman recovering and earning, or being capable of earning, in the same or other gainful employment or otherwise, wages equal to the amount being earned at the time of the accident.

For partial disability.

Provided, however, That the payments shall continue to be made as herein determined to the workman so long as incapacity to earn wages in the same or other employment continues, but in no case shall the total amount of such payments, as provided in subsections 1 and 2 of this section exceed four thousand (\$4,000) dollars.

(3) When the death of the workman results from the accident within six months thereafter, and the workman, at the time of his death, leaves a widow, and a minor [minor] child, or children dependent on such workman's earnings for support and education, then the employer shall pay to the personal representative of the deceased workman for the exclusive benefit of such widow and child, or children, a sum equal to twenty-four hundred times one-half the daily wages or earnings of the decedent, determined as aforesaid, but in no event more than the sum of four thousand dollars (\$4,000). Such sum shall be paid in lump and held in trust by such representative for such widow and children and applied by him to the support of the widow while she remains unmarried, and to the support and education of the children so long as necessary, and until eighteen (18) years of age, in such way and manner as to him shall seem best and just, under and in accordance with the directions of the court having jurisdiction of the estate of the decedent; any balance remaining unapplied at the closing of the estate of the decedent shall be distributed to the decedent's widow (if still his widow), and the children or next of kin, as provided by the law of descents. The personal representative may pay out of said fund the reasonable and necessary expenses of medical attendance and burial of the decedent. If the workman leaves no widow or child, or children, but a father or mother or sister dependent on him for support, then said sum shall be for their benefit to be applied as above provided. If the deceased workman leaves no widow, children, or other dependents, then the employer shall pay the reasonable expenses of medical attendance upon the decedent and also provide and secure his burial in a proper cemetery, which may be chosen by the friends of the decedent.

For death.

Sec. 3171. Any workman claiming compensation under the provisions of this chapter shall, if requested by the employer, or upon written notice by him given to the employer, submit himself for bodily examination by some competent licensed medical practitioner or surgeon of the county in which the workman then resides, to ascertain and determine the nature, character, extent, and effect of the injury to such workman at the time of such examination for the purpose of ascertaining the semimonthly compensation then and thereafter to be made. The employer or the workman not having requested the examination may have present at the examination a medical representative, by him chosen. Each party shall pay his chosen representative the expenses of such examination. The said notice shall be given at least ten (10) days before the date fixed for the examination, and the place shall be convenient for the workman to be examined. In case the employer is a corporation, the notice may be served on any officer or agent thereof in the said county, and if none there, then elsewhere in the State.

Medical examinations.

The examiner shall make a verified report in writing in duplicate within ten (10) days after the examination and furnish one copy to the employer and one to the workman. If any workman neglects or refuses to submit to an examination, his right to compensation, if any, shall be suspended until he notifies the employer in writing of his readiness to submit thereto. No persons other than the physicians and surgeons aforesaid shall attend any examination except by agreement of the parties. If the employer and the workman each have an examiner, and they shall agree upon and join in a report, the same shall be conclusive so long as it remains in force. If either the employer or the employee, having opportunity, fails to provide an examiner, then the report of the examiner making such examination shall likewise be conclusive so long as the same remains in force. If the workman and the employer each have an examiner present, and they disagree as to the nature, character, extent, or effect of the injury, and the degree of incapacity, if any, for labor on the part of the workman at the time of such examination, then they shall join in a written report stating the matters in which they agree, and in which they disagree, and mutually select some disinterested medical practitioner or surgeon of the county, to whom the same shall be referred, and who shall proceed promptly to make an examination of the workman as to the matters in disagreement, and the same shall be conclusive so long as such report remains in force, which report shall be made by such disinterested examiner and verified, and a copy thereof furnished to the employer and the workman. For making such examination, such examiner shall be entitled to a fee of ten dollars (\$10), to be paid one-half by the employer and one-half by the workman at the time of such examination. Such examination may be required by the workman or the employer at periods not shorter than three months from the date of the last examination. The report of any examination shall supersede all previous reports. When there is disagreement between the examiners aforesaid, and they can not agree upon a third person as above provided, then it shall be the duty of the chairman of the board of supervisors of the county, on written notice of either the workman or employer, to appoint some licensed medical practitioner or surgeon, who shall be a resident of the county, to make such examination, and said appointee shall be entitled to the same compensation.

Notice.

SEC. 3172. Every workman seeking compensation under the provisions of this chapter, where the same is not fatal or does not render him incompetent to give the notice, shall, within two weeks after the day of the accident, give notice in writing to the employer, or his representative employing such workman, or to the foreman or other employee of the employer under whom he was working at the time of the accident, and before the workman has voluntarily left the service of the employer and during his disability. The notice shall state (1) the name and address of such workman, (2) the date and place of the accident, (3) and state in simple words the cause thereof, (4) the nature and degree of the injury sustained, (5) and that compensation is claimed under this chapter. The notice may be written and served personally by the workman or by any one in his behalf on any person named above in this section, or by mail, postpaid, to such person, addressed to the office, place of business or residence of the person notified. No want or defect or inaccuracy of the notice shall be a bar to the right of the workman to claim and receive compensation under this chapter, or to maintain any proceeding to secure the same, unless the employer proves that he has been seriously prejudiced by such lack of notice. No compensation shall be claimed or allowed so long as such notice is not given. If the workman is killed, or otherwise rendered incompetent to give the notice, the same is not hereby required, nor is any notice required to be given by the personal representative of such deceased person. It shall be the duty of any one giving a notice as in this section provided, to mail a duplicate copy to the attorney general of this State.

Settlement of
disputes.

SEC. 3173. Any question which may arise between the employer and the workman or his personal representative, under this chapter, shall be determined either (1) by written agreement between the parties, or (2) by arbitration, or (3) by reference and submission to the attorney general of this State; and in case of a refusal or failure of the employer and workman, or such personal representative, to agree upon a settle-

ment by either of the modes above provided, then by a civil action at law, showing such refusal or failure as a reason for suit. If any employer fails to make and pay compensation, as in this chapter provided, for a period of three months after the date of the accident, or for any two months or more after payment of the last monthly compensation, then the injured workman, if surviving, or the personal representative, in case of death, may bring an action in any court of competent jurisdiction to recover and enforce the compensation herein provided. Such action shall be conducted as near as may be in the same manner as other civil actions at law. The action shall be brought within one year after the happening of the accident, or after the nonpayment of any semimonthly installment theretofore fixed by agreement or otherwise; or within one year after the appointment of a personal representative of the decedent. The judgment in such action, when in favor of the plaintiff, shall be for a sum equal to the amount of payments then due and prospectively due under the provisions of this chapter. The judgment shall be for the total amount thereof and collectible without relief from valuation or appraisal laws. And the court awarding the judgment shall, by proper order, direct that the same shall be paid ratably to the workman, if living, in semimonthly installments until the determination of the periods provided in this chapter the same as if such payments were being made voluntarily or without suit in conformity with this chapter. The judgment by agreement, if it appears to the court to be for the best interests of the workman, may be paid in lump and not otherwise. The court rendering the judgment is hereby given power from time to time to make such orders touching the matter of payments as may appear best to provide for the maintenance and support of the workman and his family during his infirmity, and for his and their benefit and security. The employer shall have the right to stay the judgment in whole, whether the same is to be paid in lump sum or monthly installments, upon securing the same by one or more freehold sureties or a surety company, to be approved by the court rendering the judgment, who shall enter into a recognizance acknowledging themselves bound for the defendant for the payment of the judgment in lump or in partial payments as the same is, or shall be made, payable, together with interest and costs. On failure of any one or more of such payments by the employer, execution may issue out of said court and cause, against such defendant, and his bail from time to time leviable and collectible without relief from valuation or appraisal or stay laws. The recognizance shall be written upon the order book of the court and immediately following the entry of the judgment and signed by such bail and docketed in the judgment docket of the court against such defendant and bailors, which shall bind the property of the same in the same manner as the judgment binds the property of the employer. In an action by a personal representative of a deceased workman, the court shall determine the proportions of the judgment, whether in lump or in installments, to be distributed between the widow and child, or children, with power to alter and amend the proportionment from time to time on petition of any party interested as the court may deem best for the support, maintenance, and education of such widow and children.

In any action under this chapter the court shall fix and allow, at the time of entering the judgment against the employer, a reasonable fee to the workman's attorney, to be taxed against the employer as costs, and collectible in the same manner. From such allowance there shall be no right of appeal. Such attorney shall have no claim for compensation upon the judgment or its proceeds, other than as herein provided. But no allowance, or any fee payable by the workman to an attorney for services, or any fee payable by the workman to an attorney for services in securing a recovery or disbursement, shall ever exceed twenty-five (25) per centum of the principal of the sum recovered; and the same shall not be made a lien on the recovery of its proceeds, except as may be determined and allowed and fixed by the court.

SEC. 3174. Any workman entitled to monthly or other payments from or to any judgment against any employer as above provided, as com-

Enforcement claims.

Limitation.

Payments.

Distribution.

Attorney's fees.

Payments are preferred claims.

- compensation shall have the same preferential claim therefor against the property and assets of the employer and any bailor, as now is allowed by law for unpaid wages or personal services. No judgment or any part thereof, nor monthly payments due, or coming due, under this chapter shall be assignable by the workman or subject to mortgage, levy, execution, or attachment. But the same shall stand as a continuing provision for the maintenance and support of such injured workman during his incapacity for the periods provided in this chapter.
- Mental incompetence.** SEC. 3175. In case an injured workman, having a right of action under the provisions of this chapter, shall be mentally incompetent at the time when any right or privilege accrues thereunder to him, a guardian may be appointed by any court having jurisdiction, to secure and protect the rights of such workman; and the guardian may claim and exercise any and all of such rights or privileges with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege; and no limitation of time provided in any of the foregoing sections shall run so long as said incompetent workman has no guardian.
- Effect of act.** SEC. 3176. This chapter shall be construed as a continuation of the law contained in chapter 14 of the laws of the first legislature of the State of Arizona, second session. All workmen employed by an employer at manual and mechanical labor of the kinds defined in section 67 of this title shall be deemed and held in law to be employed and working subject to the provisions of this chapter, and the employer and the workman shall alike be bound by and shall have each and every benefit and right given in this chapter the same as if a mutual contract to that effect were entered into between the employer and the workman at any time before the happening of any accident. It shall be lawful, however, for the employer and workmen to disaffirm an employment under the provisions of this chapter by written contract between them, or by written notice by one to, and served upon the other to that effect before the day of the accident.
- Substitute schemes.** *Provided*, Such written contract does not provide for less compensation than as provided in this chapter. And in the absence of such written contract or written notice, served as above provided, it shall be taken and held that the employment and service is under this chapter; and the same shall be the sole measure of their respective rights and liabilities when and as provided in this chapter.
- Suits.** *Provided*, If, after the accident, either the employer or the workman shall refuse to make or accept compensation under this chapter or to proceed under or rely upon the provisions hereof for relief, then the other may pursue his remedy or make his defense under other existing statutes, the State constitution, or the common law, except as herein provided, as his rights may at the time exist. Any suit brought by the workman for a recovery shall be held as an election to pursue such remedy exclusively.
- Agreements.** SEC. 3177. Any employer employing workmen to perform labor or services of other kinds than as defined in this chapter, and such workmen and employees may, by agreement, at any time during the employment, accept and adopt the provisions of this chapter as to liability for accident, compensation, and the methods and means of paying and securing and enforcing the same. And in every such case the provisions of this chapter shall be taken in law and fact to bind the parties as fully as if they were specifically mentioned and embraced in the provisions of this chapter.
- Nature of act.** SEC. 3178. This chapter is remedial in its purpose and shall be construed and applied so as to secure promptly and without burdensome expense to the workmen the compensation herein provided and apportioned so as to provide support during the periods named for the loss of ability to earn full wages.
- Construction.** SEC. 3179. Nothing in this chapter shall be deemed or taken to repeal or affect in any way any other acts or laws passed by the first legislature of the State of Arizona, and as [sic] in so far as it refers to the same subject in other acts it shall be deemed to be cumulative only.

Approved May 13, 1913.
In effect October 1, 1913.

CALIFORNIA.

CONSTITUTION.

ARTICLE XX.—*Compensation and insurance legislation.*

SECTION 21. The legislature is hereby expressly vested with plenary power, unlimited by any provision of this constitution, to create and enforce a complete system of workmen's compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workmen for injury or disability, and their dependents for death incurred or sustained by the said workmen in the course of their employment, irrespective of the fault of any party. A complete system of workmen's compensation includes adequate provisions for the comfort, health and safety, and general welfare of any and all workmen and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workmen 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 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 dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

Power to enact law.

Safety, etc.

Insurance.

Disputes.

The legislature is vested with plenary powers to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence, and the manner of review of decisions rendered by the tribunal or tribunals designated by it: *Provided*, That all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The legislature may combine in one statute all the provisions for a complete system of workmen's compensation, as herein defined.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed.

Amendment adopted November 5, 1918.

STATUTES.

*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 sec-

[Ch. 586, 1917.]
Purpose of act.

¹ The original act, chapter 176, acts of 1913, was amended in 1915, and largely recast in 1917. Other changes were made in 1919, so that the present law is the result of four separate enactments. They are presented here in the form adopted by the Industrial Accident Commission of the State.

tion 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.

[Ch. 176, 1913.] Short title. SEC. 1. This act shall be known, and may be cited, as the "workmen's compensation, insurance, and safety act" and shall apply to the subjects mentioned in its title.

[Ch. 586, 1917.] Short title. 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.

[Ch. 586, 1917.] Definitions. SEC. 3 (as amended by chapter 471, acts of 1919). The following terms as used in this act shall, unless a different meaning is plainly required by the context, be construed as follows:

(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, including injuries to artificial members. In case of aggravation of any disease existing prior to such injury, compensation shall be allowed only for such proportion of the disability 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 and any employer to whom a certificate of consent to self-insure has been issued.

(8) 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.

[Ch. 176, 1913.] Commission created. SEC. 3. There is hereby created a board to consist of three members who shall be appointed by the governor from the State at large and which shall be known as the "Industrial Accident Commission" and shall have the powers, duties, and functions hereinafter conferred. Within thirty days prior to the first day of January, 1914, the governor shall appoint the three members of said commission, one for the term of two years, one for the term of three years, and one for the term of four years. Thereafter the term of office of each commissioner shall

be four years. Vacancies shall be filled by appointment in the same manner for the unexpired term. Each commissioner shall receive an annual salary of five thousand dollars. Each commissioner shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

Sec. 4. The commission shall organize by choosing one of its members as chairman. A majority of the commission shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power or authority of the commission. A vacancy on the commission shall not impair the right of the remaining members to perform all the duties and exercise all the power and authority of the commission. The act of the majority of the commission, when in session as a commission, shall be deemed to be the act of the commission, but any investigation, inquiry, or hearing, which the commission has power to undertake or to hold, may be undertaken or held by or before any member thereof or any referee appointed by the commission for that purpose, and every finding, order, decision, or award made by any commissioner or referee, pursuant to such investigation, inquiry, or hearing, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the finding, order, decision, or award of the commission.

[Ch. 176, 1913.]
Organization,
etc.

Sec. 5. The commission shall have a seal, bearing the following inscription: "Industrial Accident Commission State of California, seal." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

[Ch. 176, 1913.]
Seal.

Sec. 6. The commission shall keep its principal office in the city and county of San Francisco, and shall also keep an office in the city of Los Angeles, and shall provide itself with suitable rooms, necessary office furniture, stationery and other supplies. For the purpose of holding sessions in other places, the commission shall have power to rent temporary quarters.

[Ch. 176, 1913.]
Offices.

Sec. 7. The commission shall have full power and authority:

(1) To appoint as its attorney an attorney at law of this State, who shall hold office at the pleasure of the commission. It shall be the right and the duty of the attorney to represent and appear for the people of the State of California and the commission in all actions and proceedings involving any question under this act or under any order or act of the commission and, if directed so to do by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute, and expedite the final determination of all actions or proceedings, civil or criminal, directed or authorized by the commission; to advise the commission and each member thereof, when so requested, in regard to all matters in connection with the jurisdiction, powers, or duties of the commission and members thereof; and generally to perform all duties and services as attorney to the commission which may be required of him.

[Ch. 176, 1913.]
Officers.

Attorney.

(2) To appoint, and it shall appoint, a secretary, who shall hold office at the pleasure of the commission. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the commission, to issue all necessary processes, writs, warrants, and notices which the commission is required or authorized to issue, and generally to perform such other duties as the commission may prescribe. The commission may also appoint such assistant secretaries as may be necessary, and such assistant secretaries may perform any duty of the secretary, when so directed by the commission.

Secretary.

(3) To appoint a manager of the State compensation insurance fund, who shall hold office at the pleasure of the commission. It shall be the duty of such manager to manage, supervise, and conduct, subject to the general direction and approval of the commission, the business and affairs of the State compensation insurance fund and to perform such other duties as the commission may prescribe. Before entering on the duties of his office he must give an official bond in the sum of fifty thousand dollars, and take and subscribe to an official oath. Said bond must be approved by the commission, by written endorsement thereon, and be filed in the office of the secretary of state.

Manager of
State fund.

(4) To appoint a superintendent of the department of safety, who shall hold office at the pleasure of the commission and who shall perform such duties as the commission shall prescribe.

(5) To employ such other assistants, officers, experts, statisticians, actuaries, accountants, inspectors, referees, and other employees as it may deem necessary to carry out the provisions of this act, or to perform the duties and exercise the powers conferred by law upon the commission.

[Ch. 586, 1917.] SEC. 4. The commission shall have power and authority to appoint
Assistant attorney.
ney. 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.

[Ch. 586, 1917.] SEC. 5. Said commission is hereby vested with full power, authority,
Powers. 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.

SEC. 8. All officers and employees of the commission shall receive such compensation for their services as may be fixed by the commission and shall hold office at the pleasure of the commission and shall perform such duties as are imposed on them by law or by the commission.

[Ch. 176, 1913.] The salaries of the members of the commission, its attorney, secretary,
Salaries. and assistant secretary, as fixed by law or the commission, shall be paid in the same manner as are the salaries of other State officers. The salary or compensation of every other person holding office or employment under the commission, as fixed by law or by the commission, shall be paid monthly, after being approved by the commission, upon claims therefor to be audited by the State board of control. All expenses incurred by the commission 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 commission, either within or without the state, shall, unless otherwise provided in this act, be paid from the funds appropriated for the use of the commission, after being approved by the commission, upon claims therefor to be audited by the board of control: *Provided, however,* That no such expenses incurred outside of the State shall be allowed unless prior authorization therefor be obtained from the board of control.

[Ch. 176, 1913.] SEC. 9. In all cases in which salaries, expenses, or outgoings of one
Expenses. department under the jurisdiction of the commission are expended in whole or in part on behalf of another department the commission may apportion the same between such departments.

[Ch. 176, 1913.] SEC. 10. The commission shall cause to be printed and furnished
Forms. free of charge to any employer or employee, or other person, 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 in which shall be recorded all awards made by the commission, and such other books or records as it shall deem requisite for the proper and efficient administration of this act; all such records to be kept in the office of the commission.

SEC. 11. The commission shall also have power and authority:
[Ch. 176, 1913.] (1) To charge and collect the following fees: For copies of papers
Fees. and records not required to be certified or otherwise authenticated by the commission, ten cents for each folio; for certified copies of official documents and orders filed in its office or of the evidence taken on proceedings had, fifteen cents for each folio.

Reports. (2) To publish and distribute in its discretion from time to time, in addition to its annual report to the governor of the State, such further reports and pamphlets covering its operations, proceedings and matters relative to its work as it may deem advisable.

(3) To fix and collect reasonable charges for publications issued under its authority.

(4) The fees charged and collected under this section shall be paid monthly into the treasury of the State to the credit of the "industrial accident fund" and shall be accompanied by a detailed statement thereof.

SEC. 6 (as amended by chapter 471, acts of 1919). (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:

[Ch. 586, 1917.]
Compensation
payable when.

(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 willful 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: *And provided further,* That in case of an injury suffered by an employee under sixteen years of age, it shall be conclusively presumed that such injury was not caused by serious and willful misconduct.

Willful miscon-
duct.

(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 or general superintendent thereof, the amount of compensation otherwise recoverable for injury or death, as hereinafter 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 two thousand five hundred dollars.

Acts of em-
ployers.

(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.

SEC. 7 (as amended by chapter 471, acts of 1919). 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, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies 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.

[Ch. 586, 1917.]
Employer.

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

[Ch. 586, 1917.]
Employee.

Employments
excluded.

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.

Presumption of employment.

(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 workers.

(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.

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 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.

Persons unlawfully employed.

(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.

[Ch. 586, 1917.]
Medical treatment.

SEC. 9 (as amended by chapter 471, acts of 1919). 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:

(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.

(b) If the injury causes temporary disability, a disability payment which shall be payable for one week in advance as wages on the eighth 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 eighth 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:

(1) If the period of disability does not last longer than seven days from the day the employee leaves work as the result of the injury, no disability payment whatever shall be recoverable. Waiting time.

(2) If the period of disability lasts longer than seven days from the day the employee leaves work as the result of the injury, no disability payment shall be recoverable for the first seven days of disability suffered.

2. The disability payment shall be as follows:

(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. Maximum limits.

(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 Permanent disability.

Rates.

- 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.
- Intermediate ratings.** (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.
- Determining percentages.** (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 diminished ability of such injured employee to compete in an open labor market.
- Double injury.** (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.** (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.
- Accrued benefits.** 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.** (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 earn-

ings, 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.

(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 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.

Partial 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 and such other benefit as may be provided by law.

No dependents.

(d) Payment of compensation in accordance with the order and direction of the commission shall discharge the employer from all claims therefor.

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.

[Ch. 586, 1917.]
Employers' hospitals.

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.

[Ch. 586, 1917.]
Claims.

(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

- In six months. within six months from the date of the injury, except as otherwise provided in this act.
- In one year. (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.
- Extension of time. of (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 collections 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.
- Incompetent. (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.
- Refusal of 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.
- Pre-existing disability. (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.
- Advance 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.

(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. Limitation as a defense.

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 average 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: [Ch. 586, 1917.]
Average earnings.

(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. Overtime.
Board, etc.

(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. Minors.

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 em- [Ch. 586, 1917.]
Wage loss.

ployee 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 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.

[Ch. 586, 1917.]
Dependents.

SEC. 14 (as amended by chapter 471, acts of 1919). (a) The following shall be conclusively presumed to be wholly dependent for support upon a deceased employee: *Provided*, That these presumptions shall not apply in favor of aliens who are nonresidents of the United States at the time of the injury:

(1) A wife upon a husband with whom she was living at the time of his injury or for whose support such husband was legally liable at the time of his injury.

(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 injury of such parent or for whose maintenance such parent was legally liable at the time of injury, 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.

Adjustments.

(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.

Death of beneficiary.

[Ch. 586, 1917.]
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 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.

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. [Ch. 586, 1917.]
Medical examination.

(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.

SEC. 17 (as amended by chapter 471, acts of 1919). (a) Upon the filing with the commission by any party in interest, his attorney, or other representative authorized in writing, 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. [Ch. 586, 1917.]
Procedure.

(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.

(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.

[Ch. 536, 1917.]
Disclaimers
etc.

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.

Failure to answer.

(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.

Dismissal of application.

(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.

Attachments.

(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 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.

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.

[Ch. 586, 1917.]
Hearings.

(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.

Stipulated
facts.

(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:

Evidence.

- (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.

(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:

Burden of proof.

- (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.

(5) Prejudice to the employer by failure of the employee to give notice, as required by section fifteen.

(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

Autopsy.

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.

[Ch. 586, 1917.]
Findings.

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.

Jurisdiction
continuing.

(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.

[Ch. 586, 1917.]
Enforcement of
award.

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 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.

(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.

(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.

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. [Ch. 586, 1917.]
Review by courts.

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. [Ch. 586, 1917.]
Fees, costs, etc.

Sec. 24 (as amended by chapter 586, acts of 1919). (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. [Ch. 586, 1917.]
Assignments of claims.

(b) The commission may fix and determine and allow as a lien against any amount to be paid as compensation. Liens.

(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 or of his dependents subsequent to the injury.

(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 deem proper, upon application of the wife or guardian of the minor children.

(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. Claim a lien, when.

(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.

(e) A claim for compensation for the injury or death of any employee, or any award of judgment entered thereon, shall have preference over all other unsecured debts of the employer or insurance carrier.

[Ch. 586, 1917.]
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 premium 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.

[This section is unconstitutional in so far as it attempts to authorize the awarding of compensation against a third person not an employer, *Perry v. Industrial Acc. Com.*, 181 Pac. 788.]

[Ch. 586, 1917.]
Injuries caused
by third parties.

SEC. 26 (as amended by chapter 471, acts of 1919). The term "employee," as used in this section, shall include the person injured and any other person in whom a claim may arise by reason of the injury or death of such injured person. The death of the employee, or of any other person, shall not abate any right of action established by this section. The claim of an employee for compensation shall not affect his right of action for damages arising out of injury or death against any person other than the employer; and any employer having paid, or having become obligated to pay, compensation, may likewise bring an action against such other person to recover said damages. 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 service or registered mail, of such fact and of the name of the court in which such suit is brought, filing proof thereof in such action, and if the action be brought by either, the other may, at any time before trial on the facts, join as party plaintiff or must consolidate his action, if brought independently. If the suit be prosecuted by the employer alone evidence of any expenditures which the employer has paid or become obligated to pay by reason of said injury or death shall be admissible, and such expenditures shall be deemed a part of the damages, including a reasonable attorney's fee to be fixed by the court; and if in such suit the employer shall recover more than the amount he has paid or become obligated to pay as compensation he shall pay the excess to the injured employee or other person entitled. If the employee joins in or prosecutes such suit, evidence of the amount of disability indemnity or death benefit paid by the employer shall not be admissible, but proof of all other expenditures on account of said injury or death shall be admissible and shall be deemed part of the damages. The court shall, on application, allow as a first lien against any judgment recovered by the employee the amount of the employer's expenditures for compensation. When any injury or death shall have been suffered by an employee, no release or settlement of any claim for damages by reason of such injury or death and no satisfaction of judgment in such proceedings, shall be valid without the written consent of either both employer and employee, or one of them, together with the consent of the commission or the court in which any such action may be pending.

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.

[Ch. 586, 1917.]
Waivers.

(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.

Agreements to
be approved.

(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.

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

[Ch. 586, 1917.]
Lump sums.

its discretion, commute the compensation payable under this act to a lump sum, if it appears 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.

(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.

[Ch. 586, 1917.]
Payments to be
secured.

Sec. 29 (as amended by chapter 471, acts of 1917). (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, but not both a bond and 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. So long as the certificate of consent to self-insure has not been revoked, and the self-insurer has deposited with the State treasurer such bond or securities, the self-insurer shall not be required or obliged to pay into the State compensation insurance fund any sums covering liability for compensation, excepting life pensions; but shall be permitted, and such permission is hereby given the self-insurer, to fully administer any and all such compensation benefits assessed against the said insurer.

(b) If any employer shall fail so 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 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 and proceedings upon such attachment: *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 foregoing defenses.

Failure to secure payments.

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.

[Ch. 586, 1917.]
Insurance.

(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

Liability not reduced.

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 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 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.

(f) Where any employer is insured against liability for compensation with any insurance carrier and such insurance carrier 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.

Insurer's rights.

(g) The State compensation insurance fund may insure against any liability fixed under this act to the same extent as any insurance carrier.

Reinsurance by State fund.

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.

[Ch. 586, 1917.] Limited policies.

(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.

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.

[Ch. 586, 1917.] State fund unaffected.

Sec. 36 (as amended by chapter 607, acts of 1915). There is hereby created and established a fund to be known as the "State compensation insurance fund," to be administered by the industrial accident commission of the State, without liability on the part of the State beyond the amount of said fund, for the purpose of insuring employers against liability for compensation under this act and against the expense of defending any suit for damages under the optional provisions of section twelve hereof (subdivision b), and insuring to employees and other persons the compensation fixed by this act for employees and their dependents.

[Ch. 176, 1913.] State insurance fund.

Sec. 37 (as amended by chapter 607, acts of 1915). (a) The State compensation insurance fund shall be a revolving fund and shall consist of such specific appropriations as the legislature may from time to time make or set aside for the use of such fund, all premiums received and paid into the said fund for compensation insurance issued, all property and securities acquired by and through the use of moneys belonging to said fund and all interest earned upon moneys belonging to said fund and deposited or invested, as herein provided.

[Ch. 176, 1913.] State insurance fund.

(b) Said fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of the salaries and other expenses to be charged against said fund in accordance with the provisions contained in this act.

(c) Said fund shall, after a reasonable time during which it may establish a business, be fairly competitive with other insurance carriers, and it is the intent of the legislature that said fund shall ultimately become neither more nor less than self-supporting. In order that the State compensation insurance fund shall ultimately become neither more nor less than self-supporting, the actual loss experience and expense of the fund shall be ascertained on or about the first of January in each year for the year preceding, and should it then be shown that there exists an excess of assets over liabilities, such liabilities to include the necessary reserves, and a reasonable surplus for the catastrophe hazard, then, in the discretion of the commission, a cash dividend shall be declared to, or a credit allowed on the renewal premium of each employer who has been insured with the fund, such cash dividend or credit to be such an amount to which, as in the discretion of the commission, such employer may be entitled as the employer's proportion of divisible surplus.

To be competitive.

[Ch. 176, 1913.]
Powers of com-
mission.

SEC. 38. (a) The commission is hereby vested with full power, authority and jurisdiction over the State compensation insurance fund and may 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 over said fund in the administration thereof, or in connection with the insurance business to be carried on by it under the provisions of this act, as fully and completely as the governing body of a private insurance carrier might or could do.

(b) The commission shall have full power and authority, and it shall be its duty, to fix and determine the rates to be charged by the State compensation insurance fund for compensation insurance, and to manage and conduct all business and affairs in relation thereto, all of which business and affairs shall be conducted in the name of the State compensation insurance fund, and in that name, without any other name or title, the commission may:

(1) Sue and be sued in all the courts of the State in all actions arising out of any act, deed, matter or thing made, omitted, entered into, done, or suffered in connection with the State compensation insurance fund, the administration, management or conduct of the business or affairs relating thereto.

(2) Make and enter into contracts of insurance as herein provided, and such other contracts or obligations relating to the State compensation insurance fund as are authorized or permitted under the provisions of this act.

(3) Invest and reinvest the moneys belonging to said fund as herein-after provided.

(4) Conduct all business and affairs, relating to the State compensation insurance fund, whether herein specifically designated or in addition thereto.

(c) The commission may delegate to the manager of the State compensation insurance fund, or to any other officer, under such rules and regulations and subject to such conditions as it may from time to time prescribe, any of the powers, functions or duties, conferred or imposed on the commission under the provisions of this act in connection with the State compensation insurance fund, the administration, management and conduct of the business and affairs relating thereto, and the officer or officers to whom such delegation is made may exercise the powers and functions and perform the duties delegated with the same force and effect as the commission, but subject to its approval.

(d) The commission shall not, nor shall any commissioner, officer or employee thereof, be personally liable in his private capacity for or on account of any act performed or contract or other obligation entered into or undertaken in an official capacity, in good faith and without intent to defraud, in connection with the administration, management or conduct of the State compensation insurance fund, its business or other affairs relating thereto.

[Ch. 176, 1913.]
Powers of man-
ager.

SEC. 39. In conducting the business and affairs of the State compensation insurance fund, the manager of the said fund or other officer to whom such power and authority may be delegated by the commission, as provided by subsection (c) of section thirty-eight thereof, shall have full power and authority:

(1) To enter into contracts of insurance, insuring employers against liability for compensation and insuring to employees and other persons the compensation fixed by this act.

(2) To sell annuities covering compensation benefits.

(3) To decline to insure any risk in which the minimum requirements of the commission with regard to construction, equipment and operation are not observed, or which is beyond the safe carrying of the State compensation insurance fund, but shall not have power or authority, except as otherwise provided in this subdivision, to refuse to insure any compensation risk tendered with the premium therefor.

(4) To reinsure any risk or any part thereof.

(5) To inspect and audit, or cause to be inspected and audited the pay rolls of employers applying for insurance against liability for compensation.

(6) To make rules and regulations for the settlement of claims against said fund and to determine to whom and through whom the payments of compensation are to be made.

(7) To contract with physicians, surgeons, and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund.

Sec. 40. (a) It shall be the duty of the commission to fix and determine the rates to be charged by the State compensation insurance fund for compensation insurance coverage as herein provided, and such rates shall be fixed with due regard to the physical hazards of each industry, occupation, or employment and, within each class, so far as practicable, in accordance with the elements of bodily risk or safety or other hazard of the plant or premises or work of each insured and the manner in which the same is conducted, together with a reasonable regard for the accident experience and history of each such insured, and the means and methods of caring for injured persons, but such rates shall take no account of the extent to which the employees in any particular establishment have or have not persons dependent upon them for support.

[Ch. 176, 1913.]
Rates.

(b) The rates so made shall be that percentage of the pay roll of any employer which, in the long run and on the average, shall produce a sufficient sum, when invested at three and one-half per cent interest:

(1) To carry all claims to maturity; that is to say, the rates shall be based upon the "reserve" and not upon the "assessment" plan;

(2) To meet the reasonable expenses of conducting the business of such insurance;

(3) To produce a reasonable surplus to cover the catastrophe hazard.

Sec. 41. The insurance contracts entered into between the State compensation insurance fund and persons insuring therewith may be either limited or unlimited, and issued for one year or, in the form of stamps or tickets or otherwise, for one month or any number of months less than one year, or for one day or any number of days less than one month, or during the performance of any particular work, job, or contract. *Provided*, That the rates charged shall be proportionately greater for a shorter than for a longer period and that a minimum premium charge shall be fixed in accordance with a reasonable rate for insuring one person for one day. Nothing in this act shall be construed to prevent any person applying for compensation insurance from being covered temporarily until the application is finally acted upon, or to prevent the insured from surrendering any policy at any time and having returned to him the difference between the premium paid and the premium at the customary short term for the shorter period which such policy has already run. The State compensation insurance fund may at any time cancel any policy, after due notice, upon a pro rata basis of premium repayment.

[Ch. 176, 1913.]
Contracts.

Sec. 42. The State compensation insurance fund may issue policies, including with their employees, employers who perform labor incidental to their occupations, and including also members of the families of such employers engaged in the same occupation, such policies insuring to such employers and working members of their families the same compensations provided for their employees, and at the same rates: *Provided*, That the estimations of their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their pay rolls upon which their premium is computed. Such policies may likewise be sold to self-employing persons and to casual employees, who, for the purpose of such insurance, shall be deemed to be employees within the meaning of sections twelve to thirty-five, inclusive, of this act.

[Ch. 176, 1913.]
Who may be
insured.

Sec. 43. The treasurer of the State shall be custodian of all moneys and securities belonging to the State compensation insurance fund, except as otherwise provided in this act, and shall be liable on his official bond for the safe-keeping thereof. All moneys belonging to said fund collected or received by the commission, or the manager of the State compensation insurance fund, under and by virtue of the provisions of this act, shall be delivered to the treasurer of the State or may be deposited to his credit in such bank or banks throughout the State as he may, from time to time, designate, and such moneys when so delivered

[Ch. 176, 1913.]
Custodian of
fund.

or deposited shall be credited by the treasurer to the said fund and no moneys received or collected on account of such fund shall be expended or paid out of such fund without first passing into the State treasury and being drawn therefrom as provided in this act. In like manner there shall be delivered to the treasurer all securities belonging to said fund which shall be held by him until otherwise disposed of as provided in this act.

[Ch. 176, 1913.]
Monthly estimates. SEC. 44. (a) The commission shall submit each month to the State board of control an estimate of the amount necessary to meet the current disbursements from the State compensation insurance fund during each succeeding calendar month and, when such estimate shall be approved by the State board of control, the controller is directed to draw his warrant on said fund in favor of said commission for such amount, and the treasurer is authorized and directed to pay the same.

(b) At the end of each calendar month the commission shall account to the State board of control and the State controller for all moneys so received, furnishing proper vouchers therefor.

(c) During the months of January and July of each year the State board of control or the commission shall cause a valuation to be made of the properties and securities which have been acquired and which are held for said fund, and shall report the results of the same to the State controller, whose duty it shall be to keep a special ledger account showing all of the assets pertaining to the State compensation insurance fund. In the controller's general ledger this fund account may be carried merely as a cash account, like other accounts of funds in the State treasury, and therein only the actual cash coming into the State compensation insurance fund shall be credited to such fund.

[Ch. 176, 1913.]
Investments. SEC. 45. (a) The commission shall cause all moneys in the State compensation insurance fund, in excess of current requirements, to be invested and reinvested, from time to time, in the securities now or hereafter authorized by law for the investment of funds of savings banks.

(b) The commission shall, from time to time, submit to the State board of control an estimate of the amount required by it for investment, which estimate shall be accompanied by a full description of the kind and character of the investments to be made and, when such estimate shall be approved by the State board of control, the controller is directed to draw his warrant on the State compensation insurance fund in favor of the commission for such amount and the treasurer is authorized and directed to pay the same.

(c) At the end of each calendar month the commission shall account to the said board of control and the State controller for all moneys so received, furnishing proper vouchers therefor.

(d) All moneys in said fund, in excess of current requirements and not otherwise invested, may be deposited by the State treasurer from time to time in the banks authorized by law to receive deposits of public moneys under the same rules and regulations that govern the deposit of other public funds and the interest accruing thereon shall be credited to the State compensation insurance fund.

[Ch. 176, 1913.]
Municipalities. SEC. 46 (as amended by chapter 607, acts of 1915). Each county, city and county, city, school district, or other public corporation or quasi-public corporation within the State, not including, however, any public-utility corporation, may insure against its liability for compensation with the State compensation 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, and the premium therefor shall be a proper charge against the general fund of each such political subdivision of the State.

[Ch. 176, 1913.]
Schedules of rates to be furnished. SEC. 47. When the premium rates for insurance in the State compensation insurance fund shall have been established the commission shall furnish schedules of rates and copies of the forms of policy to the commissioner of labor, to the clerk and to the treasurer of every county, city and county, and city in the State, and it shall be the duty of every public officer to whom the foregoing may be furnished to fill out and transmit to the manager of the State compensation insurance fund applications for compensation insurance in such fund and to receive and transmit to said manager all premiums paid on account of any policy

issued or applied for, and for this service such officials may be allowed such commission or other compensation as the commission may from time to time direct.

Sec. 48. The commission shall each quarter make to the governor of the State, reports of the business done by the State compensation insurance fund during the previous quarter, and a statement of the fund's resources and liabilities, and it shall be the duty of the State board of control to audit such reports and to cause an abstract thereof to be published one or more times in at least two newspapers of general circulation in the State. The commission shall likewise make to the State insurance commissioner all reports required by law to be made by other insurance carriers.

[Ch. 176, 1913.]
Reports.

Sec. 49. Any employer who shall willfully misrepresent the amount of the pay roll upon which his premium under this act is to be based shall be liable to the State in ten times the amount of the difference in premium 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 in the name of the State compensation insurance fund and any amount so collected shall become a part of said fund.

[Ch. 176, 1913.]
Misrepresenting
pay roll.

Sec. 50. Any person who willfully misrepresents any fact in order to obtain insurance at less than the proper rate for such insurance, or in order to obtain any payments out of such fund, shall be guilty of a misdemeanor.

[Ch. 176, 1913.]
Fraud.

[Here follow sections 33 to 54 of chapter 586, acts of 1917. They relate to safety provisions, inspections, accident reporting and investigation, and are printed in Bulletin No. 244, Labor Legislation of 1917.]

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.

[Ch. 586, 1917.]
Proceedings be-
fore commission.

(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.

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, 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.

[Ch. 586, 1917.]
Service of no-
tices, etc.

(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.

[Ch. 586, 1917.]
Powers of com-
mission.

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-employed 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-employed 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 shall be charged by the commission to any party for arbitrating the issues presented under this section.

[Ch. 536, 1917.]
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.

[This section is unconstitutional, as it discriminates between residents of the State and nonresident citizens of other States. Quong Ham Wah Co. v. Ind. Acc. Com., 59 Cal., Dec. 18.]

[Ch. 586, 1917.]
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.

Power of referees.

(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 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.

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 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.

[Ch. 586, 1917.]
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.

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 subpoenas 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

[Ch. 586, 1917.]
Power to administer oaths,
etc.

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 subpoenaed, unless otherwise ordered by the commission. When any witness who has not been required to attend at the request of any party is subpoenaed 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 subpoenaed, 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 subpoena. 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.

[Ch. 586, 1917.]
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 subpoena 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 subpoena, 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 subpoenaed in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, 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 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 subpoena 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.

[Ch. 586, 1917.]
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.

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.

[Ch. 586, 1917.]
Rehearings.

(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 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.

[Ch. 586, 1917.]
Grounds for re-hearing.

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.

[Ch. 586, 1917.]
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 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.

[Ch. 586, 1917.]
Appeal to courts.

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.

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. [Ch. 586, 1917.]
Suspension.

(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.

(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.

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. [Ch. 586, 1917.]
Construction.

(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 Interstate commerce.

permitted to apply under the provisions of the Constitution of the United States or the acts of Congress.

[Ch. 586, 1917.]
Election in ex-
cluded employ-
ments.

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 employer 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.

[Ch. 176, 1913.]
Reports.

SEC. 88. The commission shall, not later than the first day of December of each calendar year, subsequent to the year 1913, make a report to the governor of the State covering its entire operations and proceedings for the previous fiscal year, with such suggestions or recommendations as it may deem of value for public information. Such report shall be printed and a copy thereof furnished to all applicants within this State.

ACTS OF 1919.

CHAPTER 183.—*Vocational rehabilitation.*

SECTION 1. Whenever any fatal compensable injury is suffered by any employee coming under the provisions of said compensation, insurance and safety act and such deceased employee does not leave surviving him any person entitled to a death benefit, the employer, or his insurance carrier, if he be insured under said compensation act, shall pay into the treasury of the State of California the sum of three hundred fifty dollars for each such fatal injury in addition to any other payments under the provisions of said compensation act: *Provided*, That the total payments shall not exceed three times the average annual earnings of said deceased employee. Said moneys paid into the State treasury under the provisions of this section shall be covered into a special fund to be known as the "industrial rehabilitation fund," which fund is hereby created and appropriated for the purposes set forth in this act. Rehabilitation fund.

SEC. 2. The industrial accident commission may draw upon said fund for the promotion of vocational reeducation and rehabilitation of persons disabled in industry in this State, in addition to any other money appropriated for such purposes. The controller is hereby ordered to draw his warrant on said fund from time to time in accordance with the direction of the commission, and the treasurer is hereby authorized and directed to pay the same. Use of fund.

SEC. 3. The treasurer shall place the remainder, if any, of the fund, after making the payments required by the preceding sections of this act, semiannually, to the credit of the accident prevention fund, established by said compensation act. Surplus.

SEC. 4. As soon as the sum of five thousand dollars shall have accumulated in said fund, the treasurer shall, upon the order of the industrial accident commission, deposit the same with the State compensation insurance fund as a revolving fund. The State compensation insurance fund shall, upon the order or award of the industrial accident commission, make the payments required by sections two, three, and four from said revolving fund, accounting therefor to the State board of control as in other cases, and the State treasurer shall from time to time, upon the order of the commission, reimburse said State compensation insurance fund from the industrial rehabilitation fund for expenditures made from said revolving fund. The reasonable expense of administration of the said State compensation insurance fund in carrying out the duties imposed by this act shall, upon the auditing and approval thereof by the State board of control, be paid from said industrial rehabilitation fund in the same manner as is provided in this section for other payments. The controller is hereby directed to draw his warrant from time to time in favor of the State compensation insurance fund in accordance with the direction of said commission, and the treasurer is hereby authorized and directed to pay the same. To be a revolving fund.

SEC. 5. If any proceedings are necessary to collect from any employer the amount mentioned in the preceding section, or to determine the liability of any employer under said compensation act with respect to said amount, such proceedings shall be instituted before the industrial accident commission of its own motion or by the attorney general on behalf of the people of the State of California and such proceedings shall be tried and determined in the same manner and with the same effect as any other proceeding to collect compensation: *Provided*, That if proceedings be instituted by any other person to collect benefits under the compensation act on account of such fatal injury, the commission may, if it finds said sum of three hundred fifty dollars payable to the State treasurer, award said sum to the State of California without the people of the State of California being a party to said proceedings: *And provided further*, That if said sum of three hundred fifty dollars shall be paid into the treasury and at any time thereafter any person claiming to be a dependent of the deceased employee shall establish such dependency and secure an award therefor, the commission may make an award against the State of California in Collection of fund.

favor of said dependent for said sum of three hundred fifty dollars, or as much thereof as may be necessary to meet the claim of such dependent, said sum to be applied to said death benefit and to relieve to that extent the employer or his insurance carrier against liability therefor.

Powers of commission.

SEC. 6. The industrial accident commission of the State of California is hereby vested with full jurisdiction and authority to hear and determine any and all questions and controversies arising under this act and to make and enter all orders and awards necessary to carry out the purposes herein set forth.

Approved May 5, 1919.

COLORADO.

ACTS OF 1915.

CHAPTER 180.—*Industrial commission.*

SECTION 5. There is hereby created a board which shall be known as the "Industrial Commission of Colorado." Within thirty days after the passage of this act the governor, by and with the consent of the senate, shall appoint one member whose term of office shall expire March 1, 1917; a second member whose term of office shall expire March 1, 1919; and a third member whose term of office shall expire March 1, 1921. Upon the expiration of each appointment the governor shall appoint members of the commission, by and with the advice and consent of the senate, for terms of six years each. Vacancies shall be filled in the same manner for unexpired terms. Not more than two of the commissioners shall be members of the same political party. Not more than one of the appointees to such commission shall be a person who, on account of his previous vocation, 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 employees. Commission created.

Each member of the commission, before entering upon the duties of his office, shall take the oath prescribed by the constitution, and shall give good and sufficient bond running to the people of the State of Colorado, in the penal sum of ten thousand dollars, conditioned that he shall faithfully discharge the duties of his office and shall account for and pay over to the person entitled thereto such moneys as shall come into his possession; said bond shall be signed by a surety company duly authorized to do business in this State or by two or more individuals as surety or sureties and shall be subject to approval by the governor and shall then be filed with the secretary of state. If surety company bonds shall be furnished, the premium therefor shall be paid by the State as other expenses of the commission are paid. 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. Each member of the commission shall receive an annual salary of not to exceed four thousand dollars and actual expenses necessarily incurred in the performance of his duties, which shall be in full for all services performed. The commissioners shall devote their entire time to the duties of their office. Oath. Bond. Salaries.

A majority of said commissioners shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred by this act.

Approved April 12, 1915.

ACTS OF 1919.

CHAPTER 210.—*Compensation of workmen for injury.*

SECTION 1. This act shall be known and may be cited as "Workmen's Compensation Act of Colorado." Title.

SEC. 2. The industrial commission of Colorado, created by the act of the general assembly of Colorado, shall enforce and administer the provisions of this act. The said commission, in the administration of this act shall be governed by its provisions if there be conflict between the same and the provisions of the act creating said commission. Administration.

SEC. 3. The term "commission" when used in this act shall mean the industrial commission of Colorado. Definitions.

- Number and gender.** SEC. 4. Unless the context otherwise requires, a word used in this act in the singular number shall also include the plural; and the masculine gender shall include feminine and neuter.
- Order.** SEC. 5. The term "order" shall mean and include any decision, finding and award, classification, rate, rule, regulation, direction, requirement or standard of the commission, or any other determination arrived at or decision made by such commission.
- Place of employment.** SEC. 6. The term "place of employment" shall mean and include every place whether indoors or outdoors or underground, and the premises, work places, works and plants appertaining thereto or used in connection therewith, 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, or 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.
- Employment.** SEC. 7. The term "employment" shall mean and include any trade, occupation, job, or position, or process of manufacture, or any method of carrying on any such trade, occupation, job, or position, or process of manufacture in which any person may be engaged, except as otherwise expressly provided in this act.
- Employer.** SEC. 8. The term "employer" shall mean and include:
 (a) 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.
 (b) Every person, association of persons, firm and private corporation (including any public service corporation), personal representative, assignee, trustee or receiver, who has four or more persons 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.
- Exemptions.** (c) 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 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 herein provided.
- Employee.** SEC. 9. The term "employee" shall mean and include:
 (a) Every person in the service of the State, or of any county, city, town, irrigation, drainage, or school district therein, or 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 any county, city, town, irrigation, drainage, or school district therein, or of any public institution or administrative board thereof; 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, or if killed, any dependent, claiming compensation under this act shall have deducted from such compensation any sum which such policeman or fireman, or their dependent may receive from any pension or any benefit fund to which the municipality may contribute.
 (b) 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, whether lawfully or unlawfully employed (who for the purpose 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 persons, who are expressly
- Casual workers.** excluded from this act or whose employment is but casual and not in

the usual course of trade, business, profession or occupation of his employer.

Sec. 10. The provisions of this act shall not apply to common carriers engaged in interstate commerce nor to their employees. Interstate commerce.

Sec. 11. 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, express or implied, between the employee whose services were loaned and the person to whom he was loaned. Loaned employees.

Sec. 12. In an action to recover damages for a personal injury sustained by an employee on and after the first day of August, 1915, while engaged in the line of his duty as such, or for death resulting from personal injuries so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of the officer, agent, or servant of the employer, it shall not be a defense: Defenses abrogated.

(a) That the employee, either expressly or impliedly, assumed the risk of the hazard complained of as due to the employer's negligence.

(b) That the injury or death was caused, in whole or in part, by the want of ordinary care of a fellow servant.

(c) 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 care was not willful.

Sec. 13. Any employer who has elected to and has complied with the provisions of this act, including the provisions relating to insurance, shall not be subject to the provisions of section 12 of this act; nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employee, except as in this act provided; and all courses of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common law rights and remedies for and on account of such death or personal injury to any such employee are hereby abolished except as in this act provided. Remedy exclusive.

Sec. 14. If an employer has elected to and has complied with the provisions of this act, including the provisions thereof relating to insurance, and an action is brought against such employer to recover damages for personal injuries or death sustained by an employee who has elected not to come under this act, then such employer shall have all the defenses to such an action which he would have had if this act and that certain other act entitled, "An act concerning assumption of risk," being chapter 43, page 115, of the Session Laws of 1913, and an act entitled, "To give a right of action against an employer for injuries or death resulting to his agents, employees, or servants, etc.," same being chapter 113, page 294 of the Session Laws of 1911, and also an act entitled, "To relieve employees and workmen from assuming the risk of injury or death, etc.," same being chapter 72, page 197, Session Laws of 1915, had not been enacted. Defenses valid, when.

Sec. 15. The right to the compensation provided for in this act, in lieu of any other liability whatsoever, to any and all persons whomsoever, for any personal injury accidentally sustained or death resulting therefrom, on and after August 1, 1915, shall obtain in all cases where the following conditions occur: Application of act.

(a) Where, at the time of the accident, both employer and employee are subject to the provisions of this act; and where the employer has complied with the provisions thereof regarding insurance.

(b) Where, at the time of the accident, the employee is performing service arising out of and in the course of his employment.

(c) Where the injury or death is proximately caused by accident arising out of and in the course of his employment, and is not intentionally self-inflicted.

Sec. 16. On and after August 1, 1915, every employer of four or more employees, not including private domestic servants and farm and ranch laborers, engaged in a common employment, shall be conclusively presumed, when he becomes the employer of four or more persons, to have accepted the provisions of this act, unless prior to that Election presumed.

date such employer shall have filed with the commission a notice in writing to the effect that he elects not to accept the provision of this act: *Provided, however*, That any employer commencing business subsequent to August 1, 1915, or not having in his employ four or more employees on said date, may make his election not to become subject to the provisions of this act at any time prior to becoming an employer of four or more employees, in a common employment, exclusive of private domestic servants, and farm and ranch laborers, by giving written notice as above provided. If such written notice is not given prior to said employer becoming the employer of four or more employees, said employer shall be conclusively presumed to have accepted the provisions of this act, subject, however, to the right of withdrawal, as herein provided.

Voluntary election.

SEC. 17. Election on the part of any employer to be subject to this act, including the employer of private domestic servants, farm and ranch laborers or of three or less employes, may be made by filing with the commission a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate to subject such employer to the provision of this act for the term of one (1) year from the date of filing such statement, 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 any succeeding 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 this act.

Employees under act, when.

SEC. 18. Any employee may become subject to the provisions of this act, and shall be deemed to have accepted, and shall be subject to the provisions thereof if at the time of the accident upon which liability is claimed—

(a) His employer is subject to the provisions of this act and has complied with the requirements thereof, including insurance; and if,

(b) Such employee shall not, at the time of entering into his contract of hire, expressed or implied with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this act.

Suits barred.

SEC. 19. Such election and compliance with the provisions of this act, including the provisions for insurance, shall be, and be construed to be, a surrender by the employer and the employee of their rights to any other method, form or amount of compensation or determination thereof, or to any cause of action, action at law, suit in equity or statutory or common law right or remedy or proceeding whatever for or on account of such personal injuries or death of such employee than as provided in this act, and shall be an acceptance of all of the provisions of this act, and shall bind the employee himself, and for compensation for his death, shall bind his personal representatives, his widow and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency.

Notice of non-election.

SEC. 20. Every employer, not electing to accept or rejecting the provisions of this act, shall cause printed notices thereof to be kept posted in and about his place of employment in a conspicuous manner and in sufficient places frequented by his employees, as to reasonably notify such employees that he is not subject to the provisions of this act, and shall likewise cause similar notice to be given of the filing of any change of such election on his part.

Insurance.

SEC. 21. Any employer electing to become subject to the provisions of this act shall secure compensation for his employees in one of the following ways, which shall be deemed to be compliance with the insurance requirements of this act:

(a) By insuring and keeping insured the payment of such compensation in the State compensation insurance fund; or,

(b) By insuring and keeping insured the payment of such compensation with any stock or mutual corporation authorized to transact the business of workmen's compensation insurance in this State. If insurance be so effected in such stock or mutual corporation, the employer or insurer shall forthwith file with the commission, in form prescribed by it, a notice specifying the name of the insured and the insurer, the business and place of business of the insured and the

effective and termination dates of the policy, also, when requested, a copy of the contract or policy of insurance.

(c) By procuring a self-insurance permit from the commission as hereinafter provided: *Provided, however,* 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, at all times, insure and keep insured the payment of such compensation in the State compensation insurance fund.

Sec. 22. Every contract for the insurance of compensation herein provided for, or against liability therefor, shall be deemed to be made subject to all the provisions of this act, and all provisions in such contract for insurance, inconsistent with the provisions of this act, shall be void. The industrial commission shall from time to time approve and prescribe a standard or universal form, as nearly as possible, for every contract or policy of insurance, indorsement, rider, letter, or other document affecting such contract, for use in insuring the compensation herein provided for. Contracts for insurance.

Sec. 23. Every insurance carrier 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 all rates and any system or systems of rating, none of which shall take effect until approved by the industrial commission, and said commission shall have the power to disapprove same as inadequate. The commission may, at any time, withdraw its approval of any rate or system of rating. Rates, etc., to be filed.

Sec. 24. Every insurance carrier writing compensation insurance shall write said insurance at the rate or rates approved as adequate by the industrial commission, and the cutting of rates or rebating, or any other method whereby directly or indirectly any employer is given the benefit of, or obtains a rate lower than that approved by the industrial commission is hereby prohibited. Any insurance carrier or any employer or any officer, agent, or employee of either, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and may be punished by a fine of not more than \$500 or imprisonment for a period not longer than thirty days, or both such fine and imprisonment. Rebating, etc., forbidden.

Sec. 25. 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 compensation, if any, for which the employer is liable, thereby discharging to the extent of such payment the obligations of the employer to the employee; 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. Direct liability.

Such policy must also provide that the employee shall have a first lien upon any amount which shall become owing to the employer from the insurance carrier, and 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 obligation of the employer to the employee, and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes legally incapable, insolvent, or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing. Award a lien.

Sec. 26. If any insurance carrier intentionally, knowingly, or 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. Violations.

Failure to insure. Sec. 27. In any case where the employer is subject to the provisions of this act by election or by nonrejection, and at the time of an injury has not complied with the insurance provisions of this act, or has allowed his insurance to terminate or has not effected a renewal thereof, the employee, if injured, or if killed, his dependents, if such employee has not rejected this act as herein provided, may claim the compensation and benefits provided in this act, and in any such case the amounts of compensation or benefits provided in this act shall be increased fifty per cent.

Access to books. Sec. 28. Any insurance carrier operating under the terms and provisions of the workmen's compensation act shall have the right to apply to the industrial commission for permission to examine any of the books, pay rolls, or other documents of any employer insured by such carrier, or of any contractor, subcontractor, lessee, sublessee, person, or persons, covered by the employer's compensation insurance to determine the amount of wage expenditure of such employer, or of any contractor, subcontractor, lessee, sublessee, person, or persons during any period that such employer, or contractor, subcontractor, lessee, sublessee, person, or persons was insured by such insurance carrier, and the commission may grant such carrier authority in writing to make such investigation, or may appoint any of its agents to conduct such investigation.

Self-insurance. Sec. 29. The commission in its discretion may grant to any employer, who has accepted the provisions of this act, permission to be its own insurance carrier for the payment of the compensation and benefits herein provided. Such permission may be granted by the commission after the filing by such employer of such statement or statements and the giving of such information as may be required by the commission. The commission shall have the sole power to prescribe the rules, regulations, orders, terms, and conditions upon which said permit shall be granted or continued. Such permission for self-insurance may be revoked at any time by the commission and such employer shall upon notice of revocation immediately insure otherwise his liability.

Injuries to be reported. Sec. 30. Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within 10 days after the occurrence of an accident resulting in personal injury a report thereof shall be made, in writing by the employer to the commission, upon forms prescribed by the commission for that purpose. Such report shall contain such information as shall be required by the commission.

Notice to employer. Sec. 31. 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 to do so, or unless his employer or his foreman, superintendent, manager, or other person in charge 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.

Employers to furnish information. Sec. 32. Every employer shall furnish the commission, upon request, all information required by it, to accomplish the purposes of this act, which information shall be for the confidential use of said commission, unless otherwise ordered by it, and shall not be open to the public nor used in any court, or any action or proceeding pending therein, unless the commission is a party to such action or proceeding.

Same. Sec. 33. Every employer receiving from the commission any blanks with directions to fill out the same or requests for information required for the purposes of this act shall properly fill out said blanks and furnish said information so requested fully and correctly. The commission may require that any information requested by it be verified under oath and may fix the time within which said information shall be returned to it.

Inspection of plant. Sec. 34. The commission, or any of its agents, may enter into any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, protection, and safety of

the employees, and bringing to the attention of every employer any rule, order, or requirement of the commission, or any law, or any failure on the part of any employer to comply therewith.

Sec. 35. All books, records, and pay rolls of employers, or of any contractor, subcontractor, lessee, sublessee, person or persons, showing or reflecting in any way upon the amount of wage expenditure of such employers, contractor, subcontractor, lessee, sublessee, person or persons, and all other facts, data, and statistics appertaining to the purposes of this act, shall always be open for inspection by the commission, or any of its agents, for the purpose of ascertaining the correctness of the reported wage expenditure, number of men employed, and such other information as may be necessary for the uses and purposes of the commission in its administration of this act. Books to be open.

Sec. 36. In case any person fails or refuses to comply with any order of the commission or obey any subpoena issued by it or its agents or to furnish the statistics, data, and information required to be furnished to the commission by the provisions of this act, or refuse to permit an inspection as provided in this act, or being in attendance refuses to be sworn or examined or answer a question or produce a book or paper when ordered so to do by the commission or any of its deputies, agents, or referees, the commission may apply to the district court upon proof by affidavit of the facts for an order returnable in not less than three days nor more than five days directing such person to show cause before the district court which made the order why he should not be committed to jail. Upon the return of such order the district court shall examine under oath such person and give him an opportunity to be heard, and if the court determine that he has refused without legal excuse in any one of the foregoing matters, it may forthwith by warrant commit the offender to jail, there to remain until he submits to do the act which he was required to do or until he is discharged according to law. Refusing inspection. in-

Sec. 37. All expenses incurred by the commission pursuant to the provisions of this act shall be paid from funds appropriated for the use of the commission upon claims therefor, itemized and sworn to, made by the person who incurred the same, which shall be allowed by the commission subject to the approval of the State auditing board; *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 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. Expenses of commission.

Sec. 38. All orders of the commission shall be valid and in force, and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose, pursuant to the provisions of this act, or until altered or revoked by the commission. Orders.

Sec. 39. A substantial compliance with the requirements of this act shall be sufficient to give effect to the orders or awards of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. Compliance.

Sec. 40. For the purpose of making any investigation or conducting any hearing with regard to any matter or matters contemplated by the provisions of this act, the commission shall have power to appoint, by an order in writing, any competent person as an agent or referee whose duties shall be prescribed in such order. Agents.

(a) In the discharge of his duties such agent or referee shall have every power whatsoever for obtaining information granted in this act to the commission and all powers granted by law to officers authorized to take depositions are hereby granted to such agent.

(b) The commission may conduct any number of such investigations contemporaneously through different agents or referees and may delegate to such agents the subpoenaing and swearing of witnesses, and the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agents or referees shall not preclude any further investigation or the taking of further testimony, if the commission so order.

- Regulations. SEC. 41. The commission shall have power to adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of investigations and hearings, and to alter and amend said rules from time to time in its discretion; such rules and regulations, amendments and alterations shall be effective 10 days after same are adopted and posted. A copy of such rules and regulations shall be delivered to every person making application therefor, and to every insurance carrier doing business in this State by mailing a copy thereof to such insurance carrier at the address within this State as furnished the commission by such insurance carrier.
- Actuary. SEC. 42. The commission may employ and maintain in the department a compensation actuary who shall be experienced and skilled and fully competent to perform the duties of the position and who shall assist in or take charge of the practical operation of the State compensation insurance fund under the general direction of the commission. The actuary shall receive such salary as may be agreed upon by the commission.
- Employees. SEC. 43. The commission shall have power to employ during their pleasure such deputies, experts, statisticians, accountants, actuaries, inspectors, clerks, and other employees as they may deem necessary to carry out the provisions of this act or to perform the duties and exercise the powers conferred by law upon the commission. Such deputies, statisticians, accountants, inspectors, clerks, and all other employees, except experts and actuaries in the employ of the commission, shall have been for two years prior to such employment or appointment bona fide residents of the State of Colorado, and each and all of them, except only the experts, shall, while in the employ of the commission, devote their entire time to the service of the commission.
- Salaries. SEC. 44. All deputies, statisticians, accountants, actuaries, clerks, experts, and all other employees of the commission shall receive such compensation as may be fixed by law or by the commission, and their salaries so fixed, as aforesaid shall be paid monthly from the funds appropriated for the use of the commission, after being approved by the commission.
- Duty of employees. SEC. 45. It shall be the duty of all officers and employees of the State, counties, and municipalities, upon the request of the commission to enforce in their respective departments all lawful orders of the commission in so far as the same may be applicable and consistent with the general duties of such officers and employees, and it shall also be their duty to make to the commission such reports as it may require concerning matters within their knowledge appertaining to the purposes of this act, and to furnish to it such facts, data, statistics, and information as may from time to time come to them appertaining to the purposes of this act, and the duties of the commission thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of this act, as regards the health, protection, and safety of employees, and the hazard and risk of such places of employment.
- Bonds. SEC. 46. Such employees of the commission as shall be directed by the commission shall furnish surety company bonds in such sum as may be fixed by the commission, the premiums therefor to be paid as other expenses of the commission are paid.
- Computation of wages. SEC. 47. The average weekly wage of the injured employee shall be taken as the basis upon which to compute benefits and shall be determined as follows:
 (a) 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 employers or others, nor shall it include the amounts deducted by the employer under the contract of hire for material, supplies, tools, and other things furnished and paid for by the employer and necessary for the performance of such contract by the employee; but the term "wages" shall include the reasonable value of board, rent, housing, lodging, or any other similar advantages received from the employer, the reasonable value of which

shall be fixed and determined from the facts by the commission in each particular case.

(b) The total amount earned by the injured or killed employee in the six months preceding the accident shall be computed, which sum shall be divided by 26, and the result thus ascertained shall be considered as the average weekly wage of said injured or deceased employee, for the purpose of computing the benefits provided by this act, except as hereinafter provided.

(c) *Provided further, however,* That in any case where the foregoing method of computing the average weekly wage of the employee by reason of the nature of the employment or the fact that the injured employee has not worked a sufficient length of time to enable his earnings to be fairly computed thereunder or has been ill or in business for himself, or where for any other reason said methods will not fairly compute the average weekly wage, the commission may in each particular case compute the average weekly wage of said employee by taking the daily earnings at the time of the accident or compute it in such other manner and by such other method as will in the opinion of the commission, based upon the facts presented, fairly determine such employee's average weekly wage.

(d) Where an employee is a minor the average weekly wage of such minor shall be determined by this commission on the basis of the earnings that such minor, if not disabled or killed, would probably have earned during the period for which compensation is granted.

Minors.

Sec. 48. 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 weekly earnings shall be such sum as will reasonably represent his average weekly earning capacity at the time of the latter injury and shall be arrived at according to and subject to the limitations in the foregoing sections.

Second injuries.

Sec. 49. Any person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sublessee, contractor or subcontractor, shall irrespective of the number of employees engaged in such work, be construed to be and be an employer as defined in this act, and shall be liable as provided in this act to pay compensation for injury or death resulting therefrom to said lessee, sublessee, contractors and subcontractors and their employees; and such employer as in this section defined shall, before commencing said work, insure and shall keep insured his liability as herein provided, and such lessee, sublessee, contractor or subcontractor, as well as any employee of such lessee, sublessee, contractor or subcontractor, shall each and all of them be deemed employees as defined in this act. Such employer shall be entitled to recover the cost of such insurance from said lessee, sublessee, contractor or subcontractor, and may withhold and deduct the same from the contract price or any royalties or other money due, owing or to become due said lessee, sublessee, contractor or subcontractor: *Provided, however,* That if said lessee or sublessee, contractor or subcontractor doing any work as in this section provided shall himself be an employer as defined in this act in the doing of such work, and shall, before commencing said work, insure and shall keep insured his liability for compensation as herein provided, then, and in that case, such person, company, or corporation operating, engaged in, or conducting said business shall not be subject to the provisions of this section.

Contractors and lessees.

Sec. 50. Every person, company, or corporation that owns any real property or improvements thereon and that contracts out any work done on and to said property to any contractor, subcontractor, person or persons, who shall hire or use four or more employees or workmen (including himself if working thereon) in the doing of such work, shall be deemed to be an employer under the terms of this act, and every such contractor or subcontractor, person or persons, as well as his or their employees shall each and all of them be deemed to be employees as defined in this act, and such employer shall be liable as provided in this act to pay compensation for injury or death resulting therefrom to said contractor and subcontractor and their employees, and shall before commencing said work insure and shall keep insured his liability as herein

Owners of real property.

provided. Such employer shall be entitled to recover the cost of such insurance from said contractor, subcontractor, person or persons, and may withhold and deduct the same from the contract price or any royalties or other money due, owing, or to become due said contractor or subcontractor, person or persons: *Provided, however,* That if said contractor, subcontractor, person or persons doing or undertaking to do any work for an owner of property as above provided shall himself be an employer as defined in this act, and shall, before commencing said work, insure and shall keep insured his liability for compensation as herein provided, then, and in that case, said owner of said property shall not be subject to the provisions of this section.

Medical, surgical and hospital aid.

SEC. 51. Every employer regardless of his method of insurance shall furnish such medical, surgical, nursing and hospital treatment, medical hospital and surgical supplies, crutches and apparatus, as may reasonably be needed at the time of the injury and thereafter during the disability, but not exceeding sixty days from the date of the accident and \$200 in value to cure and relieve from the effects of the injury: *Provided, however,* That every employer subject to the terms and provisions of this act must insure his liability for the medical, surgical, and hospital expenses herein provided for, unless permission is given by the industrial commission to such employer to operate under a medical plan as hereinafter set forth.

Every plan which is in force at the time of the adoption of this act, or which is hereafter agreed to between employer and employee, for the furnishing of medical, surgical, and hospital treatment whether the employee is to pay any part of the expense of such treatment or not shall before being put into effect, receive the approval of the industrial commission, which shall have full power and authority to formulate the terms and conditions under which any such plan may operate and the essentials thereof, and it may at any time order modifications or changes in any said plan or withdraw its approval thereof: *Provided, however,* That no plan shall be approved by the commission which relieves the employer from the burden of assuming and paying for any part of the medical, surgical, and hospital services and supplies hereinabove required.

The commission shall have the power to establish a schedule fixing the fees for which all medical, surgical, and hospital treatment rendered to employees under this section shall be compensated.

Dependents.

SEC. 52. For the purposes of this act the following described persons shall be conclusively presumed to be wholly dependent:

(a) Wife, unless it be shown that she was voluntarily separated and living apart from the husband at the time of his injury or death and was not dependent in whole or in part on him for support.

(b) Minor children of the deceased under the age of eighteen years. The term "minor child" shall include posthumous children or a child legally adopted prior to the injury.

Same.

SEC. 53. Children eighteen years of age or over, husband, mother, father, grandmother, grandfather, sister, or brother, who were wholly or partially supported by the deceased employee at the time of his death and for a reasonable period of time immediately prior thereto, shall be considered his actual dependents. If such dependents be a son eighteen years of age or over, a husband, father, grandfather, or brother to be entitled to compensation, they must prove that they were incapable of or actually disabled from earning their own living during the said time: *Provided, however,* If said incapacity or disability is temporary only, compensation shall be paid only during the period of such temporary incapacity or disability.

Benefits for death.

SEC. 54. In case of death, the dependents of deceased entitled thereto shall receive as compensation or death benefits 50 per cent of the deceased employee's average weekly wages not to exceed a maximum of \$10 per week and not less than a minimum of \$5 per week, for a period not to exceed six years from the date of the death of the injured employee, less any sums paid to the employee prior to his death as compensation for his disability as in this act provided.

Remarriage.

SEC. 55. In the case of remarriage of the husband or wife of a deceased employee without children he or she shall receive at the time of marriage, a lump sum settlement without commutation equal to one-half of

the amount of compensation then remaining unpaid: *Provided, however,* That if such husband or wife has had a lump sum or lump sums granted to him or her during a six months period immediately preceding said remarriage, the lump sum settlement shall be determined by following basis:

The commission shall determine the amount of compensation which would have been unpaid at the date of remarriage under the terms of the award if a lump sum or lump sums had not been granted within said six months period. From one-half of said sum the commission shall then deduct the actual amount paid to such husband or wife on all lump sums granted during said six months period and the balance of said one-half, if any, shall be paid to said husband or wife at the time of remarriage without commutation.

In case of remarriage of husband or wife of a deceased employee, who has a dependent child or children, the entire unpaid balance of compensation shall be paid such child or children.

SEC. 56. Partial dependents shall be entitled to receive only that portion of the benefits provided for those wholly dependent which the average amount of the wages regularly contributed by the deceased to such partial dependents at and for a reasonable time immediately prior to the injury bore to the total income of the dependents during the same time. The commission shall have the power and discretion to determine the proper elements to be considered as income of said dependents in each particular case. Where there are persons both wholly dependent and partially dependent, only those wholly dependent shall be entitled to compensation. Partial dependents.

SEC. 57. The question as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the injured employee, and the right to death benefit shall become fixed as of said date irrespective of any subsequent change in conditions, and such death benefit shall be directly payable to the dependent or dependents entitled thereto or to their legal representatives. Current status.

SEC. 58. When the right to a death benefit shall become fixed it shall cease, lapse, or terminate upon the happening of any of the following contingencies: Lapse of benefits.

(a) Upon marriage, with the exception as to lump-sum settlement, as herein provided.

(b) Upon the death of any dependent: *Provided, however,* That in any case where the share of any dependent shall cease, lapse, or terminate it shall survive to the remaining dependents.

(c) When a son of the deceased reaches the age of 18 years, except as otherwise provided in section 53 hereof.

SEC. 59. When as a proximate result of an accident death occurs to an injured employee, there shall be paid in one lump sum within 30 days after his death the sum of \$75, for his reasonable funeral and burial expenses. Said sum may be paid to the undertaker, or to any other person who may have paid the undertaker, if the commission so orders. If the employee leaves no dependents compensation shall be limited to said sum, and the compensation, if any, which has accrued to date of death, and the medical, surgical, and hospital expenses herein provided. If the deceased employee leaves dependents said sum shall be paid in addition to all other sums of compensation herein provided for. Funeral expenses, etc.

SEC. 60. No dependent of an injured employee shall be deemed, during the life of the employee, a party in interest to any proceeding by him for the enforcement of any claim for compensation nor as respects any settlement thereof by said employee. Rights distinct.

SEC. 61. Illegitimate minor children of deceased putative father shall be entitled to compensation in the same respect as a legitimate minor child of said decedent, when it is proved to the satisfaction of the commission that the father has, during his lifetime, acknowledged said child or children to be his and has regularly contributed to its or their support and maintenance for a reasonable period of time prior to his death. Illegitimate children.

SEC. 62. In case death occurs more than two years after the date of receiving of any injury such death shall be prima facie presumed not to be due to such injury. Death after two years.

Death within two years. SEC. 63. In case death proximately results from the injury within a period of two years, the benefits shall be in the amounts and to the persons following:

(a) If there be no dependents compensation shall be limited to the expenses provided for medical, hospital, and funeral of deceased, together with such sums as may have accrued or been paid to deceased during his lifetime for disability.

(b) If there are wholly dependent persons at the time of death the payment shall be 50 per cent of the average weekly wages, subject to the limitations of this act as to maximum and minimum weekly amount, and to continue for the remainder of the period from the date of the death and not to exceed six years after the date of injury and not to amount to more than a maximum of \$3,125, less the sums, if any, paid to deceased during his lifetime.

(c) If there are partly dependent persons at the time of the death, the payment shall be not to exceed 50 per cent of the average weekly wages subject to the limitations of the minimum and maximum weekly amount and to continue for such portion of six years after the date of the injury as shall be required to pay at the said weekly rate, the total amount awarded by the commission to be paid to such partial dependent or partial dependents.

Death from other cause. SEC. 64. If death occurs to an injured employee other than as a proximate result of accident before disability indemnity ceases, and the deceased leaves a person or persons wholly dependent upon him for support, death benefits shall be as follows:

(a) Where the accident proximately caused permanent total disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had he lived until he had received the sum of \$3,125.

(b) Where the accident proximately caused permanent partial disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received had he lived.

Same. SEC. 65. If death occurs to an injured employee other than as a proximate result of the accident before disability indemnity ceases, and the deceased leaves a person or persons partially dependent upon him for support, death benefits shall be as follows:

(a) Where the accident proximately caused permanent total disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had he lived until he had received the sum of \$3,125 as the amount devolved by the deceased for the support of such person or persons for the year immediately prior to the accident bears to the total income of the person or persons during said year.

(b) Where the accident caused permanent partial disability the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received if he had lived, as the amount devolved by the deceased to the support of such person or persons for the year immediately prior to the accident bears to the total income of the person or persons during said year.

Nonresident aliens. SEC. 66. Death benefits under the provisions of this act to dependents who are nonresidents of the United States at the time of the death of the injured employee shall be one-third of the amount or amounts provided herein: *Provided*, That, in no event, shall death benefits to dependents who are nonresidents of the United States exceed the aggregate sum of \$1,041.66.

Mode of payment. SEC. 67. Death benefits shall be paid to such one or more of the dependents of the decedent for the benefit of all the dependents entitled to such compensation as may be determined by the commission who may apportion the benefits among such 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, which payment 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.

Sec. 68. In all cases of death where the dependents are one or more minor children, it shall be sufficient for the widow or a friend to make application and claim on behalf of said minor children. The commission, for the purpose of protecting the rights and interests of any dependent whom it may deem incapable of fully protecting his or her own interests, may provide for the manner and method of safeguarding the payments due such dependent or dependents in such manner as it may see fit.

If minor children.

Sec. 69. Payment of death benefits to one or more dependents shall protect and discharge to that extent all compensation under this act, unless and until any other person claiming to be a dependent shall have given the commission notice of his claim and until the commission shall have notified the employer or his insurance carrier of such claim. In such case the commission shall determine the respective rights of the said rival claimants, and thereafter such death benefits shall be paid to such dependents as it may find so entitled, under the provisions of this act.

Payment as discharge.

Sec. 70. If the accident causes disability, a disability indemnity shall be payable as wages, upon the 18th day after the injured employee leaves work as the result of the injury and thereafter regularly but not less frequently than once in each calendar month, unless otherwise ordered by the commission, subject, however, to the following limitations:

Disability benefits.

(a) If the period of disability does not last longer than 10 days from the day the employee leaves work as the result of the injury, no disability indemnity whatever shall be recoverable except the disbursement in this act provided for medical, surgical, nursing, and hospital services, apparatus and supplies; nor in any case unless the commission has actual knowledge of the injury or is notified thereof within the period specified in this act.

(b) If the period of disability lasts longer than 10 days from the day the injured employee leaves work as the result of the injury no disability indemnity shall be recoverable for the first 10 days of disability.

Sec. 71. In case of temporary disability of more than 10 days duration, the employee shall receive 50 per cent of his average weekly wages so long as such disability is total not to exceed a maximum of \$10 per week and not less than a minimum of \$5 per week unless the employee's wages shall be less than \$5 per week, in which event he shall receive compensation equal to his average weekly wages.

Temporary disability.

Sec. 72. In case of injury resulting in temporary partial disability, the employee shall receive 50 per cent of the impairment of his earning capacity during the continuance thereof, not to exceed the maximum sum of \$10 per week, or the aggregate sum of \$1,300.

Temporary partial disability.

Sec. 73. In cases included in the following schedule the disability in each case shall be deemed to continue for the period specified and the compensation to be paid for such loss shall be as specified herein, to wit:

Schedule.

The loss of one arm between elbow and shoulder, 208 weeks; the loss of forearm between wrist and elbow, 139 weeks; the loss of a hand, 104 weeks; the loss of a palm, where thumb remains, 70 weeks; the loss of a thumb and the metacarpal bone thereof, 50 weeks; the loss of a thumb at the proximal joint, 35 weeks; the loss of a thumb the second or distal joint, 18 weeks; the loss of an index finger and the metacarpal bone thereof, 26 weeks; loss of an index finger at the proximal joint, 18 weeks; loss of an index finger at the second joint, 13 weeks; loss of an index finger at the distal joint, 9 weeks; loss of a second finger and the metacarpal bone thereof, 18 weeks; loss of a middle finger at the proximal joint, 13 weeks; loss of the middle finger at the second joint, 9 weeks; loss of the middle finger at the distal joint, 5 weeks; loss of a third or ring finger and the metacarpal bone thereof, 11 weeks; loss of a ring finger at the proximal joint, 7 weeks; loss of a ring finger at the second joint, 7 weeks; loss of a ring finger at the distal joint, 4 weeks; loss of a little finger and the metacarpal bone thereof, 13 weeks; loss of a little finger at the proximal joint, 9 weeks; loss of a little finger at the

second joint, 9 weeks; loss of a little finger at the distal joint, 4 weeks; loss of all the fingers of one hand where the thumb and palm remains, 52 weeks; loss of a leg at the hip joint or so near thereto as to preclude the use of an artificial limb, 208 weeks; the loss of a leg at or above the knee, where the stump remains sufficient to permit the use of an artificial limb, 139 weeks; the loss of a foot at the ankle, 104 weeks; the loss of a great toe with the metatarsal bone thereof, 26 weeks; the loss of a great toe at the proximal joint, 18 weeks; the loss of a great toe at the second joint, 9 weeks; the loss of any other toe with the metatarsal bone thereof, 11 weeks; the loss of any other toe at the proximal joint, 4 weeks; the loss of any other toe at the second or distal joint, 4 weeks; the loss of all the toes of one foot, 35 weeks; the loss of an eye by enucleation (including disfigurement resulting therefrom), 139 weeks; total blindness of one eye, 104 weeks; total deafness of both ears, 139 weeks; total deafness of one ear, 35 weeks; where workman prior to injury has suffered a total loss of hearing in one ear and as a result of the accident loses total hearing in remaining ear, 139 weeks.

(a) The periods of time specified in the foregoing schedule shall commence to run from the date of actual loss of any member or members.

(b) For the purpose of this schedule, permanent and complete paralysis of any member as the proximate result of accidental injury shall be deemed equivalent to the loss thereof.

(c) Whenever amputation is made between any two joints mentioned in this schedule (except amputation between the knee and hip joint) the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto.

(d) The amounts specified in this section are all subject to the limitations as to weekly maximum and minimum indemnity provided herein for injuries causing temporary total disability.

(e) When by reason of infection or any other cause resulting from such injury, which is not due to the neglect or misconduct of the injured employee, he is actually disabled longer than the time specified in the foregoing schedule, compensation may be awarded by the commission for the period of additional disability within the limits otherwise provided in this act.

(f) When an injured employee sustains two injuries coming under this schedule, the disabilities specified herein shall be added and the injured employee shall receive the sum of the two.

(g) Where an injury causes the loss of use or partial loss of use of any member or members specified in the foregoing schedule, the commission may determine the disability suffered and the amount of compensation to be awarded, by awarding compensation which shall bear such relation to the amount stated in the above schedule for the loss of a member or members as the disabilities bear to the loss produced by the injuries named in the schedule, or the commission may award compensation under the permanent partial disability section of this statute as the commission in its discretion may determine from the particular facts in each case.

Injury to teeth. SEC. 74. When an accident causes injury to the teeth of an employee, he shall, in addition to receiving compensation for disability and the medical, surgical, and hospital services provided herein, be entitled with the prior approval and consent of the commission to receive such dental treatment and services as may reasonably be necessary to repair and alleviate the effects of the injury, not to exceed \$100 in value.

Disfigurements. SEC. 75. If any employee is seriously permanently disfigured about the head or face, the commission may allow, in addition to all other compensation benefits provided herein, such sum for compensation on account thereof as it may deem just, not exceeding \$500.

Second injuries. SEC. 76. Where an employee has previously suffered the loss of one hand or one arm or one foot or one leg or the vision of one eye, and, as a result of an accident arising out of and in the course of his employment, he suffers the loss of another hand, arm, foot, leg, or the vision of an eye, he shall be compensated as follows:

If the employee has previously lost vision of one eye and loses the vision of the remaining eye, he shall receive compensation for 312 weeks.

If the employee previously lost the vision of one eye and loses a hand, arm, foot, or leg, he shall be compensated by receiving the scheduled number of weeks for the loss of such member plus 50 per cent.

If the employee has previously lost the right hand and loses the left hand or arm or vice versa, he shall receive the schedule number of weeks for the loss of such member, plus 50 per cent.

If the employee has previously lost the right arm and loses the left hand or arm, or vice versa, he shall receive twice the number of scheduled weeks for the loss of such member.

If the employee has previously lost a hand or arm and loses one foot or leg or the vision of one eye, he shall receive as compensation the scheduled number of weeks for the loss of such member or loss of vision, plus 50 per cent.

If the employee has previously lost the right foot and loses the left leg or foot, or vice versa, he shall receive the scheduled number of weeks for the loss of such member, plus 25 per cent.

If the employee has previously lost the right leg and loses the left leg or foot, or vice versa, he shall receive the scheduled number of weeks for the loss of such member, plus 50 per cent.

If the employee has previously lost one leg or foot and loses one hand or arm or the vision of one eye, he shall receive compensation for the scheduled number of weeks for the loss of such member or loss of vision, plus 50 per cent.

Compensation awarded in this section is subject to the maximum and minimum weekly amounts herein specified for accidents causing temporary total disability.

Sec. 77. In cases of permanent total disability the award shall be 50 per cent of the average weekly wages of the injured employee and shall continue until death of such person so totally disabled, but not in excess of the weekly maximum and not less than the weekly minimum indemnity specified herein for injuries causing temporary total disability. Permanent total disability.

The loss of both hands or both arms or both feet or both legs or both eyes, or of any two thereof, shall prima facie constitute total and permanent disability to be compensated according to the provisions of this section: *Provided, however,* That where the disability comes under this section and where the employer or the commission obtains suitable employment for such disabled person which he can perform and which in all cases shall be subject to the sole approval of the commission, the disabilities set out in this paragraph shall not constitute total disability during the continuance of the commission's approval of said employment, but such partial disability as may be determined by the commission after a finding of the facts.

Sec. 78. Where an accident causes injury resulting in permanent partial disability (except the sustaining of any one of the specific injuries set forth in the schedule herein), the injured employee shall be deemed to be permanently partially disabled from the time he is so declared by the commission and from said time shall be entitled to compensation for permanent partial disability in addition to any compensation theretofore allowed. In determining permanent partial disability the commission shall ascertain in terms of percentage the extent of general permanent disability which the accident has caused, taking into consideration not only the general physical condition but the mental training, ability, former employment, and education of the injured employee. The commission shall then determine the injured employee's expectancy of life from recognized expectancy tables and such other evidence relating to his expectancy as may be presented; it shall then ascertain the total amount which said employee would receive during the balance of his expectancy if permanently totally disabled at not more than the maximum nor less than the minimum weekly indemnity specified in this act for temporary total disability and shall then take that percentage of the total sum so arrived at as is indicated by the percentage of general permanent disability found to exist in the manner as hereinabove set forth, not to exceed in any event, however, the aggregate sum of \$2,600. Said sum to be paid at a weekly rate not more than the maximum nor less than the minimum herein specified for injuries causing total disability. Injuries not scheduled.

Multiple inju- SEC. 79. Where an injured employee sustains a loss set forth in the
ries. schedule herein, but in addition thereto receives other injuries which
are sufficient in their nature to alone cause temporary total disability,
said employee shall receive in addition to the amounts specified in
said schedule, compensation for temporary total disability as long as
said disability may be found to exist as a result of said other injuries.

Hernia. SEC. 80. An employee in order to be entitled to compensation for
hernia must clearly prove—first, that its appearance was accompanied
by pain; second, that it was immediately preceded by some acci-
dental strain suffered in the course of the employment. If an
employee, after establishing his right to compensation for hernia as
above provided, elected to be operated upon, a special operating fee
of not to exceed \$50 shall be paid by the employer, insurer, or com-
mission as the case may be. In case the employee elects not to be
operated upon and the hernia becomes strangulated in the future the
results from such strangulation will not be compensated.

Medical exami- SEC. 81. Whenever, in case of injury, the right to compensation
nations. under this act would exist in favor of an employee, he shall upon the
written request of his employer, or the insurer carrying such risk, sub-
mit himself from time to time to examination by a physician or
surgeon, who shall be provided and paid for by the employer or
insurer, and shall likewise submit to examination from time to time
by any regular physician selected and paid for by said 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 or insurer, shall refuse to submit himself to such
examination, or shall in any way obstruct the same, his right to collect
or to begin or to maintain any proceeding for the collection of com-
pensation 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
weekly indemnity which shall accrue and become payable during the
period of such refusal or obstruction, shall be barred. If any employee
shall persist in any unsanitary 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 commission may, in its discretion, reduce or suspend the compen-
sation of any such injured employee. 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 com-
mission when it shall so direct. A physician will not be required,
however, to disclose confidential communications imparted to him for
the purpose of treatment and which are unnecessary to a proper under-
standing of the case. In all cases of injury the employer or insurer, as
the case may be, shall have the right in the first instance to select the
physician who shall attend said injured employee: *Provided, however,*
That if the services of a physician are not tendered at the time of injury,
the employee shall have the right to select his own physician, and
may upon the proper showing to the commission procure its permis-
sion at any time to have a physician of his own selection attend him,
and in any nonsurgical case the employee with such permission in
lieu of medical aid may procure any nonmedical treatment recog-
nized by the laws of this State as legal, the practitioner administering
such treatment to receive such fees therefor under the medical pro-
visions of this act as may be fixed by the commission.

Lump sums. SEC. 82. At any time after six months have elapsed from the date
of the injury the commission may, in the exercise of its discretion,
after five days' prior notice to the parties, order payment of all or any
part of the compensation awarded in a lump sum, or in such manner
as it may determine to be for the best interests of the parties concerned,
and its discretion so exercised shall be final and not subject to review.
When payment in a lump sum is ordered, the commission shall fix the
amount to be paid based on the present worth of partial payments,
considering interest at 4 per cent per annum, and less deductions for
the contingencies of death and remarriage.

The aggregate of all lump sums granted to a claimant who has been found and declared by the commission to be permanently and totally disabled shall not exceed \$3,125.

Sec. 83. The compensation provided for herein shall be reduced 50 per cent:

Willful acts.

(a) Where injury is caused by the willful failure of the employee to use safety devices provided by the employer.

(b) Where injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee.

(c) Where injury results from the intoxication of the employee.

Claims.

Sec. 84. No claim to recover compensation under this act shall be maintained unless notice in writing in form as prescribed by the commission, and making claim for compensation with respect to the injury and signed by the injured person or by some one in his behalf, or, in case of death, by a dependent or some one in his behalf, shall be served upon the commission either by delivering to and leaving with it a copy of such notice or by mailing to it by registered mail a copy thereof in a sealed and postpaid envelope addressed to its office in State capitol building, Denver, Colo.: *Provided, however,* That if no payment of compensation has been made, other than medical, funeral, surgical, nursing, dental, and hospital services, crutches, apparatus and supplies, such notice or claim must be filed within one year from the date of the accident, or, if death result therefrom, within one year after such death, or the right to compensation therefor shall be wholly barred; and, further, 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. The claim provided for in this section may be filed by anyone, including the commission or any of its agents, on behalf of such injured employee or on behalf of dependents in case of his death, and shall be considered as having been filed by said injured person, or, in case of death, by his dependents if subsequently ratified, such ratification to be in writing filed with the commission within two years from the date of accident or from date of death if death results therefrom.

Sec. 85. The limitation of time provided for in this act as against any person who is mentally incompetent or a minor dependent shall be eighteen months instead of one year.

Incompetents.

Sec. 86. Claims for compensation or benefits due under this act shall not be assigned, released, or commuted except as provided in this act, and shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

Assignments,
etc.

The power given in any power of attorney or other authority from any injured employee or the dependents of any killed employee, purporting to authorize any other person to receive, be paid, or receipt for any compensation benefits awarded any such claimant shall be wholly void, illegal, and of no force and effect.

Sec. 87. 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 filing any claim under this act, elect in writing whether to take compensation under this act 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 act, the awarding of compensation shall operate as and be an assignment of the cause of action against such other to the Industrial Commission of Colorado if compensation be payable from the State compensation insurance fund, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation; "however, said insurance carrier shall not be entitled to recover any sum in excess of the amount of compensation for which said carrier is liable under this act to the injured employee, but to that extent said carrier shall be subrogated to the rights of the injured employee against said third party causing the injury;" if the injured em-

Injuries due to
third parties.

ployee elects to proceed against such other, the State compensation 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 by this act in such case. Such a cause of action assigned to the commission may be prosecuted or compromised by it. A compromise of any such cause of action by the employee or his dependents at an amount 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 compensation insurance fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same. Whenever 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 act 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 his behalf by a parent of such minor, or by his next friend or duly appointed guardian, as the commission may determine by rule in each case.

Awards preferred.

SEC. 88. The right of compensation granted by this act and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of employer or insurer or both as is now or hereafter may be allowed by law for a claim for unpaid wages for labor.

Failure to insure.

SEC. 89. Any employer subject to the terms and provisions of this act who fails to insure or to keep the insurance required by this act in force or who allows the same to lapse or fails to effect a renewal thereof, shall not continue any of his business operations while such default in effective insurance continues. The commission in its own name as party plaintiff may institute the proper action to enjoin any such employer from continuing his business operations during any such default.

Attorneys' fees.

SEC. 90. Unless previously authorized by the commission, no lien shall be allowed nor any contract be enforceable for any attorney's fees, contingent or otherwise, for services rendered for the enforcement or collection of any claim for compensation or other proceedings under the workmen's compensation act, and then only as provided by rules of the commission.

Trust fund.

SEC. 91. The commission may, in its discretion, at any time, any provisions in this act to the contrary notwithstanding, by unanimous consent of all the members thereof, and with the approval of a majority of the State auditing board, compute and require to be paid to it to be held by it in trust, an amount equal to the present value of all unpaid compensation or other benefits in any case, computed at the rate of 4 per cent per annum. Such action may be taken after a finding by the commission as to the insolvency, threatened insolvency, or any other condition or danger which may cause the loss of, or which has delayed or may impede, hinder or delay prompt payment of compensation or benefits by any insurance carrier or employer. The action and finding of the commission shall not be subject to review, nor shall the commission be required to give any notice of hearing or hold any hearing prior to taking such action or making its finding as aforesaid. The order of the commission requiring said payment shall be valid, effective, and in force from and after the approval thereof by the State auditing board.

All moneys so paid in shall constitute a separate trust fund, and after any such payment is so ordered the employer or insurance carrier shall thereupon be discharged from any further liability under such award, for which payment is made, to the extent of the payment made, and the payment of the award shall then be assumed to the extent of payment made by the special trust fund so created.

If, for any reason, a beneficiary's right to the compensation awarded and ordered paid into said special trust fund, ceases, lapses, or in any manner terminates by virtue of the terms and provisions of this act so that a surplus not surviving or accruing to any other beneficiary remains in said trust fund of the amount ordered paid into it on behalf of the

beneficiary, the insurance carrier, or employer who has made said payment shall be entitled to a refund of the present value of said surplus, if any, computed at the rate of 4 per cent per annum. Any portion of the special trust fund may, pursuant to resolution of the commission, be invested in any securities of the State of Colorado or of the United States of America.

SEC. 92. Any dispute or controversy concerning compensation under this act shall be submitted to the commission in the manner and with the effect as provided herein. Procedure.

SEC. 93. If the insured employee or his dependents and the employer or his insurer reach an agreement in regard to compensation under this act the agreement shall be filed with the commission and after approval by it shall be enforceable as are all the awards of the commission. All such agreements shall be subject to the approval of the commission, shall be upon and in form as prescribed by it, and approval shall be given only when the terms thereof conform to the provisions of this act and the rules and regulations of the commission. Such approval of the commission shall be evidenced by the signature of its chairman thereon. Agreements to be approved.

SEC. 94. Hearings upon claims arising under this act shall be held by the commission upon its own motion or upon the motion of any party interested therein. The commission shall cause reasonable notice of such hearing, embracing a general statement of such claim 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 10 days before such hearing. Such hearings may be adjourned from time to time in the discretion of the commission, and may be held at such place or places as the commission shall designate. 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 may be pertinent to the controversy before the commission, and shall have the right of cross-examination: *Provided, however,* That the commission may with summary notice to either party cause testimony to be taken or an examination to be made of the person of the injured employee, or with or without notice 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; the testimony so taken and the results of any such inspection or examination shall be reported to the commission for its consideration upon final hearing and determination of the cause. All ex parte testimony taken by the commission shall be reduced to writing and either party shall have an opportunity to examine and rebut the same on final hearing, by cross-examination or otherwise. Hearings.

SEC. 95. All hearings arising under this act may be held before the commission or any two commissioners or before any referee or referees appointed by the commission. Such hearings may also be held by any commissioner as referee when he has been especially appointed by the commission to hold any such hearing. Same.

SEC. 96. The commission shall have the power and authority to appoint one or more referees to hold any of the hearings provided for in this act. Such referee or referees shall have full power and authority to call, preside at, and conduct such hearings, as the said commissioner would have. After the close of any such hearing the referee shall make his findings of fact as to the issues involved in said hearing and his determination and award, which said finding and award so made shall be taken as a part of the record in said cause, and shall be considered as the final finding and award of the industrial commission in said cause unless a review thereof is prayed for in the manner and within the time as herein provided. Referees.

SEC. 97. Any party in interest to any proceeding who is dissatisfied with the finding and award entered by any referee or referees of said commission may petition the industrial commission as a commission to review the finding and award of such referee or referees and the entire record in said cause, or the commission on its own motion upon five days' notice to the parties may review any case, and the commission in its discretion, may grant an oral hearing. Such petition shall be in writing and shall specify in detail the particular errors complained of in the finding and award and in the conduct and hearing of such cause. Such petition must be filed within 10 days after the rendition of any finding Review of referees' findings.

or award by the referee unless further time is granted by the referee or the commission within said 10 days, and, unless so filed, the finding and award of the referee shall be considered as the final finding and award of the commission in said cause. All parties in interest shall be given due notice of the rendition of any finding or award by the referee, and said period of 10 days shall begin to run only after such notice, and the mailing of a copy of said finding or award addressed to the last known address of any party in interest shall be completed notice. Upon the filing of any such petition the commission shall review the entire record of proceedings in said cause and in its discretion may take or order the taking of additional testimony and shall either affirm the finding and award of the referee or may enter a new finding and award, affirming or reversing the finding or award of the referee in whole or in part.

Suits restricted. SEC. 98. No action, proceeding, or suit to set aside, vacate, or amend any finding, order, or award of the commission, or referee, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have first applied to the commission for a review as herein provided. Such action, proceeding, or suit must be commenced within 20 days after the final finding, order, or award entered by the commission upon such review.

Appeal to court. SEC. 99. Any person in interest being dissatisfied with any such finding, order, or award of the commission issued or promulgated by virtue of the authority conferred in this act, may commence an action in the district court in and for the county wherein the injury was sustained or in the district court in and for the city and county of Denver, against the commission as defendant to modify or vacate the same on the grounds herein specified in which action any adverse party shall also be made a defendant.

Actions to have precedence. SEC. 100. All such actions shall have precedence over any civil cause of a different nature pending in such court, and the district court shall always be deemed open for the trial thereof, and the same shall be tried and determined by the district court in manner as provided for other civil actions.

Procedure. SEC. 101. In such action, a copy of the complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. The commission shall file its answer within 20 days after the service of the 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 a certified copy of its order, finding, and award. Such return of the commission when filed in the office of the clerk of the district court shall constitute the 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. Such action may be thereupon brought on for hearing before said court on such record by either party upon notice and in the manner as provided in said court in other civil actions, subject, however, to the provisions of laws for a change of place of trial or the calling in of another judge.

Same. SEC. 102. If upon trial of such action it shall appear that all issues arising in such action have not theretofore been presented to the commission in the petition filed as provided in this act, or that the commission has not theretofore had an ample opportunity to hear and determine any issues raised in such action, or has for any reason, not in fact heard and determined the issues raised, the court shall, before proceeding to render judgment, unless the parties to such action stipulate to the contrary, transmit to the commission a full statement of such issue or issues not adequately considered, and shall stay further proceedings in such action until such issues are heard by the commission and returned to said court.

Upon receipt of such statement the commission shall hear and consider the issues not theretofore heard and considered, and may alter, affirm, modify, amend, or rescind its finding, order, or award complained of in said action; and it shall report its action thereon to said court within a reasonable time after its receipt of the statement from the court.

The court shall thereupon order such amendment or other proceeding as may be necessary to raise the issues as presented by such modification of the finding, order, or award as may have been made by the commission upon the hearing, if any such modification has in fact been made, and shall thereupon proceed with the trial of such action.

Sec. 103. Upon such hearing, the court may affirm or set aside such order or award; but only upon the following grounds: Power of court limited.

- (a) That the commission acted without or in excess of its powers.
- (b) That the finding, order, or award was procured by fraud.
- (c) That the findings of fact by the commission do not support the order or award.

Sec. 104. Any action commenced in court under this section to set aside or modify any order or award of the commission shall be brought to trial within 30 days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than 30 days at one time. Trial in 30 days.

Sec. 105. Trial shall be to the court without a jury and upon the record of the commission returned to said court. Upon the trial of any such action the court shall disregard any irregularity or error of the commission unless it be made affirmatively to appear that the party complaining was damaged thereby. Proceedings summary.

Sec. 106. The record in any case shall be transmitted to the commission within 20 days after the order or judgment of the court, unless, in the meantime, a writ of error addressed to the district court shall be obtained from the supreme court, for the review of such order or judgment. Transmitting record.

Sec. 107. Upon 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 order said commission to enter the proper award upon the findings, as the nature of the case shall demand: *Provided, however, That* in no event shall such order for award be for a greater amount of compensation than allowed by this act, or in any manner conflict with the provisions thereof. Remanding case.

Sec. 108. The commission or any party who may consider himself aggrieved by a judgment entered upon the review of any such order or award, may have questions of law only reviewed summarily by the supreme court, by writ of error, as provided by law, and said cause shall be advanced upon the calendar of the supreme court, and a final decision rendered within 60 days from date of issuance of the writ. It shall not be necessary for said commission or any party aggrieved by said action to execute, serve, or file any undertaking in order to obtain such a writ of error. Review by supreme court.

Sec. 109. No fee shall be charged by the clerk of any court for the performance of any official service required by this act. On proceedings to review any 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 any order or award, and upon any review thereof by the supreme court, it shall be the duty of the district attorney of the county wherein said action is pending, or of the attorney general, if requested by the commission, to appear on behalf of the commission, whether any other party defendant should have appeared or be represented in the action or not. Fees, etc.

Sec. 110. Upon its own motion on the ground of error, mistake, or a change in conditions, the commission may at any time after notice of hearing to the parties interested, review any award, and on such review may make an award ending, diminishing, maintaining, or increasing the compensation previously awarded, subject to the maximum and minimum provided in this act, and shall state its conclusions of facts and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys already paid. Review of awards.

Sec. 111. The commission, or any agent, deputy, or referee designated by it shall have power and authority to issue subpoenas, to compel the attendance of witnesses or parties, and the production of books, papers, or records and to administer oaths. Any person who Power as to oaths, etc.

serves a subpoena shall receive the same fee as the sheriff. Each witness who is subpoenaed on behalf of the commission, and who appears in obedience thereto, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the district court, which shall be audited and paid from the State treasury in the same manner as other expenses are audited and paid, upon the presentation of proper voucher approved by the commission.

The commission may, in its discretion, assess the cost of attendance and mileage of witnesses subpoenaed by either party to any proceeding, against the other party to such proceeding, when in its judgment the necessity of subpoenaing such witnesses arises out of the raising of any incompetent, irrelevant, or sham issues by such other party.

Disobedience of summons.

SEC. 112. Any person who shall willfully fail or neglect to appear and testify or to produce books, papers, or records, as required by such subpoena duly served upon him, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25 nor more than \$100, or imprisoned in the county jail not longer than 30 days for each such offense, or both such fine and imprisonment. Each day such person shall so refuse or neglect shall constitute a separate offense.

Courts to aid.

SEC. 113. The district court of the county wherein such person resides, or district court of the city and county of Denver, upon application of the commission or its agent, shall issue an order compelling the attendance and testimony of witnesses and the production of books, papers, or records before such commission or any such agent.

Depositions.

SEC. 114. The commission or any party may, in any investigation or hearing, cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in district courts. All such depositions shall be taken upon commission issued by the commission, and shall be taken in accordance with the laws and rules of court covering depositions in civil cases in the district courts of this State.

Records.

SEC. 115. A full and complete record shall be kept of all proceedings had before the commission on any hearing, and all testimony shall be taken down and transcribed by a stenographer appointed by the commission.

Evidence.

SEC. 116. A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation or hearing taken by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation or hearing of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation or hearing so purporting to be taken and subscribed, may be received as evidence by the commission and by any court with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of 10 cents per folio. Fees received from the sale of transcripts shall be applicable to the expenses of the commission in addition to all sums which may be appropriated for its use.

General penalty.

SEC. 117. If any employer or insurer, or any officer or agent of either, or any employee, or any other person shall violate any provision of this act, or shall do any act prohibited thereby, or shall fail or refuse to perform any duty lawfully enjoined, within the time prescribed by the commission, for which no penalty has been specifically provided, or shall fail, neglect, or refuse to obey any lawful order made by the commission, or any judgment or decree made by any court as provided by this act, for each such violation, failure, or refusal such employer or insurer, or any officer or agent of either, or any employee or any person shall be punished by a penalty of not more than \$100 for each such offense.

Each day an offense.

SEC. 118. Every day during which any employer or insurer or officer or agent of either or any employee, or any other person shall fail to comply with any lawful order of the commission or shall fail to perform any duty imposed by this act, shall constitute a separate and distinct violation thereof: *Provided, however,* That in any action which may be brought to enforce the same, or to enforce any penalty provided for in

this act, such violations shall be considered cumulative, and may be joined in such action.

SEC. 119. All penalties provided for in this act, except fines in cases of misdemeanor, shall be collected in a civil action brought against the employer, or insurer or any officer or agent of either, or of any employee or any other person as the case may be, in the name of and by the commission, and all such penalties, when collected, shall be applicable to the expense of the commission, in addition to all sums which may be appropriated for its use. Collection of penalties.

SEC. 120. Upon the request of the commission the attorney general or the district attorney of any district, or any attorney at law in the regular employ of the commission, shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this act or award or order of the commission, or for the recovery of any money due the State compensation insurance fund, or any penalty herein provided, and shall defend in like manner all suits, actions, or proceedings brought against the commission or any member thereof in his official capacity. Who to prosecute actions.

SEC. 121. If, for the purpose of obtaining any order, benefit, award, or compensation or payment under the provisions of this act, either for himself or for any other person, anyone willfully makes under oath a false statement or representation, he shall be guilty of perjury and punished accordingly, and he shall forfeit all right to compensation under this act upon conviction of such offense. False statements.

SEC. 122. There is hereby established a fund, to be known as the State compensation insurance fund, for the benefit of injured and the dependents of killed employees, which shall be administered in accordance with the following provisions, without liability on the part of the State, beyond the amount of said fund, constituted as provided in this act. State fund.

SEC. 123. The commission is hereby vested with full power, authority, and jurisdiction over the State compensation insurance fund, and may 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 over said fund in the administration thereof under the provisions of this act, as fully and completely as the governing body of a private insurance company might or could do, subject, however, to all the provisions of this act. Power of commission.

SEC. 124. The commission shall have full power and authority, and it shall be its duty, to fix and determine the rates to be charged by the State compensation insurance fund for compensation insurance, and to manage and conduct all business and affairs in relation thereto, all of which business and affairs shall be conducted in the name of the commission, and in that name, without any other name or title, the commission may: Same.

(a) Sue and be sued in all the courts of the State and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the State compensation insurance fund, the administration, management, or conduct of the business or affairs relating thereto.

(b) Make and enter into contracts of insurance with employers as herein provided, and such other contracts or obligations relating to the State compensation insurance fund as are authorized or permitted under the provisions of this act; but the commission shall not, nor shall any officer or employee thereof be personally liable in his private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity, in good faith and without intent to defraud in connection with the administration, management, or conduct of the State compensation insurance fund, its business, or other affairs relating thereto.

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services, and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund, and may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited herein, whenever said commission may determine that the contracting of such extra medical, surgical, hospital, and nursing services

- and supplies might tend to reduce the period of disability for which said fund would be liable for the payment and compensation.
- Fund to be continuing. SEC. 125. The State compensation insurance fund shall be a continuing fund, and shall consist of all premiums received and paid into said fund for compensation insurance, all property and securities acquired by and through the use of moneys belonging to said fund, and all interest earned upon moneys belonging to said fund and deposited or invested as herein provided. Said fund shall be applicable to the payment of losses sustained on account of compensation and benefit insurance in accordance with the provisions of this act.
- Classifications. SEC. 126. The commission shall from time to time classify the places of employment of employers insured in the State compensation insurance fund into classes in accordance with the nature of the business in which they are engaged and the probable hazard of risk of injury to their employees. It shall determine the amount of the premiums which such employers shall pay to said State compensation insurance fund, and may prescribe in what manner such premiums shall be paid, and may change the amount thereof both in respect to any or all of such employers, from time to time, as circumstances may require, and the condition of their respective plants, establishments, or places of work in respect to the safety of their employees may justify, but all such premiums shall be levied on a basis that shall be fair, equitable, and just as among such employers.
- Subclasses. SEC. 127. It shall also be its duty to divide each of such classes under said classification into as many subclasses as may be necessary, upon such terms and conditions as will enable it to determine the risks and fix the rates of premium of the different employers in the same class of employment, with respect to the conditions of said places of employment as regards the several requirements upon which the rates of premium of risks are based and determined, as provided in this act.
- Maintenance rates only. SEC. 128. It shall be the duty of the commission in the exercise of the powers and discretion conferred upon it by this act, ultimately to fix and maintain for each class and subclass of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent State compensation insurance fund, and the creation and maintenance of a reasonable surplus after the payment of legitimate claims for injury and death that may be authorized to be paid from the State compensation insurance fund for the benefit of injured and dependents of killed employees.
- Basis of rates. SEC. 129. Such rates shall take no account of the extent to which the employees in any particular establishment have or have not persons dependent upon them for support, nor of whether such employees have dependents who are nonresidents of the United States, nor of whether such employees are married or single, nor the age of any such employees. The rates so made shall be that percentage of the pay roll of any employer which, on the average, shall produce a sufficient sum:
- (a) To carry all claims to maturity; that is to say, the rates shall be based upon the "reserve" and not upon the "assessment" plan;
 - (b) To produce a reasonable surplus as provided in this act and to cover the catastrophe hazard and to insure the payment to employees and their dependents of the compensation herein provided.
 - (c) 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 4 per cent per annum, and such calculations shall be made according to a table of mortality not lower than the American Experience Table of Mortality, and, in the discretion of the commission, by such other and further methods as will result in the establishment of adequate reserves.
- Separate accounts. SEC. 130. 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.

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.

Sec. 131. The commission shall set aside such proportion 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 10 per cent of the earned premiums paid into the State compensation insurance fund shall be so set aside.

Surplus.

Sec. 132. The commission may, in its discretion, amend at any time the rate or rates for any class or classes, subclass or subclasses: *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 this act: *And provided further*, That after the inspection of the premises of any employer, or after considering the experience of such employer, the commission may quote with respect to his risk a rate higher or lower than that indicated by its manual as applicable to his risk. Twice a year 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 fund by classes and subclasses. Should the experience of the fund show a balance to the credit of the policyholders of any class or subclass after the before mentioned amounts have been credited to the surplus fund, and after payment of all amounts which have fallen due because of injury or death and after setting aside proper reserves, then the commission shall distribute such credit balance 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 to the credit balance earned by the class or subclass as a credit upon the premium or premiums next due from him: *Provided, however*, That in the event any such policyholder fails to renew his policy in the State compensation insurance fund for the six-months' period following the period in which said dividends were earned, he shall not be entitled to said credit dividend: *And provided, further*, That in the event an employer actually discontinues business, his policy shall be canceled and the dividend if any, when ascertained, returned to him.

Amending and adjusting rates.

Sec. 133. If any employer shall be in arrears for more than 20 days in any payment required to be made by him to the State compensation insurance fund as provided in this act, he shall by virtue of such arrearage be in default of such payment and any policy issued to him by said fund shall thereupon be canceled without notice as of the effective or renewal date of said policy. In the event cancellation of policy is made as herein provided and the State compensation insurance fund is required to make any expenditures for the benefits provided by this act for any accident causing injury or death within said 20-day period said fund shall be entitled to reimbursement from the employer for all amounts so paid which may be collected by said fund in civil action brought against the employer: *Provided, however*, That the employer shall be primarily liable to any injured employee or the dependents of a killed employee for the payment of the compensation and benefits provided by this act during said 20-day period.

Default in premiums.

Sec. 134. In the event the amount of premium collected by the fund from any employer at the beginning of any period of six months as ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payments as a basis, shall differ from the earned premium based upon the actual wage expenditure for such six-months' period, an adjustment of the amount of such premium shall be made at the end of such six-months' period and the actual amount of such premium shall be determined in accordance with the amount of actual expenditure of wages for such period; and,

Adjusting premiums.

in the event such actual wage expenditure for such period is less than the amount on which such estimated premium was collected, then such employer shall be entitled to have the amount of the difference in premium repaid to him or credited on succeeding premium payments; and should the earned premium, where ascertained as aforesaid, exceed in amount the premium so paid by such employer at the beginning of each such six-months' period, such employer shall upon being advised of the true amount of such premium due, forthwith pay to said State compensation insurance fund an amount equal to the difference between the amount actually found to be due and the amount so paid by him at the beginning of said six-months' period.

Premium pay-
ments. Sec. 135. Every employer insured in the State compensation insurance fund shall semiannually, on the first day of January and July of each year pay into the State compensation insurance fund in advance the amount of premium determined and fixed by the commission for the ensuing period. The amount of the premium to be paid by every such employer at the rates fixed and established by the commission for said State compensation insurance fund shall be on the basis of the annual expenditure of money by said employer for the services of persons engaged in his employment. The amount of premium to be so paid by each such employer shall be determined by the classifications, rules, and rates made and published by the commission. Payment shall be made within the time fixed by this act and a receipt or certificate certifying that such payment has been made shall be mailed to such employer by the commission, which receipt or certificate shall be prima facie evidence of the payment of such premium.

Municipalities. Sec. 136. The amount of money to be contributed by the State itself, and by each county, city, town, irrigation or school district, or other taxing district of the State, shall be determined and fixed by said industrial commission by any of the methods herein provided for the determination of premiums and rates for private employers: *Provided, however,* That the commission shall make such readjustment of premiums heretofore paid in by public employers and of premiums now due from public employers under the prior statute, after the same are actually paid in, as it may deem equitable and just.

Raising money. Sec. 137. The officials of the State, county, city, town, irrigation or school district, or other taxing district of the State, who are charged by law with the duties of raising and appropriating funds of each such subdivision for the payment of expenditures authorized on behalf of each such subdivision shall cause to be raised and appropriated sufficient moneys for the payment of any sum of money required to purchase compensation insurance from said fund for any such subdivision, and the officials who are charged with the duty of issuance and payment of the warrants of each such subdivision shall pay same when due: *Provided, however,* The commission shall communicate to the general assembly, within the first 10 days of each regular session thereof, an estimate of the aggregate amount of money necessary to be contributed by the State during the two years next ensuing as its proper payments due to said fund.

Information to
be furnished. Sec. 138. All officials of the State, county, city, town, irrigation or school district, or other taxing district of the State, who are charged by law with the duty of keeping or preparing any or all of the books or records of any such subdivision shall upon request furnish to the industrial commission of Colorado such information as may be required by the commission relative to the expenditure of money by any such subdivision for the services of any and all persons in its employ.

It shall be the duty of the public examiner of the State of Colorado to audit and examine, at least once a year, all of the books, records, and other documents of every public employer as hereinabove set forth as far as they relate to the wage expenditure or pay roll of any and all such public employers during the year preceding said examination or audit, and said public examiner shall furnish to the commission in form as prescribed by it a verified statement of the total wage expenditure of each and all such subdivisions for the period covered by said examination and audit.

Reinsurance. Sec. 139. The commission may secure reinsurance covering the catastrophe hazard with respect to any risk or risks carried by the State com-

pensation 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.

SEC. 140. The State treasurer shall be the custodian of the State compensation insurance fund, and all disbursements therefrom shall be paid by him upon warrants of the State auditor upon vouchers issued by the commission, and the State auditor is hereby authorized and directed to draw warrants upon the State compensation insurance fund for payment thereof, upon order of the commission.

Custody of funds.

SEC. 141. The commission shall in writing authorize and direct the State treasurer to invest any portion of the State compensation insurance fund which in the judgment of the commission is not needed for immediate use. Said fund, including its surplus and reserves, or any portion thereof, may be invested in any warrants or bonds of the State of Colorado or of the United States of America at market price, as may be determined by the commission. All interest earned upon such portion or portions of the 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. Upon the direction of the commission, with the approval of the State auditing board, the State treasurer shall sell or dispose of such portion of the investments of said fund at market price as he may be directed.

Investments.

SEC. 142. The State treasurer shall give a separate and additional bond in such amount as may be fixed by the commission, with sureties to be approved by the governor, conditioned for the faithful performance of his duties as custodian of the State compensation insurance fund and as custodian of all the bonds, warrants, investments, and moneys of, or belonging to said fund, subject to all provisions of law governing bonds of the State treasurer, and the premium on said bond shall be paid from the State treasury upon warrant issued by the State auditor upon voucher approved by the commission.

Bond.

SEC. 143. The State compensation insurance fund shall be open to visitation 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, so far as applicable to said fund. A thorough examination of said fund shall be made whenever the industrial commission and the insurance commissioner deem it necessary, but not less often than once in every two years. Such examination shall be made by a competent, fair, and impartial examiner, selected by agreement of the insurance commissioner and the commission, and it shall be an actuary of recognized standing and free from any connection with any interest opposed to the State compensation insurance fund.

Examination of fund.

SEC. 144. Any employer who intentionally misrepresents to the commission the amount of pay roll or wage expenditure upon which any premium under this act is based, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$500 or jail sentence of not more than 30 days, or both such fine and imprisonment.

Misrepresenting pay roll.

SEC. 145. The commission shall prepare and furnish to employers, at the expense of the State, all such blanks as may be necessary to carry out the terms and provisions of this act in connection with the operation and maintenance of the State compensation insurance fund.

Blanks.

SEC. 146. The commission shall cause to be prepared proper schedules showing its classification, rates, and regulations which shall be effective at such time or times as may be ordered by the commission, said classifications, rates, and regulations shall be published by posting a copy thereof on the bulletin board in the offices of said commission.

Schedules.

SEC. 147. The manner, mode, and method of proceeding of the industrial commission of Colorado in the hearing and disposition of claims, contested and noncontested, arising under chapter 179 of

Acts continued.

the Session Laws of Colorado of 1915, and the amendments thereto of 1917, is hereby ratified, confirmed, and validated.

Pending and decided cases.

SEC. 148. 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 before, or done or performed under the provisions of chapter 179 of the Session Laws of 1915 and all acts amendatory thereof, by the industrial commission of Colorado or any department thereof, including the State compensation insurance fund, or to effect [affect] any right 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 commission of Colorado, with full power, authority, and jurisdiction and with the right and duty in said commission to dispose of the same.

Provisions not retroactive.

SEC. 149. The compensation provisions of this act, except the procedural provisions, shall not apply to any injury sustained prior to the taking effect hereof.

Provisions severable.

SEC. 150. If any part, section, subsection, 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 general assembly hereby declares that it would have passed this act and each part, section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more other parts, section, subsection, sentence, clause, or phrase be declared unconstitutional.

Acts repealed.

SEC. 151. Chapter 179 of the Session Laws of 1915 and chapter 155 of the Session Laws of 1917, and all acts or parts of acts inconsistent with this act are hereby repealed.

Approved, April 10, 1919; in effect, May 1, 1919.

CONNECTICUT.

GENERAL STATUTES, 1918.

CHAPTER 284.—*Compensation of workmen for injuries.*

PART A—EMPLOYERS' LIABILITY.

SECTION 5339. In an action to recover damages for personal injury sustained by an employee arising out of and in the course of his employment, or for death resulting from injury so sustained, it shall not be a defense—(a) that the injured employee was negligent; (b) that the injury was caused by the negligence of a fellow employee; (c) that the injured employee had assumed the risk of the injury. Abrogation of defenses.

SEC. 5340. The provisions of section 5339 shall not apply to actions to recover damages for personal injuries sustained by employees of any employer having regularly less than five employees, by casual employees, or by outworkers; nor shall the same provisions apply to actions against any employer who shall have accepted part B of this chapter in the manner hereinafter prescribed. Does not apply when.

PART B—WORKMEN'S COMPENSATION.

SECTION 5341 (as amended by ch. 142, acts of 1919). When any persons in the mutual relation of employer and employee shall have accepted part B of chapter 284 of the general statutes the employer shall not be liable to any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from injury so sustained; but the employer shall pay compensation on account of such injury in accordance with the scale hereinafter provided, except that no compensation shall be paid when the injury shall have been caused by the willful and serious misconduct of the injured employee or by his intoxication. If an injury arises out of and in the course of the employment it shall be no bar to a claim for compensation that it can not be traced to a definite occurrence which can be located in point of time and place. Any disease, which is caused by an injury arising out of and in the course of the employment, shall be deemed to be a natural consequence of such injury, but in any case of aggravation of a disease existing prior to such injury, compensation shall be allowed only for such proportion of the disability due to the aggravation of such prior disease as may reasonably be attributed to the injury. The acceptance of part B of chapter 284 of the general statutes by employers and employees shall be understood to include the mutual renunciation and waiver of all rights and claims arising out of injuries sustained in the course of employment as aforesaid, other than rights and claims given by part B of said chapter, including the right of jury trial on all questions affecting compensation and all right of appeal from the compensation commissioners except as hereinafter established. Election of compensation.

SEC. 5342 (as amended by ch. 142, acts of 1919). All contracts of employment between an employer and an employee, as such terms are defined in section 5338 of the general statutes, except those made between an employer having regularly less than five employees and any such employer and employee, shall be conclusively presumed to include a mutual agreement between employer and employee to accept part B and become bound thereby, unless either employer or employee shall, by written stipulation in the contract, or by such notice as is prescribed in section 5343 of the general statutes, indicate his refusal to accept the provisions of said part B. No provision of said part B shall apply to any employer having regularly less than five employees unless such employer shall, in the manner hereinafter provided, accept Election presumed. Employers of less than five employees.

- the provisions of part B and become bound thereby. All contracts of employment between an employer having regularly less than five employees and any such employee, shall be conclusively presumed to include the following mutual agreements between employer and employee: (1) That the employer may accept the provisions of part B and become bound thereby by forthwith complying with section 5369 of the general statutes; (2) that if the employer so accepts the provisions of part B the employee shall thereupon be deemed to accept such provisions and shall be bound thereby; unless the employer shall neglect or refuse to furnish, forthwith, to the employee, on his written request, evidence of compliance with section 5369 of the general statutes in the form of a certificate from the compensation commissioner, the insurance commissioner, or the insurer, as the case may be; (3) that the employee may at any time withdraw his acceptance of such provisions and become released therefrom by giving written or printed notice of such withdrawal to the commissioner having jurisdiction, and also to the employer, and such withdrawal shall take effect forthwith from the time of its service on the commissioner and the employer; and (4) that the employer may withdraw his acceptance and the acceptance of the of the employee by filing a written or printed notice of his withdrawal with such commissioner and with such employee, which withdrawal shall become effective forthwith from the time of its service on the commissioner and the employee. The notices of acceptance and withdrawal to be given by an employer having regularly less than five employees and the notice of withdrawal to be given by the employee, as herein provided, shall be served upon such commissioner, employer, or or employee, either by personal presentation or by registered mail; and notices in behalf of a minor shall be given by or to his parent or guardian, or, if there be no parent or guardian, by or to such minor. The manner of acceptance of or withdrawal from the provisions of part B, prescribed in said section 5343, shall not apply to employers having regularly less than five employees, or to such employees. 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.
- Withdrawals.** SEC. 5343 (as amended by ch. 142, acts of 1919). Acceptance of part B may be withdrawn by written or printed notice from either employer or employee to the other party and to the compensation commissioner of the district in which the employee is employed. Notice of withdrawal may be served by personal presentation or by registered letter addressed to the person on whom it is to be served at his last known residence or place of business; and such notice shall become effective 30 days after service. Either employer or employee who has withdrawn acceptance may renew the same by the same notice and procedure as is prescribed for withdrawals. Notices in behalf of a minor shall be given by or to his parent or guardian, or, if there be no parent or guardian, then by or to such minor.
- How withdrawal may be made.**
- Effect of non-acceptance.** SEC. 5344. Every employer not accepting part B shall be liable to action for damages on account of personal injury to his employees in accordance with the provisions of part A, and every employee not accepting part B shall lose all rights and benefits of part A with reference to any employer who continues to accept part B.
- Contractors.** SEC. 5345. When any principal employer procures any work to be done, wholly or in part for him, by a contractor, or through him by a subcontractor, and the work so procured to be done is a part or process in the trade or business of such principal employer, and is performed in, on or about premises under his control, then such principal employer shall be liable to pay all compensation under this chapter to the same extent as if the work were done without the intervention of such contractor or subcontractor.
- Liability of third persons.** SEC. 5346. When any injury for which compensation is payable under the provisions of this chapter 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 chapter, 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 for such injury; and any employer having paid, or by award having become obligated to pay, compensation under the provisions of this chapter may bring an action against such other person to recover any amount that he has paid or by award has become obligated to pay as compensation to such injured employee: *Provided*, 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 act and of the name of the court to which the writ is returnable, and such other may join as a party plaintiff in such action, within thirty days after such notification, and if such other fails to join as a party plaintiff, his right of action against such third person shall abate. In the event that such employer and employee shall join as parties plaintiff in such action and any 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 him for the compensation which he has paid, or by award 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, damages shall be assessed in his favor sufficient to reimburse him for the money he has paid, with a reasonable allowance for an attorney's fee, to be fixed by the court, and his costs, and the excess shall be assessed in favor of the injured employee. 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.

Sec. 5347 (as amended by ch. 142, acts of 1919). Any employee who has sustained an injury in the course of his employment shall forthwith notify his employer, or some person representing him, of such injury; and on his failure to give such notice, the commissioner may reduce the award of compensation proportionately to any prejudice which he shall find the employer has sustained by reason of such failure; but the burden of proof with respect to such prejudice shall rest upon the employer. The employer, as soon as he has knowledge of any such injury, shall provide a competent physician or surgeon to attend the injured employee, and, in addition, shall furnish such medical and surgical aid or hospital service as such physician or surgeon shall deem reasonable or necessary. In the event of the failure of the employer promptly to provide such physician or surgeon or medical, surgical or hospital service, the injured employee may provide such physician or surgeon or medical, surgical or hospital service at the expense of the employer; or, at his option, the injured employee may refuse the medical, surgical and hospital service provided by his employer and provide the same at his own expense. The commissioner may, when he finds that good reasons exist therefor, authorize or direct a change of such physician or surgeon, or such hospital service. If it shall appear to the commissioner that an injured employee has refused to accept and failed to provide such reasonable medical, surgical, or hospital service, all rights of compensation under the provisions of said chapter shall be suspended during such refusal and failure. The pecuniary liability of the employer for the medical, surgical, or hospital service herein required shall be limited to such charges as prevail in the same community or similar communities for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured persons. In the case of a seaman employed upon any enrolled vessel of the United States and entitled, by the provisions of any law of the United States, to medical or surgical aid or hospital service without charge, such medical or surgical aid or hospital service may be substituted for that provided for in this section so far as it may answer the requirements of the provisions of this section, but nothing herein shall excuse the employer in such cases from giving emergency treatment when required; and any employer desiring to take advantage of this provision shall ascertain that such services as are provided for by the laws of the United States are rendered. If, after due knowledge that an employee has suffered injury arising out of and in the course of his employment, an employer has failed to provide medical care promptly, and the injured

Notice of injury.

Medical, etc., aid.

Refusal to accept.

employee has provided such medical care, then the employer shall not compel the employee to change his physician, surgeon, or hospital, except upon the order or approval of the commissioner.

Waiting time.

SEC. 5348 (as amended by ch. 142, acts of 1919). No compensation shall be payable for total or partial incapacity under the provisions of chapter 284 of the general statutes 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: *Provided*, If such incapacity extends beyond a period of four weeks, compensation shall begin from the day of the injury. 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.

Death benefits.

SEC. 5349 (as amended by ch. 142, acts of 1919). Compensation shall be paid on account of death resulting from injuries within two years from date of injury as follows: (a) For burial expenses, \$100; (b) to those wholly dependent upon the deceased employee at the time of his injury, a weekly compensation equal to half of the average weekly earnings of the deceased at the time of his injury; (c) in case there is no one wholly dependent upon the deceased employee, to those partially dependent upon the deceased employee at the time of his injury, a weekly compensation equal to half of the average weekly earnings of the deceased at the time of the injury: *Provided*, The amount so paid shall not be more than \$18 weekly, nor less than \$5 weekly; nor if the average weekly sum contributed by the deceased at the time of the injury to those partially dependent be more than \$5 weekly, not more than said sum so contributed; but the compensation payable on account of death resulting from injuries shall in no case be more than \$18 or less than \$5 weekly, and such compensation shall not continue longer than 312 weeks after death. The compensation on account of death payable under the provisions of chapter 284 of the general statutes to a widow or widower of a deceased employee shall not cease with the death of such widow or widower, but, upon her or his death within the period during which such compensation is payable, it shall continue to be paid for the remainder of such period to the other dependents of the deceased employee as defined in section 5388 of the general statutes.

Dependents.

SEC. 5350. The following persons shall be conclusively 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 injury or from whom she receives support regularly; (b) a husband upon a wife with whom he lives at the time of her injury or from whom he receives support regularly; (c) any child under the age of 18 years, or over said age but physically or mentally incapacitated from earning, upon the parent with whom he is living or from whom he is receiving support regularly at the time of the injury of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent the death benefit shall be divided equally among them. In all other cases, questions of dependency shall be determined in accordance with the fact, as the fact may be at the time of the injury. In such other cases, if there is more than one person wholly dependent, the compensation in case of death shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof. If there is no person wholly dependent and more than one person partially dependent, the compensation in case of death shall be divided among them according to the relative degree of their dependence. For the purpose of this chapter the dependence of a widow or widower of a deceased employee shall be construed to terminate with remarriage, but upon remarriage within the period during which such compensation is payable, it shall continue to be paid for the remainder of such period to other dependents of the deceased employee, as defined in section 5388: *Provided*, There are any such dependents. The presumptive dependence of a child as hereinbefore defined, except a child physically or mentally incapacitated from earning, shall be construed to terminate at the age of 18 years. Compensation under the provisions of this

chapter shall be paid to alien dependents in half the amounts indicated in this chapter unless such alien dependents are residents of the United States, or its dependencies, or Canada, such alienage to be determined as of the date of the injury. 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.

Sec. 5351. In case the injury results in total incapacity to work, there shall be paid to the injured employee a weekly compensation equal to half of his average weekly earnings at the time of the injury; but the compensation shall in no case be more than \$14 or less than \$5 weekly; and such compensation shall not continue longer than the period of total incapacity, or in any event longer than 520 weeks. The following injuries of any person shall be considered as causing total incapacity and compensation shall be paid accordingly: (a) Total and permanent loss of sight in both eyes, or the reduction to one-tenth or less of normal vision with glasses; (b) the loss of both feet at or above the ankle; (c) the loss of both hands at or above the wrist; (d) the loss of one foot at or above the ankle; (e) any injury resulting in permanent and complete paralysis of the legs or arms or of one leg and one arm; (f) any injury resulting in incurable imbecility or insanity.

Total disability.

Sec. 5352 (as amended by ch. 142, acts of 1919). In case the injury results in partial incapacity, there shall be paid to the injured employee a weekly compensation equal to half the difference between his average weekly earnings before the injury and the amount he is able to earn thereafter. Such compensation shall in no case be more than \$18 weekly and shall continue during the period of partial incapacity, but no longer than 520 weeks. If the employer procures for an injured employee employment suitable to his capacity the wages offered in such employment shall be taken as the earning capacity of the injured employee. In case of the following injuries the compensation, in addition to the usual compensation for total incapacity, but in lieu of all other payments for compensation, shall be half of the average weekly earnings of the injured employee, prior to such injury for the terms, respectively, indicated, but in no case more than \$18 or less than \$5 weekly: (a) For the loss of one arm at or above the elbow, or the complete and permanent loss of the use of one arm, 208 weeks; (b) for the loss of one hand at or above the wrist, or the complete and permanent loss of the use of one hand, 156 weeks; (c) for the loss of one leg at or above the knee, or the complete and permanent loss of the use of one leg, 182 weeks; (d) for the loss of one foot at or above the ankle, or the complete and permanent loss of the use of one foot, 130 weeks; (e) for the complete and permanent loss of hearing in both ears, 156 weeks; (f) for the complete and permanent loss of hearing in one ear, 52 weeks; (g) for the complete and permanent loss of sight in one eye, or the reduction in one eye to one-tenth or less of normal vision with glasses, 104 weeks; (h) for the loss of, or the complete and permanent loss of the use of, a thumb, 38 weeks; (i) for the loss of, or the complete and permanent loss of the use of, a first finger or a great toe, 38 weeks; (j) for the loss of, or the complete and permanent loss of the use of, a second finger, 30 weeks; a third finger, 25 weeks; a fourth finger, 20 weeks; (k) for the loss of, or the loss of the use of, any toe except the great toe, 13 weeks. The loss of, or the loss of the use of, one phalanx of a thumb shall be construed as half of the loss of the thumb; the loss of, or the loss of the use of, one phalanx of a finger shall be construed as one-third of the loss of the finger; the loss of, or the loss of the use of, two phalanges of a finger shall be construed as two-thirds of the loss of the finger; the loss of, or the loss of the use of, one phalanx of a great toe shall be construed as half of the loss of a great toe; and the loss of the greater part of a phalanx shall be construed as the loss of a phalanx; and shall be compensated accordingly. 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

Partial disability.

- 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 chapter, 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) inclusive.
- Computation of earnings.** Sec. 5353 (as amended by ch. 142, acts of 1919). For the purposes of said chapter, the average weekly wage shall be ascertained by dividing the total wages received by the injured workman from the employer in whose service he is injured during the 26 calendar weeks immediately preceding that during which he was injured, by the number of said calendar weeks during which, or any portion of which, said workman was actually employed by said employer: *Provided*, In making such computation, absence for seven consecutive calendar days, although not in the same calendar week, shall be considered as absence for a calendar week. When the employment commenced other than at the beginning of a calendar week, such calendar week and the wages earned during such week shall be excluded in making the above computation. When the employment, previous to injury as provided above, is computed to be less than a net period of two calendar weeks, then his weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment in the same locality at the time of injury. For the purpose of determining the amount of compensation to be paid in the case of a minor under the age of 18 years who has sustained an injury entitling him to compensation for total or partial incapacity for a period of 52 or more weeks, or to specific indemnity for any of the injuries enumerated in subsections (a) to (k), inclusive, or in any other portion following subdivision (k), of the preceding section, the commissioner may add 50 per cent to his average weekly wage.
- Advance payments.** Sec. 5354. In fixing the amount of any compensation under this chapter due allowance shall be made for any sum which the employer may have paid to any injured employee or to the 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.
- Review.** Sec. 5355. Any award of, or voluntary agreement concerning compensation made under the provisions of this chapter shall be subject to modification, upon the request of either party and in accordance with the procedure for original determinations, whenever it shall appear to the compensation commissioner that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence, on account of which the compensation is paid, has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement or award in order properly to carry out the spirit of this chapter. The commissioner shall also have the same power to open and modify an award as any court of the State has to open and modify a judgment of such court. The compensation commissioner shall retain jurisdiction over claims for compensation, awards, and voluntary agreements, for any proper action thereon, during the whole compensation period applicable to the injury in question.
- Commissioners.** Sec. 5356 (as amended by ch. 142, acts of 1919). There shall continue to be five compensation commissioners, one for each of the five congressional districts as constituted October 1, 1913. On or before January 1 of each year the governor shall appoint a competent person to be compensation commissioner for the term of five years. Said commissioners shall be sworn to a faithful performance of their duties. Vacancies occurring during a term shall be filled by the governor. After due notice and public hearing the governor may remove any commissioner for cause and the good of the public service.
- Powers.** Sec. 5357. Each commissioner shall, for the purposes of this chapter, have power to summon and examine under oath such witnesses, and may direct the production of, and examine or cause to be produced or examined, such books, records, vouchers, memoranda, documents, letters, contracts, or other papers in relation to any matter at issue as he may find proper, and shall have the same powers in reference thereto as are vested in magistrates taking depositions. He shall have power to certify to official acts, and all powers necessary to

enable him to perform the duties imposed upon him by the provisions of this chapter. The commissioners shall reside in the districts for which they are severally appointed, and each shall have jurisdiction of all claims and questions arising in such district under part B of this chapter. The commissioner for the first congressional district shall maintain an office at some convenient location in the city of Hartford; the commissioner for the second district, an office similarly located in the city of Norwich; the commissioner for the third district, in the city of New Haven; the commissioner for the fourth district, in the city of Bridgeport; and the commissioner for the fifth district, in the city of Waterbury. Each commissioner shall keep his office open during reasonable business hours of every day except Sundays and legal holidays, but may hear and decide cases at any other place within his district. In case a commissioner is disqualified or temporarily incapacitated from hearing any matter, he shall designate some other commissioner to hear and decide such matter, and such other commissioner shall possess the same jurisdiction and power, for the purpose of such hearing, as such incapacitated or disqualified commissioner. The superior court, on application of a commissioner or the commission, or of the attorney general, may enforce, by appropriate decree or process, any provision of this chapter or any proper order of a commissioner or the commission rendered in pursuance of any such provision.

Residence.

Enforcement of orders.

Sec. 5358 (as amended by ch. 142, acts of 1919). Acting together, the commissioners shall have power to adopt and change such common rules, procedure, and forms as they shall deem expedient for the purposes of said chapter. Biennially the commissioners shall prepare and submit to the governor a report of their doings, including such recommendations as they shall think proper for the improvement of said chapter or its administration.

Regulations.

Sec. 5359 (as amended by ch. 142, acts of 1919). Every employer who has accepted the provisions of part B of said chapter 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 to the commissioner, in duplicate, each week, or oftener if so directed, such report of such injuries as the rules prescribed by the board of commissioners shall determine, with such notices of claims for compensation as have been served upon him within one week, in conformity with the provisions of section 5360 of the general statutes. 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 commissioner of labor and factory inspection.

Reports of accidents.

Sec. 5360. No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is made within one year from the date of the injury. Such notice shall state in simple language the date, place, and nature of the injury, the name and address of the injured employee, and the person in whose interest compensation is claimed. Notices may be served in the same manner as notices of withdrawal from the provisions of part B; and, in cases of fatal injuries, notice may be served either by any one of the dependents under the provisions of this chapter as provided in section 5343 or by the legal representative of the deceased employee; but where there has been a hearing or a written request for a hearing or an assignment for hearing within one year from the date of the injury, or where a voluntary agreement has been submitted within said period of one year, no want of such notice of claim shall be a bar to the maintenance of proceedings, and in no case shall any defect or inaccuracy of such notice of claim be a bar to the maintenance of proceedings unless the employer shall show that he was ignorant of the injury and was prejudiced thereby. Upon satisfactory showing of such ignorance and prejudice, the employer shall receive allowance to the extent of such prejudice. Within one week after the receipt by an employer of such notice of claim for compensation, he shall report the substantial facts of such notice to the commissioner.

Claims.

Sec. 5361 (as amended by ch. 142, acts of 1919). If an employer and an injured employee, or in case of fatal injury his legal representa-

Voluntary agreements.

tive, shall, at a date not earlier than the expiration of the waiting period, reach an agreement in regard to compensation, such agreement shall, by the employer, be submitted in writing to the commissioner, with a statement of the time, place, and nature of the injury upon which it is based; and if said commissioner shall find such agreement to conform to the provisions of said chapter in every regard he shall so approve it. Every agreement thus approved shall be filed in the office of the clerk of the superior court for the county in which the injury occurred if such injury occurred within this State, otherwise in the office of the clerk of the superior court for the county in which the office of the commissioner making the award is located. A copy of such agreement shall be retained by the commissioner, and a like copy delivered to each of the parties, and thereafter it shall be as binding upon both parties as an award by the commissioner. Before discontinuing payment on account of total or partial incapacity under any such agreement, the employer, if it is claimed by or on behalf of the injured person that his incapacity still continues, 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.

Medical exam-
inations.

SEC. 5362. At any time while claiming or receiving compensation, upon the reasonable request of the employer or at the direction of the commissioner, an injured employee shall submit himself to examination by a reputable practicing physician or surgeon provided and paid by the employer, with a view to a determination of the nature of the injury and the incapacity resultant therefrom. At any such examination the injured employee shall be allowed to secure the attendance of any reputable practicing physician or surgeon provided and paid by himself. The refusal of an injured employee thus to submit himself to a reasonable examination shall suspend his right to compensation during such refusal.

Hearings.

SEC. 5363. If an employer and his injured employee, or his legal representative as the case may be shall fail to reach an agreement in regard to compensation under this chapter, either party may notify the commissioner of the failure. Upon such notice, or upon other knowledge that an agreement has not been reached in a case in which compensation is claimed, the commissioner shall appoint an early hearing upon the matter, giving both parties due notice of time and place not less than 10 days prior to the date appointed. Hearings shall be held, if practicable, in the town in the State in which the injured employee resides; and, if such place is not practicable, in such other convenient place as the commissioner may prescribe. Sufficient notice of such hearing may be given to the parties in interest by a brief written statement in ordinary terms of the date, place, and nature of the injury upon which the claim for compensation is based.

Conduct of
hearings.

SEC. 5364. Both parties may appear at any hearing, either in person or by attorney or other accredited representative, and no formal pleadings shall be required beyond such informal notices as the commissioner shall approve. In all cases and hearings under the provisions of this chapter the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but may make inquiry in such manner, through oral testimony or written and printed records, as is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit of this chapter. No fees shall be taxed or charged to either party by the commissioner in connection with any hearing or other procedure, but the commissioner shall furnish at cost certified copies of any testimony, award, or other matter which may be of record in his office. Witnesses subpoenaed by the commissioner 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 subpoenaed.

Awards.

SEC. 5365 (as amended by ch. 142, acts of 1919). As soon as may be after the conclusion of any hearing the commissioner shall send to each party a written copy of his findings and award, and shall file a third

copy in his office. The original award shall be filed in the office of the clerk of the superior court for the county in which the injury occurred if such injury occurred within this State. If such injury occurred outside of the State and under such circumstances as to authorize an award under the provisions hereof, the original award may be filed in the office of the clerk of the superior court in the county in which the office of the commissioner making the award is located. If no appeal from his decision is taken by either party within 10 days thereafter, such finding and award shall be final and may be enforced in the same manner as a judgment of the superior court. The superior court is authorized to issue execution upon any uncontested or final award of a commissioner in the same manner as in cases of judgments rendered in the superior court. In cases where, through the fault or neglect of the employer or insurer, adjustments of compensation have been unduly delayed, or where, through such fault or neglect, payments have been unduly delayed, the commissioner may include in his award interest at 6 per centum per annum. In cases where there has been delay in either adjustment or payment, which delay has not been due to the fault or neglect of the employer or insurer, whether such delay was caused by appeals or otherwise, the commissioner may allow interest at such rate, not to exceed 6 per centum per annum, as may be fair and reasonable, taking into account whatever advantage the employer or insurer, as the case may be, may have had from the use of the money, the burden of showing that the rate in such case should be less than 6 per centum per annum to be upon the employer or insurer.

SEC. 5366 (as amended by ch. 142, acts of 1919). At any time within 10 days after entry of such finding and award by the commissioner either party may appeal therefrom to the superior court for the county in which the award was filed. The clerk of said court shall notify the adverse party of such appeal. No bond for prosecution shall be required on any such appeal unless property of the defendant is attached therein. Actions brought to the superior court under the provisions of this section shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the State, including informations on the relation of private individuals. No costs shall be taxed in favor of either party on any such appeal either in the superior court or in the supreme court of errors, nor shall either party be liable to pay any fees or costs of any kind whatsoever, except the record fee on appeal to the supreme court of errors: *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. When any appeal is pending, and shall appear to the court that any part of the award appealed from is not affected by the issues raised by such appeal, the court may, on motion or of its own motion, render a judgment directing compliance with any portions of such award not affected by such appeal. In all appeals where one of the parties is not represented by counsel, and where the party taking the appeal shall not claim the case for trial within a reasonable time from the return day, the court may of its own motion affirm the award. When an appeal is taken to the superior court the clerk thereof shall forthwith notify the commissioner from whose award the appeal is taken, in writing, of such fact, and shall thereafter notify such commissioner, in writing, of any action of the court thereupon and of the final disposition of said appeal, whether by judgment, withdrawal, or otherwise, and shall, upon the decision of the appeal, furnish the commissioner with a copy of such decision.

SEC. 5367. When he finds it just or necessary the commissioner may approve or direct the commutation, in whole or in part, of weekly compensations under the provisions of this chapter into monthly or quarterly payments, or into a single lump sum, which may be paid to the one then entitled to the compensation, and such commutation shall be binding upon all persons who may be entitled to compensation for the injury in question. In any such case of commutation a true equivalence of value shall be maintained, with due discount of sums payable

Appeals.

Lump sums.

in the future; and when commutation is made into a single lump sum the commissioner may direct that it be paid into any savings bank, trust company, or life insurance company which is authorized to do business within this State, to be held in trust for the beneficiary or beneficiaries under the provisions of this chapter and paid in conformity with the provisions of this chapter.

Substitute
schemes.

SEC. 5368. With the approval of the State insurance commissioner any employer subject to the provisions of part B may enter 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 chapter. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this chapter, nor shall any such substitute system be approved which contains an obligation of employees to join in it as a condition of employment, or which in that case does not contain equitable provision for the withdrawal of employees from it and the distribution of its assets. If any such system requires contributions from employees it shall not be approved unless it confers benefits in addition to those provided under this chapter at least commensurate with such contributions. The insurance commissioner, having given his approval of such substitute system, shall have over it all the jurisdiction given him by section 4064 over insurance companies. He may withdraw his approval upon reasonable notice to the employer and order a distribution of the assets, subject to the right of any party in interest to take an appeal to the superior court for Hartford County.

Guaranty of
payments.

SEC. 5369. Every employer subject to part B who shall not furnish to the commissioner satisfactory proof of his solvency and financial ability to pay directly to injured employees or other beneficiaries the compensation provided by this chapter shall insure his full liability under part B in one or both the following ways: (1) By filing with the insurance commissioner in form acceptable to him security guaranteeing the performance of the obligations of this chapter by said employer; or, (2) by insuring his full liability under part B in such stock or mutual companies or associations as are or may be authorized to take such risks in this State, or by such combination of the above-mentioned two methods as he may choose, subject to the approval of the insurance commissioner.

Provisions
of policies.

SEC. 5370. Every policy insuring the payment of compensations under this chapter shall contain a clause to the effect that as between the employee and the insurer notice and knowledge of the occurrence of injury by the insured shall be deemed notice and knowledge by the insurer, that jurisdiction of the insured for the purposes of this chapter shall be jurisdiction of the insurer, and that the insurer shall in all things be bound by and subject to the findings, judgments, and awards rendered against such insured.

Same.

SEC. 5371. No policy of insurance against liability under part B except as provided in section 5369, shall be made unless the same shall cover the entire liability of the employer thereunder and shall contain an agreement by the insurer that, in case the insured shall become insolvent or be discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid, or in case an execution upon a judgment for compensation is returned unsatisfied, an injured employee or other person entitled to compensation under the provisions of this chapter, may enforce his claim to compensation against the insurer to the same extent that the insured could have enforced his claim against such insurer had he paid compensation. Nothing herein contained shall prevent the issuance of an insurance policy, insuring any employer having ordinarily and regularly less than five employees against such liability under part B as he may incur by reason of employing five or more employees at irregular intervals or from time to time.

Waivers.

SEC. 5372. No contract, expressed or implied, no rule, regulation, or other device shall in any manner relieve any employer, in whole or in part, of any obligation created by this chapter, except as herein set forth.

Sec. 5373. When any employee affected by the provisions of this chapter, or any person entitled to compensation hereunder, shall be a minor, or mentally incompetent, his parent, or guardian duly appointed, may, on his behalf, perform any act or duty required or exercise any right conferred by the provisions of this chapter with the same effect as if such person were legally capable to act in his own behalf and had so acted. The commissioner may, for just cause shown, authorize or direct the payment of compensation directly to a minor, or to some person nominated by the minor and approved by the commissioner, which person shall act in behalf of such minor.

Incompetents.

Sec. 5374. All fees of attorneys, physicians or other persons for services under this chapter shall be subject to the approval of the commissioner.

Fees.

Sec. 5375. All sums due for compensation under the provisions of this chapter shall be exempt from levy, attachment, and execution and shall be nonassignable before or after award. The rights of compensation granted by this chapter, 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.

Status of payments.

Sec. 5376. Compensations payable under this chapter shall be paid at such particular times in the week and in such manner as the commissioner may order, and shall be paid directly to the persons entitled to receive them unless the commissioner, for good reason, shall order payment to those entitled to act for such persons.

Mode of payment.

Sec. 5377. Any notice under this chapter required to be served upon employer, employee, or commissioner may be served in the manner prescribed in section 5343, unless the circumstances of the case or the rules of the commission shall direct otherwise.

Service of notice.

Sec. 5378. The town clerks of the several towns are authorized and directed to receive from the commission such blank forms as may be prepared for use under this chapter and to distribute the same to persons making proper application for them.

Duty of town clerks.

Sec. 5379. This chapter shall not affect the liability of employers to employees engaged in interstate or foreign commerce, for death or injury in case the laws of the United States provide for compensation or for liability for such death or injury.

Interstate commerce.

Sec. 5380. If an employer has accepted the provisions of part B of this chapter and thereafter fails to conform to any provision of section 5369, an employee shall have the option to elect, either to claim his right to compensation under the terms of this chapter, or to bring an action to recover damages under the terms of part A, and if such employer be a corporation or joint stock association, such action may be brought against any or all 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. If the injury sustained results in death, the option to elect shall be exercised by those persons entitled to compensation under the terms of section 5349. In the event of a failure by such persons to agree upon the election, the commissioner shall decide and his decision shall be final. The option to elect to bring an action to recover damages under the terms of part A shall be exercised by notifying the employer within 30 days after receiving the injury upon which such claim is based, and such action shall be brought within one year from the date of such injury. If the employer is not so notified, there shall remain only the right to compensation under the terms of this chapter. If an employer has accepted the provisions of part B of this chapter and thereafter fails to conform to any provision of part B, he shall be fined not more than \$100 for each such failure.

Failure to comply with act.

Sec. 5381 (as amended, ch. 142, acts of 1919). Any employer who has complied with the provisions of section 5368 of the general statutes 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 chapter 284 of the general statutes, which agreement has been approved by the insurance commissioner; or any employer who has complied with the provisions of section 5369 of the general statutes by filing with the insurance commissioner

Substitute schemes.

security guaranteeing the performance of his obligations under chapter 284 of the general statutes; or by insuring his full liability, or by a 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 said chapter has been filed with and accepted by said insurance commissioner, or that a combination of the methods contemplated in section 5369 of the general statutes has been approved. Any employer who has insured his full liability may file a certificate, in the manner prescribed in section 5414 of the general statutes, 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.

Attachments.

Sec. 5382. When 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 commissioner that there has been a compliance with the provisions of section 5368 or 5369, which compliance is then effective, said 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 commissioner that there has been a compliance with the provisions of section 5368 or 5369, which compliance was then effective and applicable to the injury in question, the 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. 5383 (as amended by ch. 142, acts of 1919). When, in any case arising under the provisions of said chapter, 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. Where the commissioner shall find that a claim before him involves a doubtful question of law, which the public interest requires should be finally and definitely determined, he may find the facts as in other cases and make his award, indicating that it is pro forma. A pro forma award shall be of the same effect as an award in ordinary cases except in the following particulars: On the filing of a pro forma award the question shall come before the superior court as though an appeal had been taken, and said court shall thereupon reserve the case for the opinion of the supreme court of errors in the manner herein indicated: *Provided*, In the opinion of the superior court the principles of law involved in the decision are in fact free from reasonable doubt, and the public interest does not in fact require that they be determined by the supreme court of errors, the superior court may, in its discretion, hear and determine the controversy as in other cases. Whenever a compensation commissioner shall have reason to believe that any employer who has furnished, in accordance with the provisions of section 5369 of the general statutes, satisfactory proof of his solvency and financial ability to pay compensation direct to injured employees or other beneficiaries, is dilatory in investigating or

adjusting claims, or making payments, or fails to comply with the provisions of said chapter or the rules, procedure and forms adopted by the commission, he may, after due hearing, find the facts, and, in case he finds proven the neglect or misconduct hereinbefore set forth, may revoke any certificate which may have been granted to such employer, even though the solvency and financial condition of such employer be beyond question.

SEC. 5384. 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 chapter 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 of his employment, which injury shall not be found to be directly due to the particular condition described therein.

Waivers allowed, when.

SEC. 5385 (as amended by ch. 142, acts of 1919). 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 said chapter is conducting such business improperly or is dilatory in investigating and adjusting claims or making payments, or fails to comply with the provisions of said chapter 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 thereon, 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. Whenever the compensation commissioners, or a majority of them, shall have reason to believe that any employer who has filed with the insurance commissioner security for the performance of the obligations of said chapter in accordance with section 5369 of the general statutes, is dilatory in investigating or adjusting claims, or in making payments, or fails to comply with the provisions of said chapter, or the rules, procedure and forms adopted by the commission, they may notify the insurance commissioner, in writing, setting forth the facts, and thereupon the insurance commissioner shall fix the time and place for a hearing thereon, giving reasonable notice to the commissioners and to such employer, and if he shall find the allegations to be true, then after ten days from the notice of such finding to such employer, the compliance of such employer with the terms of section 5369 of the general statutes shall be, as to any future injuries, null and void.

Power over insurance companies.

SEC. 5386. Whenever any fees or expenses are, under the provisions of this chapter, 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.

Fees and expenses.

SEC. 5387. 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 2,500

Digest of decisions.

copies thereof for distribution by him as follows: To the commissioners, 700 copies; to the State librarian, 300 copies; and to the secretary of the State, for sale by him at cost, 1,500 copies.

Definitions.

SEC. 5388 (as amended by ch. 142, acts of 1919). Terms in said chapter are defined as follows: "Commissioner" shall mean that compensation commissioner who has jurisdiction in the matter referred to in the context. "Commission" shall mean the five commissioners, or a majority of them, acting as a board. "Dependents" shall mean members of the injured employee's family or next of kin who were wholly or partly dependent upon the earnings of the employee at the time of the injury. "Employee" shall mean any person who has entered into or works under any contract of service or apprenticeship with an employer, whether such contract contemplated the performance of duties within or without the State, but shall not be construed to include either (a) an outworker, or (b) one whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business, or (c) a member of the employer's family dwelling in his house. "Employer" shall mean any person, corporation, firm, partnership, or joint-stock association, the State and any public corporation within the State using the services of another for pay; it shall include also the legal representatives of any such employer. Masculine terms shall include males, females, and legal persons. "Outworker" shall mean 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. As the natural interpretation of the context may require, singular terms may be taken to include the plural, and plural the singular. The word "injury" as the same is used in said chapter shall be construed to include any disease which is due to causes peculiar to the occupation and which is not of a contagious, communicable, or mental nature.

SEC. 5389. [Repealed by ch. 142, sec. 20, acts of 1919.]

Provisions severable.

SEC. 5390. In case any provision of this chapter shall be held by the courts to be unconstitutional and invalid, the invalidity of such provision shall not affect any other provision which can be given effect without the provision held invalid.

PART C—EMPLOYERS' MUTUAL INSURANCE.

Mutual associations authorized.

SECTION 5391. With the approval of the insurance commissioner, employers who have accepted the provisions of part B of this chapter and are bound to pay compensations to their employees thereunder, may associate themselves, in accordance with the law for the formation of corporations without capital stock, for the purpose of establishing and maintaining mutual associations to insure their liabilities under this chapter, but no such association shall be formed to include employers not in the same or similar trade or business or in trades or businesses with substantially similar degrees of hazard of injury to employees.

To be approved.

SEC. 5392. With a view to his approval, the insurance commissioner may require the incorporators of any such association to include in their proposed certificate of incorporation such lawful provisions for the regulation of the affairs of the association and the definition of its powers and the powers of its officers, directors, and incorporators as shall satisfy him that it is well designed and wisely adapted to its proposed purposes. When such a certificate, in form and substance acceptable to the insurance commissioner, has been approved by and filed with the secretary of the State, the incorporators shall forthwith cause copies thereof to be filed in the offices of the insurance commissioner and each of the compensation commissioners.

Membership.

SEC. 5393. Membership in such associations shall be limited to such employers as are subject to part B of this chapter, and each association shall have power, by appropriate by-laws, to provide for the admission, suspension, withdrawal, or expulsion of members.

Control.

SEC. 5394. Except as herein otherwise provided, such associations shall be subject to the same regulation and control as is or may be imposed by law upon other corporations or associations taking similar risks in this State, and over them the insurance commissioner shall have all the jurisdiction given him by section 4064 over insurance companies.

Sec. 5395. No policies shall be issued by any such association until members in such numbers and with such numbers of employees as the insurance commissioner may decide will give a fair diffusion of risks shall have obligated themselves to take policies immediately upon their authorization, nor shall any policies be issued except such as the insurance commissioner shall have approved as conforming in all respects to the requirements of this chapter. Conformably to the provisions of section 5369 policies may be issued covering claims only in excess of a certain amount. If at any time, by the retirement of members, reduction of number of employees, or other cause, the membership of any association shall appear to the insurance commissioner no longer to afford a fair diffusion of risks, he may suspend or forbid the further issue of policies until the former conditions of the association have been restored.

Policies to issue when.

Sec. 5396. The affairs of all associations incorporated under this chapter shall be managed by such officers and directors as may be chosen in manner prescribed by the by-laws of the association: *Provided*, Every member shall be entitled to cast at least one ballot in all elections and votes; that any member having had for six months an average of more than 100 and not more than 500 employees to whom he is bound to pay compensation under this chapter shall be entitled to cast two ballots; that each additional 500 employees shall entitle such member to an additional ballot; and that no member shall be entitled to cast more than eight ballots.

Officers.

Votes.

Sec. 5397. Each association shall have power to prescribe and enforce reasonable rules for safety regulations on the premises of its members, and for that purpose its inspectors shall have free access to all such premises during regular working hours.

Rules for safety.

Sec. 5398. Each association shall have power to determine the comparative premium rates for each occupation or risk insured by it and to prescribe rates of cash premiums sufficient to cover the current cost. Said premium rates shall prevail for the fiscal year of the association, but annually they may be changed at any time by the directors. The current cost herein specified shall be such an amount as is estimated to cover the expenses and the claims or portions of claims payable within the same fiscal year within which they originated. Members of each association shall be required to pay yearly in advance cash premiums for current costs, and in addition thereto an amount in negotiable notes sufficient to maintain a reserve equal to that required of stock or commercial casualty companies by the general statutes for similar classes of risks. These notes shall be payable on the call of the treasurer of the association, as they may be required to meet estimated losses or expenses in excess of the current cost or to meet claims covering losses not payable within the same fiscal year within which the claim originated. The directors may, in their discretion, fix rates of interest on either notes or balances.

Premiums.

Sec. 5399. If an association is not possessed of funds sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses, upon the members liable to assessment therefor, in proportion to their several liabilities.

Assessments.

Sec. 5400. The funds of each association shall be invested by the directors in the same classes as securities and in the same manner in which the funds of domestic life insurance companies are by law required or permitted to be invested.

Investments.

Sec. 5401. Each association shall have power to determine the premiums, contingent liabilities, assessments, penalties, and dividends of its members and to enforce or administer the same without the limitations imposed upon corporations without capital stock by section 5356. It shall also have power to make and amend by-laws or regulations not inconsistent with its certificate of incorporation for the prompt, economical, and safe conduct of its affairs. All by-laws and regulations of each association shall be filed with the insurance commissioner, and shall be subject to his approval. If not disapproved by him, they shall go into effect 30 days after filing, or at such later date as may be indicated in the by-laws or regulations.

By-laws and regulations.

Appeals.

SEC. 5402. From any decision or order of the insurance commissioner affecting any association, such association shall have the right of appeal to the superior court for Hartford County.

PART D—WORKMEN'S COMPENSATION INSURANCE.

Effect of insurance contract.

SECTION 5403. Whenever any employer of labor as defined in this chapter shall insure his liability under this chapter with any company authorized to transact a compensation insurance business in this State, the contract of insurance between such employer of labor and such insurer shall be a contract for the benefit of any employee, who shall sustain an injury arising out of and in the course of his employment by such insured by reason of the business operations described in the policy while conducted at any working place therein described or elsewhere in connection therewith, or in the event of such injury resulting in death, for the benefit of the dependents of such employee. Every such policy shall contain an agreement by the insurer to the effect that the insurer shall be directly and primarily liable to the employee and, in the event of his death, to his dependents to pay to him or to them the compensation, if any, for which the employer is liable: *Provided*, Payment in whole or in part of such compensation by either the employer or the insurer shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

Notice of hearings.

SEC. 5404. When a claim for compensation by any such injured employee or the dependent of an injured employee of an employer who has insured his liability as aforesaid, shall not result in a voluntary agreement and a hearing before a compensation commissioner shall be necessary to determine such claim, the insurer shall receive the same notice of such hearing as is by law required to be given to the employer and shall thereupon be a party to the proceeding.

Awards.

SEC. 5405. In any such hearing the commissioner having jurisdiction may make his award directly against such employer, insurer or both, and such award shall be enforceable in all respects as provided by law for enforcing awards against an employer, and the proceedings on hearing, finding, award, appeal and execution shall be in all respects similar to that provided by law as between employer and employee.

Scope and validity of contract.

SEC. 5406. As between any such injured employee or his dependent and the insurer every such contract of insurance shall be conclusively presumed to cover the entire liability of the insured, and no question as to breach of warranty, coverage or misrepresentation by the insured shall be raised by the insurer in any proceeding before the compensation commissioner or on appeal therefrom.

False statements.

SEC. 5407. No statement in an application for a policy of compensation insurance shall vitiate such policy as between the insurer and the insured, unless such statement shall be false and shall materially affect either the acceptance of the risk or the hazard assumed by the insurer.

Forms to be approved.

SEC. 5408. No insurer shall issue any policy of insurance purporting to cover the liability of an employer under the provisions of this chapter, until a copy of the form of such policy shall have been filed with and approved by the insurance commissioner.

Damages for misstatements.

SEC. 5409. When any insured shall knowingly make a material misstatement to any insurer to the damage of such insurer, such insurer may recover just damages resulting from such misstatement.

Duty of insurance companies.

SEC. 5414 (as amended by ch. 142, acts of 1919). Every insurance company writing compensation insurance shall report in writing to the board of commissioners, in accordance with rules by them prescribed, 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 section shall be fined not less than one hundred nor more than one thousand dollars for each offense.

ACTS OF 1919.

CHAPTER 251.—*Claims of injured workmen against the State.*

SECTION 1. It shall be the duty of any compensation commissioner, immediately upon receiving from any department of the state notice by any employee of said department, of claim for compensation, to serve a copy of such notice by mail upon the attorney general, and the awards of the commissioners shall be paid from the funds of the State appropriated by the general assembly for such purpose. Compensation for State employ-ees.

SEC. 2. The sum of \$10,000 is appropriated for the purpose of carrying out the provisions of this act and to be available until the rising of the general assembly at its January session, 1921. Appropriation.

DELAWARE.

ACTS OF 1917.

CHAPTER 233.—*Compensation of workmen for injuries.*

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|---------------------------|--|
| New article. | 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 3193 a. section 94 to 3193 xx. section 143, inclusive. |
| Title. | 3193 a. SECTION 94. This act shall be called and cited as "The Delaware Workmen's Compensation Law of 1917," and shall apply to all accidents occurring within this State, irrespective of the place where the contract of hiring was made, renewed or extended, and shall not apply to any accident occurring outside of this State. |
| Application. | 3193 b. 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— |
| Defenses abrogated. | (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 (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: <i>Provided, however,</i> 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 or the subsequent sections of this article. |
| Exceptions. | 3193 c. 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. |
| Plaintiff to show status. | 3193 d. 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 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 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 |
| Election presumed. | |

conclusively presumed to be coextensive with the contract of hire between the employer and employee.

3193 e. 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. **Waiving ex-
emptions.**

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: **Notice of rejec-
tion:**

(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 employer;**

(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 as 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. **By employee.**

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. **Waivers.**

3193 h. SEC. 101 (as amended by chapter 203, acts of 1919). No compensation shall be paid for any 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 on the fifteenth day after the injury: *Provided, however*, that if such disability continues for four weeks or longer, such compensation shall be computed from the date of the injury. During the first two weeks after the injury, the employer shall furnish reasonable surgical, medical, and hospital services, medicines and supplies, as and when needed, unless the employee refuse to allow them to be furnished by the employer. The cost of such services, medicines and supplies shall not exceed seventy-five dollars. If the employer shall, upon application made to him, refuse to furnish such services, medicines, and supplies, the employee may procure the same, and shall receive from the employer the reasonable cost thereof within the above limitations. If the employee shall refuse reasonable surgical, medical, and hospital services, medicines, and supplies tendered to him by his employer, he shall forfeit the right to compensation for any injury or any increase in his incapacity shown to have resulted from such refusal. **Waiting time.**

**Medical, etc.,
aid.**

Refusal.

- 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 hundred dollars, but without deduction of any amount theretofore paid for compensation or for medical expenses.
- Compensation benefits. 3193 j. SEC. 103 (as amended by chap. 203, acts of 1919). The following schedule of compensation is hereby established for injuries resulting in total disability:
- Total disability; (a) For the first four hundred and seventy-five weeks of total disability, fifty per centum of the wages of the injured employee as defined by this act as amended; but the compensation shall not be more than fifteen dollars per week nor less than five dollars per week, and shall not exceed in the aggregate the sum of four thousand dollars: *Provided*, That if at the time of injury, the employee receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week as compensation. Nothing in this paragraph (a) shall require the payment of compensation after disability shall cease. Should partial disability be followed by total disability, the period of four hundred and seventy-five weeks mentioned in this paragraph (a) of this section shall be reduced by the number of weeks during which compensation was paid for such partial disability.
- Partial 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 centum of the difference between the wages received by the injured employee before the injury and the earning power of the employee thereafter, but such compensation shall not be more than fifteen dollars per week. This compensation shall be paid during the period of such partial disability for work; not, however, beyond two hundred and eighty-five weeks. Should total disability for work be followed by partial disability for work, the period of two hundred and eighty-five weeks mentioned in this subsection (b) shall be reduced by the number of weeks during which compensation was paid for such total disability.
- Schedule. (c) For all permanent injuries of the following classes, the compensation, regardless of the earning power of such injured employee after such injury, shall be exclusively as follows:
- For the loss of a hand, fifty per centum of wages during one hundred and fifty-eight weeks.
- For the loss of an arm, fifty per centum of wages during one hundred and ninety-four weeks.
- For the loss of a foot, fifty per centum of wages during one hundred and thirty-five weeks.
- For the loss of a leg, fifty per centum of wages during one hundred and ninety-four weeks.
- For the loss of an eye, fifty per centum of wages during one hundred and thirteen weeks.
- For the loss of two or more of such members, not constituting total disability, fifty per centum of wages during the aggregate of the period specified for each.
- Unless the board shall otherwise determine from the facts, 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 and 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) 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 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.
- This compensation shall not be more than fifteen dollars per week, nor less than five dollars per week: *Provided*, That, if at the time of injury, the employee receives wages of less than five dollars per week,

then he shall receive the full amount of such wages per week as compensation.

(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.

Compensation
for death.

1393 k. SEC. 104 (as amended by ch. 203, acts of 1919). In case of death, compensation shall be computed on the following basis and distributed to the following persons:

Benefits.

1. To the child or children, if there be no widow nor widower entitled to compensation, twenty-five per centum of wages of deceased, with ten per centum additional for each child in excess of two, with a maximum of sixty per centum, to be paid to their guardian.

2. To the widow or widower, if there be no children, twenty-five per centum of wages.

3. To the widow or widower, if there be one child, forty per centum of wages.

4. To the widow or widower, if there be two children, forty-five per centum of wages.

5. To the widow or widower, if there be three children, fifty per centum of wages.

6. To the widow or widower, if there be four children, fifty-five per centum of wages.

7. To the widow or widower, if there be five children or more, sixty per centum 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 centum 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 centum of wages for one brother or sister, and five per centum additional for each additional brother or sister, with a maximum of twenty-five per centum; such compensation to be paid to their guardian.

Compensation shall be payable under this section to or on account of any child, brother, or sister, only if and while such child, brother, or sister, is under the age of sixteen years. 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 actually dependent upon him for support, 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.

The terms "child" and "children" shall include stepchildren and adopted children and children to whom the deceased stood in loco parentis, if members of the decedent's household at the time of his death and shall include posthumous 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.

Readjustments. 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 or to any other person or class of persons entitled.

Basic wages. The wages upon which death compensation shall be based shall not in any case be taken to exceed thirty dollars per week nor to be less than ten dollars per week. Subject to the provisions of subsection (d) of the last preceding section, this compensation shall be paid during two hundred and eighty-five weeks, and in the case of children entitled to compensation under this section the compensation of each child shall continue after such period of two hundred and eighty-five weeks until such child shall reach the age of sixteen years, at the rate of fifteen per centum of wages if there be but one child, with ten per centum additional for each additional child, with a maximum of sixty per centum. Children are not entitled to compensation during the period that compensation is payable to their mother or father, except as herein provided.

Notice of accidents. 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 of some one 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.

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.

Medical examinations. 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 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 at-

tended 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.

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.

Agreements.

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.

Notice of disagreement.

Decision.

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.

Review.

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.

Procedure.

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 from the record (which shall include a typewritten copy of the evidence and the finding and award of the board), without the aid of a jury, and the court may reverse, affirm, or modify the award of the board, or remand the cause to the board for a rehearing. In case any cause shall be remanded to the board for a rehearing, the procedure and the rights of all parties to such cause shall be the same as in case of the original hearing before the board. The prothonotary shall not require any deposit or security to cover the costs incident to the taking of any appeals under this article.

Awards.

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 court after the date of such appeal, but the court may extend the time for adequate cause shown.

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

Decisions of courts.

- 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 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.
- Medical advisers. 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.
- Alien beneficiaries. 3193 s. SEC. 112. Compensation under this article to alien dependent widows and children not residents of the United States, shall be one-half of the amount provided in each case for residents; and the employer may at any time commute all future installments of compensation payable to alien dependents, not residents of the United States, by paying to such alien dependents the then value thereof, calculated in accordance with the provisions of 3193 t. section 113 of the act to which this is an amendment. Alien widowers, parents, brothers, and sisters, not residents of the United States, shall not be entitled to any compensation. Nonresident alien dependents may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases, the consular officers shall have the right to receive for distribution to such nonresident alien dependents, 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.
- 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, sec. 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 the 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 (as amended by chap. 203, acts of 1919). 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 savings bank or 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.
- 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.

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 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 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.

Limitation of one year.

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.

Industrial accident board.

Term.

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."

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.

Organization.

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. 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.

Expenses.

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.

Duties.

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 information, record all awards, and shall have power to compel the attendance of witnesses.

It shall have the power to issue subpoenas 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 subpoenas issued by any member of said board. Any subpoena, process, or order of said board, or any notice or paper requiring service, may be served by any sheriff, deputy sheriff, consta-

Powers.

ble, 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 subpoenaed, 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. Each member of the board shall receive an annual salary of twenty-five hundred dollars. 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, or the employee, or the dependents of such employee.
- Witness fees. Costs.** 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.** 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 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 literature as it shall deem requisite to facilitate and promote the efficient administration of this article.
- Accidents to be reported.** 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. 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 made in accordance with this section shall not be evidence against the employer in any proceedings 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 as hereinbefore provided. Not to be used as evidence.

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. Insurance.

3193 z. Sec. 119 (as amended by chapter 203, acts of 1919). 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. Same.

Whenever a self-insurer under this section shall enter into an agreement to pay compensation to an injured employee or his dependents in case of his death, or whenever an award shall be made by the board in favor of such injured employee or his dependents in case of his death, the employer shall pay the full liability under said agreement or award to a savings bank or trust company in accordance with the provisions of 3193 u. section 114, and the said fund, together with all interest arising from the investment thereof, shall be held and paid out in accordance with the provisions of said last-mentioned section. Failure on part of the employer to make such payment within 30 days after such an agreement or award shall forthwith terminate the right of such employer to carry his own insurance. Self-insurance.

3193 aa. Sec. 120. Every employer accepting the compensation provisions of this article shall within 60 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. Evidence of compliance.

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 than 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: Failure.

- (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. Suits.

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.

3193 bb. Sec. 121. Whenever an employer has 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. Certificate.

tificate 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 associa-
tions.

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 premium dues, 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 an 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 knowledge, 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 enforceable 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 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.

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.

Contractors.

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.

Intoxication, etc.

3193 kk. Sec. 130. Whenever an 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 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.

Joint employment.

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 the same) shall be paid forthwith, when collected, to the employee or the dependents.

Actions against third parties.

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.

Status of payments.

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 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 the former injury) for the subsequent injury in the same amount as if the previous injury had not occurred.

Suspension of payments.

- Construction. 3193 oo. SEC. 134. Whenever in this article the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter gender shall be included.
- Employers. 3193 pp. SEC. 135. The following shall constitute employers subject to the provisions of this article:
 Every person, firm, association, and corporation (excepting the employers mentioned in 3193 vv. sections 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.
- Employees. 3193 qq. SEC. 136. The term "employee" as used in this article shall be construed to mean—
 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 workers' own home, or on other premises not under the control or management of the employer.
- Injury. 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 effect when reasonably treated as aforesaid, and occurring within two hundred and eighty-five weeks after the accident.
- Restrictive clause. 3193 ss. SEC. 138. The term "personal injury" sustained by accident arising out of and in the course of the employment:
 (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.
- Dependent. 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 of the deceased, and guardians of infants or trustees for incompetent persons.
- Wages. 3193 uu. SEC. 140 (as amended by chapter 203, acts of 1919). Wherever in this act 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; nor shall it include amounts deducted by the employer, under the contract of hiring, for labor, material, supplies, tools, or other things furnished or paid for by the employer, and necessary for the performance of such contract by the employee. 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 earn-

ings 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 five and one-half times his average earnings at such rate for a working day of ordinary length, excluding earnings from overtime, and using as a basis of calculation his earnings during so much of the preceding six months as he worked for the same employer.

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.

Exemptions.

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.

Interstate commerce.

3193 xx. Sec. 143 (as amended by chapter 203, acts of 1919). This act shall begin and take effect from the first day of January, A. D. 1918.

Act in effect.

If any provision of this article shall be held to be void or unconstitutional it is hereby provided that all other portions of the same, which are not expressly held to be void or unconstitutional, shall continue in full force and effect.

Provisions severable.

Approved April 2, 1917.

177982°—21—Bull. 272—26

DISTRICT OF COLUMBIA.

ACTS OF 1919—SIXTY-SIXTH CONGRESS.

PUBLIC No. 6.—*Compensation of workmen for injuries—Public employees.*

Act extended. SECTION 11. All the provisions of the act of Congress approved September 7, 1916, 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,"² are hereby extended to Scope. employees of the government of the District of Columbia so far as they may be applicable, except to those members of the police and fire departments of the District of Columbia who are pensioned or pensionable under the provisions of the District of Columbia appropriation act approved September 1, 1916. Such compensation as the commission provided for in said act may award to employees of the government of the District of Columbia shall be paid in the manner provided by law for the payment of the general expenses of the government of the District of Columbia. For carrying out the provisions of this section there is appropriated \$5,000; and the commissioners of the District of Columbia shall submit annually to Congress, through the Secretary of the Treasury, estimates of appropriations necessary for the foregoing purpose.

Approved July 11, 1919.

² See under United States.

HAWAII.

ACTS OF 1915.

Act No. 221.—*Compensation of workmen for injuries.*

SECTION 1 (as amended by act No. 227, acts of 1917). This act shall apply to any and all industrial employment, as hereinafter defined. If a workman 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.

SEC. 2. This act shall apply to employees (other than officials as hereinafter defined) of the Territory, and all counties, and all other political subdivisions within the Territory now existing or which may hereafter be created. Public employ-
ments.

SEC. 3. 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. Injuries not
covered.

SEC. 4. 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. Remedy exclu-
sive.

Employers who hire workmen within this Territory to work outside of the Territory may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this Territory by accident arising out of and in the course of such employment; and all contracts of hiring in this Territory shall be presumed to include such an agreement.

SEC. 5. When any 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. Liability of
third persons.

SEC. 6. No contract, rule, regulation, or device whatsoever shall operate to relieve the employer in whole or in part from any liability created by this act. Contracting
out.

SEC. 7. If death results from the injury within six months, the employer or the insurance carrier shall pay to the persons entitled to compensation or, if there be none, then to the personal representative of the deceased employee, burial expenses not to exceed one hundred dollars (\$100); 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 15: Death benefits.

(a) To the dependent widow or widower, if there be no dependent children, forty per centum.

(b) To the dependent widow or widower, if there be one or two dependent children, fifty per centum, or if there be three or more dependent

children, sixty per centum. 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.

(c) If there be no dependent widow or widower, but a dependent child or children, then to such child or children thirty per centum, with ten per centum additional for each child in excess of two, with a maximum of fifty per centum, to be divided equally among such children if more than one.

(d) If there be neither dependent widow, widower, nor child, but there be a dependent father or mother, then to such parent, if wholly dependent forty per centum, or if partially dependent twenty-five per centum, 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 twenty-five per centum for one such dependent and five per centum additional for each additional such dependent, with a maximum of forty per centum, to be divided equally among such dependents if more than one.

Dependents.

SEC. 8. The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of this act:

A child if under sixteen years of age, or incapable of self-support and unmarried, whether ever 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 sixteen 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.

An alien shall not be considered a dependent within the meaning of this act unless actually residing within the United States, and any alien dependent leaving the United States shall thereupon lose all right to any benefits under this act.

Periods of compensation.

SEC. 9. 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 three hundred and twelve weeks.

To a widower, during disability or until remarriage, but in no case to exceed three hundred and twelve weeks.

To or for a child, until sixteen 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 one hundred and four weeks beyond said age of sixteen years.

To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed three hundred and twelve weeks.

To or for a grandchild, brother, or sister, during dependency as hereinbefore defined, but in no case to exceed three hundred and twelve 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.

Definitions.

SEC. 10. As used in this act the term "child" includes stepchildren, adopted children, posthumous children, and illegitimate children, acknowledged previous to the injury, but does not include married children unless dependent. The terms "brother" and "sister" in-

clude 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.

Sec. 11. In computing death benefits the average weekly wages of the deceased employee shall be considered not to be more than thirty-six dollars (\$36) nor less than five dollars (\$5); but the total weekly compensation shall not exceed in any case the average weekly wages computed as provided in section 15, nor shall the amount of compensation paid in any case exceed in the aggregate the sum of five thousand dollars (\$5,000).

Basic wages.

Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependent 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 accident board to decide between them.

What payments a defense.

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 9.

Subsequent death.

The compensation of a person who is insane shall be paid to his or her guardian.

Sec. 12 (as amended by act No. 227, acts of 1917). During the disability the employer shall furnish reasonable surgical, medical, and hospital services and supplies not exceeding the amount of one hundred 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 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 expenses 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.

Refusal to accept.

Sec. 13 (as amended by act No. 227, acts of 1917). 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 sixty per centum of his average weekly wages, but not more than eighteen dollars (\$18) nor less than three dollars (\$3) a week. In no case shall the weekly payments continue after the disability ends, nor longer than three 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 permanent disability shall be made until after two weeks from the date of injury.

Total disability.

In case of an employee whose average weekly wages are less than three dollars (\$3) 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 three 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 three hundred and twelve weeks.

In the case of the following injuries the disability caused thereby shall be deemed total and permanent, to wit:

- (1) The total and permanent loss of 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) The loss of one hand and one foot.
- (5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or of one leg and one arm.
- (6) An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive.

Partial disability.

Sec. 14 (as amended by act No. 227, acts of 1917). (a) Partial disability. 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 centum 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 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.

Schedule.

(b) Permanent partial disability. In case of disability partial in character but permanent in quality the compensation shall be fifty per centum of the average weekly wages and shall be paid to the employee for the period named in the schedule as follows:

Thumb. For the loss of a thumb, sixty weeks.

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks.

Second finger. For the loss of a second finger, thirty weeks.

Third finger. For the loss of a third finger, twenty-five weeks.

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks.

Phalange of thumb or finger. 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.

Great toe. For the loss of a great toe, thirty-eight weeks.

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks.

Phalange of toe. 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.

Hand. The loss of a hand, two hundred and forty-four weeks.

Arm. For the loss of an arm, three hundred and twelve weeks.

Foot. For the loss of a foot, two hundred and five weeks.

Leg. For the loss of a leg, two hundred and eighty-eight weeks.

Eye. For the loss of an eye, one hundred and twenty-eight weeks.

Ear. 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.

Loss of use. 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. 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).

Other cases. In all other cases in this class of disability the compensation shall be fifty per centum 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. 15. 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, or the terms 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.

Computation of wages.

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 larger regular wages, only such larger wages shall be taken into consideration in computing his average weekly wages.

Sec. 16. Any payments made by the employer or his insurer to the injured workman 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 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 under sections 13 and 14.

Advances.

Sec. 17. 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.

Time of payments.

Sec. 18. 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 fixed by the board.

Lump sums.

Sec. 19. Whenever for any purpose the board deems it expedient, any lump sum which is to be paid as provided in section 18 shall be paid by the employer to some suitable person or corporation appointed by the circuit court in the jurisdiction of which the injury occurred 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 any one else who is liable therefor.

Trustees.

Sec. 20. After an injury and during the period of disability, the workman, whenever 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

Medical examinations.

- 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.
- Notice and claim.** SEC. 21. No proceedings under this act for compensation for an 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 three months after the date of the injury; or, in case of death, then within three months 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. 22. Such notice and such claim shall be made 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.
- How given.** SEC. 23. 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 of notice.** SEC. 24. A notice given under the provisions of section 21 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, had knowledge of the accident or that the employer has not been prejudiced by such delay or want of notice.
- Incompetents.** SEC. 25. 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 guardian, or next friend.
- Industrial accident board.** SEC. 26. There shall be a board created, to be known as the industrial accident board, in each county, consisting of five members to be appointed by the governor, as provided by section 80 of the Organic Act. Each board shall elect its own chairman. Members of the boards shall hold office for five years except that when the boards are first constituted one member for each board shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one member shall be appointed to each board every year for the full term of five years. Outgoing members shall be eligible for reappointment. It shall be the duty of the county or city and county attorney, as the case may be, to act as attorney for the board in all matters coming before the board whenever requested to so act.
- Jurisdiction.** SEC. 27. Each board shall have jurisdiction over the injuries occurring within the county for which it is appointed, or occurring to employees of residents of the county while such employees are without the Territory, or on vessels operated by residents of such county: *Provided*, That if the principal business or occupation of the employer concerned or of the owner of the vessel is carried on in another county, the board of such other county shall have such jurisdiction.
- Salaries and expenses.** SEC. 28. The members of such boards shall serve without remuneration, except that they may be allowed their reasonable traveling and other expenses while proceeding to, attending, and returning from attendance of meetings of the board, or reasonably incurred in the discharge of their duties, which board may employ such assistance and clerical help as it may deem necessary, and fix the compensation of all persons so employed. All such salaries and expenses shall be paid out

of such funds as shall be appropriated by the legislature for the use of such boards.

Sec. 29. Each board may make rules not inconsistent with this act for carrying out the provisions of this act. Process and procedure under this act shall be as summary and simple as reasonably may be. The board, or any member thereof, shall have the power to subpoena witnesses, administer oaths, and to examine such of the books and records of the parties to a proceeding as relate to the questions in dispute. The circuit 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. The board 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 this act. Such blanks shall also be furnished by the board to the clerk of the circuit court who shall furnish the same to any employer or employee free of charge, but subject, however, to any rules and regulations the board shall make relating thereto.

Rules.

Powers.

Blanks.

Sec. 30 (as amended by act No. 227, acts of 1917). 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.

Agreements.

Such agreements 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. 31 (as amended by act No. 227, acts of 1917). 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: *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.

Awards.

Committee of arbitration.

Sec. 32. 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.

How formed.

Sec. 33. 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 Territory, and the award of the committee, together with a statement of its findings of fact, rulings of law, and any other matters pertinent to the question arising before it, shall be filed with the industrial accident board of the respective county. A copy of the award shall be immediately sent to the parties. Unless a claim for a review is filed by either party within ten days after the sending of the award, it shall be enforceable under the provisions of section 39.

Hearings and awards.

Sec. 34 (as amended by act No. 227, acts of 1917). Each industrial accident board may appoint a duly qualified impartial physician to examine the injured employee and to report.

Medical examination.

- Fees and ex- Sec. 35. The fees and expenses of arbitrators under section 33 and
penses. of physicians under section 34 shall be paid from the funds appropri-
ated by the legislature for the use of the respective boards.
- Review of Sec. 36. If an application for review is made to any board, or if the
award. 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.
- Modification. Sec. 37. On the application of any party on the ground of a change
of 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 pre-
viously 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 send to the parties a copy of the award, but
this section shall not apply to a commutation of payments under sec-
tion 18.
- Appeals. Sec. 38. An award of the board, in the absence of fraud shall be
final and conclusive between the parties except as provided in section
37, unless within ten days after a copy has been sent to the parties either
party appeals to the circuit court of the circuit in which said board is
located. In the County of Hawaii the circuit court shall be that of the
fourth circuit. In case of every such appeal the right of a trial by jury
shall be deemed to be waived unless claimed within ten days from the
date such appeal is entered. Said court may by proper rules prescribe
the procedure to be followed in the case of such appeals.
- Enforcement of Sec. 39 (as amended by act No. 227, acts of 1917). Any party in
award. 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.
- Costs. Sec. 40. If the committee of arbitration, industrial accident 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 it may assess the whole cost of the
proceedings upon the party who has so brought, prosecuted, or defended
them.
- Powers of Sec. 41. All questions arising under this act, if not settled by agree-
board. ment 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 enforceable by the circuit court
under the provisions of section 39. There shall be a right of appeal from
decisions of the board to the circuit court as provided in section 38, but
in no case shall such an appeal, either under this section or under sec-
tion 38, operate as a supersedeas or stay unless the board or the circuit
court shall so order.

Sec. 42. The circuit court, upon the filing with it of a certified copy of a decision of the industrial accident board ending, diminishing, or increasing compensation previously awarded, shall revoke or modify its prior decree or judgment so that it will conform to said decision. Revision of decrees.

Sec. 43. If a workman who has been hired in this Territory 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 Territory, even though such injury was received outside this Territory. Injuries outside the Territory.

If a workman who has been hired outside of this Territory is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the State or Territory where he was hired, he shall be entitled to enforce against his employer his rights in this Territory if his rights are such that they can reasonably be determined and dealt with by the board and the court in this Territory.

Sec. 44. 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 unpaid wages for labor. Preferences.

Sec. 45 (as amended by act No. 227, acts of 1917). 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 not be a valid claim against the person to or for whom said services were rendered unless and until approved by the board. Assignments.
Fees.

Sec. 46. Employers, but not including the territorial or the municipal bodies mentioned in section 2, shall secure compensation to their employees in one of the following ways: Security for payments.

(1) 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 this Territory; or

(2) By obtaining and keeping in force guarantee insurance with any company authorized to do such guarantee business within the Territory; or

(3) By depositing and maintaining with the territorial treasurer security satisfactory to the board securing the payment by said employer of compensation according to the terms of this act.

(4) Upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits herein provided, no insurance or security shall be required, and the employer shall make such payments directly to his employees as they may become entitled to receive under the terms and conditions of this act.

Any person who willfully misrepresents any fact in order to obtain the benefits of this section shall be guilty of a misdemeanor.

Any decision of the board rendered under the provisions of subdivisions 3 and 4 of this section with respect to the amount of security required or refusing to permit no security to be given shall be subject to review on appeal by the circuit court in like manner as appeals are permitted under section 38 of this act.

Sec. 47 (as amended by act No. 227, acts of 1917). If the insurance so effected is not under subdivisions 3 or 4 of section 46 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. Notice of insurance.

Sec. 48. If an employer fails to comply with the provisions of section 46 he shall be liable to a penalty for every day during which such failure continues, of one dollar (\$1) for every employee, to be recovered in an action brought by the chairman of the board in the name of the Territory, and the amounts so collected shall be paid into the territorial treasury and be a special fund for the use of the board. It shall be the duty of the county attorney of each county to prosecute such suits, if so requested by the board. The board may, however, in its discretion, for good cause shown, remit any such penalty in whole or in part, provided the employer in default forthwith secures compensation as provided in section 46. Failure to secure compensation.

- Furthermore, if any employer shall be in default under section 46, for a period of thirty days, he may be enjoined by the circuit court from carrying on his business while such default continues.
- Provisions of policies.** of Sec. 49 (as amended by act No. 227, acts of 1917). 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.
- Knowledge of employer.** of Sec. 50. 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, decisions, or awards rendered against the employer for the payment of compensation under the provisions of this act.
- Insolvency of employer.** of Sec. 51. 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.
- Notice of cancellation.** Sec. 52. No policy or contract of insurance or guaranty issued by a stock company or mutual association 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 Territorial treasurer and also served on the board and the employer.
- Public employees.** Sec. 53. The Territory, and each county, and any other political subdivision of the Territory, which is liable to its employees for compensation may insure with any authorized insurance carrier.
- Burden of cost.** Sec. 54. No agreement by an employee to pay any portion of the premium paid by his employer, to contribute to a benefit fund or department maintained by such employer, or to the cost of mutual or other insurance 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 and on conviction thereof shall be punished by a fine not to exceed two hundred and fifty dollars (\$250.).
- Inspections.** Sec. 55. The board shall have the right to inspect the plants and establishments of all employers in the Territory, and the inspectors designated by the board shall have free access to such premises during regular working hours and at other reasonable times.
- Report of accidents.** Sec. 56. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment, when known to him or brought to his attention. As soon as practicable after the occurrence of an injury causing absence from work for one day or more a report thereof shall be made in writing by the employer to the board on blanks to be procured from the board for the purpose.

Upon the termination of the disability of the injured employee, the employer shall make a supplemental report upon blanks to be procured from the board for that purpose. 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 twenty-five dollars (\$25) 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.

SEC. 57. 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.

Interstate commerce.

SEC. 58. Annually on or before the first day of February the board of each county shall make a report to the governor, which shall be transmitted to the legislature and which shall include a properly classified statement of the expenses of the board, together with any other matters which the board deems proper to report, including any recommendations it may desire to make.

Reports of industrial accident boards.

SEC. 59. Whenever under this act any award, order, rule, regulation, or decision is required or authorized to be made by the board or by a committee of arbitration the action of a majority of the members of such board or committee shall be considered as the action of such board or committee, respectively, as the case may be.

Acts of majority.

SEC. 60 (as amended by act No. 227, acts of 1917). In this act, unless the context otherwise requires:

Definitions.

(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 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 insured it includes his insurer as far as applicable.

(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 a person whose employment is purely casual or not for the purpose of the employer's trade or business, or whose remuneration from any one employer, excluding pay for overtime, exceeds thirty-six dollars (\$36) a week. 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 guardian or next friend.

(c) "Injury" or "personal injury" includes death resulting from injury within six months.

(d) 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.

(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.

Public employment means employment by the Territory, or by a county, or by any political subdivision of the Territory now existing or which may hereafter be created. It does not include the employment

of public officials who are elected by popular vote or who receive salaries exceeding eighteen hundred dollars (\$1,800) a year.

(f) The word "board" or words "industrial accident board," whenever used in this act, unless the context shows otherwise, shall be taken to mean the industrial accident board of the respective county.

(g) "Partial disability." Diminished ability to obtain employment owing to disfigurement resulting from an injury may be held to constitute partial disability.

(h) "Wages" shall include the market value of board, lodging, fuel, and other advantages which can be determined 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.

(i) "Insurance carrier" shall include stock corporations or mutual associations from any of which employers have obtained workmen's compensation insurance or guaranty insurance in accordance with the provisions of this act.

(j) The word "county" includes the city and county of Honolulu.

(k) Any term shall include the singular and plural and both sexes where the context so requires.

Provisions sev-
erable.

SEC. 61. 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.

False represen-
tations.

SEC. 62. If for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, anyone willfully makes a false statement or representation, he shall be guilty of a misdemeanor and liable to a fine of not exceeding two hundred and fifty dollars (\$250).

Prior injuries.

SEC. 63. The provisions of this act shall not apply to injuries sustained, or accidents which occur, prior to the taking effect hereof.

Rules of con-
struction.

SEC. 64. (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(b) 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.

Title.

SEC. 66. This act may be cited as the "Workmen's compensation act."

Approved this 28th day of April, 1915.

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 employ- ment.

Sec. 3. None of the provisions of this act shall apply to:

Em ployments 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.

PART II.

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.

Right accrues, when.

Injuries not covered. Sec. 5. No compensation shall be allowed for an injury caused (1) by the employe'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 employe 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 employe, 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 employe 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 employe 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 employe 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 employes 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 employes shall be at least equivalent to those herein provided.

(b) If contributions are required from employes 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 employes 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 employes 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 employe, 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 employe'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 com-

pensation 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.

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.

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

Dependents.

Periods of compensation.

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 non-resident 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 step-brothers 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.

The compensation of a person who is insane shall be paid to his or her guardian.

Medical, etc., attendance.

Sec. 16. The employer shall provide 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.

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.

Employees' payments.

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.

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.

Total disability.

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.

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:

Presumptions.

- (a) The total and permanent loss of sight in both eyes.
- (b) The loss of both feet at or above the ankle.
- (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.

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.

Partial disability.

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 metacarpel 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 |
| 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.

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. **Voluntary 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. **Times of payments.**

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. **Lump sums.**

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.

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. **Trustees.**

PART IV.

SEC. 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. **Medical examinations.**

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 **Notice and claim.**

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, 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 hearing 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.

Sec. 36. The salary of each member of the board shall be three thousand dollars per year. Salaries.

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. General provisions.

Sec. 38. The board shall have a seal bearing the following inscription: "Industrial accident board, State of Idaho, seal." 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. Seal.

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. Office.

Sec. 40. The board shall employ such assistance and other employees as it may deem necessary to carry out the provisions of this act. Employees.

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. Salaries, etc.

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 approved by the State board of examiners. Payment of salaries.

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. Expenses.

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. Forms.

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. Reports.

Sec. 46. The board shall have power and authority to charge and collect the following fees: 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 subpoena witnesses, administer oaths, and to examine such of the books and records of the parties to a proceeding as relate to the 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 subpoenaed 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 subpoenaed.

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 enforceable 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 enforceable 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.

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 send to the parties a copy of the award, but this section shall not apply to a commutation of payments under section 27.

Modifications.

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.

Appeals.

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.

Enforcement.

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.

Costs.

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 enforceable 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.

Powers of board.

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.

Revision of decrees.

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.

Injuries outside of 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.

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.

Status of awards.

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.

PART VIII.

Security of pay- SECTION 65. Employers, but not including the State or the municipal ments. 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,* 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.

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. Effect of notice to employer.

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. Insolvency.

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. Notice of cancellation.

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. Public corporations.

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. Deductions from wages.

PART IX.

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. State insurance fund.

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."

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 recess of the legislature it shall be subject to confirmation by the senate at its next ensuing session. Manager.

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 Powers and duties.

- 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 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 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 deposit 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.

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.

Investments.

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.

Expenses.

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.

Classifications.

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 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.

Separate accounts.

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.

Dividends.

Sec. 93. If the premiums fixed for any class and collected from its members are subsequently found by the State insurance manager to

Assessments.

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 semiannually 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 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.

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.

Reinsurance.

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.

Pay rolls.

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.

Misrepresentations.

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.

Same.

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.

Inspection.

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.

Information confidential.

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.

Premium rates to be approved.

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.

Allotments for payments.

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.

Reports.

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.

Public corporations.

PART X.

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

Reports of accidents.

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 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 com-
merce.

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 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 accepted 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.

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. Board.

Sec. 110-h. "Partial disability." Diminished ability to obtain employment owing to disfigurement resulting from an injury may be held to constitute partial disability. Partial disability.

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. Wages.

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. Surety.

Sec. 110-k. Any terms shall include the singular and both sexes where the context so requires. Number and sex.

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. Provisions severable.

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 "Workman's compensation act." Title.

Approved March 16, 1917.

177982—21—Bull. 272—28

ILLINOIS.

ACTS OF 1913.

Compensation of workmen for injuries.

(Page 335.)

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.

(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.

(b) Every employer within the provisions of this act who has elected to provide [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 1st 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.

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 employee, 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 1 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.

Withdrawals.

(d) Any such employer or employee may, without prejudice to any existing right or claim, withdraw his election to reject this 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. 538, acts of 1919). The provisions of this act hereinafter following shall apply automatically, and without election to the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation, and

to all employers and their employees, engaged in any of the following enterprises or businesses which are declared to be extrahazardous, namely:

1. The erection, maintaining, removing, remodeling, altering, or demolishing of any structure, except as provided in subparagraph 8 of this section.
2. Construction, excavating or electrical work, except as provided in subparagraph 8 of this section.
3. Carriage by land or water and loading or unloading in connection therewith, including the distribution of any commodity by horse-drawn or motor-driven vehicle where the employer employs more than three employees in the enterprise or business, except as provided in subparagraph 8 of this section.
4. The operation of any warehouse or general terminal storehouses.
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.

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 purpose of that action be conclusively presumed to have filed his notice of nonelection.

Pleadings.

(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:

Certificate.

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.

SEC. 4 (as amended by act, p. 505, acts of 1917). The term "employer" as used in this act shall be construed to be:

Employers.

1. The State, and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.
2. 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. 505, acts of 1917). The term "employee" as used in this act, shall be construed to mean:

1. Every person in the service of the State, county, city, town, township, incorporated village or school district, body politic or municipal corporations 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.

2. 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. 538, acts of 1919). 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 obligations 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 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, husband, child or children who at the time of injury were 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 and fifty dollars, and not more in any event than three thousand five hundred dollars.

(c) If no amount is payable under paragraphs (a) or (b) of this section and the employee leaves any parent, child, or children, grandparent or grandchild, who at the time of injury were 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 dependent collateral 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 paragraphs (a), (b), (c), or (d) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses to be paid by the employer to the undertaker or to the person or persons incurring the expense of burial.

(f) All compensation, except for burial expenses provided 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 to the persons who form the basis for determining the amount of compensation to be paid by the employer, the respective shares to be in the proportion of their respective dependency at the time of the injury on the earnings of the deceased: *Provided*, That the industrial commission or an arbitrator thereof may, in its or his discretion, order or award the payment to the parent or grandparent of a child for the latter's support the amount of compensation which but for such order or award would have been paid to such child as its share of the compensation payable, which order or award may be modified from time to time by the commission in its discretion with respect to the persons to whom shall be paid the amount of said order or award remaining unpaid at the time of said modification.

The payments of compensation by the employer in accordance with the order or award of the industrial commission shall discharge such employer from all further obligation as to such compensation.

In a case where any of the persons who would be entitled to compensation is living at any place outside of the United States, then payment shall be made to the personal representative of the deceased employee. The distribution by such personal representative to the persons entitled shall be made to such persons and in such manner as the commission shall order.

(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.

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.

Increase for children.

- Disability. SEC. 8 (as amended by act, p. 538, acts of 1919). The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:
- Medical, etc., aid. (a) The employer shall provide the necessary first aid medical and surgical services; all necessary hospital services during the period for which compensation may be payable; also all necessary medical and surgical services for a period not longer than eight weeks, not to exceed, however, an amount of two hundred dollars, and in addition such medical or surgical services in excess of such limits as may be necessary during the time such hospital services are furnished. All of the foregoing services shall be limited to those which are reasonably required to cure and relieve from the effects of the injury. 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 centum of the earnings, but not less than \$7 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: *Provided*, That in the case where temporary total incapacity for work continues for a period of four weeks from the day of the injury, then compensation shall commence on the day after the injury.
- 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 paragraphs (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 limitation as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to fifty per centum 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.
- 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 this section, for the specific loss herein mentioned, as follows, but shall not receive any compensation for such injuries under any other provisions of this act:
1. For the loss of a thumb, or the permanent and complete loss of its use, fifty per centum 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 centum 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 centum 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 centum 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 centum 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 centum of the average weekly wage during thirty weeks.

9. For the loss of one toe other than the great toe, fifty per centum 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 centum 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 the 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 centum 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 centum 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 centum 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 centum 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 centum 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 centum 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 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, or the permanent and complete loss of use 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.

(f) In case of complete disability, which renders the employee wholly and permanently incapable of work, compensation equal to fifty per centum of his earnings, but not less than \$7 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), 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.

Permanent
total disability.

(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, par-

Death during
compensation
period.

ents, 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 ben-
efits.

(h) In no event shall the compensation to be paid exceed fifty per centum of the average weekly wage or exceed \$12 per week in amount; nor, except in case 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 a guardian.

Payments.

(i) All compensation 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 for
children.

(j) 1. Wherever in this section there is a provision for fifty per centum, such per centum shall be increased five per centum for each child of the employee under 16 years of age at the time of the injury to the employee until such per centum shall reach a maximum of sixty-five per centum.

2. Wherever in this section a weekly minimum of \$7 is provided; such minimum shall be increased in the following cases to the following amounts:

\$8 in case of any employee having one child under the age of 16 years at the time of the injury to the employee.

\$9 in a case of an employee having two children under the age of 16 years at the time of the injury to the employee.

\$10 in a case of an employee having three or more children under the age of 16 years at the time of the 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 the injury to the employee.

\$14 in case of an employee with two children under the age of 16 years at the time of the 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.

4. The increases in the above per centum 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 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 centum 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 ap-

pointed 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.

Sec. 10. The basis for computing the compensation provided for in sections 7 and 8 of the act shall be as follows: Computing compensation.

(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 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 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.

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 Limit of liability.

the employment according to the provision 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 representative 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. 538, acts of 1919). The salary of each of the members of the commission appointed by the governor shall be five thousand dollars (\$5,000) per year. The commission shall appoint a secretary and shall employ such assistants and clerical help as may be necessary.

The salary of the arbitrators designated by the commission shall be at the rate of three thousand dollars (\$3,000) per year.

The members of the commission 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 commission shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed 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.

Sec. 15. The industrial commission 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.

Jurisdiction.

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, subpoena and examine witnesses, to issue subpoenas *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 subpoenas for the attendance of such witnesses and production of such books, papers, records, and documents as shall be designated in said applications: *Providing, however,* That the parties applying for such subpoena shall advance the officer and witness fees provided for in suits pending in the circuit court. Service of such subpoenas 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 subpoena 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 subpoena from such court on a refusal to testify therein.

Powers.

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 thereof of five cents per one hundred words for the original and three cents per one hundred words for each copy of such transcript.

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 connection with this act, or for which payment is to be made under this act or rendered in securing any right under this act.

Fees.

Sec. 17. The board shall cause to be printed and furnish free of charge upon request of 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

Blanks and records.

filing thereof; and such other notices as may be required by the terms and intentment 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. 538, acts of 1919). Any disputed question of law or fact shall be determined as herein provided:

Arbitration.

(a) It shall be the duty of the industrial commission 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 determination by a committee shall be made by petitioner filing with the commission his election in writing with his petition or by the other party filing with the commission 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 commission, 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 commission 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 commission shall appoint a person to fill the vacancy and notify the parties to that effect. The party filing his election for a committee of arbitration shall with his election deposit with the commission the sum of twenty dollars, to be paid by the commission 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 commission. The members of the committee of arbitration appointed by either of the parties or one appointed by the commission to fill a vacancy by reason of the failure of one of the parties to appoint, shall not be a member of the commission 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 commission, which commission 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 commission 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 commission and in the absence of fraud shall be conclusive: *Provided*, That such industrial commission 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 commission.

(c) The industrial commission may appoint, at its own expense, a duly qualified, impartial physician to examine the injured employee and report to the commission. The fee for this service shall not exceed five dollars and traveling expenses, but the commission may allow additional reasonable amounts in extraordinary cases. The fees and the payment thereof of all attorneys and physicians for services authorized by the commission 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 commission.

Physician.

(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 commission may, in its discretion, reduce or suspend the compensation of any such injured employee.

Insanitary practices.

(e) If a petition for review and agreed statement of facts or stenographic report is filed, as provided herein, the industrial commission 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 commission 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.

Review.

Such review and hearing may be held in its office or elsewhere as the commission may deem advisable: *Provided*, That the taking of testimony on such hearing may be had before any member of the commission and in the event either of the parties may desire an argument before others of the commission such argument may be had upon written demand therefor filed with the commission 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 commission: *Provided*, That the commission shall give ten 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 commission in its decision 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 receipt of notice of the commission's decision, or within such further time, not exceeding thirty days, as the commission may grant, file with the commission 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 commission, 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 any member of the commission. 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 commission 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 commission, and shall be subject to review as hereinafter provided.

(f) The decision of the industrial commission, acting within its powers, according to the provisions of paragraph (e) of this section shall, in the absence of fraud, be conclusive, unless reviewed as in this paragraph hereinafter provided.

Decision conclusive.

(1) The circuit court of the county where any of the parties defendant may be found shall by writ of certiorari to the industrial commission have power to review all questions of law presented by such record, except as arise in a proceeding in which under paragraph (b) of this section a decision of the arbitrator or committee of arbitration has become the decision of the industrial commission. Such writ shall be issued by the clerk of such court upon praecipe. Service upon any member of the industrial commission or the secretary thereof

Review by court.

shall be service on the commission and service upon other parties interested shall be by scire facias, or service may be made upon said commission 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 commission and the last known place of residence of the other parties in interest at least ten days before the return day of said writ. Such writ by writ of certiorari shall be commenced within twenty days of the receipt of notice of the decision of the commission.

The industrial commission shall not be required to certify the record of their proceedings to the circuit court, unless the party commencing the proceedings for review in the circuit court, as above provided, shall pay to the commission the sum of five cents per one hundred words of testimony taken before said commission and three cents per one hundred words of all other matters contained in such record.

(2) No such writ of certiorari shall issue unless the one against whom the industrial commission shall have rendered an award for the payment of money shall upon the filing of his praecipe for such writ filed with the clerk of said court a bond conditioned that if he shall not successfully prosecute said writ, 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 commission and the 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 industrial commission. If the decision is set aside and the facts found in the proceedings before the commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the industrial commission for further proceedings, and may state the questions requiring further hearing, and give such other instructions as may be proper.

Judgments and orders of the circuit court under this act shall be reviewed only by the supreme court upon a writ of error which the supreme court in its discretion may order to issue, if applied for not later than the second day of the first term of the supreme court following the rendition of the circuit court judgment or order sought to be reviewed: *Provided*, That if the first day of said term is less than thirty days from the rendition of said judgment or order, then application for said writ of error may be made not later than the second day of the second term following the rendition of said judgment or order.

The writ of error when issued shall operate as a supersedeas.

The bond filed with the praecipe for the writ of certiorari or order in this paragraph shall operate as a stay of the judgment or order of the circuit court until the time shall have passed within which an application for a writ of error can be made, and until the supreme court has acted upon the application for a writ of error if such application is made.

The decision of a majority of the members of a committee of arbitration or of the industrial commission shall be considered the decision of such committee or commission, respectively.

Judgment.

(g) Either party may present a certified copy of the decision of the industrial commission, 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 commission 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 said court shall render a judgment in accordance therewith; and in case where the employer does not institute proceedings for review of the decision of the industrial commission 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 commission; which commission 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 commission 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.

(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 commission 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 such review, compensation payments may be reestablished, increased, diminished or ended: *Provided*, That the commission shall give fifteen days' notice to the parties of the hearing for review. *And provided, further*, Any employee, upon any petition for such 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 hearing of the commission upon said petition and three days in addition thereto, and such employee, shall, at the discretion of the commission, 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 commission as costs and deposited with the petition of the employer.

(i) Each party, upon taking any proceedings or steps whatsoever before any arbitrator, committee of arbitration, industrial commission or court, shall file with the industrial commission 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 commission. *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 commission.

(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 witness 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.

(k) In any case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the commission may award compensation additional to that otherwise payable under this act equal to 50 per centum of the amount payable at the time of such award.

SEC. 20. The industrial commission 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 commission, seems advisable.

SEC. 21 (as amended by act, p. 538, acts of 1919). 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

Review of awards.

Reports.

Exemption, etc., of payments.

any lien, debt, penalty or damages. A decision or award of the industrial commission against an employer for compensation under this act, or a written agreement by an employer to pay such compensation shall, upon the filing of a certified copy of the decision or said agreement, as the case may be, 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 mortgages, trust deeds, or for wages or taxes, and such liens may be enforced in the manner provided for the foreclosure of mortgages under the laws of this State. 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.

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 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's personal representative or beneficiary hereunder except after approval by the industrial commission.

Notice. SEC. 24 (as amended by act, p. 538, acts of 1919). No proceedings for compensation under this act shall be maintained unless notice of the accident has been given to 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 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 and a receipt therefor or a statement of the amount of compensation paid shall have been filed with the commission: *Provided*, That no employee who after the accident returns to the employment of the employer in whose services he was injured shall be barred for failure to make such claim if an application for adjustment of such claim is filed with the industrial commission within eighteen months after he returns to such employment and the said commission shall give notice to the employer of the filing of such application in the manner provided in this act.

SEC. 25. Any employer against whom liability may exist for compensation under this act, may, with the approval of the industrial commission, be relieved therefrom by: Employers' options.

(a) Depositing the commuted value of the total unpaid compensation for which such liability exists, computed at three per centum 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 commission: *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 commission.

SEC. 26 (as amended by act, p. 538, acts of 1919). (a) Any employer who shall come within the provisions of section 3 of this act, and any other employer who shall elect to provide and pay the compensation provided for in this act shall: Guaranty of payments.

(1) File with the commission a sworn statement showing his financial ability to pay the compensation provided for in this act; or

(2) Furnish security, indemnity, or a bond guaranteeing the payment by the employer of the compensation provided for in this act; or

(3) Insure to a reasonable amount his liability to pay such compensation in some corporation 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 compensation provided for in this act; and

(5) Upon becoming subject to this act and thereafter as often as the commission may in writing demand, file with the commission in form prescribed by it evidence of his compliance with the provisions of this paragraph.

(b) 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 commission, upon the approval of which the commission shall send to the employer written notice of its approval thereof. The filing with the commission of evidence of compliance with paragraph (a) of this section as therein provided shall constitute such compliance until 10 days after written notice to the employer of the disapproval by the commission. Approval by commission.

(c) Whenever the industrial commission shall find that any corporation, company, association, aggregation of individuals, or other insurer affecting workmen's compensation insurance in this State shall be insolvent, financially unsound, or unable to fully meet all payments and liabilities assumed or to be assumed for compensation insurance in this State, or shall practice a policy of delay or unfairness toward employees in the adjustment, settlement, or payment of benefits due such employees, the said industrial commission may, after reasonable notice and hearing, order and direct that such corporation, company, association, aggregation of individuals, or insurer shall from and after a date fixed in such order discontinue the writing of any such workmen's compensation insurance in this State. Subject to such modification of said order as the commission may later make on review of said order, as herein provided, it shall thereupon be unlawful for any such corporation, company, association, aggregation of individuals, or insurer to effect any workmen's compensation insurance in this State. Any such order made by said industrial commission shall be subject to review by the courts, as in the case of other orders of said industrial commission: *Provided*, That upon said review the circuit court shall have power to review all questions of fact as well as of law. Ouster of insolvent, etc., insurers.

Failure to provide guaranty.

(d) The failure or neglect of an employer to comply with the provisions of paragraph (a) of this section shall be deemed a misdemeanor punishable by a fine equal to ten cents per each employee of such employer, at the time of such failure or neglect, but not less than one dollar not more than fifty dollars, for each day of such refusal or neglect until the same ceases. Each day of such refusal shall constitute a separate offense.

Insurance.

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 discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

(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.

Insurer liable, when.

SEC. 28 (as amended by act, p. 538, acts of 1919). In the event the employer does not pay the compensation for which he is liable, then an insurance company, association, or insurer which may have insured such employer against such liability shall become primarily liable to pay to the employee, his personal representative or beneficiary the compensation required by the provisions of this act to be paid by such employer. The insurance carrier may be made a party to the proceedings to which the employer is a party and an award may be entered jointly against the employer and the insurance carrier.

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 person 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 this 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 or to be paid under this act, and all cost, attorneys' fees, and reasonable expenses incurred by such employer in making such collection and enforcing such liability.

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. Accidents to be reported.

SEC. 31 (as amended by act, p. 538, acts of 1919). Anyone engaging in any business or enterprise referred to in subsections 1 and 2 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. Contractors.

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 procedure 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 commission or committee of arbitration provided for in this act.

Penalties.

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.

Approved June 28, 1913.

INDIANA.

ACTS OF 1915.

CHAPTER 106.—*Compensation of workmen for injuries.*

PART I.

SECTION 1. This act shall be known as "The Indiana Workmen's Title.
Compensation Act."

SEC. 2 (as amended by chapter 165, acts of 1917). 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 the employment, and shall be bound thereby, unless he shall have given prior to any accident resulting in injury or death notice to the contrary in the manner herein provided. This act shall not apply to railroad employees engaged in train service. Acceptance presumed.

SEC. 3. Either an employer or an employee, who has excepted 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. Waiver by notice.

The notice of exemption and the notice of acceptance heretofore referred to shall be given 30 days prior to any accident resulting in injury or death: *Provided*, That if any such injury occurred less than 30 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 a substantial form prescribed by the industrial board 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 board.

SEC. 4. 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; 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 3, to the other party to such contract that the provisions of this act other than sections 10, 11, and 67 are not intended to apply. Presumption as to contracts.

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.

SEC. 5 (as amended by chapter 57, acts of 1919). Every employer who accepts the compensation provisions of this act shall insure the payment of compensation to his employees and their dependents in the manner hereinafter provided, or procure from the industrial board a certificate authorizing him to carry such risk without insurance, and while such insurance or such certificate remains in force he or those conducting his business shall be liable to any employee and his dependents for personal injury or death by accident arising out of and in the course of employment only to the extent and in the manner herein specified. Insurance required.

- Remedy ex-clusive. SEC. 6. The rights and remedies herein granted to an employee subject to this act on account of personal injury or death by accident 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 or death.
- Violation of statute. SEC. 7. Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.
- Willful misconduct, etc. SEC. 8 (as amended by chapter 57, acts of 1919). No compensation shall be allowed for an injury or death due to the employee's intentionally self-inflicted injury, his intoxication, his commission of a felony or misdemeanor, his willful failure or refusal to use a safety appliance, his willful failure or refusal to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous place, his willful failure or refusal to perform any statutory duty or to any other willful misconduct on his part. The burden of proof shall be on the defendant.
- Exemptions. SEC. 9 (as amended by chapter 57, acts of 1919). This act, except section 67, shall not apply to casual laborers, as defined in clause (b) of section 76, nor to farm or agricultural employees, nor to domestic servants, nor to the employers of such persons, unless such employees and their employers file with the industrial board their voluntary joint election to be so bound.
- Defenses abrogated. SEC. 10. Every employer who elects not to operate under this act shall not in any suit at law by an employee 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.
- Employee rejecting act. SEC. 11. Every 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.
- Rejection by both parties. SEC. 12. 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 had rejected the terms of this act, and in any suit brought against him the employer shall not be permitted to avail himself of any of the common-law defenses cited in section 11.
- Liability of third persons. SEC. 13 (as amended by chapter 57, acts of 1919). Whenever an injury or death, 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, or his dependents, in case of death, at his or their option, may claim compensation from the employer or proceed at law against such other person to recover damages or may proceed against both the employer and such other person at the same time, but he or they shall not collect from both; and, if compensation is awarded and accepted under this act, the employer, having paid compensation or having become liable therefor, may collect in his own name or in the name of the injured employee, or, in case of death, in the name of his dependents from the other person in whom legal liability for damage exists, the compensation paid or payable to the injured employee or his dependents.
- Principals and contractors. SEC. 14 (as amended by chapter 57, acts of 1919). The State, any political division thereof, any municipal corporation, any corporation, partnership, or person, contracting for the performance of any work without exacting from the contractor a certificate from the industrial board showing that such contractor has complied with section 68 of this act, shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to an accident arising out of and in the course of the performance of the work covered by such contract.

Any principal contractor, intermediate contractor, or subcontractor, who shall sublet any contract for the performance of any work, without requiring from such subcontractor a certificate from the industrial board, showing that such subcontractor has complied with section 68 hereof, shall be liable to the same extent as such subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract.

The State, any political division thereof, any municipal corporation, any corporation, partnership, person, principal contractor, intermediate contractor, or subcontractor, paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses under the foregoing provisions of this section, may recover the amount paid from any person who, independently of such provisions, would have been liable for the payment thereof.

Every claim, filed with the industrial board under this section, shall be instituted against all parties liable for payment, and said board, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

SEC. 15 (as amended by chapter 57, acts of 1919). 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.

SEC. 16. 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.

SEC. 17. No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

SEC. 18 (as amended by chapter 57, acts of 1919). The provisions of this act except sections 3, 4, 10, 11, and 12, shall apply to the State, to all political divisions thereof, to all municipal corporations within the State, to persons, partnerships, and corporations engaged in mining coal, and to the employees thereof.

SEC. 19. This act, except section 67, 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.

SEC. 20. Every employer and employee under this act, except as provided in section 19, 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.

SEC. 21. The provisions of this act shall not apply to injuries or death nor to accidents which occurred prior to the taking effect of the act.

PART II.

SECTION 22 (as amended by chapter 57, acts of 1919). Unless the employer or his representative shall have actual knowledge of the occurrence of an injury or death at the time thereof or shall acquire such knowledge afterward, the injured employee or his dependents, as soon as practicable after the injury or death resulting therefrom, shall give written notice to the employer of such injury or death.

Unless such notice is given or knowledge acquired within 30 days from the date of the injury or death, no compensation shall be paid until and from the date such notice is given or knowledge obtained. No lack of knowledge by the employer or his representatives and no want, failure, defect or inaccuracy of the notice shall bar compensation, unless the employer shall show that he is prejudiced by such lack of knowledge or by such want, failure, defect or inaccuracy of the notice, and then only to the extent of such prejudice.

SEC. 23 (as amended by chapter 57, acts of 1919). The notice provided for in the preceding section shall state the name and address of the employees, the time, place, nature, and cause of the injury or death, and shall be signed by the injured employee or by some one

Subrogation.

Waivers.

Preferences.

Assignments,
etc.

Public employ-
ments.

Coal mining.

Interstate com-
merce.

Injuries outside
State.

Prior injuries.

Notice of injury.

Form of notice.

- in his behalf or by one or more of the dependents, in case of death, or by some person in their behalf. Said notice may be served personally upon the employer, or upon any foreman, superintendent or manager of the employer to whose orders the injured or deceased employee was required to conform or upon any agent of the employer upon whom a summons in a civil action may be served under the laws of the State, or may be sent to the employer by registered letter, addressed to his last known residence or place of business.
- Claim.** Sec. 24. The right to compensation under this act shall be forever barred unless within two years after the injury, or if death results therefrom, within two years after such death, a claim for compensation thereunder shall be filed with the industrial board.
- Medical, etc., aid.** Sec. 25 (as amended by chapter 57, acts of 1919). During the first 30 days after an injury the employer shall furnish or cause to be furnished free of charge to the injured employee an attending physician for the treatment of his injuries, and in addition thereto such surgical, hospital and nurse's services and supplies as the attending physician or the industrial board may deem necessary.
- Refusal by employee.** And during the whole or any part of the remainder of the period of disability or impairment resulting from the injury, the employer may continue to furnish such physician, services, and supplies. If, by reason of the nature of the injury or the process of recovery treatment is necessary for a longer period than thirty days, the industrial board may require the employer to furnish such treatment for an additional period, not exceeding thirty days. The refusal of the employee to accept such service and supplies, when so provided by the employer, shall bar the employee from all compensation during the period of such refusal unless, in the opinion of the industrial board, the circumstances justify such refusal.
- Emergency service.** If in an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital, or nurse's services and supplies as herein specified, or for other good reason, a physician other than that provided by the employer treats the injured employee within the first thirty days or necessary and proper surgical, hospital, or nurse's services and supplies are procured within said period, the reasonable cost of such service and supplies shall, subject to the approval of the industrial board, be paid by the employer.
- Charges.** Sec. 26. The pecuniary liability of the employer for 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 examination.** Sec. 27. After an injury and during the period of resulting disability, the employee, if so requested by his employer or ordered by the industrial board, 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 board. The employee shall have the right to have present at any 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 the hearings provided for in this act, or any action at law brought to recover damages against any employer who may have accepted the compensation provisions of this act. If the employee refuses to submit himself to or in any way obstructs such examination, his right to compensation and his right to take or prosecute any proceeding under this act shall be suspended until such refusal or obstruction ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the industrial board the circumstances justify the refusal or obstruction.
- Autopsies.** The employer, or the industrial board, shall have the right in any case of death to require an autopsy at the expense of the party requiring same.
- Waiting time.** Sec. 28 (as amended by chapter 81, acts of 1917). No compensation shall be allowed for the first seven calendar days of disability resulting from an injury, except the benefits provided for in section 25; but if

disability extends beyond that period compensation shall commence with the eighth day after the injury.

SEC. 29 (as amended by chapter 81, acts of 1917). Where the injury causes total disability for work, there shall be paid to the injured employee during such total disability, but not including the first seven days thereof, a weekly compensation equal to fifty-five per cent of his average weekly wages for a period of not to exceed five hundred weeks. Total disability.

SEC. 30 (as amended by chapter 81, acts of 1917). Where the injury causes partial disability for work, there shall be paid to the injured employee during such disability, but not including the first seven days thereof, a weekly compensation equal to one-half of the difference between his "average weekly wages" and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred weeks. Partial disability.

In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period allowed for partial disability.

SEC. 31 (as amended by chapter 57, acts of 1919). For injuries in the following schedule the employee shall receive in lieu of all other compensation, on account of said injuries, a weekly compensation of fifty-five per cent of his average weekly wages for the periods stated for said injuries respectively, to wit: Schedule.

(a) Amputations: For the loss by separation, of the thumb sixty weeks, of the index finger forty weeks, of the second finger thirty-five weeks, of the third or ring finger thirty weeks, of the fourth or little finger twenty weeks, of the hand by separation below the elbow joint two hundred weeks, of the arm above the elbow joint two hundred and fifty weeks, of the big toe sixty weeks, of the second toe thirty weeks, of the third toe twenty weeks, of the fourth toe fifteen weeks, of the fifth or little toe ten weeks, of the foot below the knee joint one hundred and fifty weeks, and of the leg above the knee joint two hundred weeks. The loss of more than one phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two phalanges of a finger shall be considered as the loss of the entire finger. That the loss of not more than one phalange of a thumb or toe shall be considered as the loss of one half of the thumb or toe and compensation shall be paid for one half of the period for the loss of the entire thumb or toe. That the loss of not more than two phalanges of a finger shall be considered as the loss of one half the finger and compensation shall be paid for one half of the period for the loss of the entire finger.

(b) Loss of use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss, by separation, of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and the compensation shall be paid for the same period as for the loss thereof by separation. Loss of use.

(c) Partial loss of use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(d) For injuries resulting in total permanent disability five hundred weeks. Permanent total disability.

(e) For the loss of both hands, or both feet, or the sight of both eyes or any two of such losses in the same accident five hundred weeks.

(f) For the permanent loss of the sight of an eye or its reduction to one-tenth of normal vision with glasses, one hundred and fifty weeks, and for any other permanent reduction of the sight of an eye compensation shall be paid for a period proportionate to the degree of such permanent reduction.

(g) For the permanent and complete loss of hearing, one hundred weeks.

(h) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the industrial board, not exceeding five hundred weeks. Other injuries.

(i) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation, in Disfigurement.

- the discretion of the industrial board, not exceeding two hundred weeks.
- Temporary total disability.** (j) For injuries causing temporary total disability for work there shall be paid to the injured employee during such total disability, but not including the first seven calendar days thereof, a weekly compensation equal to fifty-five per cent of his average weekly wages for a period not to exceed five hundred weeks.
- Temporary partial disability.** (k) For injuries causing temporary partial disability for work, compensation shall be paid to the injured employee during such disability, but not including the first seven calendar days, a weekly compensation equal to fifty-five per cent of the difference between his average weekly wages and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred weeks. In case the partial disability begins after the period of temporary total disability, the latter period shall be deducted from the maximum period allowed for partial disability.
- First seven days.** (l) No compensation shall be allowed on account of injuries producing only temporary total disability to work or temporary partial disability to work for the first seven calendar days of disability resulting from such injuries except the benefits provided for in section 25; but if disability extends beyond that period, compensation shall commence with the beginning of the eighth day of such disability.
- Refusing employment.** SEC. 32. 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 board such refusal was justifiable.
- Subsequent injuries.** SEC. 33. If an employee has sustained a permanent injury in another employment than that in which he received a subsequent permanent injury by accident, such as specified in section 31, he shall be entitled to compensation for the subsequent injury in the same amount as if the previous injury had not occurred.
- Double injuries.** SEC. 34. 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 it be for a permanent injury, such as specified in section 31; 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.
- Two permanent injuries.** SEC. 35. If an employee receives a permanent injury such as specified in section 31, 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.
- When the previous and subsequent permanent injuries result in total permanent 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.
- Death during compensation period.** SEC. 36. When an employee receives or is entitled to compensation under this act for an injury 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 of kin dependent upon him for support.
- Death benefits.** SEC. 37 (as amended by ch. 57, acts of 1919). When death results from the injury within three hundred weeks, there shall be paid a weekly compensation equal to fifty-five per cent of the deceased's average weekly wages during such remaining part of three hundred weeks as compensation shall not have been paid to the deceased on account of the injury, in equal shares to all dependents of the employee wholly dependent upon him for support at the time of the death. If the employee leaves dependents only partially dependent upon his earning for support at the time of his injury, the weekly compensation to those dependents shall be in the same proportion to the weekly compensation for persons wholly dependent as the average amount contributed weekly by the deceased to such partial dependent bears to his average weekly wages at the time of the injury.

SEC. 38 (as amended by ch. 57, acts of 1919). The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

Dependents.

(a) A wife upon a husband with whom she is living at the time of his death, or upon whom the laws of the State impose the obligation of her support at such time.

(b) A husband, who is both physically and financially incapable of self-support, upon his wife with whom he is living at the time of her death.

(c) A child under the age of eighteen years upon the parent with whom he or she is living at the time of the death of such parent.

(d) A child under eighteen years upon the parent with whom he or she may not be living at the time of the death of such parent, but upon whom, at such time, the laws of the State impose the obligation to support such child.

(e) A child over the age of eighteen years who is either physically or mentally incapacitated from earning his or her own support, upon a parent with whom he or she is living at the time of the death of such parent, or upon whom the laws of the State at such time impose the obligation of the support of such child.

As used in this section, the term "child" shall include stepchildren, legally adopted children, posthumous children, and acknowledged illegitimate children, but shall not include married children; the term "parent" shall include step-parents and parents by adoption.

In all other cases questions of total dependency shall be determined in accordance with the fact as the fact may be at the time of the death, and the question of partial dependency shall be determined in like manner as of date of the injury. If there is more than one person wholly dependent, the death benefit shall be divided equally among them; and persons partially dependent shall receive not [no] part thereof.

If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among the partial dependents according to the relative extent of their dependency.

The dependency of a widow, widower, or child shall terminate with his or her marriage subsequent to the death of the employee.

The dependency of a child, except a child physically or mentally incapacitated from earning shall terminate with the attainment of eighteen years of age.

SEC. 39 (as amended by ch. 57, acts of 1919). In all cases of the death of an employee from an injury by an accident arising out of and in the course of his employment under such circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding one hundred dollars.

Burial expenses.

SEC. 40. In computing compensation under the foregoing sections the average weekly wages of an employee shall be considered not to be more than twenty-four dollars nor less than ten dollars: *And provided further*, That the total compensation payable under this act shall in no case exceed five thousand dollars (\$5,000).

Basic wages.

SEC. 41. 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 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, unless otherwise hereinafter specified.

Maximum benefits.

Advance payments.

SEC. 42 (as amended by ch. 57, acts of 1919). When so provided in the compensation agreement or in the award of the industrial board, compensation may be paid semimonthly or monthly instead of weekly.

Time of payments.

SEC. 43 (as amended by ch. 57, acts of 1919). After the lapse of twenty-six compensation weeks and the payment in full of twenty-six weeks' compensation, the remainder of the compensation in unusual cases, upon the agreement of the employer and the employee or his dependents, and the approval of the industrial board, may be redeemed,

Lump sums.

in whole or in part, by the cash payment, in a lump sum, of the commutable value of the installments to be redeemed.

The board may, at any time, in the case of permanently disabling injuries of a minor, require that he be compensated by the cash payment in a lump sum of the commutable value of the unredeemed installments of the compensation to which he is entitled.

In all such cases, the commutable value of the future, unpaid installments of compensation shall be the present value thereof, at the rate of three per cent interest, compounded annually.

Trustees

SEC. 44. Whenever the industrial board deems it expedient, any lump sum under the foregoing section shall be paid by the employer to some suitable person or corporation appointed by the circuit or superior court, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner provided by the board. The receipt of such trustee for the amount as paid shall discharge the employer or anyone else who is liable therefor.

Reviews.

SEC. 45 (as amended by ch. 57, acts of 1919). The power and jurisdiction of the industrial board over each case shall be continuing, and, from time to time, it may, upon its own motion or upon the application of either party, on account of a change in conditions, make such modification or change in the award, ending, lessening, continuing, or extending the payments, previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this act.

Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

The board shall not make any such modification upon its own motion, nor shall any application therefor be filed by either party after the expiration of one year from the termination of the compensation period fixed in the original award, made either by an agreement or upon hearing. The board may at any time correct any clerical or mistake of fact in any finding or award.

Small awards.

SEC. 46 (as amended by ch. 57, acts of 1919). When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen years of age, do not exceed one hundred dollars, the payment thereof may be made directly to such employee or dependent, except when the industrial board shall order otherwise.

Payments to minors.

Whenever the aggregate payments of compensation, due to any person under eighteen years of age, exceed one hundred dollars, the payment thereof shall be made to a trustee, appointed by the circuit or superior court, or to a duly qualified guardian, or to a parent upon the order of the industrial board. The payment of compensation, due to any person eighteen years of age or over, may be made directly to such person.

Incompetents.

SEC. 47 (as amended by ch. 57, acts of 1919). If an injured employee or a dependent is mentally incompetent or a minor at the time when any right or privilege accrues to him under this act, his guardian or trustee may, in his behalf, claim and exercise such right or privilege.

Limitation not to run.

SEC. 48 (as amended by ch. 57, acts of 1919). No limitation of time provided in this act shall run against any person who is mentally incompetent or a minor dependent, or a minor, so long as he had no guardian or trustee.

Two or more employers.

SEC. 49. 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 employees: *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.

PART III.

Board created.

SECTION 50 (as amended by ch. 57, acts of 1919). There is hereby created the industrial board of Indiana, which shall consist of five members, two of whom shall be attorneys, and not more than three of

whom shall be of the same political party, appointed by the governor, one of whom he shall designate as chairman.

The chairman of said board shall be an attorney of recognized qualifications.

Each member of the board shall hold his office for four years, and until his successor is appointed and qualified, unless removed by the governor, except that the three present members of said board shall continue to serve for and during the terms for which they have been appointed, unless removed as hereinafter provided, and of the two additional members hereby provided for, one shall be appointed for two years and one for four years. Thereafter, upon the expiration of the term of any member, the governor shall appoint his successor for the full term of four years.

Each member of the board shall devote his entire time to discharge of the duties of his office and shall not hold any other position of trust or profit or engage in any occupation or business interfering with or inconsistent with the discharge of his duties as such member.

Any member of said board may be removed by the governor at any time for incompetency, neglect of duty, misconduct in office, or other good cause, to be stated in writing in the order of removal.

In case of a vacancy in the membership of said board, the governor shall appoint for the unexpired term.

Sec. 51 (as amended by ch. 57, acts of 1919). The annual salary of each member of the board shall be four thousand dollars.

Salaries, etc.

The board may appoint a secretary at a salary of not more than twenty-five hundred dollars a year and may remove him. The secretary shall have the authority to administer oaths and issue subpoenas.

The board, subject to approval of the governor, may employ and fix the compensations of such clerical and other assistants as it may deem necessary. The clerical and other assistants shall be employed with special reference to their qualifications for the discharge of the duties assigned to them, and without regard to their political affiliations, except that not more than sixty per cent of such employees shall be of the same political party: *Provided*, That none of the present employees shall be discharged merely to establish such political proportion.

The members of the 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 expenses shall be sworn to by the person who incurred the same and shall be approved by the chairman of the board before the payment is made.

All salaries and expenses of the board 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.

Sec. 52. The rights, powers, and duties conferred by law upon the State bureau of inspection of the State of Indiana are hereby continued in full force and are hereby transferred to the industrial board hereby created and shall be held and exercised by them under the laws heretofore in force and the said State bureau of inspection is hereby abolished. The present chief inspector of said State bureau of inspection is hereby made a member of said industrial board until the expiration of one year from the date of the taking effect of this act and until his successor is appointed and qualified. The deputy inspectors heretofore appointed by the governor as deputy inspectors in said State bureau of inspection, to wit: Inspector of buildings, factories and workshops, inspector of boilers, and inspector of mines and mining, together with their assistant inspectors, are hereby continued in their respective office, at their present salaries, until the expiration of the terms for which they are respectively appointed and until their successors are appointed and qualified, and each of them respectively shall have and perform all the rights, powers, and duties now held and performed by each of them respectively, together with such other rights, powers, and duties as may be prescribed by said industrial board. Upon the terminations of the said terms of office for which said deputy inspectors have been appointed, said industrial board, with the concurrence of the governor, shall appoint their successors to serve during the pleasure of said industrial board.

Transfer of powers.

Labor commis- Sec. 53. All the rights, powers, and duties of the labor commission abolished. of the State of Indiana, heretofore created and subsequently transferred to and vested in the State bureau of inspection, are hereby abolished.

Offices. Sec. 54. The board shall be provided with adequate offices in the capitol or some other suitable building in the city of Indianapolis in which the records shall be kept and its official business be transacted during regular business hours; it shall also be provided with necessary office furniture, stationery, and other supplies.

The board or any member thereof may hold sessions at any place within the State as may be deemed necessary.

Rules. Sec. 55. The board 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.

Powers. The board or any member thereof 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 have examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

The county sheriff shall serve all subpoenas of the board and shall receive the same fees as now provided by law for like service in civil actions; each witness who appears in obedience to such subpoena of the board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts.

The circuit or superior court shall, on application of the board or any member thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records.

Forms. Sec. 56 (as amended by chapter 57, acts of 1919). 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 literature as it shall deem requisite to facilitate or promote the efficient administration of this act. The accident reports and reports of attending physicians shall be the private records of the board, which shall be open to the inspection of the employer, the employee and their legal representatives, but not to the public unless, in the opinion of the board, the public interest shall so require.

Records. That the board shall make to the governor annually, on or before the first day of December, a report of its work during the preceding fiscal year, in such form as it may determine, with the approval of the governor. In order to prevent the accumulation of unnecessary and useless files of papers, the board, in its discretion, may destroy all papers which have been on file for more than two years, when there is no claim for compensation pending, or, when compensation has been awarded either by agreement or upon hearing, and more than one year has elapsed since the termination of the compensation period as fixed by such board.

Reports. Sec. 57 (as amended by chapter 81, acts of 1917). If after seven 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 board shall be filed with the board; otherwise such agreement shall be voidable by the employee, or his dependents.

If approved by the board, thereupon the memorandum shall for all purposes be enforceable by court decree as hereinafter specified. Such agreement shall be approved by said board only when the terms conform to the provisions of this act.

Agreements to be filed. Sec. 58 (as amended by chapter 57, acts of 1919). If the employer and the injured employee or his dependents fail to reach an agreement in regard to the compensation payable under this act, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the industrial board, and then disagree as to the continuance of payments under such agreement, because of a change in conditions since the making of such agreement, either party may make an application, to the industrial board, for the determination of the matters in dispute.

Reference to board.

Upon the filing of such application, the board shall set the date of hearing, which shall be as early as practicable, and shall notify the parties in the manner prescribed by the board of the time and place of hearing. The hearing of all claims for compensation, on account of injuries occurring within the State, shall be held in the county in which the injury occurred, except when the parties consent to a hearing elsewhere.

Hearing.

Sec. 59 (as amended by chapter 63, acts of 1917). 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.

Awards.

Sec. 60 (as amended by chapter 63, acts of 1917). 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 the 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 (as amended by chap. 63, acts of 1917). 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.

An award by the full board shall be conclusive and binding as to all questions of the 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 errors 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.

Sec. 62. Any party in interest may file in the circuit or superior court of the county in which the injury occurred, a certified copy of a memorandum of agreement approved by the board or of an order or decision of the board, or of an award of the board unappealed from, or of an award of the board rendered upon an 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.

Enforcement.

Any such judgment of said circuit or superior court unappealed from or affirmed on appeal or modified in obedience to the mandate of the appellate court shall be modified to conform to any decision of the industrial board, ending, diminishing or increasing any weekly payment under the provisions of section 45 of this act, upon the presentation to it of a certified copy of such decision.

Sec. 63 (as amended by chap. 57, acts of 1919). In all proceedings before the industrial board or in a court under this act the costs shall be awarded and taxed as provided by law in ordinary civil action in the circuit court.

Costs.

Sec. 64. The board 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 board not exceeding ten dollars for each examination and report, but the board may allow additional reasonable amounts in extraordinary cases.

Medical examination.

- The fees and expenses of such physician or surgeon shall be paid by the State.
- Fees.** SEC. 65 (as amended by chap. 57, acts of 1919). The fees of attorneys and physicians and charges of nurses and hospitals for services under this act shall be subject to the approval of the industrial board. When any claimant for compensation is represented by an attorney in the prosecution of his claim, the industrial board shall fix and state in the award, if compensation be awarded, the amount of the claimant's attorney's fee. The fee so fixed shall be binding upon both the claimant and his attorney, and the employer shall pay to the attorney out of the award, the fee so fixed and the receipt of the attorney therefor shall fully acquit the employer for an equal portion of the award. The industrial board may withhold the approval of the fees of the attending physician in any case until he shall file report with the industrial board on the form prescribed by such board.
- Settlement of disputes.** SEC. 66. All questions arising under this act, if not settled by agreement of the parties interested therein with the approval of the board, shall be determined by the board except as otherwise herein provided for.
- Reports of injuries.** SEC. 67. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one week after the occurrence and knowledge thereof, as provided in section 22, of an injury to an employee causing his absence from work for more than one day, a report thereof shall be made in writing and mailed to the industrial board on blanks to be procured from the board for the purpose.
- Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of 60 days, then also at the expiration of such period the employer shall make a supplementary report to the board on blanks to be procured from the board for the purpose.
- The said same report shall contain the name, nature, and location of the business of the employer, and 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 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 the board.

PART IV.

- Registration of employers.** SECTION 68 (as amended by ch. 57, acts of 1919). Every employer of the State, except agricultural employers and the employers of domestic servants, shall register annually on or before the first day of September, with the industrial board, and procure the certificate of said board showing such registration. Each such employer shall file an application with the industrial board annually on or before the first day of September, for registration and a certificate thereof, upon a form therefor, prescribed by the industrial board and furnished by it, in which the employer shall state the following facts, to wit: The correct name of the employer, and, if a partnership, both the firm name and the names of the partners. The post-office address of the employer, and, when a partnership, the post-office address of each partner; the nature and location of the business in which the employer is engaged; the number of employees; the sex of employees and the number of each sex, when both sexes are employed. Any employer failing to so file such application with the industrial board and procure a certificate of registration shall be fined not less than ten nor more than one hundred dollars.
- The industrial board shall keep registry by cards of the employers of the State, by counties, arranged in alphabetical order as to the names of the counties and the names of the employers.
- Insurance required.** Every employer under this act shall either insure or keep insured his liability hereunder in some corporation, association, or organization authorized to transact the business of workmen's compensation insurance in this State, or shall furnish to the industrial 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 act. 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.

Self-insurers.

Sec. 69 (as amended by ch. 57, acts of 1919). Every employer who does not exempt himself from the compensation provisions of this act and who does not procure from the industrial board a certificate of his financial ability to pay compensation direct, without insurance, shall within ten days after this act takes effect file with the industrial board in the form prescribed by it, and thereafter within ten days after the termination of his insurance by expiration or cancellation, evidence of his compliance with the insurance provisions of section 68 hereof, and all others relating to the insurance under this act.

Evidence of compliance.

That any employer hereafter coming under the compensation provisions hereof shall in a like manner file like evidence of such compliance on his part.

If such employer refuses or 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 ten dollars nor more than fifty dollars for each day of such refusal or neglect and until the 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 for in section 10.

Violations.

Sec. 70 (as amended by ch. 57, acts of 1919). Whenever an employer has complied with the provisions of section 68 relating to self-insurance, the industrial 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 ten days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the board may grant a new certificate to the employer upon his petition and satisfactory proof of his financial ability.

Certificates.

Sec. 71. For the purpose of complying with the provisions of section 68, groups of employers, to form mutual insurance associations or reciprocal insurance associations subject to such reasonable conditions and restrictions as may be fixed by the industrial board, are hereby authorized. Membership in such mutual insurance associations or reciprocal insurance associations so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with section 68.

Mutual, etc., companies.

Sec. 72. Subject to the approval of the industrial 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 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 contributions.

Substitute schemes.

Such substitute system may be terminated by the industrial board 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 latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act; 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 appellate court.

Sec. 73 (as amended by ch. 57, acts of 1919). No insurer shall enter into or issue any policy of insurance under this act until its policy form shall have been submitted to and approved by the industrial board. The industrial board shall not approve the policy form of any insurance company until such company shall file with it the certificate of the auditor of State showing that such company is authorized to transact the business of workmen's compensation insurance in the State. That the filing of a policy form by any insurance company or reciprocal insurance association with the industrial board for approval shall con-

Policies.

stitute on the part of such company or association a conclusive and unqualified acceptance of each and all of the provisions of this act, and an agreement by it to be bound thereby.

All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this act, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured.

Any provision in any such policy attempting to limit or modify the liability of the company or association issuing the same shall be wholly void.

Provisions re- Every policy of any such company or association must contain the
quired. following provisions:

(a) The insurer hereby assures in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under the provisions of "The Indiana workmen's compensation act."

(b) That this policy is made subject to the provisions of "The Indiana workmen's compensation act," and the provisions of said act relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits to and for said employees, the acceptance of such liability by the insured, the adjustment, trial, and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits and the liability of the insurer to pay the same are and shall be a part of this policy contract as fully and completely as if written herein.

(c) That, as between this insurer and the employee, notice to or knowledge of the occurrence of the injury on the part of the insured (the employer) shall be notice or knowledge thereof, as the case may be, on the part of the insurer, that the jurisdiction of the insured (the employer) for the purpose of "The Indiana workmen's compensation act," shall be the jurisdiction of this insurer, and this insurer shall in all things be bound by and shall be subject to awards, judgments, and decrees rendered against the insured (the employer) under said act.

(d) That this insurer will promptly pay to the person entitled to the same, all benefits conferred by "The Indiana workmen's compensation act," including physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses and all installments of compensation or death benefits that may be awarded or agreed upon under said act; that the obligation of this insurer shall not be affected by any default of the insured (the employer) after the injury or by any default in the giving of any notice required by this policy, or otherwise; that this policy is and shall be construed to be a direct promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital supplies, charges for burial, compensation or death benefits, and shall be enforceable in the name of such person.

(e) That any termination of this policy either by cancellation or expiration shall not be effective as to employees of the insured covered hereby until ten days after written notice of such termination has been received by the industrial board of Indiana, at its office in Indianapolis, Indiana.

That all claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees, or burial expenses may be made directly against either the employer or the insurer or both, and the award of the industrial board may be made against either the employer or the insurer or both.

That if any insurer shall fail or refuse to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail or refuse to comply with any provision of this act, the industrial board shall revoke the approval of its policy form, and shall not accept any further proofs of insurance from it until it shall have paid said award or judgment or complied with the violated provision of the act, and shall have resubmitted its policy form and received the approval thereof by the industrial board.

Agreements to pay.

Sec. 74. 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.

SEC. 75. 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 industrial board.

Presumptions.

Approval.

PART V.

SECTION 76 (as amended by ch. 57, acts of 1919). In this act unless the context otherwise requires:

Definitions.

(a) "Employer" shall include the State and any political division, any municipal corporation within the State, any individual, firm, association, or corporation or the receiver or trustee of the same, or the legal representatives of a deceased person 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, lawfully 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 52 weeks immediately preceding the date of injury, divided by 52; but if the injured employee lost seven or more calendar days during such period, although not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of 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 reason of the shortness of the time during which the employee has been in the employment of his employer or of the casual nature or terms of the 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 52 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 part of the wage contract, they shall be deemed a part of his earnings.

(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 as it shall result from the injury.

SEC. 77. 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.

Provisions severable.

SEC. 78. [Repealed.]

SEC. 80. For the purpose of paying the salaries and expenses of the members of the industrial board and its employees, the sum of \$70,000 or so much thereof as may be necessary is hereby appropriated.

Appropriation.

SEC. 81. The provisions of this act shall not affect pending litigation.

Pending cases.

IOWA.

ACTS OF 1913.

CHAPTER 147 (codified).—*Compensation of workmen for injuries.*

PART I.

- Election presumed. SECTION 2477-m (as amended by chap. 418, acts of 1917). (a) Except as by this act otherwise provided, it shall be conclusively presumed that every employer as defined by this act has elected to provide, secure, and pay compensation according to the terms, conditions, and provisions of this act for any and all personal injuries 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; but this act shall not apply to any household or domestic servant, farm or other laborer engaged in agricultural pursuits, nor persons whose employment is of a casual nature. 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.
- Compulsory as to municipalities. (b) Where the 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 compensation and amount thereof for such injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee.
- Defenses abrogated, when. (c) An employer having the right under the provisions of this act to elect to reject the terms, conditions, and provisions thereof and [who] in such case exercises the right in the manner and form by this act provided, such employer shall not escape liability for personal injury sustained by an employee of such employer when the injury sustained arises out of and in the usual course of the employment because—
- (1) The employee assumed the risks inherent in 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.
- (2) That the injury was caused by the negligence of the 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.
- Suits. (4) [d] In actions by an employee against an employer for personal injury sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this act, it shall be presumed that the injury to the employee was the direct result and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such cases the burden of proof shall rest upon the employer to rebut the presumption of negligence.
- Rejection of law by employer. Every such employer shall be conclusively presumed 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 and until notice in writing of an election to the contrary shall have been given to the employees by posting the same in some conspicuous place at the place where the

business is carried on, and also by filing notice with the Iowa industrial commissioner with return thereon by affidavit showing the date that notice was posted as by this act provided: *Provided, however,* That any employer beginning business after the taking effect of this act and giving notice at once of his desire not to come under the provisions of this act, shall not be considered as under the act: *Provided, however,* That such employer shall not be relieved of the payment of compensation as by this act provided until thirty days after the filing of such notice with the Iowa industrial commissioner, which notice shall be substantially in the following form:

EMPLOYERS' NOTICE TO REJECT.

To the employees of the undersigned, and the Iowa industrial commissioner: Form.

You and each of you are hereby notified that the undersigned rejects the terms, conditions, and provisions to provide, secure, and pay compensation to employees of the undersigned for injuries received as provided in the acts of the _____ (thirty-fifth) general assembly known as chapter — (one hundred forty-seven), and elects to pay damages for personal injuries received by such employee under the common law and statutes of this State modified by subdivisions one, two, three, and four of section one, chapter — (one hundred forty-seven) of the acts of the — (thirty-fifth) general assembly and acts amendatory thereto.

Signed _____

State of Iowa, — County, ss:

The undersigned being first duly sworn deposes and says that a true, correct, and verbatim copy of the foregoing notice was on the — day of _____, 19—, posted at _____. (State fully place where posted.)

Subscribed and sworn to before me by _____, this — day of _____, 19—.

Notary Public.

The employer shall keep such notice posted in some conspicuous place, which shall apply to the employees subsequently employed by the employer with the same force and effect and to the same extent and in like manner as employees in the employ at the time the notice was given.

Where the employer and employee have not given notice of an election to reject the terms of this act, every contract of 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 the employment.

Sec. 2477-m1. No compensation under this act shall be allowed Willful injuries,
etc. for an injury caused:

(a) By the employee's willful intention to injure himself or to willfully injure another; nor shall compensation be paid to an injured employee if injury is sustained where intoxication of the employee was the proximate cause of the injury.

Sec. 2477-m2. (a) The rights and remedies provided in this act for Remedies ex-
clusive. an employee on account of injury shall be exclusive of all other rights and remedies of such employee, his personal or legal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury; and all employees affected by this act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions, and provisions of this act until notice in writing shall have been served upon his employer, and also on the Iowa industrial commissioner, with return thereon by affidavit showing the date upon which notice was served upon the employer.

(b) In the event such employee elects to reject the terms, conditions, and provisions of this act, the rights and remedies thereof shall not Rejection by
employee. apply where an employee brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this

act; and in such actions where the employee has rejected the terms of this act the employer shall have the right to plead and rely upon any and all defenses, including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow-servant shall apply and be available to the employer as by statute authorized unless otherwise provided in this act: *Provided, however,* That if an employee sustains an injury as the result of the employer's failure to furnish or failure to exercise reasonable care to keep or maintain any safety device required by statute or rule, or violation of any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employees, the doctrine of assumed risk in such case growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employer shall be substantially in the following form:

Form.

EMPLOYEES' NOTICE TO REJECT.

To _____ and the Iowa industrial commissioner:
(Name of employer.)

You and each of you are hereby notified that the undersigned hereby elects to reject the terms, conditions, and provisions of an act for the payment of compensation as provided by (chapter one hundred forty-seven of) the acts of the _____ (thirty-fifth) general assembly and acts amendatory thereto, and elects to rely upon the common law as modified by section three of (chapter one hundred forty-seven of) the acts of the _____ (thirty-fifth) general assembly, for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Dated this _____ day of _____, 19—

Signed _____

State of Iowa, _____ County, ss:

The undersigned, being first duly sworn, deposes and says that the written notice was on the _____ day of _____, 19—, served on the within named employer of the undersigned by delivering to _____ a true, correct, and verbatim copy thereof.

(Name of served.)

Subscribed and sworn (or affirmed) to before me by the said _____ this _____ day of _____, 19—

Notary Public.

Information required.

In any case where an employee or one who is an applicant for employment elects to reject the terms, conditions, and provisions of this act, he shall, in addition to the notice required by subdivision (b) of section three of this act, state in an affidavit to be filed with said notice who, if any person, requested, suggested, or demands of such person to exercise the right to reject the provisions of this act. And if request, suggestion, or demand has been made of such employee by any person, such employee shall give and state the name of the person who made the request, suggestion, or demand, and all of the circumstances relating thereto, the date and place when and where made, and persons present, and if it be found that the employer of such employee, or an employer to whom an applicant for employment, or any person a member of the firm, association, corporation, or agent or official of such employer, made a request, suggestion, or demand of such employee or applicant for employment to reject the terms, conditions, and provisions of this act, such request, suggestion, or demand if made under such conditions shall be conclusively presumed to have been sufficient to have unduly influenced such employee or an applicant for employment to exercise the right to reject the terms of this act, and the rejection made under such circumstances shall be conclusively presumed to have been procured through fraud and thereby fraudulently procured, and such rejection shall be null and void and of no effect.

No person interested in the business of such employer, financially or otherwise, shall be permitted to administer the oath to the affidavit required in case as [an] employee or applicant for employment elects to exercise the right to reject the provisions of this act. And the person administering such oath in making such affidavit, shall carefully read the notice and affidavit to such person making such rejection, and shall explain that the purpose of the notice is to bar such person from recovering compensation in accordance with the schedule and terms of this act in the event that he sustains an injury in the course of such employment. All of which shall be shown by certificate of the person administering the oath herein contemplated. The Iowa industrial commissioner, or any person acting for such commissioner, shall refuse to file the notice and affidavit, unless such notice, affidavit, and certificate fully, and in detail, comply with the requirements hereof. And if such rejection, affidavit, and certificate is found insufficient for any cause [it] shall be returned by mail or otherwise to the person who executed the instrument.

Administration of oath.

SEC. 2477-m3. (a) When the employer or employee has given notice in compliance with this act electing to reject the terms thereof such election shall continue and be in force until such employer or employee shall thereafter elect to come under the provisions of this act as is provided in subdivision (b) of this section.

Rejection in force.

(b) When an employer or employee rejects the terms, conditions, or provisions of this act, such party may at any time thereafter elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of the act and which shall become effective when filed with the Iowa industrial commissioner.

Waiver.

SEC. 2477-m4. Where the employer and employee elect to reject the terms, conditions, and provisions of this act, the liability of the employer shall be the same as though the employee had not rejected the terms, conditions, and provisions thereof.

Rejection by both parties.

SEC. 2477-m5. An employer having come under this act, who thereafter elects to reject the terms, conditions, and provisions thereof, shall not be relieved from the payment of compensation to such employee who sustains an injury in the course of the employment before the election to reject becomes effective; and in such cases the employer shall be required to secure the payment of any compensation due or that may become due to such workman, subject to the approval of the Iowa industrial commissioner.

Rejection after election.

SEC. 2477-m6. Where an employee coming under the provisions of this act receives an injury for which compensation is payable under this act and which injury was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof.

Liability of third parties.

(a) The employee or beneficiary may take proceedings both against that person to recover damages and against the employer for compensation, but the amount of the compensation to which he is entitled under this act shall be reduced by the amount of damages recovered.

(b) If the employee or beneficiary in such case recovers compensation under this act, the employer by whom the compensation was paid or the party who has been called upon to pay the compensation, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employee to recover therefor.

SEC. 2477-m7. No contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this act except as herein provided.

Waivers.

SEC. 2477-m8. Unless the employer or representative of such employer shall have actual knowledge of the occurrence of an injury, or unless the employee or some one on his behalf, or some of the dependents or some one on their behalf, shall give notice thereof to the employer within fifteen days of the occurrence of the injury, then no compensation shall be paid until and from the date such notice is given or knowledge obtained; but if notice is given or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtain-

Notice.

ing compensation, unless the employer shall show that he was prejudiced by such want, defect, or inaccuracy, and then only to the extent of such prejudice: *Provided*, That if the employee or beneficiary shall show that his failure to give prior notice was due to mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of another, or to any other reasonable cause or excuse, then compensation may be allowed, unless and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice: *Provided further*, Unless knowledge is obtained or notice given within ninety days after the occurrence of the injury, no compensation shall be allowed. No form of notice shall be required, but may substantially conform to the following form:

FORM OF NOTICE.

Form. To
 You are hereby notified that on or about the .. day of 19.., personal injury was sustained by while in your employ at
 (Give name of place employed and point where located when injury occurred.)
 and that compensation will be claimed therefor
 Signed

but no variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of his employment on or about a specified time at or near a certain place. Notice served upon one on whom an original notice may be served in civil cases shall be a compliance with this act.

The notice required to be given to the employer may be served by any person over sixteen years of age, who shall make return upon a copy of the notice, properly sworn to, showing the date of service where and upon whom served, but no special form of the return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time.

Compensation payable, when. Sec. 2477-m9 (as amended by ch. 220, acts of 1919). If any employee has not given notice to reject the terms, conditions, and provisions of this act, or has given such notice and waived the same as by this act provided, and the employer has not rejected the terms, conditions, and provisions of the act or has given such notice and waived the same and the employee receives a personal injury arising out of and in the course of the employment, compensation shall be paid as herein provided.

Amount. (a) The compensation provided for in this act shall be paid in accordance with the schedule unless otherwise provided.

Medical, etc., aid. (b) At the time of the injury and thereafter during the disability, but not exceeding four weeks of incapacity, the employer, if so requested, by the employee, or anyone for him, or if so ordered by the court or Iowa industrial commissioner, shall furnish reasonable surgical, medical, and hospital services, and supplies therefor, not exceeding one hundred (\$100) dollars: *Provided, however*, That in exceptional cases, an application may be made in writing to the Iowa industrial commissioner for additional surgical, medical, and hospital services, and supplies therefor, in which case a copy of such application shall be mailed to the employer or his insurer. If such application is approved by the commissioner, then the employer shall furnish such additional services and supplies for such period and in such amount as the Iowa industrial commissioner shall order, but in no event to exceed one hundred (\$100) dollars.

(c) Where the injury causes death the compensation under this act shall be as follows:

Funeral, etc., expenses. The employer shall in addition to any other compensation pay the reasonable expense of the employee's last sickness and burial not to exceed one hundred dollars. If the employee leaves no dependents this shall be the only compensation.

Death benefits. (d) If death results from the injury, the employer shall pay the dependents of the employee wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to sixty per cent of his average weekly wages, but not more than fifteen (\$15)

dollars nor less than six (\$6) dollars per week for a period of three hundred weeks.

(e) If the employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid shall be equal to 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 earnings of the deceased at the time of the 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.

(f) Where injury causes death to an employee, a minor, whose earnings were received by the parent, the compensation to be paid the parent shall be two-thirds of the amount provided for payment in subdivision (d), section ten [nine].

Minors.

(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 the injury, then the compensation for the fifth week of incapacity shall be increased by adding thereto an amount equal to two-thirds ($\frac{2}{3}$) of the weekly compensation; if the period of incapacity extends beyond the forty-second (42d) day following the date of the injury, then the compensation for the sixth week of incapacity shall be increased by adding thereto an amount equal to two-thirds ($\frac{2}{3}$) of the weekly compensation; if the period of incapacity extends beyond the forty-ninth (49th) day following the date of the injury, then the compensation for the seventh week of incapacity shall be increased by adding thereto an amount equal to two-thirds ($\frac{2}{3}$) of the weekly compensation; if the period of incapacity extends beyond the forty-ninth (49th) day following the date of the injury, then the compensation thereafter shall be only the weekly compensation provided for in this law.

Waiting time.

Increased benefits.

(h) For injury producing temporary disability, sixty per cent of the average weekly wages received at the time of the injury, subject to a maximum compensation of fifteen dollars and a minimum of six dollars per week: *Provided,* That if at the time of injury the employee receives wages less than six dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks.

Temporary disability.

(i) For disability total in character and permanent in quality, sixty per cent of the average weekly wages received at the time of the injury, subject to a maximum compensation of fifteen dollars per week, and a minimum of six dollars per week: *Provided,* That if, at the time of injury, the employee receives wages less than six dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond four hundred weeks.

Permanent total disability.

(j) For disability partial in character and permanent in quality the compensation shall be as follows:

Partial disability.

For all cases included in the following schedule compensation shall be paid as follows, to wit:

- (1) For the loss of a thumb, sixty per cent of daily wages during forty weeks.
- (2) For the loss of a first finger, commonly called the index finger, sixty per cent of daily wages during thirty weeks.
- (3) For the loss of a second finger, sixty per cent of daily wages during twenty-five weeks.
- (4) For the loss of a third finger, sixty per cent of daily wages during twenty weeks.

(5) For the loss of a fourth finger, commonly called the little finger, sixty per cent of daily wages for fifteen weeks.

(6) For 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 of 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, sixty per cent of daily wages during twenty-five weeks.

(9) For the loss of one of the toes other than the great toe, sixty per cent of daily wages during fifteen weeks.

(10) For 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 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, sixty per cent of daily wages during one hundred fifty weeks.

(13) The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall constitute the loss of an arm, and the compensation therefor shall be sixty (60) per cent of the average weekly wages during two hundred twenty-five (225) weeks.

(14) For the loss of a foot, sixty per cent of daily wages during one hundred twenty-five weeks.

(15) The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall constitute the loss of a leg, and the compensation therefor shall be sixty (60) per cent of the average weekly wages during two hundred (200) weeks.

(16) For the loss of any [an] eye, sixty per cent of daily wages during one hundred weeks.

(a) For the loss of a second or last eye, the other eye having been lost prior to the injury resulting in the loss of the second eye, sixty (60) per cent of the average weekly wages during two hundred (200) weeks.

(17) For the loss of hearing in one ear, sixty (60) 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.

(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 compensated according to the provisions of section twenty-four hundred seventy-seven-m-9 (I) (2477-m-9-i), supplement to the code, 1913.

Other injuries. (19) In all other cases in this, clause (j), the compensation shall bear such relation to the amount stated in the above schedule as the disability bears to those produced by the injuries named in the schedule. Should the employee and employer be unable to agree upon the amount of compensation to be paid in cases not specifically covered by the schedule, the amount of compensation shall be settled according to provisions of this act as in other cases of disagreement.

Amounts. (20) The amounts specified in this clause (j) and subdivisions thereof, shall be subject to the same limitations as to maximum and minimum weekly payments as are stated in clause (h), section ten [nine] hereof.

Death during compensation period. SEC. 2477-m10. Where an employee is entitled to compensation under this act for an injury received, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balances for such injury shall cease and all liability therefor shall terminate.

Medical examinations. SEC. 2477-m11. After an injury, the employee, if so requested by his employer, shall submit himself for examination at some reasonable time and place within the state and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this State, without cost to the employee; but if the employee request, he shall, at his own cost, be entitled to have a physician or physicians of his own selection present to participate in

such examination. The refusal of the employee to submit to such examination shall deprive him of the 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.

Refusal.

SEC. 2477-m12. 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, subject to the provisions of this act, and it shall not be in any wise reduced by contribution from employees.

Burden on employer.

SEC. 2477-m13 (as amended by ch. 270, 336, acts of 1917). When an injured minor employee or a minor dependent or one physically or mentally incapacitated from earning is entitled to compensation under this act, payment shall be made to a trustee appointed by the judge of the district court for each county in the respective judicial districts, and the money coming into the hands of the said trustees shall be expended for the use and benefit of the person entitled thereto under the direction and orders of the judge during term time or in vacation. The trustee shall make annual reports to the court of all money or property received and expended for each person, and for services rendered as trustee shall be paid such compensation by the county as the court may direct by written order directed to the auditor of the county who shall issue a warrant therefor upon the treasurer of the county in which the appointment is made. If the judge making the appointment deems it advisable, a trustee may be appointed to serve for more than one county in the district, and the expenses shall be paid ratably by each county according to the amount of work performed in each county. The trustee shall qualify and give bond in such amount as the judge may direct, which may be increased or diminished from time to time as the court may deem best.

Payments to trustees, when.

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 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 thereunder.

Aliens.

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 the 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 decedent last resided, and give bond as administrator for the protection of such funds as provided by law.

SEC. 2477-m14 (as amended by ch. 270, acts of 1917). In any case where the period of compensation can be determined definitely either party may, upon due notice to the other, apply to any judge of the district court for the county in which the accident occurred for an order commuting future payments to a lump sum: *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. And such judge may make such an order when it shall be shown to his satisfaction that the payment of a lump sum in lieu of future monthly or weekly payments, as the case may be, will be for the best interest

Lump sums.

of the person or persons receiving or dependent upon said compensation, or that the continuance of periodical payments will, as compared with lump-sum payments, entail undue expense or undue hardship upon the employer liable therefor. Where the commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at five per cent per annum. Upon the payment of such amount the employer shall be discharged from all further liability on account of such injury or death, for which said compensation was being paid, and be entitled to a duly executed release, upon filing which the liability of such employer under any agreement, award, finding, or judgment shall be discharged of record.

Computing payments.

SEC. 2477-m15 (as amended by ch. 220, acts of 1919). The basis for computing compensation provided for in 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 in the employment of the same employer 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) The annual earnings, if not otherwise determinable, shall be regarded as three hundred times the average daily earnings in such computation.

(d) If the injured person has not been engaged in the employment for a 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 or in neighboring employments of the same kind have earned during such period. And if this basis of computation is impossible, or should appear to be unreasonable, three hundred times the amount which the injured person earned on an average of those days when he was working during the year next preceding the accident, shall be used as a basis for the compensation.

(e) In case of injured employees who earn either no wages or less than three hundred times the usual daily wage or earnings of the adult day laborer in the same line of industry of that locality, the yearly wage shall be reckoned as three hundred times the average daily local wages of the average wage earner in that particular kind or class of work; or if information of that class is not obtainable, then of the class or kindred or similarity in the same general employment in the same neighborhood.

Seasonal employments.

(f) As to employees employed in a business or enterprise which customarily shuts down and ceases operation during a season of each year, the number of working days which it is the custom of such business or enterprise to operate each year shall be used instead of three hundred as a basis for computing the annual earnings; *Provided*, The minimum number of days which shall be used as a basis for the year's work shall not be less than two hundred.

Overtime, etc.

(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 the employment.

Second injuries.

(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.

Definitions.

SEC. 2477-m16 (as amended by ch. 270, acts of 1917). In this act unless the context otherwise requires:

(a) "Employer" includes and applies to any person, firm, association or corporation, and includes State, counties, municipal corporations, cities under special charter and under commission form of government and shall include school districts and the legal representa-

tives of a deceased employer. Whenever necessary to give effect to section 7 of this act, it includes a principal or intermediate contractor.

(b) "Workman" is used synonymously with "employee," and means any person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship for an employer, except a person whose employment is purely casual or not for the purpose of the employer's trade or business or those engaged in clerical work only, but clerical work shall not include one who may be subjected to the hazards of the business, or one holding an official position or standing in a representative capacity of the employer, or an official elected or appointed by the State, county, school district, municipal corporation, cities under special charter and commission form of government: *Provided*, That one who sustains the relation of contractor with any person, firm, association, corporation or the State, county, school district, municipal corporation, cities under special charter or commission form of government, shall not be considered an employee thereof.

The term "workman" shall include the singular and plural of both sexes. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, legal representatives or where the workman is a minor or incompetent to his guardian or next friend.

(c) The following shall be conclusively presumed to be wholly dependent upon a deceased employee:

Dependents.

(1) The surviving spouse, unless it be shown that the survivor willfully deserted deceased without fault upon the part of the deceased, and if it be shown that the survivor deserted deceased without fault upon the part of deceased, the survivor shall not be regarded as a dependent in any degree. No surviving spouse shall be entitled to the benefits of this act unless she shall have been married to the deceased at the time of the injury, 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.

(2) A child or children under sixteen years of age (and over said age if physically or mentally incapacitated from earning) whether actually dependent for support or not upon the parent at the time of his or her death.

(3) A parent of a minor entitled to the earnings of the employee at the time when the injury occurred, subject to provisions of subdivision (f), section 10 [nine] hereof.

(4) If the deceased employee leaves dependent surviving spouse, the full compensation shall be paid to such spouse; but if the dependent surviving spouse dies before payment is made in full, the balance remaining shall be paid to the person or persons wholly dependent, if any, share and share alike. If there be no person or persons wholly dependent, then payment shall be made to partial dependents.

(5) In all other cases, questions of dependency in whole or in part shall be determined in accordance with the fact as the fact may be at the time of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be equally divided among them, and persons partially 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: *Provided, however*, That when a lump sum is paid as contemplated by this act, the court or commissioner, in making distribution thereof, shall take into consideration the contingent rights of partial beneficiaries or the rights of those who may become such after a wholly dependent child or children become sixteen years of age.

(6) Step-parents shall be regarded in this act as parents.

(7) Adopted child or children or stepchild or children shall be regarded in this act the same as if issue of the body.

(d) "Injury" or "personal injury" includes death resulting from injury.

Injury.

(e) The words "personal injury arising out of and in the course of such employment" shall include injuries to employees whose services

are being performed on, in or about the premises which are occupied, used or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

(f) The words "injury" and "personal injury" shall not include injury caused by the willful act of a third person directed against an employee for reasons personal to such employee or because of his employment.

Disease.

(g) They shall not include a disease except as it shall result from the injury.

(h) The word "court" whenever used in this act, unless the context shows otherwise, shall be taken to mean the district court.

Employees' contributions.

SEC. 2477-m17. (a) Any contract of employment, relief benefit or insurance or 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 not less than ten dollars nor more than fifty dollars for each offense, in the discretion of the court.

No employee 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 or beneficiary hereunder to whom the act applies.

Agreements within 12 days.

SEC. 2477-m18. Any contract or agreement made by any employer or his agent or attorney with any employee or any other beneficiary of any claim under the provisions of this act within twelve days after the injury shall be presumed to be fraudulent.

SEC. 2477-m19. [Repealed.]

Attorneys' fees.

SEC. 2477-m20. No claim of an attorney at law for services in securing a recovery under this act shall be an enforceable lien thereon unless the amount of the same be approved in writing by a judge of a court of record or the Iowa industrial commissioner, which approval may be made in term time or vacation.

Commerce.

SEC. 2477-m21. The provisions of this act shall apply to employers and employees as defined in this act engaged in intrastate commerce and also to those engaged in interstate or foreign commerce for whom a rule 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 or foreign commerce shall be clearly separable and distinguishable from interstate or foreign commerce: *Provided*, That any such employer and workman of such employer working only in this State may, subject to the approval of the Iowa industrial commissioner, and so far as not forbidden by any act of Congress or permitted, voluntarily by written agreement, accept and become bound by the provisions of this act in like manner and with the same force and effect in every respect as by this act provided for other employers and employees.

PART II.

Industrial commissioner.

SECTION 2477-m22 (as amended by ch. 272, acts of 1919). There is hereby created the office of Iowa industrial commissioner, to be appointed by the governor, by and with the consent of the senate. The term of office of the commissioner shall be six years. An appointment may be made to fill a vacancy or otherwise when the senate is not in session, but shall be acted upon at the next session thereof.

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 the powers and perform all of the duties of the industrial commissioner pertaining to his office, and shall receive an annual salary of twenty-four hundred dollars, payable in equal monthly installments, out of the State treasury and in the same manner as are the salaries of other State officials.

Salary, etc.

SEC. 2477-m23. The salary and actual necessary expenses 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 annual salary of the commissioner shall be thirty-three hundred dollars. The commissioner, by and with the consent of the executive council, may fix the salary and appoint a secretary and other assistants and clerical help as may be required and needed: *Provided*, That the salary of the secretary shall not exceed eighteen hundred dollars per annum. The salary and 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 at the end of each calendar month: *Provided, however*, That the expense account may be audited, allowed, and paid at the end of each week. 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, "Iowa Industrial Commissioner's Seal" and the date of organization. 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, attested by the secretary, filed as other bills are required by statute; and a warrant shall issue therefor by the auditor of State upon the treasurer, who shall pay the same out of the funds appropriated for the use of the commissioner as by this act provided. The salaries of all persons under the commissioner shall be audited, allowed, and paid at the end of each month, and expense accounts may be audited, allowed, and paid at the end of each week. The commissioner shall have the power to remove the secretary or any other person appointed to an office by him at any time the commissioner may see fit.

Seal.

Accounts.

It shall be unlawful for any appointee by the commissioner to espouse the election or appointment of any candidate for or to any political office, or to contribute to the campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointment to any political office, and any person performing the duties as an appointee under the commissioner violating the provisions of this act shall be sufficient cause for dismissal and removal from office.

Political activity.

Before entering upon his duties the commissioner shall qualify by taking the oath of his office, that he will support the Constitution of the United States and of the State of Iowa, and will faithfully and impartially, without fraud, fear, or favor, discharge the duties of his office incumbent upon him, as provided by the law of the State of Iowa, to the best of his ability and understanding.

Oath.

There is hereby appropriated out of any money not otherwise appropriated for the use of the commissioner, as contemplated within the terms of this act or acts amendatory thereof, or other statutes relating to the commissioner, his duties and responsibilities empowered by law, the sum of twenty thousand dollars annually, and in addition thereto the executive council shall provide and furnish the commissioner with such printing as may be necessary in the transaction of the business within the contemplation of law.

Appropriation.

SEC. 2477-m24 (as amended by chs. 188, 270, 409, acts of 1917). The commissioner may make rules and regulations not inconsistent with this act for carrying out the provisions of the act. 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. 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

Regulations.

Procedure.

- Oaths.** of the parties. The commissioner shall have the power to subpoena 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 one dollar and fifty cents per diem; for attending before an arbitration committee, one dollar 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 as evidence in any hearing pending before a board of arbitration in workmen's compensation proceeding in connection herewith. 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 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. 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.
- Fees.**
- Memoranda of agreements.** **Sec. 2477-m25** (as amended by ch. 270, acts of 1917). If the employer and the employee reach an agreement in regard to the compensation under this act, a memorandum thereof shall be filed with the Iowa 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. 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. Such agreement shall be approved by said commissioner only when the terms conform to the provisions of this act.
- Arbitrations.** **Sec. 2477-m26.** If the employer and the injured employee or representatives 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 committee of arbitration. The arbitration committee 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 of arbitrators.** **Sec. 2477-m27.** The arbitrators appointed by the parties shall be sworn by the chairman to take the following oath:
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)
- Committee.** **Sec. 2477-m28.** 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 committee of arbitration. The commissioner shall act as chairman, and, if either party does not appoint its member on this committee 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.
- Powers.** **Sec. 2477-m29** (as amended by ch. 220, acts of 1919). The committee of arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be in the city, town, or place where the injury occurred, if within the State. If the injury occurred outside this State the hearings of the committee shall be held in the county seat of this State which is nearest to the

place where the injury occurred unless the interested parties and the Iowa industrial commissioner mutually agree by written stipulation that the same may be held at some other place. The decision of the committee, 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 review is filed by either party within five days from the date of filing the decision with said commissioner, such decision shall be enforceable under the provisions of this chapter.

Sec. 2477-m30. The industrial commissioner may appoint a duly qualified impartial physician to examine the injured employee and make report. The fee for this service shall be five 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 Iowa industrial commissioner or any other person, commission, or court, as to the results of his examination or the condition of the injured employee. Medical examination.

Sec. 2477-m31. The arbitrators named by or for the parties to the dispute shall each receive five dollars as a fee for his services, but the industrial commissioner may allow additional reasonable 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. And 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 committee according to the facts. Arbitrators' fees.

Sec. 2477-m32. 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 committee 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. Review.

Sec. 2477-m33 (as amended by ch. 270, acts of 1917). 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 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. Filing orders in court.

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: Review.

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, Appeals.

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.

Further hearing.

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 proceeding on appeal from an order or decree, costs as between the parties shall be allowed or not, in the discretion of the court.

Review of awards.

SEC. 2477-m34 (as amended by ch. 270, acts of 1917). (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 of 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.

(b) Any notice to be 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.

Sec. 2477-m35. Fees of attorneys and physicians for services under this act shall be subject to the approval of the industrial commissioner unless otherwise provided in this act. Fees to be approved.

Sec. 2477-m36 (as amended by ch. 270, acts of 1917). 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. Reports of accidents.

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, 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 fifty dollars for each offense.

All books, records, and pay rolls of the employers, coming under this act showing or reflecting in any way upon 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, the number of men employed and such other information as may be necessary for the uses and purposes of the commissioner in his administration of the law. But information obtained within the contemplation of this act shall be used for no other purpose than 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 one hundred dollars for each such offense, to be collected by civil action in the name of the State, and paid into the State treasury. Access to books, etc.

Sec. 2477-m37. It shall be unlawful for the commissioner, during his term of office, to serve upon any committee of any political party or espouse the election or appointment of any person for any political office or contribute to any campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointed to any political office. A violation of this section shall be deemed a misdemeanor and upon conviction shall be fined one hundred dollars. Political activity.

Sec. 2477-m38. It shall be unlawful for any person who is a candidate for the appointment as commissioner to make any promise to another, expressed or implied, in consideration of any assistance or influence given or recommendation made that the candidate will, if appointed as commissioner, vote to appoint such person or one whom he may recommend to an office within the power of the commissioner to appoint. A violation thereof shall be deemed a misdemeanor and upon conviction thereof shall be fined one hundred dollars. Pledges.

Sec. 2477-m39. All recommendations made by any person to the commissioner asking the appointment of another as commissioner shall be reduced to writing signed by the person presenting the same, which shall be filed by the governor in his office and open at all reasonable times for public inspection, and all recommendations made by any person to the commissioner for the appointment of another within the Recommendations.

power of the commissioner to appoint, shall be reduced to writing, signed by the person presenting the same, and filed by the commissioner and open for public inspection at all reasonable times and hours. If any person recommending the appointment of another within the contemplation of this act refuse to reduce the same to writing, it shall be the duty of the person to whom the recommendation is made, to make a brief memorandum thereof, stating the name of the person recommended and the name of the person who made the same, which shall be filed as by this act in other cases provided. It shall be unlawful for the commissioner to be financially interested in any business enterprise coming under or affected by this act during his term of office, and any member offending this statute, it shall be sufficient grounds [sic] 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.

Business interests. SEC. 2477-m40. The governor shall remove from office the commissioner on the grounds of inefficiency, neglect of duty, or malfeasance in office, upon written charges having been filed with the executive council and sustained by proofs; but written notice of such charges, together with a copy thereof, shall be served upon the accused ten (10) days before the time fixed for hearing. The executive council shall have jurisdiction to hear the case, and shall make such finding in accordance with justice and the law. The finding shall be reduced to writing, and report and finding filed with the governor.

Removal from office.

PART III.

Insurance. SECTION 2477-m41 (as amended by ch. 270, acts of 1917). 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 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.

Notice of non-insurance. 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 the 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.

Mutual companies. SEC. 2477-m42. For the purpose of complying with the foregoing section, groups of employers by themselves or in an association with any or all of their workmen, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the State insurance department and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with the preceding section.

Approved schemes. SEC. 2477-m43. Subject to the approval of the Iowa industrial commissioner, any employer or group of employers may enter into or con-

tinue an agreement with his or their workmen to provide a scheme of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act; but such scheme shall in no instance provide less than the benefits here secured, nor vary the period of compensation provided for disability or for death, or the provisions of this act with respect to periodic payments, or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased: *Provided, further,* That the approval of the Iowa industrial commissioner shall be granted, if the scheme provides for contribution by workmen, only when it confers benefits in addition to those required by this act commensurate with such contributions.

Sec. 2477-m44. Whenever such scheme or plan is approved by the Iowa 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 scheme or plan for the provisions of this act during a period of time fixed by said department.

Certificates.

Sec. 2477-m45. Such scheme or plan may be terminated by the Iowa 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 Iowa industrial commissioner the parties affected, whether employer or workmen, may, upon the giving of proper bond to protect the interests involved, appeal for equitable relief to the district court of this State.

Termination.

Sec. 2477-m46. No insurer of any obligation under this act shall either by himself or through another, either directly or indirectly, charge or accept as a commission or compensation for placing or renewing any insurance under this act more than fifteen per cent of the premium charged.

Commission for reinsuring.

Sec. 2477-m47. Every policy 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 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.

Provisions of policies.

Sec. 2477-m48. No policy of insurance issued under this act 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.

Insolvency of employer.

Sec. 2477-m49. When an employer coming under this act furnishes proofs to the insurance department satisfactory to the insurance department and Iowa 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 to such insurance department security satisfactory to such insurance department and the Iowa industrial commissioner as will secure the payment of such compensation, such employer shall be relieved of the provision of section forty-two of this act: *Provided,* That such employer shall from time to time, as may be required by such insurance department and Iowa industrial commissioner, furnish such additional proof of solvency and financial ability to pay as by this section of this act provided.

Insurance not required, when.

The insurance department and Iowa industrial commissioner may, at any time, upon reasonable notice to such employer and upon hearing

revoke for cause any order or approval theretofore made, as by this act provided and within the contemplation of this section.

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.

KANSAS.

GENERAL STATUTES—1915.

Compensation of workmen for injuries.

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.

Compensation payable, when.

Sec. 5897. Nothing in this act shall affect the liability of the employer or employee to a fine or penalty under any other statute.

Fines, etc.

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 contractor who pays compensation voluntarily to a workman of a subcontractor shall have the right to recover over against the subcontractor.

Contractors.

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

Injuries by third parties.

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.

Exempt employments. em-

gricultural pursuits and employments incident thereto are hereby declared to be nonhazardous 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.

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 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 conduit, or used for carrying conductors, sewer, oil or gas well, oil tank, gas tank, water tower, or water-works (including stand pipes 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 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 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

Compensation for death.

Permanent total disability.

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.

Temporary total disability.

Permanent partial disability.

(1) For the loss of a thumb, 50 per cent of the average weekly wages during 60 weeks.

Schedule.

(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 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 amount specified above. The loss of the first phalange and any part of the second phalange of the 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 provided in section * * * [5906], but in no case less than \$6 per week nor more than \$15 per week.

Loss of use.

(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.

Schedule benefits exclusive.

Minors.

(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.

Females.

Earnings computed, how.

SEC. 5906 (as amended by chapter 226, acts of 1917). 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 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.

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.

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 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 to dependents.

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,

Payments exempt from execution, etc.

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 exami-
nations.

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 participate 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 exami-
nations.

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 medi-
cal 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.

SEC. 5917 (as amended by chapter 226, acts of 1917). Compensation due under this act may be settled by agreement.

Agreements.

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 arbitrator 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.

Arbitration.

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.

Procedure

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.

Fees.

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

Awards to be in writing.

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 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 proceedings 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 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.

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. Stay.

SEC. 5926. [Repealed by chapter 226, acts of 1917.]

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. Lump-sum payments after six months.

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. Insurer's rights and duties.

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. Courts.

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 Legal enforcement.

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 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 non-residents 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 defined and provided by this act, shall be presumed to have done so, except such em-

ployer 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.

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.

By employees.

SEC. 5940 (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, 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.

Abrogation of defenses.

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 the said employee was due 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.

Defenses allowed, when.

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."

Construction of statute.

ACTS OF 1919.

CHAPTER 222.—*Waiver of compensation or damages by blind persons.*

SECTION 1. It shall hereafter be lawful for any blind person over the age of 18 years to agree to and with his or her employer to waive his or her right to damages or compensation for any personal injury arising out of or in the course of his or her employment, for which injury such blindness was the direct cause, and any such agreement shall be valid and binding upon the parties thereto.

Waiver permitted.

Approved March 22, 1919.

KENTUCKY.

ACTS OF 1916.

CHAPTER 33.—*Compensation for injuries to workmen.*

Scope.

SECTION 1 (as amended by ch. 176, acts of 1918). This act shall apply to all employers having three or more employees regularly engaged in the same occupation or business and to their employees, except that it shall not apply to domestic employment, agriculture, steam railways, or such common carriers, other than steam railways, for which a rule of liability is provided by the laws of the United States. It shall affect the liability of the employers subject thereto to their employees for personal injuries sustained by the employee by accident arising out of and in the course of his employment or for death resulting from such accidental injury: *Provided, however,* That personal injury by accident as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident, nor shall they include the results of a preexisting disease.

Joint applica-
tion.

Any employers and employees who are, by the provisions of this section, excepted from the provisions of this act may subject themselves thereto by joint voluntary application to the board, in writing, for such period as may be stated in the application, which shall be irrevocable during such period and effective thereafter until a written revocation be filed with the board or the employment be terminated.

Public employ-
ments.

SEC. 2. The term "employer" as used in this act shall be construed to include municipal corporations and any political subdivision or corporation thereof, and any election with reference to this act shall be exercised by the lawmaking or other governing body thereof: *Provided, however,* That nothing contained in this act shall be construed as amending or repealing any statute or ordinance relating to associations or funds for the relief, pensioning, retirement, or other benefit of any employees of such municipal employer, or of the widows, children, or dependents of such employees, or as in any manner interfering with the same as now or hereafter established.

Act exclusive.

SEC. 3. Whereas at the time of the injury, both employer and employee have elected to furnish or accept compensation under the provisions of this act for a personal injury, received by an employee by accident and arising out of and in the course of his employment, or for death resulting from such injury, within two years thereafter, the employer shall be liable to provide and pay compensation under the provisions of this act and shall be released from all other liability whatsoever: *Provided, however,* That if injury or death result to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependent as herein defined shall receive the amount provided in this act in a lump sum to be used, if they so desire to prosecute the employer, and said dependents shall be permitted to bring suit against said employer for any amount they may desire, that if injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependents as herein defined shall have the privilege to take under this act, or in lieu thereof, to have a cause of action at law against such employer as if this act had not been passed for such damages so sustained by the employee, his dependents or personal representatives as may be recoverable at law. If a suit is brought under this section, all right to compensation under the provisions of this act shall thereby be waived and void as to all persons, and if a claim is made for the payment of compensation or any other benefit provided by this act, all rights to sue the employer for damages on account of such injury or death shall thereby be waived and void as to all persons.

Intentional in-
juries.

Notwithstanding anything hereinbefore or hereafter contained no employee or dependent of any employee shall be entitled to receive

Willful miscon-
duct.

compensation on account of any injury to or death of an employee caused by a willful self-inflicted injury, willful misconduct, or intoxication of such employee.

Sec. 4. In addition to all other compensation herein provided, such medical, surgical, and hospital treatment, including nursing, medical and surgical supplies and appliances as may reasonably be required at the time of the injury and thereafter during disability, but not exceeding 90 days unless the board shall, by order made within that time, otherwise direct, not exceeding a total expense to the employer of more than \$100 on account of the benefits provided by this section, to cure and relieve from the effects of the injury shall be furnished by the employer, and, in case of his refusal or neglect reasonably to do so, the employer shall be liable for the reasonable expense, within the limits of this section, incurred by or on behalf of the employee in providing the same. Medical, etc.,
treatment.

In the event of an emergency, the employee shall have the right to call in any available physician or surgeon to administer such first aid as may be reasonably necessary at the expense of the employer within the limits of this section.

Sec. 4a. In all claims for hernia resulting from injury received in the course of and resulting from the employee's employment, it must be definitely proved to the satisfaction of the board: Hernia.

First. That there was an injury resulting in hernia.

Second. That the hernia appeared suddenly and immediately followed the injury.

Fourth. That the hernia did not exist in any degree prior to the injury for which compensation is claimed.

In all such cases where liability for compensation exists, the employer shall provide competent surgical treatment by radical operation, the limits of benefits payable under section 4 hereof being increased to \$200 in such cases, if the operation is performed. In case the injured employee refuses to submit to the operation, the employer shall have the right to a medical examination as provided in section 37 hereof. If it be shown by such examination 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 disability under the general provisions of this act. If the examination does not disclose the existence of disease or other physical condition rendering the operation more than ordinarily unsafe and the employee, with knowledge of the result of such examination, thereafter refuses to submit to such operation, he shall be entitled to compensation for disability under the general provisions of this act for not exceeding one year.

If the employee submits to the operation he shall, in addition to the surgical benefits herein provided for, be entitled to compensation for 26 weeks. If the hernia result in death within one year after it is sustained, or the operation result in death, such death shall be deemed 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 refused to submit to an operation which has been found by the examination herein provided for not to be more than ordinarily unsafe.

Sec. 5. If it be shown that the employer is furnishing the requirements provided by section 4 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 requirement, and if the employer fail promptly to comply with such order after receiving it, may permit the employee or some one for him to provide the same at the expense of the employer under such reasonable regulations as may be provided by the board. Change of phy-
sician.

No action shall be brought against any employer subject to this act by any employee or other person to recover damages for malpractice or improper treatment received by such employee from any physician, hospital, or attendant thereof.

Sec. 6. All fees and charges under sections 4 and 5 shall be fair and reasonable, shall be subject to regulation by the board, and shall be Medical, etc.,
fees and charges.

limited to such charges as are reasonable for similar treatment of injured persons of a like standard of living in the same community and where such treatment is paid for by the injured person himself. In determining what fees are reasonable, the board may also consider the increased security of payment afforded by this act.

Where such requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting same. No compensation shall be payable for the death or disability of an employee if his death is caused, or if and in so far as his disability may be aggravated, caused, or continued by an unreasonable refusal, failure, or neglect to submit to or follow any competent surgical treatment or medical aid or advice.

Refusing treatment.

Waiting time.

SEC. 7 (as amended by ch. 176, acts of 1918). Except as provided in sections 4 and 5 hereof, no compensation shall be payable for the first seven days of disability, and all compensation shall be payable on the regular pay day of the employer, commencing with the first regular pay day after seven days after the injury, with interest at the rate of 6 per cent per annum on each installment from the time it is due until paid.

Work outside State.

SEC. 8. Employers who hire employees within this State to work in whole or in part without this State may agree in writing with such employees to exempt from the operation of this act injuries received outside of this State: in the absence of such an agreement the remedies provided by this act shall be exclusive as regards injuries received outside this State upon the same terms and conditions as if received within the State.

Waivers.

SEC. 8a. No contract or agreement, written or implied, no rule, regulation, or other device shall in any manner operate to relieve any any employer in whole or in part of any obligation created by this act except as herein provided.

Liability of third parties.

SEC. 9. 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 by civil action against such other person to recover damages, or proceed both against the employer for compensation and such other person to recover damages, 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 shall have the right to recover in his own name or that of the injured employee from the other person in whom legal liability for damages exists not to exceed the indemnity paid and payable to the injured employee.

Employees of contractors.

SEC. 10. A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one in [of] his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as as the immediate employer. Any principal, intermediate, or subcontractor who shall pay compensation under the foregoing provision may recover the amount paid from any subordinate contractor through whom he may have been rendered liable under this section.

Every claim to 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 his immediate employer 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 under his control otherwise or management.

Status of minors.

SEC. 11. A minor, except where employed in willful violation of any law of this State regulating the employment of minors, shall be

deemed sui juris for the purposes of this act, and no other person shall have cause of action or right to compensation for an injury to or death of such minor employee or loss of service on account thereof, by reason of the minority of such employee. In the event of the award of a lump sum of compensation to such minor employee, payment shall be made to the guardian of such minor.

SEC. 12. If death results within two years from an accident for which compensation is payable under this act, the employer or his insurer shall pay to the persons entitled to compensation, or, if none, then to the personal representative of the deceased employee reasonable burial expenses of a person of the standard of living of the deceased, not to exceed the sum of \$75, and shall also pay to or for the following persons compensation as follows, to wit:

Compensation for death.

Funeral expenses.

No dependents.

Persons wholly dependent.

Partial dependents.

(1) If there are no dependents, as herein defined, there shall be paid, in addition to the burial expenses and medical expenses, if any otherwise provided for herein, the further sum of \$100, payment to be made to the personal representative of the deceased employee.

(2) If there are one or more wholly dependent persons, 65 per cent of the average weekly earnings of the deceased employee, but not to exceed \$12 nor less than \$5 per week, shall be payable, all such payments to be made for the period between the date of death and 335 weeks after the date of accident to the employee, or until the intervening termination of dependency, but in no case to exceed the maximum sum of \$4,000.

(3) If there are partly dependent persons, the payments shall be such part of what would be payable for total dependency as the partial dependency existing at the time of the accident to the employee may be proportionate to total dependency, all such payments to be made for the period between the date of death and 335 weeks after the date of the accident to the deceased employee or until the intervening termination of dependency, but in no case to exceed in the aggregate of compensation on account of such death the maximum sum of \$4,000.

Partial dependency shall be determined by the proportion of the earnings of the employee which have been contributed to such partial dependent during one year next preceding the date of injury; if the relation of partial dependency shall not have existed for one year next preceding the date of injury, the board shall consider all the facts and circumstances and fix such proportion as may be fair and reasonable thereunder.

(4) All relations of dependency herein referred to shall be construed to mean dependency existing at the time of accident to the employee.

Who are dependents.

SEC. 13. The following persons shall be presumed to be wholly dependent upon a deceased employee: (a) A wife upon a husband whom she has not voluntarily abandoned at the time of the accident; (b) a husband incapacitated from wage earning, upon a wife whom he has not voluntarily abandoned at the time of the accident to the wife; (c) a child or children under the age of 16 years or over 16 years if incapacitated from wage earning, upon the parent with whom such child or children are living or by whom actually supported at the time of the accident. In all other cases the relation of dependency in whole or in part shall be determined in accordance with the facts of each case existing at the time of the accident, but no person shall be considered a dependent in any degree unless he be living in the household of the employee at the time of the accident or unless such person bears to the employee the relation of father, mother, husband, or wife, father-in-law or mother-in-law, grandfather or grandmother, child or grandchild, or brother or sister of the whole or half blood.

Cessation of payments.

Compensation to any dependent shall cease at the death or legal or common-law marriage of such dependent and upon the cessation of compensation to or on account of any person, the compensation of the remaining persons entitled to compensation shall, for the unexpired period during which their compensation is payable, be that which such persons would have received during such unexpired period if they had been the only persons entitled to compensation at the time of the accident.

Definitions.

SEC. 14. As used in this act, the term "child" includes stepchildren, legally adopted children, posthumous children, and recognized illegitimate children, but does not include married children unless actually dependent.

The terms "brother" and "sister" include stepbrothers, stepsisters, and brothers and sisters of the half blood or by adoption, but excludes married brothers or sisters unless actually dependent. The term "grandchild" includes children of adopted children and children of stepchildren, but excludes stepchildren of children or of adopted children and married children. The term "parent" includes step-parents and parents by adoption. The words "adopted" and "adoption" as herein used include cases where the persons are legally adopted.

Payments a release.

SEC. 15. Payment of death benefits, in good faith, to a supposed dependent or to a dependent subsequent in right to another or other dependents shall protect and discharge the employer and insurer unless and until the lawful dependent or dependents prior in right shall have given the employer or insurer written notice of his or their claim. In case the employer or insurer is in doubt as to who are dependents or as to their respective rights, the board shall, on application, decide and direct to whom payment shall be made, and payment made under such direction shall release the employer and insurer from all liability: *Provided, however,* That if an appeal be taken from the order of the board directing payment, persons receiving payment under such order shall be required to furnish bond for the protection of adverse claimants pending the outcome of the proceedings.

In case death occurs as a result of the injury, after a period of total or partial disability, the period of disability shall be deducted from the total period of compensation and the benefits paid thereunder from the maximum allowed for the death respectively stated in section 12 hereof.

Total disability.

SEC. 16 (as amended by ch. 176, acts of 1918). Where the injury causes total disability for work, the employer, during such disability, except the first seven days thereof, shall pay the employee so injured a weekly compensation equal to 65 per cent of his average weekly earnings, not to exceed \$12 nor less than \$5 per week, such payments to be made during the period of total disability but not longer than eight years after the date of the injury, nor in any case to exceed the maximum sum of \$5,000. In case the period of total disability begins after the period of partial disability, the period of partial disability shall be deducted from the total period of eight years during which compensation for total disability may be payable, and the payments made on account of such partial disability shall be deducted from the maximum of \$5,000.

In case of the following injuries, the disability shall be deemed total and permanent, to wit:

- (1) The total and permanent loss of 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.

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 disability.

Partial disability.

SEC. 17 (as amended by ch. 176, acts of 1918). In case of an injury resulting in temporary partial disability, the employee shall receive during such disability, except the first seven days thereof, a weekly compensation equal to 65 per cent of the difference between his average weekly earnings before the injury and the average weekly earnings which he earns or is able to earn in some suitable employment after the injury and during such disability, not to exceed 335 weeks from the date of injury nor exceeding the sum of \$12 per week nor the maximum sum of \$4,000. In case partial disability follows a period of total disability, such period of total disability shall be deducted from the maximum period allowed for partial disability and the benefits paid on account thereof from the maximum allowed for partial disability.

SEC. 18. For injuries enumerated in the following schedule, the employee shall receive in lieu of all other compensation, except such as may be payable under sections 4 and 5 hereof, a weekly compensation equal to 65 per cent of his average weekly earnings, but not less than \$5 per week nor exceeding \$12 per week, for the respective periods stated thereon, to wit:

Schedule.

For the loss of a thumb, 65 per cent of the average weekly wages during 60 weeks.

For the loss of a first finger, commonly called the index finger, 65 per cent of the average weekly wages during 45 weeks.

For the loss of a second finger, 65 per cent of the average wages during 30 weeks.

For the loss of a third finger, 65 per cent of the average weekly wages during 20 weeks.

For the loss of a fourth finger, commonly known as the little finger, 65 per cent of the average weekly wages during 15 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 and distal phalanges of any finger shall be considered to be equal to the loss of the whole finger: *Provided, however,* That in no case will 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 metacarpal bone (bone of palm) for the corresponding thumb, finger, or fingers above, add 10 weeks to the number of weeks as above.

For ankylosis (total stiffness of) or contractures (due to sears or injuries) which makes the fingers more than useless, the same number of weeks apply to such finger or fingers (not thumb) as given above.

For the loss of a hand, 65 per cent of the average weekly wages during 150 weeks.

For the loss of an arm, 65 per cent of the average weekly wages during 200 weeks.

For the loss of one of the toes, other than the great toe, 65 per cent of the average weekly wages during 10 weeks.

For the loss of the great toe, 65 per cent of the average weekly wages during 30 weeks.

The loss of more than two-thirds of any toe shall be considered 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 toe. For the loss of a foot, 65 per cent of the average weekly wages during 125 weeks.

For the loss of a leg, 65 per cent of the average weekly wages during 200 weeks, or the total and permanent loss of the sight of an eye, 65 per cent of the average weekly wages during 100 weeks.

In all other cases of permanent partial disability, 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 disability, taking into account, among other things, any previous disability, the nature of the physical injury or disfigurement, the occupation of the injured employee and age at the time of injury; the compensation paid therefor shall be 65 per cent of the average weekly earnings of the employee, but not less than \$5 nor more than \$12, multiplied by the percentage of disability caused by the injury, for such period as the board may determine, not exceeding 335 weeks nor a maximum sum of \$4,000. Whenever the weekly payments under this paragraph would be less than \$3 per week, the period may be shortened and the payments correspondingly increased to that amount. Where compensation, except as provided in sections 4 and 5 of this act, is paid under any other provision of this act the period during which such other compen-

- sation is paid and the amount thereof shall be deducted respectively from the maximum period and maximum amount which may be paid under this paragraph.
- Refusal to work.** Sec. 19. If an injured employee refuses employment reasonably suited to his capacity and physical condition procured for him, he shall not be entitled to compensation during the period of such refusal unless, in the opinion of the board, such refusal was justifiable.
- Second injuries.** Sec. 20. If a previously injured employee sustains a subsequent injury which results in a condition to which both injuries, or their effects, contribute, the employer in whose employment the subsequent injury is sustained shall be liable only for the compensation to which such resulting condition entitled the employee, less all compensation which the provisions of this law would have afforded on account of the prior injury or injuries had they been compensated for thereunder.
- Review of awards.** Sec. 21. Upon its own motion or upon the application of any party interested and a showing of change of conditions, mistake, or fraud the board may at any time review any award or order, ending, diminishing, or increasing the 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 had upon notice to the parties interested and shall not affect the previous order or award as to any sums already paid thereunder.
- Alien dependents.** Sec. 22. Compensation under this act to alien dependent widows and children, not residents of the United States, shall be one-half of the amount provided in each case for residents; and the employer may at any time commute all future installments of compensation to alien dependents the then value thereof. Alien widowers, parents, brothers, and sisters, not residents of the United States, shall not be entitled to any compensation.
- Notice.** Sec. 23. Any notice required to be given under this act shall be deemed to have been properly given and served when deposited in the mail in a registered letter or package properly stamped and addressed to the person to whom notice is to be given at his last-known address and in time to reach him in due time to act thereon. Notice may also be given and served in like manner as are notices in civil actions.
- Any notice, given and served as provided in this section, to the consular representative of the nation of which any nonresident dependent of a deceased employee is a citizen or subject, or to the authorized agent or representative of any such official residing in this State, shall be deemed to have been properly given and served upon such dependent.
- Computing wages.** Sec. 24. Compensation shall be computed at the average weekly wage earned by employee at time of injury, reckoning wages as earned while working at full time.
- (a) If the employee at the time of the injury is regularly employed in a higher grade of work or occupation than formerly during the year and with larger regular wages, only such higher grade of work or occupation, if the same be not seasonal, shall be taken into consideration in computing his average weekly wages.
- Advances.** Sec. 25. Any payments made, or the value of supplies furnished by the employer or his insurer during the period of disability, to the employee or his dependents which by the terms of this act were not due or payable when made or furnished may, with the approval of the board, be deducted from the amount payable as compensation.
- The board may, on the application of either party, in its discretion and having regard both to the welfare of the employee and the convenience and financial ability of the employer, authorize compensation to be paid monthly or quarterly.
- Lump sums.** Sec. 26. Whenever compensation has been paid for not less than six months, thereafter, on the application of either party and upon notice to the other party, in any case where the board may determine that it will be for the best interests of either party and will not subject the employer or his insurer to an undue risk of overpayment, future payments of compensation or any part thereof may be commuted to a

lump sum of an amount which will equal the total sum of the probable future payments so commuted, discounted at 5 per cent per annum on each payment. Upon payment of such lump sum all liability for the payments therein commuted shall cease.

Sec. 27. Whenever for any reason the board may deem it expedient, any lump sum which is paid as provided in section 26 hereof shall be paid to any suitable person or corporation appointed by the judge of the county court of the county of the residence of the injured employee or of his dependents as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of such trustee for the amount so paid to him or it shall discharge the employer and his insurer. Except as otherwise herein specifically provided, the manner of qualification and the rights, duties, and liabilities of such trustee shall be determined by the general laws of this State.

Payment to trustees.

Sec. 28. The benefits in case of death shall be paid to such one or more dependents of the deceased employee, for the benefit of all the dependents entitled thereto, as may be determined by the board. The dependents to whom payments are made shall apply the same to the use of the several persons thereto entitled under this act according to their respective claims on the deceased for support. The compensation of an insane person shall be paid to his or her committee.

To whom payments made.

In cases where the dependents are a widow, or other head of a family of minor children, and one or more minor children, it shall be sufficient for the widow or head of such family to make application for compensation on behalf of all, and in cases where the dependents are mentally incapacitated or are minors the head of whose family is not a dependent, the application may be made by the committee, guardian, or next friend of such dependents.

Sec. 29. Where an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful regulations made thereunder, communicated to such employer, and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this act, shall be increased 15 per cent in the amount of each payment; where the accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer, or to obey any lawful and reasonable rule, order, or regulation of the board or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this act, shall be decreased 15 per cent in the amount of each payment: *Provided, however,* That nothing in this section shall be construed to conflict with or impair any of the provisions of section 5 of this act.

Failure to comply with safety statutes.

Sec. 30. In case any minor employee who is injured or killed is, at the time of such injury, employed in willful and known violation by the employer of any law of this State regulating the employment of minors, his statutory guardian, or personal representative of the minor so killed, may claim compensation under the terms of this act or may sue to recover damages as if this act had not been passed. If a claim to compensation be made under this section, the making of such claim shall be a waiver and bar to all rights of action on account of said injury or death of said minor as to all persons, and the institution of an action to recover damages on account of such injury or death shall be a waiver and bar of all rights to compensation under this act.

Minors unlawfully employed.

Sec. 31. 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.

Claims preferred.

Sec. 32. No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

Assignments, etc.

Sec. 33. No proceeding under this act for compensation for an injury or death shall be maintained unless a notice of the accident 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 accident, or, in case of death, within one year after such death, whether or not a claim has been made by the employee himself for compensation. Such

Notice.

Claims

notice and such claim may be given or made by any person claiming to be entitled to compensation or by some one in his behalf. If payments of compensation, as such, have been made voluntarily, the making of a claim within such period shall not be required, but shall become requisite following the suspension of such voluntary payments.

Form. SEC. 34. Such notice and such claim shall be in writing, and the notice shall contain the name and address of the employee, and shall state in ordinary language the time, place of occurrence, nature and cause of the accident, with names of witnesses, the nature and extent of the injury sustained, and the work or employment in which the employee was at the time engaged, and shall be assigned by him or a person on his behalf, or, in the event of his death, by any one or more of his dependents or a person on their behalf. The notice may include the claim.

To whom given. SEC. 35. Any such notice or claim 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 agent of the corporation in charge of the business at the place where the injury occurred. Such notice or claim may be given by delivery to any of such persons or in the manner provided in section 23 hereof.

Inaccuracy. SEC. 36. Such notice shall not be held invalid or insufficient by reason of any inaccuracy in complying with section 34 hereof, unless it be 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 had knowledge of the injury, or that such delay or failure to give notice was occasioned by mistake or other reasonable cause.

Medical examinations. SEC. 37. After an injury and so long as compensation is claimed, the workman, if so requested by his employer or the board, shall submit himself to examination, at reasonable time and places, to a duly qualified physician or surgeon designated and paid by the employer. The employee shall have the right to have a duly qualified 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 or surgeon the right to visit the injured employee at all reasonable times and under all reasonable conditions. If an employee refuses to submit himself to or in any way obstructs such examination, his right to take or prosecute any proceedings under this act shall be suspended until such refusal or obstruction ceases, and no compensation shall be payable for the period during which said refusal or obstruction continues.

Incompetents. SEC. 38. No limitation of time provided in this act shall run against any person who is mentally incompetent or who is a minor dependent, so long as he has no committee, guardian, or next friend.

Workmen's compensation board. SEC. 39. A board is hereby created, to be known as the "Workmen's Compensation Board," which shall consist of three members appointed by the governor. Each member of the board shall hold office for four years and until his successor shall have been appointed and qualified, except that when the board is first created one member shall be appointed for two years, one for three years, and one for four years. Thereafter, upon the expiration of the term of any member, his successor shall be appointed for a full term of four years. Of the board as first constituted, the member appointed for two years shall be chairman during his term, the member appointed for three years during the third year, and the member appointed for four years during the fourth year. Thereafter the senior member in length of service on the board in his current term in any given year shall be chairman during that year.

Vacancies on the board shall be filled by appointment for the remainder of the unexpired term, but no vacancy shall impair the rights of the remaining members to exercise all the powers of the board nor shall relieve such members from discharging all the duties of the board during such vacancy. In the event of a vacancy, the appointee for the unexpired term shall not succeed his predecessor in the chairmanship of the board; such other member as would, but for the vacancy, have been chairman shall at once succeed to the unexpired chairmanship, when

State treasury. The board shall provide necessary supplies, books, periodicals, and maps, and shall provide itself with a seal for the authentication of its orders, awards, or proceedings on which shall be inserted the words "Workmen's Compensation Board, State of Kentucky. Official seal." The board may hold sessions at any place within the State where necessary and shall have power to sue or institute legal proceedings in any court of the Commonwealth under existing laws as to jurisdiction of actions: unless consented to by the board, all actions or proceedings against it or a member thereof in his official capacity as such shall be brought in the courts of the county of Franklin.

Meetings.

Sec. 44. The board shall fix and adopt at least one day of the week on which regular meetings shall be held biweekly for the transaction of all business, a quorum of the board to be present at its main offices not later than eleven a. m. and remaining at the office, or available thereto, until 5 p. m. of such day. When necessary, the chairman shall call the board together at any time during business hours on any other day to consider and transact any business which may be before it. All proceedings of the board shall be recorded in a book for that purpose by the secretary, which shall constitute a public record and shall contain an entry of each case, claim, or proceeding considered, heard, or passed upon by the board or a member thereof, with the award, finding, or decision made thereon.

Districts.

Sec. 45 (as amended by chapter 176, acts of 1918). The place of residence of each member shall be shown upon the official stationery used by the said board.

Quorum.

Sec. 46. A majority of the board shall constitute a quorum for the transaction of business, and vacancies shall not impair the right of the remaining members to exercise all the powers of the full board, so long as a majority remains. Any investigation, inquiry, or hearing which the board is authorized to hold or undertake may be held or undertaken by or before any one member of the board, or a referee acting for him, under authorization of the board. All investigations, inquiries, hearings, and decisions of the board, and every order made by a member thereof, when approved by a majority of the members, and so shown on a record of its proceedings, shall be deemed to be the order of the board.

Rules.

Procedure.

Sec. 47. The board 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 board or any member thereof 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 have examined such parts of the books and records of the parties to a proceeding as relate to question in dispute.

The county sheriff shall serve all subpoenas of the board and shall receive the same fees as now provided by law for like service in civil actions; each witness who appears in obedience to such subpoena of the board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts.

The circuit court shall, on application of the board, or any member thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

Agreements.

Sec. 48. If the employee and employer reach an agreement, conforming to the provisions of this act, in regard to compensation, a memorandum of the agreement shall be filed with the board, and, if approved by it, shall be enforceable in like manner as is herein provided for the enforcement of awards of the board. Nothing herein shall prevent the voluntary payment of compensation in the amounts and for the periods herein prescribed without formal agreement, but nothing shall operate as a final settlement except a memorandum of agreement filed with and approved by the board in accordance with this section, or the expiration of the time limit hereinbefore prescribed in section 33.

Applications for hearings.

Sec. 49. If the parties fail to reach an agreement in regard to compensation under this act, or if they have previously filed such an agreement with the board and compensation has been paid or is

a vacancy occurs therein, in addition to the year's chairmanship to which he would otherwise have been entitled.

SEC. 40. No person shall be eligible to appointment as a member of the board unless he shall be at least thirty years of age, a resident of Kentucky not less than three years consecutively next preceding his appointment, and of good moral character. Qualifications.

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 section 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.

SEC. 41. The governor may, at any time, remove any member of the board for inefficiency, neglect of duty, misconduct in office, or political activity, or if he become ineligible as defined in section 40, giving him in advance a copy of the charges preferred and an opportunity of being publicly heard, in person or by counsel, upon not less than ten days' notice. A representative of the attorney general's office shall attend such proceedings, and, upon the governor's request, shall advise or assist him therein. Either party may procure the attendance of witnesses and their testimony as is now provided by the Civil Code in ordinary actions. Removals.

If such member be removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against such member and his findings thereon, together with a complete record of the proceedings had and transcript of testimony heard, the same to constitute a public record of the Commonwealth. Any member of the board may also be removed by the senate by impeachment under the same procedure as is now provided by law.

SEC. 42. The salary and expenses of the board with their assistants and employees shall be paid out of the maintenance fund provided for in section 85 hereof; the annual salary of each member shall be \$3,500. The board may appoint a secretary at a salary of not more than \$2,500 a year and a medical director and such other assistants and employees as are necessary to the proper administration of this act at salaries to be fixed by the board and approved by the governor: *Provided, however,* That such salaries shall in no case exceed \$75 per month to any stenographer, \$100 per month to any clerical employee, \$150 per month to any other employee or assistant, or \$3,000 per year to the medical director, who shall be a reputable licensed and practicing physician and surgeon of the professional education, training, or qualification required by law for admission to practice in this State. The board may at any time remove any of its appointees upon filing with the secretary of state a full written statement of its reasons for such removal. Salaries, etc.

SEC. 42a. Members of the "Workmen's compensation board" shall be considered as officers, and shall take the oath prescribed by the constitution and laws of Kentucky, and shall give bond in the sum of \$10,000 of a surety company authorized to do business in the State, for the faithful performance of their duties, which bonds shall be approved by the governor and kept on file in the office of the secretary of state, and any action on said bonds for breach thereof shall be instituted by special counsel employed by the governor and shall be in the name of the Commonwealth. The premium upon said bonds shall be paid out of the maintenance fund. Oath.

SEC. 42b. The board and their employees or authorized representatives shall for such traveling as is necessitated by the discharge of their official duties, be allowed transportation actually paid for, not exceeding the regular fare over the most direct route, and meals and lodging actually paid for, not exceeding \$3 per day. Bonds.

SEC. 43. The board shall keep and maintain its main offices in Frankfort, Ky., using suitable rooms and offices belonging to the State, and shall be provided necessary office furniture to be paid for out of the Expenses.

Offices.

due in accordance therewith and the parties thereafter disagree, either party may make written application to the board for a hearing in regard to the matter at issue and for a ruling thereon. Such application for a hearing must be filed as soon as is practicable after disagreement, or after the cessation of voluntary payments, if any have been made.

As soon as possible after such application has been received the board shall set the date for a hearing, to be held as soon as is practicable in view of the matter involved, and shall notify the parties at issue of the time and place of such hearing.

Unless otherwise agreed to by the parties and authorized by the board, the hearing shall be held at or convenient to the place where the injury was sustained or the ground for disagreement occurred. In advance of directing a hearing, the board, or a member thereof, or referee authorized by the board, may confer informally with the parties at issue in an attempt to assist in adjusting their differences, but may not delay the granting of a hearing, over the objection of either party, for such purpose.

Sec. 50. The board, 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 any other matters pertinent to the question at issue, shall be filed with the record of proceedings, and a copy of the award shall immediately be sent to the parties in dispute.

Hearings.

Sec. 51. If an application for review is made to the board within seven days from the date of the award, the full board, if the first hearing was not held before the full board, shall review the evidence, or if deemed advisable, as soon as practicable hear the parties at issue, their representatives and witnesses, and shall make and award and file the same in like manner as specified in the foregoing section.

Reviews.

If a party introduce at a hearing before the full board a witness whose testimony at the original hearing appears in the transcript of evidence taken thereat, the costs accruing through the attendance of such witness and the transcribing of his testimony at the second hearing shall be borne by the party introducing him, at such hearing, regardless of the outcome of the controversy.

Sec. 52. An award, or order of the board, as provided in section 50, if application for review be not filed as therein provided, or an award or order of the board upon review as provided in section 51, shall be conclusive and binding as to all questions of fact, but either party may, within 20 days after the rendition of such final order or award of the board, by petition appeal to the circuit court that would have jurisdiction to try an action for damages for said injuries if this act had not passed, for the review of such order or award, the board and the adverse party being made respondents. Such petition shall state fully the grounds upon which a review is sought, assign all errors relied on, and shall be verified by the petitioner, who shall furnish copies of the petition to the respondents at the time of filing same.

Awards conclusive.

Appeals to courts.

Summons shall issue upon the petition, directing the adverse party to file answer within 15 days after service thereof and directing the board to certify its complete record of the case to the court, or, in lieu thereof, and if consented to by the petitioner and adverse party, an abstract of the record prepared in the same manner as hereinafter provided for appeals to the court of appeals.

No new or additional evidence may be introduced in the circuit court, except as to the fraud or misconduct of some person engaged in the administration of this act, and affecting the order, ruling, or award, but the court shall otherwise hear the cause upon the record or abstract thereof as certified by the board, and shall dispose of the cause in summary manner, its review being limited to determining whether or not:

- (1) The board acted without or in excess of its powers
- (2) The order, decision, or award was procured by fraud.
- (3) The order, decision, or award is not in conformity to the provisions of this act.
- (4) If findings of fact are in issue, whether such findings of fact support the order, decision, or award.

The board and each party shall have the right to appear in such review proceedings; the court shall enter judgment affirming, modifying, or setting aside the order, decision, or award, or in its discretion remanding the cause to the board for further proceedings in conformity with the direction of the court. The court may, in advance of judgment and upon a sufficient showing of fact, remand the cause to the board.

Court of appeals.

SEC. 53. Where an amount sufficient under existing laws to authorize an appeal to the court of appeals is involved, the judgment of the circuit court shall be subject to appeal to the court of appeals, the scope of whose review shall include all matters herein made the subject of review by the circuit court and also errors of law arising in the circuit court and upon appeal made reviewable by the Civil Code of Procedure where not in conflict with the provisions of this act. The procedure as to appeal to the court of appeals shall be the same as in civil actions, so far as the same may be applicable to and not in conflict with the provisions of this act, except as follows:

(1) Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise.

(2) In order to carry out the provisions of subsection 1 and further to reduce the size of the record on appeal, it shall be the duty of the appellant to file with the clerk of the circuit court, together with proof or acknowledgment of service of a copy on the appellee or his counsel, a schedule which shall indicate the portions of the record to be incorporated into the transcript of the record on such appeal. Should the appellee or his counsel desire additional portions of the record incorporated into the record to be filed in the court of appeals, he may file with the clerk of the circuit court his schedule also, within ten days thereafter (unless the term be extended by order of the circuit court or of the court of appeals), indicating such additional portions of the record desired by him.

The clerk of the circuit court shall transmit to the court of appeals as the transcript of the record only those portions of the record in the lower court which are designated by the parties as above provided. The parties, or their counsel, may, however, agree by written stipulation to be filed with the clerk of the circuit court, the portions of the record which shall constitute the transcript of record on appeal, and the clerk in such case shall transmit only the papers designated in such stipulation.

Unnecessary transcripts.

SEC. 54. If the court of appeals shall find that portions of the record unnecessary to a proper presentation of the case have been incorporated into the transcript by either party, the court may order that the whole or any part of the clerk's fee for preparing the transcript shall be paid by the offending party.

Safety of papers.

Whenever it shall be necessary or proper, in the opinion of the judge of the circuit court, that original papers of any kind should be inspected by the court of appeals, such judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper, and the court of appeals will receive and consider such original papers in connection with the transcript of the record.

Award in effect.

SEC. 55. Upon motion of either party and a sufficient showing of reason or necessity therefor, the court to which an appeal is taken may continue in force the award, judgment, or order appealed from, pending its decision of such appeal.

Judgment on agreement.

SEC. 56. Any party in interest may file in the circuit court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the board or of an order or decision of the board, or of an award of the board unappealed from, or of an award of the board rendered upon an 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.

Any such judgment of said circuit court unappealed from or affirmed on appeal or modified in obedience to the mandate of the appellate

court, shall be modified to conform to any decision of the board, ending, diminishing, or increasing any weekly payment under the provisions of section 21 of this act, upon a presentation to it of a certified copy of such decision.

Sec. 57. If the board 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 so brought, prosecuted, or defended them.

Costs.

Sec. 58. The board, 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 board, but not exceeding \$10 for each examination and report, but the board may allow additional reasonable amounts in extraordinary cases.

Medical examinations.

The fees and expenses of such physician or surgeon shall be paid out of the maintenance fund.

Sec. 59. All fees of attorneys and physicians and charges of hospitals under this act shall be subject to the approval of the board. No attorney's fees shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to 15 per cent of the amount of the first \$1,000 or fraction thereof recovered, or 10 per cent of the excess of such recovery, if any, over \$1,000. The board may deny or reduce an attorney's fee upon proof of solicitation of employment.

Fees.

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 be determined by the board except as otherwise herein provided for.

Disputes.

Sec. 61. Every employer subject to this act shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one week after the occurrence and knowledge thereof, as provided in sections 33 to 36, of an injury to an employee, causing his absence from work for more than one day, a report thereof shall be made in writing and mailed to the board on blanks to be procured from the board for the purpose.

Injuries to be reported.

Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of 60 days, then also at the expiration of such period the employer shall make a supplementary report to the board on blanks to be procured from the board for the purpose.

The said report shall contain the name, nature, and location of the business of the employer, and 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 subject to this act who refuses or willfully neglects to make the report required by this section shall be liable for a fine of not more than \$25 for each such refusal or neglect.

Sec. 62. Any person who shall knowingly file, cause to be filed, or permit to be filed, any false or fraudulent claim on his behalf to compensation or other benefits under this act, or who shall by fraud, deceit, or misrepresentation procure or cause to be made or shall receive any payments of compensation or other benefits under this act to which the recipient is not lawfully entitled, or shall conspire with, aid, or abet another so to do, shall be guilty of a misdemeanor.

False claims, etc.

Any person who shall by deceit or misrepresentation and with intent to defraud, cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this act to omit to file claim thereto or to accept the payment of a less sum than that to which he may be lawfully entitled to thereunder shall be guilty of a misdemeanor.

Any person guilty of a misdemeanor as defined in this section shall, upon conviction, be punishable by a fine of not less than \$50 nor more

than \$500, or imprisonment of not less than 10 nor more than 90 days, in the discretion of the jury.

Insurance.

SEC. 63. Every employer under this act shall either insure and keep insured his liability for compensation hereunder in some corporation, association, or organization authorized to transact the business of workmen's compensation insurance in this State, or shall furnish to the 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 act. In the latter case the board shall require the deposit of an acceptable security, indemnity, or bond to secure to such an extent as the board may direct the payment of compensation liabilities as they are incurred.

Every employer accepting the provisions of this act shall at the time of such acceptance file with the board in substantially the form prescribed by it, and annually thereafter, or as often as may be necessary, evidence of his compliance with the provisions of this section and all others relating thereto. Until these provisions are complied with the employer shall, from the date of his acceptance of the act, be liable to an employee either for compensation under this act or at law in the same manner as if the employer had refused to accept the provisions of this act. Claim of compensation in such cases shall be deemed a waiver of the right to proceed at law and the institution of an action at law shall be deemed a waiver of all claim to compensation.

Self-insurers.

SEC. 64. Whenever an employer has complied with the provisions of section 63 relating to self-insurance, the 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 60 days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. The board may thereafter, upon petition of the employer and a hearing, grant a new certificate, but the employer shall not, as a matter of right, be entitled to a hearing for this purpose sooner than six months after a previous revocation of his certificate.

Authorization to make payments of compensation direct may be granted either as to the employer's entire risk or as to such part or class thereof as the board may direct in its certificate. In the latter case the board shall determine the extent to which and the manner in which the remainder of his said risk shall be insured. Any employer authorized to make payments of compensation direct may, for his own protection, independently insure the whole or any part or character of such payments.

Mutual insurance.

SEC. 65. For the purposes of complying with the provisions of section 63, groups of employers are hereby authorized to form either among themselves or with employers in other States mutual insurance associations or reciprocal or interinsurance exchanges, subject to the general laws of this State relating to such mutual insurance associations or reciprocal or interinsurance exchanges and such reasonable conditions and restrictions, not inconsistent therewith, as may be fixed by the board. Membership in such mutual insurance associations or reciprocal or interinsurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with section 63.

The board shall have power in any case to require any mutual insurance association or reciprocal or interinsurance exchange to purchase an annuity or to effect reinsurance with a company authorized to transact insurance in this State or to make such deposit with a bank or trust company of this State as shall in either case be approved by said board for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.

Any unreasonable failure or delay in securing the payment of any deferred installments of compensation after request has been made by such board as provided in this action [section], shall, when reported to the insurance commissioner, constitute grounds for suspension or revocation of the insurer's license to do business in this State.

B e n e f i t schemes.

SEC. 66. Subject to the approval of the board, any employer may enter into or continue any agreement with his employee to provide a system of compensation, benefit, or insurance in lieu of the compensa-

tion 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 contributions.

Such substitute system may be terminated by the board 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 latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this act; 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 courts.

Sec. 67. 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 insurer; 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.

Provisions of policies.

Sec. 68. No policy of insurance against liability for compensation 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 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 person entitled to compensation enforceable in his name.

Same.

Sec. 69. Every policy for the insurance of the compensation herein provided 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 board.

Act controls.

Sec. 70. Every policy or contract of workmen's compensation insurance under this act issued or delivered in this State shall cover the entire liability of the employer for compensation under this act to each and all of his employees covered by such policy, except as otherwise provided in section 64 hereof, regardless of whatever other contingencies may be insured or provided for by riders attached thereto or endorsements made thereon. On the face of every such policy shall be printed conspicuously the words, "Insurance under this policy is in class (designating the same) 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. If more than one class of risk be covered by the same policy, the separate risks and their corresponding manual classifications shall be stated in the same manner.

Entire liability covered.

Sec. 71. No such policy of insurance or rider to be used therewith shall be issued or delivered until a copy of the form thereof has been filed with the commissioner of insurance at least 30 days prior to such issue or delivery, unless before the expiration of 30 days the said commissioner shall have approved the form thereof in writing; nor if the commissioner of insurance notifies the company in writing that in his opinion the form of said policy or rider does not comply with the laws of this commonwealth, specifying fully the reasons for his opinion: *Provided*, That upon petition of the company the decision of the said commissioner shall be subject to review by the Franklin circuit court and to appeal therefrom to the court of appeals.

Forms to be filed.

Approval.

Sec. 72. The rates charged by all carriers of insurance, including the parties to any mutual, interindemnity, interinsurance, reciprocal, or other plan or scheme, writing insurance against the liability for compensation under this act, for insurance against such liability and against the liability of employers to employees where either or both have not elected to furnish or accept compensation under this act, shall be fair,

Rates.

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 board, not shall any such carrier of insurance write any such policy or contract until its basic and merit rating schedule have been filed with, approved, and not subsequently disapproved by the board. Each such insurance carrier shall report to the board [sic] State insurance commissioner in accordance with such reasonable rules as the State insurance commissioner may at any time prescribe, for the purpose of determining the solvency of the carrier, and the adequacy of its rates; for such purposes the board or State insurance commissioner may inspect the books and records of such insurance carrier, and examine its officers, agents, and directors under oath.

Election— **Sec. 73.** Election to operate under the provisions of this act shall be effected by the employer by filing with the board the following notice, to wit:

By employer; “(Name of employer) elects to operate under the provisions of chapter 33, acts of 1916, commonly known as the Workmen’s Compensation Act, this election being effective as of the day of _____ and covering (here insert name of industry, business, or operation on which election is made.)”

In addition to the name of each industry, business, or operation as to which such election is filed, there shall also be stated in the notice with reference thereto (1) its location and address of chief office, (2) average number of employees during preceding 12 months, (3) kind of business being conducted, (4) method of securing payments of compensation to employees which the employer elects to adopt.

Such notice shall be in writing and signed by the employer, if an individual, by any partner if a partnership, or by the chief officer or agent within this State if a corporation.

By employees. **Sec. 74.** Election to operate under the provisions of this act shall be effected by the employee by signing the following notice, to wit:

“I hereby agree with (name of employer) to accept the provisions of chapter 33, acts of 1916, commonly known as the Kentucky Workmen’s Compensation Act.”

The election shall be effective from and including the date of signing, which shall be inserted opposite the employer’s signature. In case an employee be unable to write, his mark shall be witnessed by a third person, who shall at the time read the notice to the employee. Any number of employees may sign the same notice: *Provided*, That there be conspicuously written or printed at the top of each page thereof on which signatures appear a copy of the above form of notice. If the employment be intermittent or be temporarily suspended, the original acceptance of the employee shall continue effective in subsequent employment under the same employer.

Identification of such signature or mark of the employee shall constitute conclusive proof of his election to operate under the provisions of this act in any hearing or proceeding in which such election may be material or in issue.

Notices to be kept. **Sec. 75.** All such notices of election by employees shall, when executed, be preserved by the employer during the continuation of the employment of those employees whose names are subscribed thereto. Any person who shall, with fraudulent intent, willfully destroy, convert, or secrete any such notice, or willfully deprive the owner or his agent thereof, or erase or obliterate any part thereof, shall be guilty of a misdemeanor and upon conviction be punishable by a fine of not less than \$50 nor more than \$200, or imprisonment of not less than 10 days nor more than 90 days, in the discretion of the jury.

Withdrawal. **Sec. 76.** At any time after electing to operate under the provisions of this act either party may withdraw such election, the employer by filing written notice with the board stating the date when such withdrawal is effective and the industry, business, or operation covered thereby, by personal written notice to the employee or posting in conspicuous places about such place of business not less than one week next preceding the date on which the same is to become effective

copies of such notice of withdrawal; the employee desiring to withdraw such election shall file with the employer a written notice of withdrawal, stating the date when such withdrawal is to become effective. Following the filing or giving of such notices, the status of the party withdrawing shall become the same as if his former election had not been made: *Provided, however,* That withdrawal shall not be effective as to an injury sustained less than one week after the filing thereof.

An employer, while operating under the provisions of this act, shall at all times keep posted in conspicuous places about his place of business notices to that effect, in such form as may be prescribed by the board. Acceptance to be posted.

Sec. 76a. Every employer affected by the provisions of this act who does not elect to operate thereunder shall not, in any suit at law by an employee or his representative to recover damages for personal injury or death by accident arising out of and in the course of his employment, be permitted to defend any such suit at law upon any or all of the following grounds: Defenses abrogated.

- (1) That the employee was guilty of contributory negligence.
- (2) That the injury was caused by the negligence of a fellow servant of the injured employee.
- (3) That the employee has assumed the risk of injury.

Sec. 76b. Every employee affected by the provisions of this act who does not elect to operate thereunder, and his representative in case of death, shall, in any suit at law to recover damages for personal injury or death by accident arising out of and in the course of his employment against an employer electing to operate under the provisions of this act, proceed at law as if this act had not been enacted, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant, and assumption of risk as such defenses now exist at common law. Suits at law.

Sec. 77. No agreement by any employee to pay any portion of the insurance 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 \$100 for each offense. Payment of premiums.

Sec. 78. Upon the request of the board, the attorney general, or, under his direction, the Commonwealth's attorney or 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 arising within the county or counties of their respective jurisdictions, and shall defend in like manner all suits, actions, or proceedings brought against the board or the members thereof in their official capacity. Prosecutions.

Sec. 79. The board shall prepare and furnish, free of charge, blank forms and provide its rules for their distribution, so that the same may be readily available, of all notices, claims, reports, proofs, and other blank forms and literature which it may deem proper and requisite to the efficient administration of this act. It may authorize the publication and distribution of such blanks by employers and their insurers in manner and form provided by it. Forms.

Sec. 80. Annually on or before the 15th day of December the board shall make a report to the governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by it, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, and a detailed statement of the disbursements from, and unpaid expenses chargeable against, the maintenance fund and its condition, together with any other information which the board 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 board to publish and distribute among employers and employees such general information as to the business transacted by the department as may be useful and necessary: *Provided, however,* That an abuse of such right to so publish and distribute information shall constitute political activity within the meaning of section 41 hereof. Annual reports.

The annual report shall not exceed 500 copies. All printing of the department shall be done by the contractor or contractors for public printing, subject to such provisions of the general laws governing public printing as may be applicable thereto, and shall be paid for out of any funds in the State treasury not otherwise appropriated.

Act in effect. SEC. 81. This act shall become effective on the 1st day of August, 1916, except as to sections 39 to 47, hereof, both inclusive, relating to the appointment of the board and their rights, powers, and duties, an emergency is declared to exist, and the same shall become effective on the 1st day of April, 1916.

Elections by employers and employees and contracts of insurance entered into in conformity with the provisions of this act, between April 1, 1916, and August 1, 1916, to become effective on or after August 1, 1916, shall be valid and enforceable.

Salaries and expenses. SEC. 82. For the purpose of paying the salaries and expenses of the board and its necessary employees in making preparation and putting this act into operation the sum of \$7,500 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 \$1.

Administrative fund. SEC. 83. For the purpose of paying the salaries and necessary expenses of the board 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:

Tax on premiums. SUBSECTION 1. 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 the 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 4 per cent of the amount of such premiums, 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 Kentucky, which reinsurance shall be reported by the reinsurer; but no credit shall be allowed for reinsurance in companies not licensed to transact business in Kentucky.

Returns by insurers. SUBSEC. 2. Every such insurance carrier shall, for the six months ending October 31, 1916, for the eight months ending June 30, 1917, 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 30 days after the close of the period covered thereby and shall at the same time pay into the State treasury a tax of \$4 on each \$100 of such premium ascertained as provided in subsection 1 hereof, less returned premiums on canceled policies and reinsurance with other companies licensed to transact business in this State, and upon payment file a statement with the secretary of 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.

Failure to pay. SUBSEC. 3. 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.

SUBSEC. 4. 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 commissioner of insurance, in his official capacity, in any court of this State having jurisdiction; reasonable attorney's 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 cases of unincorporated associations, partnerships, interindemnity contracts, or other plan or scheme, upon the principal agent of the parties thereto.

Collection.

SUBSEC. 5. 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 fraudulent 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 \$100 nor more than \$1,000, or by imprisonment for not less than 10 nor more than 90 days, or both such fine and imprisonment, in the discretion of the jury.

Violations.

SUBSEC. 6. Whenever by this act 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.

Notice.

SUBSEC. 7. 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.

One tax.

SUBSEC. 8. Every employer carrying his own risk under the provisions of section 63 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 board and at the times herein provided for premium reports by insurer. The board shall assess against such pay roll a maintenance fund tax computed by taking 4 per cent of the basic premiums chargeable against the same or most similar industry or business, taken from the manual insurance rates for compensation then in force in this State.

Self-insurers.

SUBSEC. 9. The board 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 expense chargeable against the maintenance fund under the provisions of this act, the board may authorize a corresponding credit upon collections for the succeeding period.

Limit on expenses.

SEC. 84. For the purpose of carrying out the provisions of this act, and of affording to employers a method of insuring their liability as required thereby, the Kentucky Employees' Insurance Association is hereby created a body corporate with the powers herein and with all the general corporate powers incident thereto.

Employees' insurance association.

SEC. 85. The board of directors of the association shall consist of 15 members thereof, three of whom shall be appointed by the governor, and 12 of whom shall be elected by ballot of the subscribers, in accordance with section 207 of the constitution. Of the original directors appointed by the governor, one shall be appointed for one year, one for two years, and one for three years; annually thereafter one director shall be appointed for a term of three years. Election of directors by the subscribers shall be held at such times and in such manner as the by-laws shall provide.

Directors.

- First meeting.** Sec. 86. The appointed directors shall, within 30 days of the subscription of 25 employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his place of business not less than 10 days before the date fixed for the meeting.
- Powers of directors.** Sec. 87. At the first meeting of the subscribers the remaining 12 directors shall be elected. The board of directors may thereafter exercise power as such and may adopt by-laws not inconsistent with the provisions of this act.
- Officers.** Sec. 88. The board of directors shall annually choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officers as the by-laws shall provide.
- Quorum.** Sec. 89. 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.
- Subscribers.** Sec. 90. Any employer in the Commonwealth may become a subscriber.
- Votes.** Sec. 91. In any meeting of the subscribers each subscriber shall be entitled to one vote, and if a subscriber has 250 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 250 employees to whom the association is bound to pay compensation, but no subscriber shall cast by his own right or by the right of proxy more than 10 votes.
- Issue of policies.** Sec. 92. No policy shall be issued by the association until [not] less than 50 employers have subscribed who have not less than 5,000 employees to whom the association may be bound to pay compensation.
- Matter to be filed.** Sec. 93. No policy shall be issued until a list of the subscribers, with the number of employees of each, together with such other information as the insurance commissioner may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement by every subscriber that he will take the policies subscribed for by him within 30 days of the granting of a license to the association by the insurance commissioner to issue policies.
- Classification.** Sec. 94. The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of the risk of injury.
Subscribers within each group shall annually pay in cash, or notes absolutely payable, such premiums as may be required to pay the compensation herein provided for the injuries which may occur in that year.
- Contingent liability.** Sec. 95. The association may in its by-laws and policies fix the contingent mutual liability of the subscribers for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium.
- Assessments.** Sec. 96. If the association is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscriber liable to assessment therefor in proportion to their several liability.
Every subscriber shall pay his proportional part of any assessments which may be laid by the association, in accordance with law and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.
- Dividends.** Sec. 97. The board of directors may, from time to time, by vote, fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation which may be payable on account of injuries sustained and expenses incurred.
All premiums, assessments, and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of each group, but all the funds of the association and the contingent liability of all the subscribers shall be available for the payment of any claim against the association.

SEC. 98. Any proposed premium, assessment, dividend, or distribution of subscribers shall be filed with the insurance department and shall not take effect until approved by insurance commissioner after such investigation as he may deem necessary. Premiums, etc.;
to be approved.

SEC. 99. The board of directors shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of subscribers, and for this purpose the inspectors of the association shall have free access to all such premises during regular working hours. Rules.

Any subscriber or employee aggrieved by any such rule or regulation may petition the workmen's compensation board for a review, and it may affirm, amend, or annul the rule or regulation.

SEC. 100. If any officer of the association shall falsely make oath to any certificate required to be filed with the insurance commissioner he shall be guilty of perjury. Perjury.

SEC. 102. The rule of law requiring strict construction of statutes in derogation of the common law shall not be applicable to the provisions of this act. If any section or part thereof shall be held invalid, such partial invalidity shall not affect the act as a whole or any other section or part thereof. Construction.

Approved March 23, 1916.

LOUISIANA.

ACTS OF 1914.

No. 20.—*Compensation of workmen for injuries.*

SECTION 1. This act shall apply only to the following:

Scope of law.
Public employ-
ees.

1. Every person in the service of the State, or of any parish, town-ship, incorporated village or city, or other political subdivision, or incorporated public board or commission in this State authorized by law to hold property and to sue and be sued, under any appointment or contract of hire, express or implied, oral or written, except an official of the State, or of any parish, township, incorporated village or city, or other political subdivision, or incorporated public board or commission in this State authorized by law to hold property and to sue and be sued; and for such employee and employer the payment of compensation, according to and under the terms, conditions, and provisions hereinafter set out in this act, shall be exclusive, compulsory, and obligatory: *Provided*, That one employed by a contractor who has contracted with the State, parish, township, incorporated village or city, or other political subdivision, or incorporated public board or commission in the State, through its proper representative, shall not be considered an employee of the State, parish, township, incorporated village or city, or other political subdivision, or incorporated public board or commission.

2. Every person performing services arising out of and incidental to his employment in the course of his employer's trade, business or occupation in the following hazardous trades, businesses, and occupations:

Hazardous em-
ployments.

(a) The operation, construction, repair, removal, maintenance and demolition of railways and railroads, vessels, boats, and other water crafts, terminal docks, street railways, factories, mills, including rice mills, cotton oil mills, sawmills, shingle mills, planing mills and syrup mills, power laundries, power bakeries, foundries, forges, smelters, blast furnaces, machine shops, coke-burning plants, lime-burning plants, bleaching works, dyeing works, potteries, phosphate and sulphur works, rendering works, slaughterhouses, meat-packing plants, ice plants, warehouses, marble or stone cutting or polishing plants, ship-building and ship-repairing plants and yards, mines, mining plants, quarries, oil, gas, sulphur, salt or other wells, heating plants, lighting plants, power plants, waterworks, pumping works, coal yards, lumber yards, building material yards, derricks, bridges, junk yards, malt houses, breweries, freight or passenger elevators, stockyards, harvesting machinery, thrashing machine, cotton gins, cotton compresses, sugarhouses, sugar and other refineries, sash and door factories, wood-working establishments, printing and photo-engraving establishments, book binding and general press work, skidders, engineering works; rigging or coaling of vessels, or loading or unloading the cargoes of vessels, logging and lumbering, storing ice, paving with asphalt or other molten material, excavating or grading with power machinery, or with the use of an explosive, working in compressed air, dredging, pile driving, boring, moving safes, chimney sweeping; the construction, installation, operation, alteration, removal or repair of wires, cables, switchboards or apparatus charged with electrical current; work in any of the building or metal trades in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenances. Any occupation entailing the manufacture, transportation, care of, use of, or regular proximity to dangerous quantities of gunpowder, dynamite, nitroglycerine and other like dangerous explosives. The installation, repair, erection, removal or operation of boilers, furnaces, engines, and other forms of machinery.

“Factory” means any premises wherein mechanical 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.

Definitions.

“Mine” means any opening into and beneath the surface of the earth for the purpose of extracting any mineral or 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 also the appurtenant structures at or about the openings of a mine and any adjoining work place where the material from a mine is stored or prepared for use or shipment.

“Quarry” means any place, not a mine, including a bank or pit, where shell, stone, slate, clay, sand, gravel, or other material is dug or otherwise extracted from the earth or ground for the purpose of trade or harter or of the employer’s trade or business; and includes also the appurtenant structures at or about the openings of a quarry and any adjoining work-place where the material from a quarry is stored or prepared for use or shipment.

“Railways” and “Railroads” also includes work in or about depots, power houses, roundhouses, cars, locomotives, and all other appurtenances, and in private yards, terminals, switches, etc., and work on railroads for express companies.

3. If there be or arise any hazardous trade, business, or occupation or work other than these hereinabove enumerated, it shall come under the provisions of this act. The question of whether or not a trade, business, or occupation not named herein is hazardous may be determined by agreement between the employer and employee or by submission at the instance of either employer or employee to the judge of the court which shall have jurisdiction over the employer in a civil case. The decision of the court shall not be retroactive in its effect.

Employments not enumerated.

4. An employer and any employee in a trade, business, or occupation not specified in paragraph 2 of this section and any one engaged in a trade, business, or occupation that may not be determined to be hazardous under the operation of paragraph 3 of this section, may, prior to the accident, voluntarily contract in writing to come under the benefit and protection of the provisions of this act with the same force and effect as though they had been specifically included instead of omitted.

Voluntary contracts.

Sec. 2 (as amended by act No. 38, acts of 1918). If an employee employed as hereinabove set forth in paragraph 1 of section 1 (except an employee who shall be eliminated from the benefit of this act for the cause and reasons set forth in section 28 of this act) receives personal injury by accident arising out of and in the course of such employment his employer shall pay compensation in the amounts and to the person or persons hereinafter specified.

Compensation payable, when.

Sec. 3 (as amended by act No. 38, acts of 1918). 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 expressed 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.

Election.

2. [Obsolete.]

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 an express statement in writing either in the contract itself or by

Presumption as to contracts.

- 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 above 18.** 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.** 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 (as amended by act No. 38, acts of 1918). 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.
- 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 (as amended by act No. 38, acts of 1918). 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 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.

SEC. 6 (as amended by act No. 38, acts of 1918). 1. Where any person (in this section referred to as principal) undertakes to execute any work, which is a part of his trade, business, or occupation or which he had contracted to perform, and contracts with any other person (in this section referred to as 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 employee employed in the execution of the work or his dependent any compensation under this act which he would have been liable to pay if that employee 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, reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the employee under the employer by whom he is immediately employed.

Employees of contractors.

2. 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 employee or his dependent independently of this section and shall have a cause of action therefor.

3. Nothing in this section shall be construed as preventing an employee or his dependent from recovering compensation under this act from the contractor instead of from the principal.

4. A principal contractor, when sued by an employee of a subcontractor or his dependent, shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or codefendant.

SEC. 7 (as amended by act No. 38, acts of 1918). 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 or his dependent 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 an employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee or his dependent to recover against that person, and may compromise the claim therefor in his discretion: *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 or his dependent less the employer's legitimate and reasonable expenses and costs of the action, which payment shall be credited upon the balance of compensation, if any, that may become due thereafter.

Liability of third persons.

SEC. 8 (as amended by act No. 38, acts of 1918). 1. For injury producing disability compensation shall be paid under this act to an injured employee in accordance with the following schedule of payments:

Compensation for—

(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.

Temporary total disability;

(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.

Permanent total 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.

Partial disability.

(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.

Schedule.

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.

Disfigurement. (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 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 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 step-children, 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.

(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.

Payments
cease, when.

Wages.

Waiting time. 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.

Medical, etc., aid. 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.

Burial.

Voluntary payments. 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.

Time, etc., of 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.

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.

Medical examinations. SEC. 9 (as amended by act No. 38, acts of 1918). 1. An injured employee shall submit himself to examination by a duly qualified medical practitioner provided and paid for by the employer, as soon after the accident as demanded, and from time to time thereafter, as often as may be reasonably necessary and at reasonable hours and places, during the pendency of his claim for compensation or during the receipt by him of payment under this act.

2. It shall be the duty of the employer to cause such examination, provided for in paragraph 1 of this section, to be made of the injured employee immediately after knowledge or notice of the accident, and to serve a copy of the report by his medical practitioner of such examination upon the employee within six days after such examination. If no such examination be made and report furnished by the employer within that time, the employee shall furnish a report of the examination made by his medical practitioner to the employer, for which the employee shall be entitled to receive from the employer the sum of one dollar. Upon the receipt by either party of such a report from the other party, the party receiving it, if he disputes such report or any statement therein, shall notify the other party of that fact within six days, otherwise such report shall be prima facie evidence of the facts therein stated in subsequent proceedings under this act.

3. If there be any dispute thereafter as to the condition of the employee, the court, upon application of either party, shall order an examination of the employee to be made by a medical practitioner appointed by the court at not to exceed ten dollars, and shall be paid in advance by the applicant. Such medical examiner shall report his conclusions from such examination to the court, and such report shall be prima

facie evidence of the facts therein stated in any subsequent proceedings under this act.

Sec. 10 (as amended by act No. 38, acts of 1918). If the employee refuses to submit himself to a medical examination as provided in section 9, or in anywise obstructs the same, his right to compensation and to take or prosecute any further proceedings under this act shall be suspended until such examination takes place. And, when a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

Refusal to submit.

Sec. 11 (as amended by act No. 243, acts of 1916). 1. No proceeding under this act for compensation shall be maintained unless notice of the injury shall be given to the employer within six months after the day of injury or death. Such notice may be given or made by any person claiming to be entitled to compensation, or by some one in his behalf.

Notice.

Sec. 12 (as amended by act No. 38, acts of 1918). 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.

Statement to be posted.

Sec. 13 (as amended by act No. 38, acts of 1918). 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.

Form of notice.

Sec. 14 (as amended by act No. 38, acts of 1918). Any notice or claim under this act shall be given to the employer. If the employer be a partnership, then the notice may be given to any one of the partners. If the employer be a corporation, then the notice may be given to any agent of the corporation on 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. If the employer be a body politic then the notice may be given to the individual connected with said body politic upon whom process may be served: *Provided, however,* That in any case notice of accident may be given to the person designated in the notice posted in accordance with section 12. Any such notice shall be given by delivering it or by sending it by mail by registered letter addressed to the employer or his or its hereinbefore designated officer or agent at his or its last known residence or place of business.

To whom given.

Sec. 15. A notice given under the provisions of section 11 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, or his agent or representative, had knowledge of the accident, or that the employer has not been prejudiced by such delay or want of notice.

Sufficiency.

Sec. 16 (as amended by act No. 38, acts of 1918). 1. In case an injured employee 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 duly qualified curator or tutor, as the case may be, may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in this act provided

Incompetents.

for, shall run, so long as such incompetent or minor has no curator or tutor as the case may be.

Payments valid. 2. Payment of compensation under this section by an employer 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 the employer notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants the employer may apply to the court to decide between them.

Agreements. SEC. 17 (as amended by act No. 38, acts of 1918). The interested parties shall have the right to settle all matters of compensation between themselves. But all agreements of settlement shall be reduced to writing and shall be substantially in accord with the various provisions of this act, and shall be approved by the court. The agreement between employer and employee or his dependent shall be presented to the court upon joint petition of employer and employee or his dependent, which petition must be verified by both parties. The settlement so approved shall be immediately entered as the judgment of the court, and such judgment shall have the same force and effect and may be satisfied as other judgments of the same court.

Reference to court. SEC. 18. 1. In case of a dispute over, or failure to agree upon a claim for compensation between employer and employee, or the dependents of the employee, either party may present a verified complaint to the judge of the court which would have jurisdiction in a civil case, or, where there is more than one judge of said court, then to either or any of said judges of such court, setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the character and extent of the injury, the amount of wages being received at the time of the injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto.

Hearings. 2. Upon the presentation of such complaint it shall be filed with the clerk of the court and the judge shall fix by order a time and place for the hearing thereof, not less than three (3) weeks after the date of the filing of said complaint. A copy of said complaint and order shall be served as summons in a civil action upon the adverse party within four (4) days after filing the complaint; within seven (7) days after the service of such complaint or petition the adverse party 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 matter in dispute as disclosed by the petition. The answer shall be verified in like manner as required for a complaint or petition. The court in its discretion may grant further time for filing the answer or hearing the complaint and allow amendments of said petition and answer at any stage of the proceedings.

Procedure. 3. If the time fixed for filing answer or delay, granted for filing answer by the respondent, has elapsed without an answer having been filed, then upon simple request of petitioner the judge of the court with whom the complaint or petition has been filed shall immediately enter a judgment in favor of petitioner in accord with the facts set forth in the verified petition filed by petitioner and the provisions of this act.

4. If an answer has been filed by the respondent within the delays allowed by law or granted by the court, or if no judgment has been entered as provided in the paragraph immediately above at the time fixed for hearing, or any adjournment thereof, the said judge shall hear such witnesses as may be presented by each party. Either party shall [have] the right to be present at any hearing or to appear through an attorney or any other agent. The judge 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. The judge shall decide the merits of the controversy as equitably, summarily and simply as may be. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed, and collected as are allowed, taxed, and collected for like services and proceedings in civil

cases. The judgment rendered by the court shall have the same force and effect and may be satisfied as other judgments of the same court.

Sec. 19. 1. Either the employer or employee shall have the right to appeal to the proper appellate court from the judgment rendered as provided in paragraph 3 of section 1, and in section 18. To such an appeal preference in hearing shall be given by the appellate court such as is given in causes in which the State is an interested party. Such appeal may be prosecuted by either employer or employee without the necessity of furnishing an appeal bond and shall suspend the operation of the judgment appealed from.

Sec. 20 (as amended by act No. 38, acts of 1918). 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.

Sec. 21 (as amended by act No. 243, acts of 1916). 1. All rights of compensation granted by this act shall have the same preference and priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages of the laborer. If it should be made to appear to the satisfaction of the court in which a judgment for compensation has been rendered that there is reasonable room for uncertainty as to the financial responsibility of an employer against whom a judgment of compensation has been finally rendered, and that such employer has not taken out insurance against his liability under this act, the court may order such employer to furnish a bond, with good and solvent surety, conditioned for the faithful payment of the compensation decreed to be paid. From an order so rendered the employer may appeal to the proper appellate court as provided in section 19.

Sec. 22. 1. Claims or payments due under this act shall not be assignable and shall be exempt from all claims of creditors and from levy or execution or attachment or garnishment except under a judgment of court for alimony in favor of a wife or ascendant or descendant. Fees of attorneys and physicians for services under this act shall be reasonable and measured according to the workman's station and shall be approved by the court.

Sec. 23. 1. 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 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. No policy of insurance against liability under this act shall be made unless such policy shall cover the entire liability of the employer under this act.

Sec. 24. 1. All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employee and the insurer the notice to the insured or the knowledge of the occurrence of the injury on the part of the insured shall be deemed to be notice or knowledge on the part of the insurer, as the case may be, that the jurisdiction of the insured for the purpose of this act shall be the 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.

Sec. 25. 1. If any employer shall carry insurance against liability under this act, and said employer shall be or become insolvent, or any execution upon a judgment for compensation is returned unsatisfied, an employee of such employer, or the dependents of a deceased em-

Appeals.

Modification of awards.

Preference.

Security of payments.

Exemptions.

Insurance policies.

Knowledge of insured.

Rights of beneficiaries.

- ployee who shall be entitled to payments under this act may enforce their claim to payments against the insurer of such employer to the same extent that the employer could have enforced his claim against such insurer had he made such payments, any provision contained in any policy or agreement of insurance written after the date of the approval of this act to the contrary notwithstanding. And the making of accrued payments to the person entitled thereto, in accordance with the provisions of this act, shall relieve such insurer from liability.
- Policies subject to act.** SEC. 26. 1. Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No company or association shall enter into any such policy of insurance unless its form shall have been approved by secretary of state of Louisiana.
- Additional benefits.** SEC. 27 (as amended by act No. 38, acts of 1918). 1. An employer and employee who have elected to come under the provisions of this act or who may be under the provision of this act as provided for in paragraph 1, section 1, may by written agreement between themselves provide for compensation, in event of injury to an employee, over and above the compensation to be awarded under the provisions of this act. Such additional compensation may be provided for by the employer insuring his liability therefor in any insurance company or association authorized to do business in the State of Louisiana; and the premium therefor must be paid by the employer.
- Injuries not compensated.** SEC. 28. 1. No compensation shall be allowed for an injury caused (1) by the injured employee's willful intention to injure himself or to injure another, or (2) by the injured employee's intoxication at the time of the injury, or (3) by the injured employee's deliberate failure to use an adequate guard or protection against accident provided for him, or (4) by the employee's deliberate breach of statutory regulations affecting safety of life or limb.
2. In determining whether or not an employer shall be exempt from and relieved of paying compensation because of injury sustained by an employee for the causes and reasons set forth in this section, the burden of proofs shall be upon [upon] the employer.
- Bonds of tutors, etc.** SEC. 29. 1. Where a judgment has been rendered under the provisions of this act in favor of a minor or interdict, the tutor or curator shall be required by the court to furnish a bond in favor of the court for the faithful performance of his duties, and shall be required by the court to furnish it annually with a report or accounting of the funds the said tutor or curator may be administering for the said minor or interdict. This report or accounting of the tutor or curator is not to be of the nature of the report of the tutor or curator required to be filed under existing laws, but it is to be a simple verified statement of the receipts of the tutor or curator with a detailed accounting of the expenditures.
- Interstate carriers.** SEC. 30. 1. This act shall not be construed to apply to any employer acting as a common carrier while engaged in interstate or foreign commerce by railroad, which employer, by reason of being engaged in interstate or foreign commerce by railroad, is not subject exclusively to the legislative power of the State of Louisiana, or for which employer and the employee thereof a rule of liability or method of compensation has been, or may be, established by the Congress of the United States; nor shall it apply to any employee of such common carrier injured or killed while so employed; and nothing in this act shall be construed to apply to any work done by, nor shall any compensation be payable under this act to, the master, officers, or any member of the crew of any vessel used in interstate or foreign commerce which said vessel is not registered or enrolled in the State of Louisiana.
2. Whenever an employee of a common carrier engaged in interstate or foreign commerce by railroad shall sustain a personal injury by accident, arising out of and in the course of his employment, resulting in his disability or death, it shall be presumed prima facie that such employer was, at the time of the accident, engaged in such commerce.
- Limitation of one year.** SEC. 31. 1. In case of personal injury (including death resulting therefrom) all claims for payments shall be forever barred unless within one year after the injury or death the parties shall have agreed upon the

payments to be made under this act, or unless within one year after injury proceedings have been begun as provided in sections 17 and 18 of this act. Where, however, such payments have been made in any case, said limitations shall not take effect until the expiration of one year from the time making the last payment.

SEC. 32. 1. In case any employee for whose injury or death payments are due under this act shall at the time of the injury be employed and paid jointly by two or more employers subject to the provisions of this act, such employers shall contribute to such payments in proportion to their several wage liabilities to such employee: *Provided, however,* That nothing in this section shall prevent any arrangement between such employers for different distribution as between themselves of the ultimate burden of such payments. If one or more, but not all such employers should be subject to this act, then the liability of such of them as are so subject shall be to pay that proportion of the entire payments which their proportionate wage liability bears to the entire wages of the employee: *Provided, however,* That such payment by such employer subject to this act shall not bar the right of recovery against any other joint employer.

Two or more employers.

SEC. 33 (as amended by act No. 38, acts of 1918). 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 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 and receives payments thereunder this right shall not accrue.

Failure to pay installments.

SEC. 34 (as amended by act No. 38, acts of 1918). 1. The rights and remedies herein granted to an employee or his dependent on account of a personal injury for which he is entitled to compensation under this act shall be exclusive of all other rights and remedies of such employee, his personal representatives, dependents, relations, or otherwise, on account of such injury.

Remedies exclusive.

SEC. 35. 1. Nothing in this act shall affect the liability of the employer to a fine or penalty under any other statute.

Other statutes.

SEC. 36. 1. No contract, rule, regulation, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this act except as herein provided.

Waivers.

SEC. 37. 1. If for the purpose of obtaining or defeating any benefit or payment under the provisions of this act, either for himself or any other person, any person willfully makes a false statement or representation, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding twelve months, or both, in the discretion of the court; and an employee from and after such conviction shall cease to receive any compensation under this act.

Deception.

SEC. 38 (as amended by act No. 38, acts of 1918). 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.

Definitions.

SEC. 39 (as amended by act No. 38, acts of 1918). 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

Same.

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.

Use of words.

SEC. 40. 1. Whenever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine shall be included.

Provisions severable.

SEC. 41. 1. If any provision of this act shall be declared unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the validity of any other portion thereof which can be given reasonable effect without the provision so declared unconstitutional or invalid.

Approved June 18, 1914.

ACTS OF 1918.

ACT No. 37.—*Commission on compensation insurance.*

Appointment.

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.

Approved June 27, 1918.

ACT No. 39.—*Workmen's compensation insurance—Deductions from wages.*

Deductions for premiums.

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 towards 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.

Violations.

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.

MAINE.

ACTS OF 1919.

CHAPTER 238.—*Compensation of workmen for injuries.*

SECTION 1. The first fifty sections of this chapter [ch. 50 of the Revised Statutes of 1916] shall be known, and may be cited, and referred to in proceedings and agreements thereunder, as "The workmen's compensation act"; the phrase "this act," as used in said sections, refers thereto.

Title.

The following words and phrases as used in the first fifty sections of this chapter, shall, unless a different meaning is plainly required by the context, have the following meaning:

Definitions.

I. "Employer" shall include corporations, partnerships, natural persons, the State, counties, water districts and all other quasi-municipal corporations of a similar nature, cities, and also such towns as vote to accept the provisions of this act; and if employer is insured, it includes the insurer unless the contrary intent is apparent from the context or it is inconsistent with the purposes of this act.

Employer.

II. "Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except: (a) farm laborers; (b) domestic servants; (c) masters of and seamen on vessels engaged in interstate or foreign commerce; (d) person whose employment is but casual, or is not in the usual course of the trade, business, profession, or occupation of his employer; (e) officials of the State, counties, cities, towns or water districts and other quasi municipal corporations of a similar character. Policemen and firemen shall be deemed employees within the meaning of this act. If, however, any policeman or fireman claims compensation under this act, there shall be deducted from such compensation any sum which such policeman, 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; (f) except that any town or city may, in lieu of the compensation and insurance provided by this act, continue any member of the fire department or police force 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. 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. (g) 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.

Employee.
Exceptions.

Policemen and
firemen.

Employees of
State.

III. "Assenting employer" shall include all employers who have complied with the provisions of section six hereof, and to whom a certificate authorized by said section has been issued, but only so long as such certificate remains in force.

IV. "Commissioner" shall mean the commissioner of labor and industry of the State of Maine. "Commission" shall mean the industrial accident commission created by section twenty-nine hereof.

V. "Industrial accident insurance policy" shall mean a policy in such form as the insurance commissioner of the State of Maine approves, issued by any stock or mutual casualty insurance company that may be now or hereafter authorized to do business in this State, which in substance and effect guarantees the payment of the compensation, medical and hospital services, and expense of sickness and burial herein provided for, in such installments, at such time or times, and to such person or persons and upon such conditions as in this act

provided. Whenever a policy or certificate of renewal thereof is filed as herein provided, a copy of such policy, certified by the insurance commissioner of the State of Maine or his deputy, shall be admissible as evidence in any legal proceeding wherein the original would be admissible.

VI. "Insurance company" shall mean any casualty insurance company authorized to do business in the State of Maine, which may issue policies conforming to the provisions of the paragraph next preceding. Whenever in this act relating to procedure the words "insurance company" are used it shall be held to apply only to cases in which the employer has elected to file such policy, instead of furnishing satisfactory proof of his ability to pay compensations and benefits hereinafter provided direct to his employees.

VII. "Representatives" may include executors, administrators, and the dependents of deceased employees. Payments may be made to dependent directly or to executors or administrators. If payments are made to the latter, they shall forthwith pay the same to the dependents as the same are hereinafter defined.

Dependents.

VIII. "Dependents" shall mean members of the employee's family or next of kin, who are wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(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 the accident.

(b) A husband upon a wife with whom he lives, or upon whom he is dependent at the time of the accident.

(c) A child or children, including adopted and stepchildren under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living, or upon whom he is or they are dependent at the time of the death of said parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation shall be divided equally among them.

In all cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may have been at the time of the injury. In such other cases, if there is more than one person wholly dependent, the compensation shall be divided equally among them; and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is anyone wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency. If a dependent is an alien residing outside of the United States, or of the Dominion of Canada, the compensation paid to any such dependent shall be one-half that hereinafter provided in case of the death of an employee.

Computing wages.

IX. "Average weekly wages, earnings, or salary," of any injured employee shall be computed as follows:

(a) If the injured employee has worked in the same 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 weekly wages" shall be three hundred times the average daily wages, earnings, or salary which he has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two. But where the employee is employed regularly during the ordinary working hours concurrently by two or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the wages, earnings, or salary received by him from all such employers, were wages, earnings, or salary earned in the employment of the employer for whom he was working at the time of the accident.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year,

his "average weekly wages" shall be three hundred times the average daily wages, earnings, 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, has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two.

(c) In cases where the foregoing methods of arriving at the "average weekly wages, earnings, or salary" of the injured employee can not reasonably and fairly be applied, such "average weekly wages" shall be taken at such sum as, having regard to the previous wages, earnings, or salary 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 represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

(d) Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings, or salary.

(e) The fact that an employee has suffered a previous injury or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly 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.

In the sections of this act relating to notices and procedure, all powers and rights granted to, or duties and obligations imposed upon, employers or employees, shall inure to the benefit of and may be exercised by guardians of minors or other incapacitated persons and the legal representatives of deceased persons.

(f) The "average weekly wages, earnings, or salary" of employees who work seven days per week shall be computed by increasing the average daily wage the employee was receiving at the time of the accident by one-sixth and then multiplying by three hundred and dividing by fifty-two.

SEC. 2. 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 (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.

SEC. 3. The provisions of section two shall not apply to employers who employ five or less workmen or operatives regularly in the same business, and in case of the employer being engaged in more than one kind of business, in one of which he employs five or more workmen or operatives regularly, and in another employs five or less workmen or operatives, the fact that he elects to become subject to the provisions of this act shall not bring him within the provisions of it as to any such business in which he employs five or less workmen or operatives, and at the time of electing to become subject to the provisions of this act, if engaged in more than one kind of business, he shall specify the business or businesses in which he is engaged and concerning which he desires to come under the provisions hereof.

SEC. 4. The provisions of section two shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by employees engaged in domestic service or agriculture, or in the work of cutting, hauling, rafting, or driving logs.

SEC. 5. The provisions of section two shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by employees of an employer who has elected to become subject to this act in the manner provided in section six hereof. In the case of personal injury sustained by an employee in the course of his employment or of death resulting from personal injury so sus-

Second injuries.

Seven-day workers.

Abrogation of defenses.

Employers of five or less workmen.

Exemptions.

Remedy exclusive.

- tained, assenting employers shall be exempt from suits either at common law or under section nine of chapter ninety-two, or under sections fifty-one to fifty-eight, both inclusive, of this chapter.
- Election.** **SEC. 6. I.** Any employer desiring to become an assenting employer as herein provided, may file with the commission at its office in Augusta, his written assent in such form as the commission approves, and also file with said commission a copy of an industrial accident insurance policy in any stock or mutual insurance company or association authorized to do business in the State of Maine, said policy being stamped with the approval of the insurance commissioner of said State of Maine.
- Rates.** The insurance commissioner may require the filing of specific rates for workmen's compensation insurance including classification of risks, experience, or any other rating information from insurance companies, authorized to transact such insurance in Maine, and may make or cause to be made such investigations as may be deemed necessary to satisfy himself that such rates are correct and proper before giving his approval and permitting such rates to be promulgated for the use of said companies.
- Policies.** Any insurance company issuing policies covering the payment of compensation provided for in this act shall file with the insurance commissioner a copy of the form thereof, and no such policy shall be issued until said insurance commissioner has approved the same. Every such insurance company shall file with the insurance department its classification of risks and premiums relating thereto, and any subsequent proposed classification or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply. The insurance commissioner may withdraw his approval of any classification of risks or premium rates relating thereto, and he may at any time approve a revised classification of risks and premium rates relating thereto. Such written assent when once filed shall continue in force without renewal during the life of said original policy or during the life of any subsequent policy or policies filed in renewal of said original policy previous to the expiration of any immediately preceding policy, so that there shall be no interim between policies. In case there shall be such an interim, then a new acceptance must be filed with the policy terminating the interim.
- Self-insurers.** **II.** Any employer desiring to become an assenting employer as herein provided may file with the commission his written assent in such form as said commission approves after furnishing satisfactory proof to the commission of his solvency and financial ability to pay the compensation and benefits herein provided, and upon the deposit of cash, satisfactory securities or a bond, as the commission may determine, such bond to run to the treasurer of State, and his successor in office, in such sum as said commission may determine and shall be conditional upon the faithful performance of all the provisions of this act relating to the payment of compensations and benefits to any injured employee. In case of cash being deposited it shall be placed at interest by the treasurer of State and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same: *Provided, however,* That the commission may at any time in their discretion deny to an assenting employer the right to continue in the exercise of the option granted by this paragraph.
- Certificates.** **III.** Upon the filing of such assent and complying with the provisions of paragraph I or II of this section, the commission shall issue to such employer a certificate stating that such employer has conformed to the provisions of this act, and setting forth the date on which the policy filed under paragraph I expires. The certificate thus issued shall remain in full force until the date of the expiration of such policy or renewal thereof or until withdrawn as provided in paragraph II or until the employer assenting under paragraph II shall notify the commission that he withdraws his assent, or files an industrial accident policy in place of the securities so deposited by him.
- Existing system.** **IV.** Subject to the approval of the commission, any employer may continue with his employees in lieu of the compensation and insurance provided by this act the system of compensation, benefit, or insurance which was used by such employer on the first day of January, nineteen

hundred and fifteen. 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 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 latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act. An employer who is authorized to substitute a plan under the provisions of this section shall give his employees notice thereof in a form to be prescribed by the commission, and a statement of the plan approved shall be filed with the commission.

V. A notice in such form as the commission approves, stating that the employer has conformed to the provisions of this act, and the date of the expiration of the policy filed, together with such further matters as the commission determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories, or place of business, conspicuous and accessible to his employees. For willful failure to post such notices, the employer shall be subject to a penalty of ten dollars per day for every day of such willful neglect, to be recovered by complaint or indictment. Such failure to so post notices shall not, however, affect the rights or liabilities of the employer or the employee hereunder.

SEC. 7. An employee of an employer who shall have elected to become subject to the provisions of this act as provided in section six of this act shall be held to have waived his right of action at common law to recover damages for personal injuries; also under section nine of chapter ninety-two or under sections fifty-one to fifty-eight, both inclusive, of this chapter, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within ten days thereafter have filed a copy thereof with the commission, or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commission within ten days after notice by the employer, as above provided, of such election, and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year each, unless such employee shall at least sixty days prior to the expiration of such first or any succeeding year, file with the said commission a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A minor working at an age illegally 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 employee except as expressly provided in this act; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employees are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law, or under the statutes above referred to, to recover damages for personal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law, or under the statutes above referred to, may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.

SEC. 8. No compensation shall be allowed for the injury or death of an employee where it is proved that his injury or death was occasioned by his willful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty. This provision as to intoxication shall not apply, if the employer knew or in the exercise of ordinary care might have known that the employee was intoxicated or that he was in the habit of becoming intoxicated while on duty.

Notice to be posted.

Presumption as to employees.

Willful misconduct, etc.

Waiting time. SEC. 9. No compensation except medical, surgical, and hospital services, nursing, and medicines and mechanical surgical aids as provided in section 10 of this act shall be paid thereunder during the first ten days after the accident. If incapacity exists at the expiration of ten days, compensation shall begin on the eleventh day. If incapacity arises after ten days, compensation shall begin on the date such incapacity begins.

Medical, etc., aid. SEC. 10. During the first thirty days after the accident the employer shall promptly furnish reasonable medical, surgical, and hospital services, nursing and medicines, and mechanical surgical aids when they are needed. The amount of such medical, surgical, and hospital services, nursing, medicines, and mechanical surgical aids shall not exceed one hundred dollars unless a longer period or a greater sum is allowed by the commission which, in their discretion, they may allow when the nature of the injury or the process of recovery requires it. In case the incapacity does not begin at the time of the accident the thirty-day period shall commence at the time such incapacity begins. Whenever the employer and the employee are unable to agree upon the amount to be allowed for such medical, surgical, and hospital services, nursing, medicines, and mechanical surgical aid, the amount shall be fixed by the commission upon petition of either party setting forth the facts. In case of emergency or for other justifiable cause the employee shall have the right to select a physician other than the one provided by the employer, and the reasonable cost of his services shall be paid by the employer subject to the approval of the industrial accident commission. Such approval shall be granted only when the commission finds that there was such emergency or justifiable cause and in all cases, that the services were adequate and necessary and the charges reasonable.

Suits. SEC. 11. If an employee who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and has waived the same, as provided in section seven of this act, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation as hereinafter provided, by the employer who shall have elected to become subject to the provisions of this act.

Compensation for death. SEC. 12. If death results from the injury, the employer shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of his injury, a weekly payment equal to three-fifths his average weekly wages, earnings, or salary, but not more than fifteen dollars nor less than six dollars a week, for a period of three hundred weeks from the date of the injury, and in no case to exceed three thousand five hundred dollars: *Provided, however,* That if the dependent of the employee to whom the compensation shall be payable upon his death is the widow of such employee, upon her death the compensation thereafter payable under this act shall be paid to the child or children of the deceased employee, including adopted and stepchildren, under the age of eighteen years, or over said age but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury the employer shall pay such dependents for a period of three hundred weeks from the date of the injury, a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of 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: *Provided, however,* That if the deceased leaves no dependents at the time of the injury the employer shall not be liable to pay compensation under this act except as specifically provided in the following section:

No dependents. SEC. 13. If the employee dies as a result of the injury, leaving no dependents at the time of the injury, the employer shall pay, in addi-

tion to any compensation provided for in this act, the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars: *Provided, however,* If dependents appear before the commission, within one year after the death of the said employee, and prove that they are entitled to compensation as provided for by this act, and such compensation is decreed to be paid to the said dependents, the reasonable expenses of last sickness and burial as aforesaid shall be deducted from the amount allowed to the said dependents.

Sec. 14. While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to three-fifths his average weekly wages, earnings, or salary, but not more than fifteen dollars nor less than six dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of incapacity, nor the amount more than forty-two hundred dollars; and if the employee shall die before having received compensation to which he is entitled or which he is receiving as provided in this act, the same shall be payable to the dependents of the said employee for the specified period, and the said dependents shall have the same rights and powers under this act as the said employee would have had if he had lived. In the following cases it shall, for the purposes of this act, be conclusively presumed that the injury resulted in permanent total disability, to wit: the total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity. Total disability.

Sec. 15. While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to three-fifths the difference between his weekly wages, earnings, or salary, before the injury and the weekly wages, earnings, or salary which he is able to earn thereafter, but not more than fifteen 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 injury. The rate of wages before the injury shall be determined by dividing the whole amount of wages or salary earned by the injured employee during the immediately preceding year, whether for the same employer or not, by the full number of days employed during the same period, provided the injured employee has worked substantially the whole of the immediately preceding year at similar work. If the employee has not so worked, the weekly wages, earnings, or salary of an employee working substantially the whole of such immediately preceding year at similar work shall be used in determining the amount of partial compensation due the injured employee. Partial disability.

Sec. 16. In cases included in the following schedule the disability in each such case shall be deemed to be total for the period specified and after such specified period, if there be a partial incapacity for work resulting from the injury specified, the employee shall receive compensation while such partial incapacity continues under the provisions of section fifteen, but in no case shall compensation continue more than three hundred weeks after the injury. The compensation to be paid for the injuries hereinafter specified shall be as follows, to wit: Schedule.

For the loss of a thumb, three-fifths the average weekly wages during fifty weeks.

For the loss of the first finger, commonly called the index finger, three-fifths the average weekly wages during thirty weeks.

For the loss of the second finger, three-fifths the average weekly wages during twenty-five weeks.

For the loss of the third finger, three-fifths the average weekly wages during eighteen weeks.

For the loss of the fourth finger, commonly called the little finger, three-fifths the average weekly 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 said thumb or finger and the compensation shall be one-half the amount above specified. The loss of more than one phalange shall be considered as a loss of the entire thumb or finger: *Provided, however,* That in no case shall the amount

received for the loss of more than one finger exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, three-fifths the average weekly wages during twenty-five weeks.

For the loss of one of the toes other than the great toe, three-fifths the average weekly 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 said toe and the compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of an entire toe.

For the loss of a hand, three-fifths the average weekly wages during one hundred twenty-five weeks.

For the loss of an arm, or any part at or above the wrist, three-fifths the average weekly wages during one hundred fifty weeks.

For the loss of a leg, or any part at or above the ankle, three-fifths the average weekly wages during one hundred fifty weeks.

For the loss of a foot, three-fifths the average weekly wages for one hundred twenty-five weeks.

For the loss of an eye or the reduction of the sight of an eye, with glasses, to one-tenth of the normal vision, three-fifths the average weekly wages during one hundred weeks.

The amounts specified in this section are all subject to the same limitations as to maximum and minimum amounts, that is, of not more than fifteen and not less than six dollars a week, as provided for total or partial disability.

Loss of use. In all cases in this class where the usefulness of a member or any physical function thereof is permanently impaired, the compensation shall bear such relation to the amount stated in the above schedule as the incapacity shall bear to the injuries named in this schedule and the commission shall determine the extent of the incapacity.

Notice of accident. Sec. 17. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the accident shall have been given to the employer within thirty days after the happening thereof; and unless the claim for compensation with respect to such injury shall have been made within one year after the occurrence of the same, or, in case of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

Form. Sec. 18. Such notice shall be in writing and shall state in ordinary language the nature, time, place and cause of the injury, and the name and address of the person injured, and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representatives, or by a dependent, or by a person in behalf of either.

Service. Sec. 19. Such notice shall be served upon the employer, or upon one employer, if there are more employers than one, or, if the employer is a corporation, upon any officer or agent upon whom process may be served or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or in the case of a corporation, to the corporation itself, at his or its last known residence or place of business; and such mailing of the notice shall constitute a completed service.

Validity. Sec. 20. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place, or cause of the injury, or the name and address of the person injured, unless it is shown that it was the intention to mislead

Want of notice. and the employer was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury, or that failure to give such notice was due to accident, mistake, or unforeseen cause.

Medical examinations. Sec. 21. The employee shall, after the injury, at all reasonable times during the continuance of his disability, if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of this State, to be selected and paid by the employer. The employee shall have the right to have a physician or surgeon, selected and paid by himself,

present at such examination of which right the employer shall give him notice when requesting such examination.

The chairman or associate legal member may at any time after the injury appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner shall be fixed and paid by the commission.

Such medical examiner being first duly sworn to the faithful performance of his duties before any justice of the peace, or any clerk of the supreme judicial court, shall thereupon, and as often as the chairman of the commission may direct, examine such injured employee in order to determine the nature, extent, and probable duration of the injury. Such medical examiner shall file a report of every examination made of such employee in the office of the commission, and a copy thereof certified by the clerk of said commission may be produced in evidence in any hearing or proceedings to determine the amount of compensation due said employee under the provisions of this act. If such employee refuses to submit himself to examination provided for in this act, or in any way obstructs any such examination, his rights to compensation shall be suspended and his compensation during such period of suspension may be forfeited.

SEC. 22. No savings or insurance of the injured employee independent of this act, shall be taken into consideration in determining the compensation to be paid hereunto, nor shall benefits derived from any other source than the employer be considered in fixing the compensation under this act.

Savings or insurance.

SEC. 23. In case an injured employee is mentally incompetent, or, where death results from the injury, in case any of his dependents entitled to compensation hereunder are mentally incompetent or minors at the time when any rights, privilege, or election accrues to him or them under this act, his guardian, or next friend, or some disinterested person designated by the commission may, in his behalf, claim and exercise such right, privilege or election, and no limitation of time in this act provided shall run so long as such incompetent or minor has no guardian. In case the commission shall have reasonable grounds for believing that compensation paid under this act, either in weekly installments or in a lump sum, will be squandered or wasted by the injured employee or his dependents, the commission may designate in writing some disinterested person to act as trustee for the said injured employee or said dependents, and the said trusts shall file an account at least once a year with the said commission showing the amounts of receipts and expenditures in behalf of said injured employee or said dependents.

Incompetents.

SEC. 24. No agreement by an employee, except as provided in section thirty, to waive his rights to compensation under this act shall be valid. No claims for compensation under this act shall be assignable or subject to attachment, or liable in any way for debt.

Waivers.

SEC. 25. 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.

Assignments, etc.

Injuries outside State.

SEC. 26. When any 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.

Liability of third persons.

SEC. 27. The claim for compensation under this act, and any decree on any such claim, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted to the same amount as the

Preferences.

wages of labor are now preferred by the laws of this State, but nothing herein shall be construed as impairing any lien which the employee may have acquired.

Lump sums.

SEC. 28. In case payments have continued for not less than six months either party may, upon due notice to the other party petition the commission for an order commuting the future payments to a lump sum. Such petition shall be considered by the commission and may be summarily granted where it is shown to the satisfaction of the commission that the payment of a lump-sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of weekly payments will, as compared with lump-sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered, the commission shall fix the lump sum to be paid 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 centum per annum with annual rests. Upon payment of such amount the employer shall be discharged from all further liability on account 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, and the employee accepting the lump-sum settlement as aforesaid shall receive no future compensation under the provisions of this act.

Industrial accident commission.

SEC. 29. The industrial accident commission of the State of Maine shall consist of four members, two of whom, to be designated as the chairman and associate legal member, respectively, shall be men learned in the law and members in good standing of the bar of this State; the third, the commissioner of labor and industry, and the fourth, the commissioner of insurance. The chairman and associate legal member shall be appointed by the governor, the former for the term of four years and the latter for the term of two years upon the first appointment under this act, all successive appointments to be for the term of three years. The chairman and associate legal member shall hold office for the terms aforesaid, unless removed as herein provided, and until their successors are appointed and qualified. They shall be sworn and for inefficiency, willful neglect of duty or for malfeasance in office may after notice and hearing be removed by the governor and council. In case of a vacancy occurring through the death, resignation, or removal, the governor shall appoint a successor for the whole term of three years, subject to removal as aforesaid.

The chairman shall receive a salary of three thousand five hundred dollars per annum, beginning January first, nineteen hundred and nineteen, and the associate legal member shall receive a salary of three thousand dollars per annum. The commissioner of labor and industry shall receive the sum of one thousand dollars, in addition to his salary as commissioner of labor and industry. The commissioner of insurance shall receive the sum of five hundred dollars, in addition to his salary as commissioner of insurance. The members of the commission shall also receive their actual, necessary, cash expenses while away from their office on official business of the commission.

The commission shall have a clerk appointed and removable by it. The salary of the clerk of the commission shall be fixed by the governor and council upon recommendation of the commission.

The associate legal member shall have the same authority, powers, and duties as the chairman, but shall only exercise said authority, powers, and duties when requested in writing to do so by the chairman.

The sum of twenty-eight thousand two hundred dollars shall be annually appropriated for the payment of salaries, clerical and other assistance, physicians, witness fees, traveling and other expenses.

The commission shall have a seal bearing the words "Industrial Accident Commission of Maine." It shall have its office and keep its records in the statehouse in Augusta, but may hold sessions at any place within the State. The commission shall have general supervision over the administration of this act, and shall have powers:

Powers.

I. To make rules and regulations not inconsistent with this act or other laws of the State for the purpose of carrying out the provisions hereof.

II. To issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers and photographs relating to any questions in dispute before it.

III. The chairman or the associate legal member at any hearing under the provisions of this act may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any matters involved in the hearing. Witness fees in all proceedings under this act shall be the same as for witnesses before the supreme judicial court.

IV. The commission may, when the interests of any of the parties or when the administration of the provisions of this act demand, appoint a person in that part of the State where an accident has happened, to make a full investigation of the circumstances surrounding said accident, and report the same without delay to the office of the said commission.

V. Depositions taken for the causes and in the manner hereinafter mentioned may be used in all hearings before the industrial accident commission.

Depositions

The chairman of the industrial accident commission or the associate legal member may issue commissions to take depositions to any United States consul, United States vice consul, any judge of any court of record in the United States or any foreign country, or to any notary public or justice of the peace in the State of Maine, for either of the following causes:

1. When the deponent resides out of or is absent from the State.
2. When the deponent is bound to sea or is about to go out of the State.
3. When the deponent is so aged, infirm, or sick as to be unable to attend the place of hearing.

Such deposition shall be taken by written interrogatories to be filed with the chairman, and the adverse party shall have ten days after written notice of such filing to him or his attorney, in which to file cross-interrogatories thereto, and if cross-interrogatories are not so filed within ten days after such notice, the right of cross-examination shall be considered waived.

The deponent shall be duly sworn and after his answers have been written out, the deposition shall be signed and sworn to by the deponent before the commissioner authorized to take it, and shall by him be sealed up and sent to the chairman of the industrial accident commission at Augusta.

SEC. 30. If the employer and the employee reach an agreement in regard to compensation under this act a memorandum of such agreement signed by the parties shall be filed in the office of the commission. If the commissioner finds that such agreement is in conformity with the provisions of this act, he shall approve the same and the clerk of the commission shall record it in a book kept for that purpose. In case the commissioner shall find that any such agreement is not in conformity with the provisions of this act and shall refuse to approve the same, or if the employer and employee fail to reach an agreement in regard to compensation under this act, either employer or employee, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest, may file in the office of the commission a petition setting forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the cause, extent, and character of the injury and the knowledge of the employer or notice of the occurrence of the injury; and, if an agreement had been reached between the parties which had not been approved by the commissioner, the form of such agreement and such other facts as may be necessary and proper for the determination of the matter in dispute, and shall state the matter in dispute and the claims of the petitioner with reference thereto.

Memoranda of agreement.

Failure to agree.

- Notice of peti- Sec. 31. Within four days after the filing of the petition, a copy
tion. thereof attested by the clerk of the commission shall be mailed, postage
prepaid, to the other parties named in the petition, or notice be given
in such other manner as the commission may determine.
- Answers. Sec. 32. Within ten days after the filing of such petition, all the
other parties interested in opposition to the petition shall file an answer
to said petition and furnish a copy thereof to the petitioner, which
answer shall state the claims of the opponents with reference to the
matter in dispute as disclosed by the petition. The chairman or asso-
ciate legal member may grant further time for filing answer and allow
amendments to said petition and answer at any stage of the proceed-
ings. If any party opposing such petition does not file an answer within
the time limited, the hearing shall proceed upon the petition.
If any party be an infant or person under disability, either parent or a
guardian or a guardian ad litem for such infant or person under disa-
bility may file the petition or answer required by this section.
- Hearings. Sec. 33. The whole matter shall then be referred to the chairman or
associate legal member of said commission, who shall fix a time for
hearing upon the request of either party, upon three days' notice
given to the other party. All hearings shall be held in the town where
the accident occurred, unless the claimant shall in writing request that
it be held in some other place.
- Procedure. Sec. 34. If from the petition and answer there appear to be facts in
dispute, the chairman or associate legal member of the commission
shall then hear such witnesses as may be presented, or by agreement
the claims of both parties as to the facts in dispute may be presented
by affidavits. From the evidence thus furnished the chairman or asso-
ciate legal member shall, in a summary manner, decide the merits of
the controversy. His decision, findings of fact, and rulings of law,
and any other matters pertinent to the questions raised at the hearing,
shall be filed in the office of the commission, and a copy thereof certi-
fied by the clerk of the commission mailed forthwith to all parties
interested. His decision, in the absence of fraud, upon all questions of
fact shall be final.
- Decision. Any party in interest may present copies, certified by the clerk of
the commission, of any order or decision of the commission, or of its
chairman or associate legal member, or of any memorandum of agree-
ments approved by the commissioner, together with all papers in
connection therewith, to the clerk of courts for the county in which
the injury occurred; whereupon any justice of the supreme judicial
court shall render a decree in accordance therewith and notify all
parties. Such decree shall have the same effect and all proceedings
in relation thereto shall thereafter be the same as though rendered in
a suit in equity duly heard and determined by said court, except
there shall be no appeal therefrom upon questions of fact found by
said commission, or its chairman or associate legal member, or where
the decree is based upon a memorandum of agreement approved by
the commissioner. Upon any appeal therefrom the proceedings shall
be the same as in appeals in equity procedure, and the law court may,
after consideration, reverse or modify any decree made by a justice
based upon an erroneous ruling of finding of law. There shall be no
appeal from a decree based upon any order or decision of the commis-
sion or of its chairman or associate legal member, or upon any memo-
randum of agreement approved by the commissioner which has not
been certified and presented to the court within twenty days after the
notice of the filing thereof by the commission or its chairman or asso-
ciate legal member. Upon the presentation to it of a certified copy
of any decision of the chairman or associate legal member terminating,
diminishing, increasing, or modifying any payments under the pro-
visions of section thirty-six, or under any decision of said chairman or
associate legal member, or any agreement approved by the commis-
sioner, the court shall revoke or modify its decree, if any has been
based thereon, to conform to such decision.
- Enforcement. Sec. 35. Any agreement between employer and employee filed
with the commission and approved by the commissioner or any deci-
sion of the chairman or associate legal member of said commission
under the provisions of section thirty-four, shall have the same effect
- Status of agree- Sec. 36. Any agreement between employer and employee filed
ments, etc. with the commission and approved by the commissioner or any deci-
sion of the chairman or associate legal member of said commission
under the provisions of section thirty-four, shall have the same effect

as the judgment of a court, and a copy thereof certified to by the clerk of said commission and filed with the clerk of the court of the county in which either the employer or employee resides, or where the business of the employer is located, shall be enforceable by the supreme judicial court by any suitable process, including execution against the goods, chattels, and real estate, and including proceedings for contempt for willful failure or neglect to obey the orders or decrees of the court, or in any other manner that decrees in equity may be enforced.

Sec. 36. At any time before the expiration of two years from the date of the approval of an agreement by the commissioner, or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings, or decree may be from time to time reviewed by the chairman or associate legal member upon the application of either party, after due notice to the other party, upon the grounds that the incapacity of the injured employee has subsequently ended, increased, or diminished. Upon such review the said chairman or associate legal member may increase, diminish, or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but shall order no change of the status existing prior to the application for review. The finding of the said chairman or associate legal member upon such review shall be served on the parties and filed with the clerk of the commission and may be certified to the court in like time and manner and subject to like disposition as in the case of original decrees: *Provided*. That an agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the commissioner in the same manner as original agreements in regard to compensation are required to be approved by the provisions of section thirty of this act.

Review.

Sec. 37. The commission may prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient, and inexpensive disposition of all proceedings under this act; and interpreting this act it shall construe it liberally and with a view to carrying out its general purpose. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act. It may provide blank forms of notice, agreements, and other forms required under this act.

Forms, orders, etc.

Sec. 38. No proceedings under this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representative or by any person entitled to compensation by reason of said death, under the provisions of this act.

Death.

Sec. 39. An employee's claim for compensation under this act shall be barred unless an agreement or a petition as provided in section thirty shall be filed within two years after the occurrence of the injury, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within two years after the death of the employee or the removal of such physical or mental incapacity.

Limitation.

Sec. 40. This act shall be compulsory as to the State, counties, cities, water districts, and other quasi municipal corporations of a similar nature. The provisions of section six of this act shall not apply to the State, counties, cities, water districts, and other quasi-municipal corporations of a similar nature or to any towns voting to accept the provisions of this act.

Public employments.

Sec. 41. All assenting employers shall make prompt report to the commission of all accidents to their employees in the course of employment, with the average weekly wages or earnings of such employee, together with such other particulars as the commission may require, and shall also report whenever the injured employee shall resume his employment and the amount of his wages or earnings.

Reports of accidents.

Whenever any final settlement is made with an injured employee, either by the employer or insurance company, a copy of the receipt or final agreement showing the total amount of money paid to such injured employee, shall be filed with the commission, but shall not be binding without the approval of the commission, or of its chairman or associate legal member. Any employer or insurance company that shall will-

Agreements to be filed.

- fully neglect or refuse to make such reports or file any receipts or agreements required to be filed under this act shall be liable to a forfeiture of ten dollars for each day of such willful neglect or refusal, to be enforced by the commission in an action of debt in the name of the State. All sums so recovered shall be paid into the State treasury and credited to the appropriation made for the administration of this act.
- Insurance companies to report.** Sec. 42. Any insurance company insuring employers under this act shall fill out any blanks and answer all questions submitted to them that may relate to policies, premiums, amount of compensation paid, and such other information as the commission or the insurance commissioner may deem important, either for the proper administration of this act or for statistical purposes. Any insurance company which shall refuse to fill out such blanks or answer such questions shall be liable to a forfeiture of ten dollars for each day of such refusal, to be enforced by the commission in an action of debt in the name of the State. In case the employer or insurance company liable for any payment under this act shall fail to make the same within ten days after notification by the commission that said failure to make such payment is deemed by said commission to be unreasonable, then for each day after the said ten days, the said employer or the said insurance company, shall be liable to a forfeiture of ten dollars each day for such failure or refusal, to be enforced by the commission in an action of debt in the name of the State. All moneys so recovered shall be paid into the State treasury and credited to the appropriation for the administration of this act.
- Biennial reports.** Sec. 43. The commission shall make a report for the biennial period ending June thirtieth of an even year giving such full statistical information as may be contained in its department in relation to the administration of this act, particularly with reference to the number of employees affected, the number injured, the amount of compensations received, and the cost of the same to the employers.
- Interstate commerce.** Sec. 44. 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.
- Payments to nonresidents.** Sec. 45. If an employee receiving a weekly payment under this act shall cease to reside in the State, or, if his residence at the time of the accident is in an adjoining State, the commission upon application of either party may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, order such payments to be made monthly or quarterly instead of weekly.
- Provisions severable.** Sec. 46. 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.
- False statements.** Sec. 47. 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 liable to a fine of not exceeding fifty dollars, and shall forfeit all right to compensation under this act after conviction for such offense.
- Impersonating officials.** Sec. 48. No person other than a member of the commission or its duly authorized subordinates and employees shall in any manner directly or indirectly represent the commission and procure settlement of any claim arising under this act, or in any manner directly or indirectly hold himself out to any employee, dependent, or other person interested in his claim to have any authority to act for said commission for any purpose under this act. Any person violating the provisions of this section shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not to exceed sixty days, or by both.
- Prior injuries.** Sec. 49. The provisions of this act shall not apply to injuries sustained or accidents which occur prior to the first day of January, A. D. nineteen hundred sixteen.
- Sec. 50. [Repealer of act of 1915 and amendments.]

Approved April 4, 1919

MARYLAND.

PUBLIC GENERAL LAWS.

ARTICLE 101.—*Workmen's compensation.*

SECTION 1. 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 the same political party). One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this article. Thereafter the terms shall be six years. Each commissioner shall devote his entire time to the duties of the office, and shall not hold any position of trust or engage in any occupation or business interfering or inconsistent with his duties as such commissioner, or serve on or under any committee of a political party. Each commissioner shall hold office until his successor shall be appointed and shall have qualified. Vacancies shall be filled by the governor for the unexpired term. A decision on any question arising under this article concurred in by two of the commissioners shall be the decision of the commission. The governor may at any time remove any commissioner from office 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 a time when he can be heard in his own defense, either in person or by counsel, which shall not be less than ten days thereafter, and such hearing shall be open to the public. The governor shall designate a member of said commission as chairman thereof. The principal office of the commission shall be in the city of Baltimore, but branch offices may be established at other places in the State for the purpose of administering this article.

Industrial accident commission.

Offices.

SEC. 2. A majority of the commission shall constitute a quorum for the transaction of business, and a vacancy shall not impair the right of the remaining members to exercise all the powers of the full commission, so long as a majority remains. Any investigation, inquiry, or hearing which the commission is authorized to hold or undertake may be held or undertaken by or before any one member of the commission, and every order made by a member thereof, when approved and confirmed by a majority of the members and so shown on its record of proceedings, shall be deemed to be the order of the commission.

Quorum.

SEC. 3. The salary of each of the commissioners shall be three thousand dollars (\$3,000) per annum, and shall be paid out of the State treasury, and in addition to the said sum of three thousand dollars per annum each of said commissioners shall also receive the sum of two thousand dollars per annum which shall be paid out of its funds by the mayor and city council of Baltimore to each of said commissioners as employees of said municipal corporation.³ In addition to the salary provided in this section each commissioner shall be allowed his actual and necessary traveling and incidental expenses.

Salaries.

SEC. 4. The commission shall be in continuous session and open for the transaction of business during all business hours of each and every day, except Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its record. All proceedings of the commission shall be shown on its record of proceedings, which shall be a public record, and shall contain a record of each case considered and the award paid or allowed to any employee of the commission, or to any other person

Sessions.

³ Chapter 713, Acts of 1916, fixes the salaries of the commissioners at \$5,000 each per annum, payable entirely from State funds, and directs that no payments on such account shall be made by the city of Baltimore after Oct. 1, 1916.

for service: *Provided, however,* That any person in the employ of the commission who shall divulge any information secured by him in respect to the transactions, property, or business of any person, firm, company, or corporation, association or joint partnership to any person other than the members of the commission shall be guilty of a misdemeanor and subject to a fine of not less than \$100 or more than \$500, or imprisonment, not exceeding 18 months, in the discretion of the court, and shall thereafter be disqualified from holding any appointment or employment with the commission.

Employees.

SEC. 5. The commission may employ a secretary, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers, and other assistants, and fix their compensation subject to the written approval of the governor; such compensation shall be paid out of the appropriation in the State treasury provided for in this act. The secretary, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers, and other assistants that may be employed shall be entitled to receive their actual necessary expenses while traveling on the business of the commission. Such expenses shall be itemized and sworn to by the person who incurred the expense, and allowed by the commission. The commission shall keep and maintain its main office and such branch offices as it shall deem proper and necessary for the administration of the act, and shall provide suitable rooms, necessary office furniture, supplies, books, periodicals, and maps for the same. All necessary expenses shall be audited and paid out of the appropriation in the State treasury provided for in this article. It shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "State Industrial Accident Commission, State of Maryland—Official Seal."

Each member of the commission and each person appointed to office or employment by the commission shall before entering upon the duties of his office or employment take and subscribe the constitutional oath of office.

Secretary.

SEC. 6. The secretary of the commission shall keep and maintain a full and true record of all proceedings of the commission, of all documents or papers ordered filed by the commission or by its rules, of all decisions or orders made by any member of the commission, and of all decisions or orders made by the commission or approved and confirmed by it and ordered filed, and he shall be responsible to the commission for the safe custody and preservation of all such documents at its office. He shall have the power to administer oaths in all parts of the State, so far as the exercise of such power is properly incident to the performance of his duty or that of the commission. He may designate, from time to time with the approval of the commission, one of the clerks of the office appointed by the commission to exercise the powers and duties of the secretary during his absence. Under the direction of the commission, the secretary shall have general charge of its office, superintend its clerical business, and perform such other duties as the commission may prescribe.

Powers of commissioners, etc.

SEC. 7. Each member of the commission, the secretary thereof, and any special examiner or inspector shall, for the purpose contemplated by this act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Maryland 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 commission or a commissioner 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 commission, the commission may apply to any judge of the supreme bench of Baltimore City, or of the circuit court of any county, 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 person 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 has 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 commission or any commissioner, when ordered to do so by the commission or its secretary, upon the ground that the testimony or evidence, books, papers, or documents required of 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 commission or a commissioner or its inspector or examiner, 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.

SEC. 8. Each officer who serves such subpoena shall receive the same fee as the sheriff would receive in the county or city where said witness is subpoenaed, and each witness who appears in obedience to a subpoena before the commission or an inspector or an examiner shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the circuit courts of the counties or the common-law courts of Baltimore City, as of the place where he gives his testimony, which shall be audited and paid from the State treasury in the same manner as other vouchers approved by any member of the commission and the secretary. No witness subpoenaed at the instance of a party other than the commission, or an inspector or examiner, shall be entitled to compensation from the State treasury unless the commission shall certify that his testimony was material to the matter investigated. In an investigation, the commission may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions taken in cases pending before the circuit courts of the counties or the common-law courts of Baltimore City, as is now or hereafter may be provided by law.

Fees.

SEC. 9. Subject to the provisions of this article, the State Industrial Accident Commission shall adopt reasonable and proper rules to govern its procedure, which procedure shall be as summary and simple as reasonably may be. It shall regulate and provide for the kind and character of notices, and 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. It 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 inspection and prescribe the time within which adjudications and awards shall be made: *Provided always,* That all such rules and regulations shall conform to the provisions of this article.

Procedure.

SEC. 10. The commission 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 its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

Proceedings not formal.

SEC. 11. A transcribed copy of the evidence and proceedings or any specific part thereof, of any investigation taken by a stenographer appointed by the commission 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 transcript of the proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the commission 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

Evidence.

therefor, as provided for transcripts in the circuit courts of the counties or the common-law courts of Baltimore City.

Blanks.

Sec. 12. The commission shall prepare and furnish free of cost blank forms and provide in its rules for their distribution so that the same may be readily available, of applications for benefits or compensation notices, to employers, proof of injury or death, of medical attendance, of employment, and wage earnings and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks.

Reports.

Sec. 13. Annually on or before the first day of January the State Industrial Accident Commission shall make a report to the governor, which shall include a statement of the number of awards made by it, the causes of the accidents leading to the injuries for which the awards were made, and a detailed statement of the expenses of the commission and the condition of the State accident fund, together with any other matters which the commission deems proper to report to the governor, including any recommendations as it may desire to make.

Compensation to be paid.

Sec. 14 (as amended by chapter 597, acts of 1916). Every employer subject to the provisions of this article, shall pay or provide as required herein compensation according to the schedules of this article for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment without regard to fault as a cause of such injury, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty. Where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty, neither the injured employee nor any dependent of such employee shall receive compensation under this article.

Suits allowed, when.

The liability prescribed by the last preceding paragraph shall be exclusive, except that if an employer fail to secure the payment of compensation for his injured employees and their dependents as provided in this article, an injured employee or his legal representative in case death results from the injury, may, at his option, elect to claim compensation under this article, or to maintain an action in the courts for damages on account of such injury; and in such an action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee. If an employer, besides employing workmen in extra-hazardous employment within the meaning of this article, shall also employ workmen in employments not extrahazardous, the provisions of this article shall apply only to the extrahazardous employments within the meaning of this article and the workmen employed therein, except as provided in section 33 of this article.

Security of compensation payments.

Sec. 15 (as amended by chapter 597, acts of 1916). The employer shall secure compensation to his employees in one of the following ways:

- (1) By insuring and keeping insured the payments of such compensation in the State accident fund, or
- (2) By insuring and keeping insured the payments of such compensation with any stock corporation or mutual association authorized to transact the business of workmen's compensation insurance in this State.

(3) Any such employer who does not with the approval of said commission voluntarily insure the payment of the compensation by one of the methods designated in the preceding paragraphs of this section, must furnish satisfactory proof to the commission of his financial ability to pay such compensation himself, in which case the commission may, at any time and from time to time in its discretion, require the deposit with the commission of securities, such as are accepted by the equity courts of Baltimore City for the investment of trust funds and in an amount or amounts to be determined by the commission, to secure the liability of the employer to pay the compensation specified in this act; and in order to be informed as to the continued financial

responsibility of any such employer the commission may require reports from him annually or at such other times as the commission may deem necessary or advisable and may examine such employer under oath or make such other examination of his business as the commission may determine. If he should fail to furnish such satisfactory proof, or give bond, or deposit such securities as required by the commission, or if he should at any time fail to render satisfactory reports to the commission or otherwise satisfy the commission of his continued financial ability to pay the compensation himself, he shall be subject to the provisions of the first paragraph of this section of this act and shall be required by the commission to insure as provided in the first paragraph of said this section, unless he, at once, insure voluntarily as provided in the second paragraph of this section.

Any employer, subject to the provisions of this article, who after November first, nineteen hundred and fourteen, fails or refuses to submit to said commission, as provided in the next succeeding paragraphs, the method he desires to adopt for assuring compensation, or who shall fail to secure insurance by one of such methods, shall be guilty of a misdemeanor, and shall be subject to a fine of not less than five hundred nor more than five thousand dollars. The court may, in its discretion, remit any such penalty: *Provided*, The employer in default assures the compensation as provided in this section: *And provided further*, That he has paid or secured to be paid any compensation or other benefits under this act which may have been awarded against him.

SEC. 16 (as amended by chapter 597, acts of 1916). The State Industrial Accident Commission is hereby authorized and directed to create and establish a fund to be known as the "State accident fund," for the purpose of insuring employers against liability under this article and to their employees and their dependents the payment of the compensation specified in this article. Such fund shall consist of all premiums or taxes received and paid into the fund and of property and securities acquired and interest earned through the use of moneys belonging to the fund. Said fund shall be administered by the commission and shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in this article.

SEC. 17 (as amended by chapter 597, acts of 1916). For the purpose of creating such State accident fund each employer insured in this fund or required to be insured therein by this act shall pay into the State treasury the premiums of liability based upon and being such percentage of the pay roll of such employer, as may have been determined and published by the commission and be then in effect. The premiums shall be paid every four months, and shall be the prescribed percentage of the total wages paid to all employees subject to the act for such preceding four months' period. The State treasurer shall issue his receipt for any sums paid him hereunder in duplicate, the original to be delivered to the person, firm, or corporation or other employer paying the same and the duplicate filed with the commission: *Provided, however*, That in order to create a fund available upon the application of this article as aforesaid on November first, one thousand nine hundred and fourteen, the payments for the months of November, one thousand nine hundred and fourteen, to February, inclusive, one thousand nine hundred and fifteen, shall be made on or before November first, one thousand nine hundred and fourteen, and be preliminarily based upon the pay roll of the operations of the first four months of the year one thousand nine hundred and fourteen. If any employer be found to have overpaid for such four months he may deduct such overpayment from the next succeeding four months' payment made to the fund; if any employer be found to have underpaid for such four months, he shall pay the deficiency with the first four months' payment made by him after the end of said four months.

SEC. 18. If a single establishment of work insured in the State accident fund comprises several occupations listed in section 32 of this act, the premium shall be computed according to the pay roll of each occupation, if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards. In computing the

pay roll the entire compensation received by every workman employed in extrahazardous work and insured in the State accident fund, within the meaning of this act, shall be included, whether it be in the form of salary, wage, piecework, overtime, or any allowance in the way of profit sharing, premium, or otherwise, and whether payable in money, board, or otherwise: *Provided*, The money value of board and similar advantages shall have been fixed by parties at the time of hiring.

Classification of industries.

Sec. 19. It shall be the duty of the commission to classify any industries subject to this act, mentioned or not mentioned, which are insured in the State accident fund. And the commission shall have power on or before the first day of January of each year to reclassify such industries, or oftener, if in the opinion of the commission the same should be deemed just and advantageous; or to create additional classification with respect to their respective degrees of hazard and determine the risk of the different classes, and fix the rates of premium for each class, according to the risks of the same sufficiently large to guarantee a workmen's compensation fund from year to year. It shall be the duty of the commission in determining the rates, in order to create a fund sufficiently large to guarantee a workmen's compensation fund from year to year to also reclassify from time to time the industries or occupations in order that there may be a flexible adjustment of the rates as the hazard fluctuates, and to use all means in their power through the rate adjustment to lessen the opportunities for injuries to the workmen. The classification so determined and the rates of premium established shall be applicable for such year; and based on each one hundred dollars of the gross annual pay roll of each employer in any class: *Provided, also*, That for the purpose of this act the pay of the employee partly within and partly without the State shall be deemed to be such proportion of the total pay of such employee as his services within the State bears to his services outside the State.

Form of pay roll.

Sec. 20. The commission may establish and require all employers insured in the State accident fund to install and maintain a uniform pay roll. The commission shall ascertain and establish the amounts to be paid into and out of the accident fund, issue proper receipts for moneys received, and certificates for benefits accrued and accruing from the State accident fund.

Reports thrice yearly.

Sec. 21. Every employer subject to the operation and effect of this act who shall insure in the State accident fund shall every four months submit a report to the commission herein created, according to the regulations and requirements it may prescribe, of his pay roll for the four months then ending. A failure to comply with this section shall subject the employer to an extra contribution of one hundred dollars to be collected by the commission in a civil action in its name. The amount collected under this section shall be paid into the State accident fund.

Any employer who shall with fraudulent intent misrepresent to the commission the amount of pay roll upon which the premium under this act is based shall be liable to the commission in ten times the amount of the difference in the premium paid and the amount the employer should have paid. The liability to the commission under this provision shall be enforced in a civil action in the name of the commission. All sums collected under this section shall be paid into the State accident fund.

Default in payments.

Sec. 22. If an employer shall default in any payment required to be made by him to the State accident fund, the amount due from him shall be collected by civil action against him in the name of the State of Maryland, and it shall be the duty of the commission on the first Monday of each month after November first, nineteen hundred and fourteen, to certify to the attorney general of the State the names and residences, or places of business, of all employers known to the commission to be in default for such payment or payments for a longer period than five days and the amount due from each employer, and it shall then be the duty of the attorney general forthwith to bring or cause to be brought against each 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 accident fund, and each employer's compliance with the provisions of this chapter requiring

payments to be made to the State accident fund shall date from the time of the payment of said money so collected as aforesaid to the said commission for credit to the State accident fund.

SEC. 23. Ten per centum of the premiums collected from employers insured in the State accident fund shall be set aside by the commission for the creation of a surplus until such surplus shall amount to the sum of fifty thousand dollars, and thereafter five per centum of such premiums until such time as in the judgment of said commission such surplus shall be sufficiently large to cover the catastrophe hazard. The commission shall also set up and maintain a reserve adequate to meet anticipated losses and carry all claims and policies to maturity. Surplus.

SEC. 24. The treasurer of the State shall be the custodian of the State accident fund and all disbursements therefrom shall be paid by him upon order or voucher, approved and signed by the chairman or acting chairman and secretary of the commission, and directed to the comptroller of the State, who shall draw his warrant therefor. It shall be the duty of the treasurer to keep and maintain the fund herein created separate and distinct from other State funds. On and after January first, nineteen hundred and fifteen, the obligation in the bond of the State treasurer shall contain a provision securing the protection of this fund. Custody of funds.

SEC. 25. Whenever and as often as there shall be in the hands of the treasurer any sum belonging to the State accident fund not likely, in the opinion of the commission, to be required for immediate use, it shall be the duty of the board of public works, when called upon by the commission, to invest the same in interest-bearing securities, such as are accepted by the equity courts of Baltimore City for the investment of trust funds, and when and as it may become necessary or expedient to use the moneys so loaned or invested the board of public works shall, when called upon by the commission, collect or sell or otherwise realize upon any such loan or investment, and any interest received upon any such loan or investment, as well as any interest received upon the deposit of moneys belonging to said fund shall be credited to said fund. Investment.

The State treasurer may deposit any portion of the State 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 accident fund deposited by the State treasurer shall be collected by him and placed to the credit of the fund.

SEC. 26 (as amended by chapter 379, acts of 1916). Any employer, after entering the State accident fund may withdraw from said fund after the period of one year upon giving sixty (60) days' notice of his intention so to do and upon paying all arrears, if any, of premiums due the said fund, and upon assuring compensation to his employees by one of the other methods specified in the act. Withdrawing from fund.

SEC. 27 (as amended by chapter 597, acts of 1916). The entire expense of conducting and administering the State accident fund as likewise all other expenses of the State Industrial Accident Commission shall be paid in the first instance by the State out of the moneys appropriated for the maintenance of the State Industrial Accident Commission and the payment of the salaries and expenses of said commission and its officers and employees. In the month of January, nineteen hundred and eighteen, and annually thereafter in such month, the commission shall ascertain the just expense incurred by the commission during the preceding calendar year, in conducting and in the administration of the State accident fund, by including the salaries of the superintendent of said fund and such other employees of the commission whose services were rendered exclusively to said fund, and all other expenses incurred exclusively for said fund; and the amount of such salaries and expenses shall be chargeable to the State accident fund. And if there be employees of the commission, other than the members themselves and the secretary, whose time is devoted partly to the general work of the commission and partly to the work of the State accident fund, and in case there are any other expenses which are incurred jointly on behalf of the general work of the commission and the State accident fund, an equitable apportionment of the salaries of such Expenses.

employees and expenses shall be made by the commission and the part thereof which is applicable to the State accident fund shall likewise be chargeable thereto; and the commission shall authorize, in the same manner as other disbursements from the State accident fund are authorized, the whole amount so chargeable to the State accident fund to be transferred from said fund by the treasurer to the State treasury to reimburse the State for the moneys so appropriated and expended in conducting and administering the State accident fund for the calendar year ending December thirty-first, nineteen hundred and seventeen and for each calendar year thereafter.

Adjustment.

As soon as practicable after January first, nineteen hundred and eighteen, and annually thereafter, the commission shall ascertain as fully and accurately as possible the total pay roll of all the employers of this State, subject to the provisions of this act, for the preceding calendar year, whether insured in the State accident fund, in a stock company, or mutual association, or self-insured, and shall also calculate and ascertain the amount paid by the State for administrative expenses of the State Industrial Accident Commission during said preceding calendar year, excluding the amount chargeable to the State accident fund under the preceding paragraph of this section. The commission shall then calculate and determine the percentage which the total amount of such salaries and expenses, other than the amount chargeable to the State accident fund, bore to the total pay roll, ascertained as aforesaid for that year, of all the employers of this State subject to the provisions of this act; and the percentage so calculated and determined shall be assessed against all such employers carrying their own insurance in proportion to their several pay rolls, and all insurance carriers, including the State accident fund, in proportion to the aggregate pay roll of employers insured therewith, as a special tax for the maintenance of the State Industrial Accident Commission, other than for conducting and administering the State accident fund, for the calendar year ending December thirty-first, nineteen hundred and seventeen, and for each calendar year thereafter: *Provided, however,* That the total amount to be assessed against and paid by such insurance carriers and self-insurers shall not exceed sixty thousand dollars for any one year.

Payment of said taxes may be enforced by civil action in the name of the State of Maryland, and the amounts so assessed and collected by the commission shall be paid into the State treasury to reimburse the State for this portion of the expense of administering the workmen's compensation law. And the commission shall be and it is hereby clothed with such power and authority to examine pay rolls and require reports from employers and insurance carriers as may be reasonable and necessary to carry out the provisions of this section and to adopt rules and regulations in regard thereto.

Distribution of funds in case of repeal.

SEC. 28. If this article shall be hereafter repealed, all moneys which are in the State accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Policies.

SEC. 29. Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No company or association shall enter into any such policy of insurance until such company or association shall first obtain from the insurance commissioner of Maryland a license of authority for the purpose, which said commissioner of insurance shall have full power and authority from time to time to determine the adequacy of its or their premium rates for carrying compensation insurance as provided in this law, and until the form of such policy shall have been approved by the State Industrial Accident Commission; and said insurance commissioner shall have full power and authority to require said insurance companies to establish and maintain adequate rates to cover respective risks to which their policies are applicable under the provisions of this act. Any person violating the provisions of this section shall be subjected to a fine of not less than one hundred nor more than one thousand dollars for each offense.

SEC. 30. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association authorized to transact workmen's compensation insurance in this State, shall contain a provision setting forth the right of the commission to enforce in the name of the State of Maryland for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, 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.

Provisions of policies.

Every such policy 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; the 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 under the provisions of this article.

Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer 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.

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, if engaged in extrahazardous employment, shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for by this article.

No contract or insurance issued by a stock company or mutual association against liability arising under this article 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 be filed in the office of the commission 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.

Cancellation.

SEC. 31. Nothing herein shall affect any existing contract of policy of employer's liability insurance or the liability of any mutual insurance association, or any arrangement now existing between employers and employees, providing 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 article; but liability for the compensation specified in this article 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 such insurance or other contract, have the right to recover the compensation directly from the employer.

Existing policies, etc.

SEC. 32 (as amended by chapter 597, acts of 1916). Compensation provided for in this article shall be payable for injuries sustained or death incurred by employees engaged in the following extrahazardous employments:

Extrahazardous employments.

(1) The operation, including construction and repair, of railways operated by steam, electric, or other motive power, street railways, and inclined railways, but not in their construction when constructed by any person other than the company which owns or operates the railways, including work of express, sleeping, parlor, and dining car employees on railway trains.

(2) Construction and operation of railways not included in paragraph one.

(3) The operation, including construction and repair, of car shops, machine shops, steam and power plants, and other works for the purposes of any such railway, or used or to be used in connection with it when operated, constructed, or repaired by the company which owns or operates the railway.

(4) The operation, including construction and repair, of car shops, machine shops, steam and power plants not included in paragraph three.

(5) The operation, including construction and repair, of telephone lines and wires for the purposes of the business of a telephone company, or used or to be used in connection with its business, when constructed or operated by the company.

(6) The operation, including construction and repair, of telegraph lines and wires for the purposes of the business of a telegraph company, or used or to be used in connection with its business, when constructed or operated by the company.

(7) Construction of telegraph and telephone lines not included in paragraphs five and six.

(8) The operation, within or without the State, including repair, of vessels other than vessels of other States or countries used in interstate or foreign commerce when operated or repaired by the company.

(9) Shipbuilding, including construction and repair in a shipyard or elsewhere, not included in paragraph eight.

(10) Longshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, or moving or handling the same on any dock, platform, or place, or in any warehouse or other place of storage.

(11) Subaqueous or caisson construction and pile driving.

(12) Construction, installation or operation of electric-light and electric-power lines, dynamos, or appliances and power transmission lines.

(13) Paving, sewer, and subway construction, work under compressed air, excavation, tunneling and shaft sinking, well digging, laying and repair of underground pipes, cables and wires, not included in paragraph 5 of this section.

(14) Lumbering, logging, river driving, rafting, booming, sawmills, shingle mills, lath mills, manufacture of veneer and of excelsior, manufacture of staves, spokes, or headings.

(15) Pulp and paper mills.

(16) Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware, upholstering, manufacture of mattresses or bed springs.

(17) Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, moldings, window and door screens, window shades, carpet sweepers, wooden toys, articles, and wares or baskets.

(18) Mining, reduction of ores and smelting, preparation of metals or minerals.

(19) Quarries; sand, shale, clay or gravel pits, lime kilns; manufacture of brick, tile, terra cotta, fireproofing, or paving blocks, manufacture of calcium carbide, cement, asphalt, or paving material.

(20) Manufacture of glass, glass products, glassware, porcelain, or pottery.

(21) Iron, steel, or metal foundries, rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, sheet metal, boilers, furnaces, stoves, structural steel, iron, or metal.

(22) Operation and repair of stationary engines and boilers, not included in other paragraphs of this section.

(23) Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, screens, bolts, metal beds, sanitary, water, gas or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, photographic cameras and supplies, sheet-metal products, buttons.

(24) Manufacture of agricultural implements, thrashing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs, or baby carriages.

(25) Manufacture of explosive and dangerous chemicals, corrosive acids or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, gunpowder, or ammunition.

(26) Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers, tar, tarred, pitched, or asphalted paper.

(27) Distilleries, breweries; manufacture of spirituous or malt liquors, alcohol, wine, mineral water, or soda waters.

(28) Manufacture of drugs and chemicals, not specified in paragraph 25, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, noncorrosive acids or chemical preparations, fertilizers, including garbage disposal plants; shoe blacking or polish.

(29) Milling; manufacture of cereals or cattle foods, warehousing; storage; operation of grain elevators.

(30) Packing houses, abattoirs, manufacture or preparation of meats or meat products or glue.

(31) Tanneries.

(32) Manufacture of leather goods and products, belting, saddlery, harness, trunks, valises, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires, or hose.

(33) Canning or preparation of fruit, vegetables, fish, or foodstuffs; pickle factories and sugar refineries.

(34) Bakeries, including manufacture of crackers and biscuits, manufacture of confectionery, spices, or condiments.

(35) Manufacture of tobacco, cigars, cigarettes, or tobacco products.

(36) Manufacture of cordage, ropes, fiber, brooms, or brushes; manila or hemp products.

(37) Flax mills; manufacture of textiles or fabrics, spinning, weaving, and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy, or felt.

(38) Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats, caps, furs, or robes.

(39) Power laundries; dyeing, cleaning, or bleaching.

(40) Printing, photo-engraving, stereotyping, electrotyping, lithographing, embossing; manufacture of stationery, paper, cardboard boxes, bags, or wall paper; and bookbinding.

(41) The operation, otherwise than on tracks, on streets, highways, or elsewhere of cars, trucks, wagons or other vehicles, and rollers and engines, propelled by steam, gas, gasoline, electric, mechanical or other power, or drawn by horses and mules.

(42) Stone cutting or dressing; marble works; manufacture of artificial stone; steel building and bridge construction; installation of elevators, fire escapes, boilers, engines, or heavy machinery; bricklaying, tile laying, mason work, stone setting, concrete work, plastering; and manufacture of concrete blocks; structural carpentry; painting, decorating, or renovating; sheet-metal work; roofing; construction, repair, and demolition of buildings and bridges; plumbing, sanitary, or heating engineering; installation and covering of pipes or boilers.

(43) In addition to the employments set out in the preceding paragraphs, this act is intended to apply to all extrahazardous employments not specifically enumerated herein.

Sec. 33. Any employer, his employee, or employees engaged in work not extrahazardous within the meaning of this article may, by their joint election, filed with the commission, accept the provisions of this article and such acceptances when approved by the commission shall subject them to the provisions of this article to all intents and purposes as if they had been originally included in its terms. Who may elect.

Any workman of the age of sixteen years and upwards may himself exercise the election hereby authorized. The right of election hereby authorized shall be exercised on behalf of any workman under the age of sixteen years by his parent or guardian. Nothing herein shall be construed to apply to workmen of less than the minimum age prescribed by law for the employment of minors in the occupations in which such workmen shall be engaged.

The provisions of this article shall apply to employers and employees engaged in the intrastate and also in interstate or 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, except that any such employer and any of his workmen only in this State may, with the approval of the commission and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this article by filing written acceptances with the commission, which shall subject the acceptors to the provisions of this article to all intents and purposes as if they had been originally included in its terms.

Interstate com-
merce.

SEC. 34. Whenever there shall have been enacted by the Congress of the United States and shall be in effect any act providing an exclusive remedy and compensation to employees of common carriers by railroad while employed in interstate or foreign commerce who sustain personal injury by accident arising out of and in the course of such employment and resulting in disability, or to the dependents of such employees in case such injury results in death, it shall be lawful for any such common carrier by railroad in this State and its employees or any of them, by agreement between such employer and employees, to provide for the payment by the employer of compensation in the amounts at the times and in the manner specified in said act of Congress to any employee who, while employed by such employer in commerce or business wholly within the State, sustains personal injury by accident arising out of and in the course of his employment and resulting in his disability, or to the dependents, as defined in said act of Congress, of such employee in case such injury results in his death; and in and by such agreement to stipulate and agree that, except as provided therein, such employer shall not be civilly liable for any injury to or death of any such employee resulting from any such accident.

If any such employer shall file with the commission an instrument in writing under its corporate seal offering to enter into such an agreement with all and any of its employees in this State and referring to such act of Congress, and shall cause notice of such offer filed to be published once each week for three successive weeks following the date of such filing in a newspaper published in each county in this State through which such employer runs regularly any freight or passenger train, and in two newspapers published in the city of Baltimore, if such employer runs regularly any freight or passenger train into or through said city, every employee of such employer shall be conclusively presumed to accept such offer of the employer and to have entered into such agreement, unless such employee shall, within thirty days after the filing of such offer by the employer, file with the commission a notice in writing or statement declining such offer; and at the expiration of said period of thirty days the terms of said agreement shall be mutually binding upon the employer and upon every employee not so declining, but any employee or the employer may at any time by filing with the commission not less than thirty days' notice in writing of his or its intention so to do, terminate such agreement upon his or its part as to all accidental injuries occurring after the expiration of such notice.

Municipalities.

SEC. 35. Whenever the State, county, city, or any municipality shall engage in any extrahazardous work within the meaning of this article in which workmen are employed for wages, this article shall be applicable thereto. Whenever and so long as by State law, city charter, or municipal ordinance, provision equal or better than that given under the terms of this article is made for municipal employees injured in the course of employment such employees shall not be entitled to the benefits of this article.

Scale of com-
pensation.

SEC. 36 (as amended by chapters 368 and 597, acts of 1916). Each employee (or in case of death his family or dependents), entitled to receive compensation under this article, shall receive the same in accordance with the following schedule, and except as in this article otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

(1) In case of total disability adjudged to be permanent fifty per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability, exclusive of the first week, not to exceed a maximum of twelve dollars per week and not less than a minimum of five dollars per week unless the employee's established weekly wages are less than five dollars per week at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wages, but not to exceed a total of five thousand dollars. Loss of both hands, or both arms, or both feet or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts. Permanent total disability.

(2) In case of temporary total disability fifty per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of a maximum of twelve dollars per week, and not less than a minimum of five dollars per week unless the employee's established weekly wages are less than five dollars per week at the time of the injury, in which event he shall receive compensation equal to his full wages, but in no case to continue more than six years from the date of the injury or to exceed thirty-seven hundred and fifty dollars in the aggregate. Temporary total disability.

(3) In case of disability partial in character but permanent in quality the compensation shall be fifty per centum of the average weekly wages, in no case to exceed twelve dollars per week or more than three thousand dollars in the aggregate, and shall be paid to the employees for the period named in the schedule as follows: Permanent partial disability.

Thumb: For the loss of a thumb, fifty weeks.

First finger. For the loss of a first finger, commonly called the index finger, thirty weeks.

Second finger. For the loss of a second finger, twenty-five weeks.

Third finger. For the loss of a third finger, twenty weeks.

Fourth finger. For the loss of a fourth finger commonly called the little finger, 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 and distal phalange of any finger shall be considered to be equal to the loss of the whole of such 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.

Great toe. For the loss of a great toe, twenty-five weeks.

Other toes. For the loss of one of the toes other than the great toe, ten weeks.

Hand. For the loss of a hand, one hundred and fifty weeks.

Arm. For the loss of an arm, two hundred weeks.

Foot. For the loss of a foot, one hundred and fifty weeks.

Leg. For the loss of a leg, one hundred and seventy-five weeks.

Eye. For the loss of an eye, one hundred weeks.

Loss of use. 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, and for the loss of the fractional part of the vision of either one or both eyes the injured employee shall be compensated in like proportion to the compensation for total loss of vision.

Amputations. Amputations between the elbow and the wrist shall be considered as the equivalent of the loss of a 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 compensations, except the benefits provided in section thirty-seven of this article.

Other cases. In all other cases in this class of disability the compensation shall be fifty per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, if less than before the accident (but not to exceed twelve dollars per week), payable during the continuance of such partial disability, but not to exceed three thousand dollars, and subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest.

In all cases where there has been an amputation of a part of any member of the body herein specified or the loss of the use of any part thereof, for which compensation is not specifically provided herein, the commission shall allow compensation for such proportion of the total number of weeks allowed for the amputation or the loss of use of the entire member, as the affected or amputated portion thereof bears to the whole.

Temporary partial disability.

(4) In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section, an injured employee shall receive fifty per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, if less than before the accident, during the continuance of such partial disability, but not in excess of three thousand five hundred dollars, except as otherwise provided in this article.

Death.

In case the injury causes death within the period of two years, the benefits shall be in the amounts and to the persons following:

If there be no dependents, the disbursements shall be limited to the expenses provided for in section thirty-seven hereof.

If there are wholly dependent persons at the time of the death, the payment shall be fifty per centum of the average weekly wages, and to continue for the remainder of the period between the date of the death and eight years after the date of the injury, and not to amount to more than a maximum of four thousand two hundred and fifty dollars, nor less than a minimum of one thousand dollars.

If there are partly dependent persons at the time of the death, the payment shall be fifty per centum of the average weekly wages, and to continue for all or such portion of the period of eight 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 three thousand dollars.

The following persons shall be presumed to be wholly dependent for support upon a deceased employee: A wife or invalid husband ("invalid" meaning one physically or mentally incapacitated from earning), a child or children under the age of sixteen years (or over said age if physically or mentally incapacitated from earning) living with or dependent upon the parent at the time of the injury or death.

In all other cases questions 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 death of such employee, but no person shall be considered as dependent unless such person be a father, mother, grandfather, grandmother, stepchild, or grandchild, or brother or sister of the deceased employee, including those otherwise specified in this section.

Nonresident beneficiaries.

Compensation under this article to alien dependent widows, children, and parents, 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 an accident resulting in death, the commission may in its discretion commute any payments thereafter becoming due to such beneficiaries into a lump-sum payment, not in any case to exceed twenty-four hundred dollars, by paying a sum equal to three-fourths of the then value of such payments.

Nonresident alien dependents may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases the consular officers shall have the right to receive, for distribution to such nonresident alien dependents, 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.

Sec. 37 (as amended by chapter 597, acts of 1916). In addition to the compensation provided for herein the employer shall promptly provide for an injured employee, such medical, surgical, or other attendance or treatment, nurse and hospital services, medicines, crutches, and apparatus as may be required by the commission in an amount not to exceed one hundred and fifty dollars (\$150). If the employer fail 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 shall be subject to regulations by the commission, 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, and in case death ensues from the injury within two years, reasonable funeral expenses shall be allowed not to exceed the sum of seventy-five dollars (\$75): *Provided, however,* That if there are no dependents and the deceased employee leaves sufficient estate to pay same, all expenses of last sickness and burial shall be paid by said estate and not by the employer or insurance company or commission out of the State accident fund, as the case may be. The commission shall have full power to adopt rules and regulations with respect to furnishing medical, nurse, hospital services, and medicines to injured employees entitled thereto and for the payment therefor.

Medical, etc.,
attendance.

Sec. 38. Notice of an injury for which compensation is payable under this article shall be given to the employer within ten days after the accident, and also in case of the death of the employee resulting from such injury, within thirty days after such death. Such notice may 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. The failure to give such notice, 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 State accident fund, insurance company, or employer, as the case may be, has not been prejudiced thereby, shall be a bar to any claim under this article.

Notice.

Whenever an accident occurs to any employee it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the commission, and also to any legal representative of the commission. Such report shall state (a) the time, cause, and nature of the accident and injuries, and the probable duration of the injury resulting therefrom; (b) whether the accident arose out of or in the course of the injured person's employment; (c) any other matters the rules and regulations of the commission may prescribe.

Report.

Sec. 39 (as amended by chapter 597, acts of 1916). When an employee is entitled to compensation under this article he shall file with the commission his application together with the certificate of the physician, if any, who attended him, within thirty days after the beginning of his disability, for which compensation is claimed, and failure to do so, unless excused by the commission, either on the ground that the insurance carrier or the employer has not been prejudiced thereby, or for some other sufficient reason, shall be a bar to any claim under the act.

Application.

When death results from injury, the parties entitled to compensation under this article or some one in their behalf, shall make application for same to the commission, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this article, certificates of attending physician, if attended by a physician, and such other proof as may be required by the rules of the commission.

Sec. 40. The commission shall make or cause to be made such investigation of any claim as it deems necessary, and upon application of either party shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the commission, together with a statement of its conclusions of fact and rulings of law. The commission may, if it deems proper, on the written application of any party in interest, or on its own motion, require the claimant to appear before an arbitration committee appointed by it and consisting

Investigation,
etc.

of one representative of employees, one representative of employers, and either a member of the commission or a person specially deputed by the commission to act as chairman, before which the evidence in regard to the claim shall be adduced and by which it shall be considered and reported upon with the right of either party to appeal to the commission from the finding of said arbitration committee on all questions of law and fact.

If changes of circumstances warrant an increase or rearrangement of compensation, like application shall be made. No increase or rearrangement shall be operative for any period prior to application therefor.

- Fraud.** Sec. 41. Any person who shall knowingly secure or attempt to secure larger compensation or compensation for a longer term than he is entitled to, or knowingly secure or attempt to secure compensation when he is not entitled to any, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding twelve months, or both, in the discretion of the court, and shall from and after such conviction cease to receive any compensation.
- Medical examinations.** Sec. 42. Any employee entitled to receive compensation under this article 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 employee and as may be provided by the rules of the commission. If the employee refuse to submit to any such examination, or obstructs the same, his right to compensation shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.
- Second injuries.** Sec. 43. Should a further accident occur to an employee already receiving payment under this article for a disability, or who has been previously the recipient of a lump-sum payment under this article, his future compensation shall be adjusted according to the other provisions of this article, and with regard to the combined effect of his injuries and his past receipt of compensation under this article. In case of the remarriage of a dependent widow of a deceased employee without dependent children, all compensation under this article shall cease, and further no widow or widower shall receive any benefits under this article where the marriage shall have taken place after the person entitled to benefits hereunder shall have been injured, provided there are no dependent children.
- Remarriage of widow or widower.** 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 any party in interest or upon its own motion, readjust for future application the rate of compensation in accordance with rules in this section provided, or, in a proper case, terminate the payments.
- Deserting spouse.** A husband or wife of an injured employee who has deserted said employee for more than one year prior to the time of the injury or subsequently shall not be a beneficiary under this article. In case of the remarriage of a dependent widow of a deceased employee without dependent children, all compensation under this article shall cease, and further no widow or widower shall receive any benefits under this article where the marriage shall have taken place after the person entitled to benefits hereunder shall have been injured, provided there are no dependent children.
- Removing from State.** Sec. 44. 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 payments thereafter to become due to such beneficiary into a lump-sum payment, not in any case to exceed twenty-four hundred dollars, by paying a sum equal to three-fourths of the then value of such payments.
- Intentional injury.** Sec. 45. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the employee, the widow, widower, child, children, or dependents of the employee shall have the privilege either to take under this article or have cause of action against such employer as if this article had not been passed.

SEC. 46 (as amended by chapter 597, acts of 1916). Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any compensation or benefits under this article on account of any injury to or death of an employee caused by self-inflicted injury, the willful misconduct, or where the injury or death resulted solely from the intoxication of the injured employee. Injuries not compensated.

SEC. 47. If it be established that the injured employee was of such age and experience when injured as that under the natural conditions his wages would be expected to increase, this fact may be considered in arriving at his average weekly wage. Learners, etc.

SEC. 48. A minor working at an age legally permitted under the laws of this State shall be deemed sui juris for the purposes of this article, and no other person shall have any cause of action or right to compensation for any injury to such minor employee unless otherwise herein provided. Minors.

SEC. 49. No compensation shall be allowed for two weeks after the injury is received except disbursements herein authorized for medical, nurse, and hospital services and medicines, and for funeral expenses. Waiting time.

SEC. 50. 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. The dependent 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 findings and direction of the commission. Distribution of death benefits.

SEC. 51. In every case providing for compensation to an employee or his dependent, excepting temporary disability, the commission may, if in its opinion the facts and circumstances of the case warrant it, allow the compensation to be paid in a partial or total lump sum. Lump sums.

SEC. 52. No money payable under this article shall, prior to issuance and delivery of the warrant or voucher therefor, be capable of being assigned, charged, or taken in execution or attachment. Assignments, etc.

SEC. 53. No employer or employee who are subject to the provisions of this article shall exempt himself from the burden or waive the benefit of this article by any contract, agreement, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void. No agreement by such employee to pay any portion of the premium paid by such 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 article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than two hundred dollars for each offense. Waivers.

SEC. 54. The powers and jurisdiction of the commission over each case shall be continuing, and it may from time to time make such modifications or change with respect to former findings or orders with respect thereto as in its opinion may be justified. Jurisdiction continuing.

SEC. 55. If an employee shall be injured because of the absence of any safeguard or protection required by the commission, the employer shall be guilty of a misdemeanor and liable to a fine of not less than fifty dollars or more than five hundred dollars, to be paid into the State accident fund. Absence of safeguards.

SEC. 56. Any employer, employee, beneficiary, or person feeling aggrieved by any decision of the commission affecting his interests under this article may have the same reviewed by a proceeding in the nature of an appeal and initiated in the circuit court of the county or in the common-law courts of Baltimore (City having jurisdiction over the place where the accident occurred or over the person appealing from such decision, and the court shall determine whether the commission has justly considered all the facts concerning injury, whether it has exceeded the powers granted it by the article, whether it has misconstrued the law and facts applicable in the case decided. If the court shall determine that the commission has acted within its powers and has correctly construed the law and facts, the decision of the com- Appeals.

mission shall be confirmed, otherwise it shall be reversed or modified. Upon the hearing of such an appeal the court shall, upon motion of either party filed with the clerk of the court according to the practice in civil cases, submit to a jury any question of fact involved in such case. The proceedings in every such an appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served personally upon some member of the commission within thirty days following the rendition of the decision appealed from. An appeal shall not be a stay. If the decision of the commission shall be changed or modified, the practice prevailing in civil cases as to the payment of costs and the fees of medical and other witnesses shall apply. Appeal shall lie from the judgment of the circuit court of the county or the common-law courts of Baltimore City to the court of appeals as in other civil cases, and such appeals shall have precedence over all cases except criminal cases.

The attorney general shall be the legal adviser of the commission and shall represent it in all proceedings whenever so requested by any of the commissioners in all court proceedings under or pursuant to this article. The decision of the commission shall be prima facie correct and the burden of proof shall be upon the party attacking the same.

Costs and fees. SEC. 57. If the commission or the court before which any proceedings for compensation or concerning an award of compensation have been brought, under this article, determines that such proceedings have not been so brought upon reasonable ground, it shall assess the whole cost of the proceeding upon the party who has so brought them. Claims for legal services in connection with any claims arising under this article and claims for services or treatment rendered or supplies furnished pursuant to section thirty-six of this article shall not be enforceable unless approved by the commission. If so approved, such claim or claims shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the commission.

Liability of third parties. SEC. 58. Where the injury or death for which compensation is payable under this article was caused under circumstances creating a legal liability in some person, other than the employer, to pay damages in respect thereof, the employee, or in case of death, his personal representative or dependents as hereinbefore defined, may proceed either by law against that other person to recover damages or against the employer for compensation under this article, or in case of joint tortfeasors against both; and if compensation is claimed and awarded or paid under this article any employer may enforce for the benefit of the insurance company or association carrying the risk or the State-accident fund, or himself, as the case may be, the liability of such other person: *Provided, however,* If damages are recovered in excess of the compensation already paid or awarded to be paid under this article, then any such excess shall be paid to the injured employee or, in case of death, to his dependents, less the employer's expenses and costs of action.

Law of limitations not to run, when. SEC. 59. If the provisions of this article relative to compensation for injuries to or death of employees become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death not previously compensated for under this article by lump payment or completed periodical payments 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: *Provided,* That such action is commenced within one year after such repeal or adjudication, but in any such action any sum paid to the employee on account of injury for which the action is prosecuted shall be taken into account or disposed of as follows: If the defendant employer shall have insured himself as provided for in this article without delinquency, such sums as may have been paid to the employee or his dependents on account of injury or death shall be credited upon recovery as payment thereon.

Records on appeals. SEC. 59a (added by chapter 597, acts of 1916). It shall be the duty of the clerk of the court to which the case is sent on appeal, under the preceding section, to send to the commission a duly certified copy of the docket entries, and judgment of the court in each case heard and determined on appeal.

Sec. 60. If any employer shall be adjudicated to be outside the lawful scope of this article, the article shall not apply to him or his employees; if any employee shall be adjudicated to be outside the lawful scope of this article, because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this article in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received.

Cases outside scope of act.

Sec. 60a (added by chapter 597, acts of 1916). When any person as a principal contractor, undertakes to execute any work which is a part of his trade, business, or occupation which he has contracted to perform and contracts with any other person as subcontractor, for the execution by or under the subcontractor, of the whole or any part of the work undertaken by the principal contractor, the principal contractor shall be liable to pay to any workman employed in the execution of the work any compensation under this article 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 article, reference to the principal contractor shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

Contractors and subcontractors.

Where the principal contractor is liable to pay compensation under this section, he shall be entitled to indemnity from any employer, who would have been liable to pay compensation to the employee independently of this section, and shall have a cause of action therefor against such employer.

Nothing in this section shall be construed as preventing a workman from recovering compensation under this article from the subcontractor instead of from the contractor.

Whenever an employee of a subcontractor files a claim under this article against the principal contractor, the principal contractor shall have the right to join the subcontractor or any intermediate contractors as defendant or codefendant in the case.

Sec. 61. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this article; but this article shall be so interpreted and construed as to effectuate its general purpose.

Construction to be liberal.

Sec. 62. In any proceedings for the enforcement of a claim for compensation under this article, it shall be presumed in the absence of substantial evidence to the contrary:

Presumptions.

- (a) That the claim comes within the provisions of this article.
- (b) That sufficient notice thereof was given.
- (c) That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another.
- (d) That the injury did not result solely from the intoxication of the injured employee while on duty.

Sec. 63 (as amended by chapters 86 and 597, acts of 1916). Definitions as used in this article: (1) "Extrahazardous employment" means a work or occupation described in section thirty-two of this article.

Definitions.

(2) "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, or corporation employing workmen in extrahazardous employments.

(3) "Employee" means a person who is engaged in an extrahazardous employment in the service of an employer carrying on or conducting the same upon the premises or at a plant, or in the course of his employment away from the plant of his employer, and shall not include farm laborers. "Farm laborers," as used in this article, shall mean any employees who at the time of the accident, are engaged in rendering any agricultural service, including the thrashing and harvesting of crops, or who, at the time of the accident, are engaged in service incidental to and in connection with agricultural pursuits or developments, whether the employer be the farmer or other person under-

taking or contracting with the farmer to perform any such agricultural service, pursuit, or development. This article shall not apply to farm laborers, domestic servants, nor to country blacksmiths, wheelwrights, or similar rural employments, nor in any case where the accident occurred before this article takes effect, nor to casual employees or any employee whose salary is in excess of two thousand dollars a year, or any employees who are employed wholly without the State.

(4) "Employment" includes employment only in a trade, business, or occupation carried on by the employer for pecuniary gain.

(5) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this article, and includes funeral benefits provided therein.

(6) "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom.

(7) "Death," when mentioned as a basis for the right to compensation means only death resulting from such injury.

(8) "Average weekly wages" for the purposes of this article shall be taken to mean the average weekly wages earned by an employee when working on full time.

(9) "State accident fund" means the State insurance fund provided for in section sixteen of this article.

(10) "Child" shall include a posthumous child and a child legally adopted prior to the injury of the employee.

(11) "Beneficiary" means a husband, wife, child, children, or dependents of an employee in whom shall vest a right to receive payment under this article.

(12) "Mining" means all underground workings by shaft, drift, slope or otherwise, for the securing, removing and taking out from under the ground coal, iron ore, clays, and all other minerals and mineral substances, found in and under the earth, and shall mean all work done by any miner or employee working in and about said mines in said shafts, slopes, headings, tunnels, rooms, and other subterranean places therein for the purposes of obtaining and removing therefrom all such minerals and mineral substances, and the benefits of this article shall be extended to any employee, or in case of his death, to his dependent relatives, otherwise entitled, who shall be killed or injured while so working or employed therein, and such mine worker shall be deemed to be wholly employed in the State of Maryland, and entitled to the benefits of this article if the tippie, mouth or principal mine entrance in and about which he works, is situated in this State, notwithstanding such shaft, heading, slope or other subterranean tunnel may extend underground into an adjoining State, and notwithstanding such mine worker so employed in this State may be killed or injured while working in said mine beyond the lines of this State, and within the lines of an adjoining State.

Appropriation.

SEC. 64. The sum of forty thousand dollars (\$40,000) annually for the years nineteen hundred and fourteen, nineteen hundred and fifteen, and nineteen hundred and sixteen, or so much thereof as may be necessary annually for the maintenance of the State Industrial Accident Commission and the payment of the salaries and expenses of said commission and its officers and employees, and so much thereof, if any, as may be necessary to maintain a solvent State accident fund, is hereby appropriated, and shall be payable on the order or orders of the said commission from time to time as in this law provided; and the comptroller shall draw his warrant upon the treasurer of Maryland, as in law provided, for the annual appropriations. And a further appropriation is hereby made of the sum of fifteen thousand dollars for the year nineteen hundred and fourteen for the necessary expenses of the aforesaid State Industrial Accident Commission to cover printing, office fixtures, and such other legitimate expenses as the commission may incur in establishing their office or offices as in this article contemplated, and the comptroller of the State of Maryland shall draw his warrant upon the treasurer of Maryland for the sum of fifteen thousand dollars (\$15,000), or any part thereof, upon the order or orders presented to the State comptroller by the said State Industrial Accident Commission.

Sec. 65. Chapter one hundred and fifty-three of the Acts of nineteen hundred and ten, as amended by chapter four hundred and forty-five of the Acts of nineteen hundred and twelve of the General Assembly of Maryland [establishing a miners' cooperative insurance fund in Allegany and Garrett counties] are hereby repealed, except for the purpose of providing confirmation for all claims which may arise thereunder prior to the first day of November, nineteen hundred and fourteen; and if after all such claims are paid there be a surplus in the fund, it shall be turned over to the treasurer of Maryland for the account of the State industrial accident fund, but if there be a deficit in said fund at the time this act takes effect as between employers and employees, the payments provided for under chapter one hundred and fifty-three of the Acts of nineteen hundred and ten as amended by chapter four hundred and forty-five of the Acts of nineteen hundred and twelve shall be continued by the employers and employees of Allegany and Garrett counties to the treasurers of said counties until such pending claims are paid, when said payments shall cease.

Repeal.

MASSACHUSETTS.

ACTS OF 1911.

CHAPTER 75L.—*Compensation of workmen for injuries.*

PART I.

MODIFICATION OF REMEDIES.

- Abrogation of defenses.** of **SECTION 1.** In an action to recover damages for personal injury 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:
1. That the employee was negligent;
 2. That the injury was caused by the negligence of a fellow employee;
 3. That the employee had assumed the risk of the injury.
- Exemptions.** **SEC. 2.** The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers.
- Employees of subscribers.** of **SEC. 3.** The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by employees of a subscriber.
- Same.** **SEC. 4.** The provisions of sections one hundred and twenty-seven to one hundred and thirty-five, inclusive, and of one hundred and forty-one to one hundred and forty-three, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, and of any acts in amendment thereof, shall not apply to employees of a subscriber while this act is in effect.
- Presumption of waiver.** of **SEC. 5.** An employee of a subscriber shall be held to have waived his right of action at common law to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed such 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 thirty 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 may waive such claim by a notice in writing which shall take effect five days after it is delivered to the employer or his agent.

PART II.

PAYMENTS.

- Compensation payable, when.** **SECTION 1.** If an employee who has not given notice of his claim of common law rights of action, as provided in part I, section five, or who has given such notice and has waived the same, received a personal injury arising out of and 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.
- Misconduct.** **SEC. 2.** If the employee is injured by reason of his serious and willful misconduct he shall not receive compensation.
- Double compensation.** **SEC. 3** (as amended by ch. 571, acts of 1912). If the employee is injured by reason of the serious and willful misconduct of a subscriber or of any person regularly intrusted with and exercising the powers of superintendence the amounts of compensation hereinafter provided shall be doubled. In such case the subscriber shall repay to the association the extra compensation paid to the employee. If a claim is made under this section the subscriber shall be allowed to appear and defend against such claim only.
- Waiting time.** **SEC. 4** (as amended by ch. 90, acts of 1916). No compensation shall be paid under this act for any injury which does not incapacitate the

employee for a period of at least ten days from earning full wages, but if incapacity extends beyond the period of ten days, compensation shall begin on the eleventh day after the injury. When compensation shall have begun it shall not be discontinued except with the written assent of the employee or the approval of the board, or a member thereof: *Provided, however,* That such compensation shall be paid in accordance with section ten of part II of said chapter seven hundred and fifty-one, as amended by section five of chapter seven hundred and eight of the acts of the year nineteen hundred and fourteen, if the employee in fact earns wages at any time after the original agreement is filed.

Sec. 5 (as amended by ch. 198, acts of 1917). 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.

Sec. 6 (as amended by ch. 708, acts of 1914). If death results from the injury, the association shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to sixty-six and two-thirds per cent of his average weekly wages, but not more than ten dollars nor less than four dollars a week for a period of five hundred weeks from the date of the injury; but in no case shall the amount be more than four thousand dollars. If the employee leaves dependents only partially dependent upon his earnings for support at the time of his injury, the association shall pay such dependents a weekly compensation equal to 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 earnings 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 five hundred weeks from the date of the injury. Death benefits.

Sec. 7 (as amended by ch. 204, acts of 1919). The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee: Dependents.

(a) A wife upon a husband with whom she lives at the time of his death, or from whom, at the time of his death, the industrial accident board shall find the wife was living apart for justifiable cause or because he had deserted her. The findings of the board upon the question of such justifiable cause and desertion shall be final.

(b) A husband upon a wife with whom he lives 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 is or they are living at the time of the death of such parent, there being no surviving dependent parent: *Provided,* That in the event of the death of an employee who has at the time of his death a living child or children by a former wife or husband, under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), said child or children shall be conclusively presumed to be wholly dependent for support upon such deceased employee, and the death benefit shall be divided between the surviving wife or husband and all the children of the deceased employee in equal shares, the surviving wife or husband taking the same share as a child. The total sum due the surviving wife or husband and her or

his own children shall be paid directly to the wife or husband for her or his own use and for the benefit of her or his own children, and the sums due to the children by the former wife or husband of the deceased employee shall be paid to their guardians or legal representatives for the benefit of such children.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof, and if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

(d) A child or children under the age of sixteen (or over the said age but physically or mentally incapacitated from earning), upon a parent who was at the time of his death legally bound to support, although living apart from, such child or children.

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| Burial. | SEC. 8 (as amended by ch. 269, acts of 1917). 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. |
| Total disability. | SEC. 9 (as amended by ch. 197, acts of 1919). While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a weekly compensation equal to sixty-six and two-thirds per cent of his average weekly wages, but not more than sixteen dollars nor less than seven dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor the amount more than four thousand dollars. |
| Partial disability. | SEC. 10 (as amended by ch. 205, acts of 1919). While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to sixty-six and two-thirds per cent of 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 sixteen dollars a week; and in no case shall the amount of such compensation be more than four thousand dollars. |
| Specific injuries. | SEC. 11 (as amended by chapter 708, acts of 1914). In case of the following specified injuries the amounts hereinafter named shall be paid in addition to all other compensation: <p>(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the reduction to one-tenth of normal vision in both eyes with glasses, sixty-six and two-thirds per cent of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks.</p> <p>(b) For the loss by severance of either hand at or above the wrist, of either foot at or above the ankle, or the reduction to one tenth of normal vision in either eye with glasses, sixty-six and two-thirds per cent of the average weekly wages of the injured person, for each hand or foot so severed, but not more than ten dollars nor less than four dollars a week for a period of fifty weeks.</p> <p>(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, of the same hand, or of two or more toes of the same foot, sixty-six and two-thirds per cent of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks for each hand or foot so injured.</p> <p>(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, sixty-six and two-thirds per cent of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks for each hand or foot so injured.</p> <p>(e) The additional amounts provided for in this section in case of the loss of a hand, foot, thumb, finger, toe, or phalange shall also be paid for the number of weeks above specified, in case the injury is such</p> |

hat the hand, foot, thumb, finger, toe or phalange is not lost but so injured as to be permanently incapable of use.

Sec. 12. No savings or insurance of the injured employee, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the association be considered in fixing the compensation under this act. Savings, etc., of injured man.

Sec. 13 (as amended by ch. 708, acts of 1914). The compensation payable under this act in case of the death of the injured employee shall be paid to his legal representative; or, if he has no legal representative, to his dependents; or, if he leaves no dependents, to the persons to whom payment of the expenses for the last sickness and burial are due. If the payment is made to the legal representatives of the deceased employee, it shall be paid by him to the dependents or other persons entitled thereto under this act. When the appointment of a legal representative of a deceased employee, not otherwise necessary, is required for carrying out the provisions of this act, the association shall furnish or pay for all legal services rendered in connection with the appointment of such legal representative, or in connection with any of his duties, and shall pay the necessary disbursements for such appointment, the necessary expenses of such legal representative, and reasonable compensation to him for time necessarily spent in carrying out said provisions. All said payments shall be in addition to all sums paid for compensation. Payee.

Sec. 14. If an injured employee is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may in his behalf claim and exercise such right or privilege. Incompetents.

Sec. 15. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the association or subscriber as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employee, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity. Notice of injury.

Sec. 16 (as amended by ch. 571, acts of 1912). The said notice shall be in writing, and shall state in ordinary language the time, place, and cause of the injury, and 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. Any form of written communication signed by any person who may give the notice as above provided, which contains the information that the person has been so injured, giving the time, place and cause of the injury, shall be considered a sufficient notice. Form.

Sec. 17. The notice shall be served upon the association, or an officer or agent thereof, or upon the subscriber, or upon one subscriber, if there are more subscribers than one, or upon any officer or agent of a corporation if the subscriber is a corporation, by delivering the same to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business. Service.

Sec. 18. A notice given under the provision of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, or cause of the injury, unless it is shown that it was the intention to mislead and the association was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the association, subscriber, or agent had knowledge of the injury. Sufficiency.

Sec. 19 (as amended by ch. 571, acts of 1912). After an employee has received an injury, and from time to time thereafter during the continuance of his disability he shall, if so requested by the association or subscriber, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the Commonwealth, furnished and paid for by the association or subscriber. Medical examinations.

The employee shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited.

- Waivers. Sec. 20. No agreement by an employee to waive his rights to compensation under this act shall be valid.
- Assignments, etc. Sec. 21. No payment under this act shall be assignable or subject to attachment, or be liable in any way for any debts.
- Lump sums. Sec. 22 (as amended by ch. 708, acts of 1914). Whenever any weekly payment has been continued for not less than six months, the liability therefor may in unusual cases where the parties agree and the board deems it to be for the best interest of the employee or his dependents, be redeemed by the payment, in whole or in part, by the association, of a lump sum which shall be fixed by the board, but in no case to exceed the amount provided by this act. The board may, however, in its discretion at any time in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be compensated in whole or in part by the payment of a lump sum, the amount of which shall be fixed by the board, but in no case to exceed the amount provided by this act.
- Claims. Sec. 23 (as amended by ch. 119, acts of 1918). 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.
- Interest. Sec. 24 (added by ch. 708, acts of 1914). Whenever any question involving the compensation of an injured employee, or his dependents, is appealed to the supreme judicial court, and the decision rendered is in favor of the employee or his dependents, interest to the date of payment shall be paid by the association on all sums due as compensation to such employee or dependents.

PART III.

PROCEDURE.

- Industrial accident board. SECTION 1 (as amended by ch. 299, acts of 1919). There shall be an industrial accident board consisting of five members, to be appointed by the governor, by and with the advice and consent of the council, one of whom shall be designated by the governor as chairman. The term of office of members of this board shall be five years, except that when first constituted one member shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one member shall be appointed every year for the full term of five years. 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.⁴ 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 said board shall, from time to time, designate five members to serve as a reviewing board, and three members shall con-

⁴ The number of members of the board is reduced to six by chapter 299, acts of 1919. The first vacancy occurring is not to be filled. Title changed to department of industrial accidents by section 68, chapter 350, acts of 1919.

stitute a quorum to decide all matters which are required to be heard by the board.

The members of the board shall devote their whole time in business hours to the work of the board.

Sec. 2 (as amended by ch. 299, acts of 1919). The salaries and expenses of the board shall be paid by the Commonwealth. The salary of the chairman shall be fifty-five hundred dollars a year, and the salary of the other members shall be five thousand dollars a year each. The board may appoint a secretary at a salary of forty-five hundred dollars a year, and may remove him. It shall also be allowed an annual sum, not exceeding ten thousand dollars, for clerical service and traveling and other necessary expenses. The board shall be provided with an office in the statehouse or in some other suitable building in the city of Boston, in which its records shall be kept.

Salaries, etc.

Sec. 3 (as amended by ch. 123 and 275, acts of 1915). The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as simple and summary as reasonably may be. The board or any member thereof shall have the power to subpoena witnesses, administer oaths, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. Upon the written request of the board or of any member thereof, together with interrogatories and cross-interrogatories, if any there be, filed with the clerk of the superior court for any county of this Commonwealth, commissions to take depositions of persons or witnesses residing without the Commonwealth, or in foreign countries, or letters rogatory to any court in any other of the United States or to any court in any foreign country, shall forthwith issue from the said superior court, as in cases pending in said superior court, and upon the return of the said depositions or answers to letters rogatory the same shall be opened by the clerk of the court which issued the commissions or letters, and the said clerk shall endorse thereon the date upon which any deposition or answer to letters rogatory was received and the same shall forthwith be delivered to the board. No entry fee shall be charged in such cases. The fees for attending as a witness before the industrial accident board shall be one dollar and fifty cents a day, for attending before an arbitration committee fifty cents a day; in both cases five cents a mile for travel out and home. The superior court shall have power 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.

Rules.

Procedure.

Sec. 4 (as amended by chapter 571, acts of 1912). If the association and the injured employee reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the industrial accident board and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of Part III, section eleven. Such agreements shall be approved by said board only when the terms conform to the provisions of this act.

Agreements to be filed.

Sec. 5 (as amended by chapter 297, acts of 1917). 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 payments under such agreements, either party may notify the industrial accident board, which shall thereupon assign the case for hearing by a member of the board.

Disagreements.

Sec. 6. [Repealed.]

Sec. 7 (as amended by ch. 297, acts of 1917). 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

Hearing.

- within seven days, the decision shall be enforceable under provisions of section eleven of Part III.
- Medical examination.** SEC. 8 (as amended by ch. 72, acts of 1916). 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 five dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases, and the association shall reimburse the board for the amount so paid. The report of the physician shall be admissible as evidence in any proceedings before the industrial accident board or a committee of arbitration: *Provided*, That the employee and insurer have reasonably been furnished with copies thereof.
- Review.** SEC. 9. [Repealed.]
- SEC. 10 (as amended by ch. 297, acts of 1917). If a claim for a review is filed, as provided in Part III, section seven, the board shall hear the parties and may hear the evidence in regard to any or all matters pertinent thereto and may revise the decision of the member in whole or in part, or may refer the matter back to the member 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.
- Court decrees.** SEC. 11 (as amended by ch. 297, acts of 1917). Any party in interest may present certified copies of an order or decision of the board, a decision of a member from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the board, and all papers in connection therewith, to the superior court for the county in which the injury occurred or for the county of Suffolk, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter 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 a decision of a member or a memorandum of agreement, and that there shall be no appeal from a decree based upon an order or decision of the board which has not been presented to the court within ten days after the notice of the filing thereof by the board. Upon the presentation to it of a certified copy of a decision of the industrial accident board ending, diminishing, or increasing a weekly payment under the provisions of Part III, section twelve, the court shall revoke or modify the decree to conform to such decision.
- Appeals.** SEC. 12 (as amended by ch. 297, acts of 1917). 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.
- Review of payments.** SEC. 13 (as amended by ch. 297, acts of 1917). 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.
- Fees to be approved.** SEC. 14 (as amended by ch. 297, acts of 1917). 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.
- Costs.**

SEC. 15 (as amended by ch. 448, acts of 1913). 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 compensation be paid under this act, the association may enforce in the name of the employee, or in its own name and for its own benefit, the liability of such other person, and in case the association recovers a sum greater than that paid by the association to the employee four-fifths of the excess shall be paid over to the employee. Injuries by
third persons.

SEC. 16 (as amended by ch. 571, acts of 1912). All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board. The decisions of the industrial accident board shall for all purposes be enforceable under the provisions of part III, section eleven. Disputes.

SEC. 17. If a subscriber enters into a contract, written or oral, with an independent contractor to do such subscriber's work, or if such a contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contract with the subscriber, and the association would, if such work were executed by employees immediately employed by the subscriber, be liable to pay compensation under this act to those employees, the association shall pay to such employees any compensation which would be payable to them under this act if the independent or subcontractors were subscribers. The association, however, shall be entitled to recover indemnity from any other person who would have been liable to such employees independently of this section, and if the association has paid compensation under the terms of this section, it may enforce in the name of the employee, or in its own name and for the benefit of the association, the liability of such other person. This section shall not apply to any contract of an independent or subcontractor which is merely ancillary and incidental to, and is no part of or process in, the trade or business carried on by the subscriber, nor to any case where the injury occurred elsewhere than on, in, or about the premises on which the contractor has undertaken to execute the work for the subscriber or which are under the control or management of the subscriber. Contractors.

SEC. 18 (as amended by ch. 746, acts of 1913). 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, a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for the purpose. Upon the termination of the disability of the injured employee, the employer shall make a supplemental report upon blanks to be procured from the board for that purpose. 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. Reports of in-
juries.

The said reports shall contain the name and nature of the business of the employer, the situation of the establishment, the name, age, sex, and occupation of the injured employee, and shall state the date and hour of any 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 fifty dollars for each offense.

Copies of all reports of injuries filed by employers with the industrial accident board, and all statistics and data compiled therefrom shall be kept available by the said board and shall be furnished on request to the State board of labor and industries for its own use.

Within sixty days after the termination of the disability of the injured employee, the association or other party liable to pay the compensation provided for by Part II of 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.

Hospital records. SEC. 19 (added by ch. 198, acts of 1919). Copies of hospital records kept in accordance with the provisions of chapter three hundred and thirty of the acts of nineteen hundred and five, as amended by chapter two hundred and sixty-nine of the acts of nineteen hundred and eight, and of chapter four hundred and forty-two of the acts of nineteen hundred and twelve, certified by the persons in custody thereof to be true and complete, shall be admissible in evidence in proceedings before the industrial accident board, or any member thereof. The board, or any member, in its or his discretion, before admitting any such copy in evidence, may require the party offering the same to produce the original record.

PART IV.

THE MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION.

Association created. SECTION 1 (as amended by special act 314, acts of 1915). The Massachusetts Employees Insurance Association is hereby created a body corporate with the powers provided in this act and with all the general corporate powers incident thereto. The said association may also transact within the Commonwealth any kind of liability insurance which mutual companies are allowed by law to transact, and shall be governed by the laws now or hereafter in force relating to the transaction of such business by mutual companies, so far as the same are not in conflict with the provisions of this act.

Directors. SEC. 2 (as amended by ch. 338, acts of 1914). The board of directors of the association shall consist of not less than fifteen members, to be elected by ballot by the members, who shall hold office for such term or terms as the by-laws may provide in accordance with the provisions of section twenty-six of chapter five hundred and seventy-six of the acts of the year nineteen hundred and seven and until their successors are elected.

Powers of board. 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 annually choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officers as the by-laws shall 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.

Membership. SEC. 6. Any employer in the Commonwealth may become a subscriber.

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 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 be entitled to one vote, and if a subscriber has five hundred 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 five hundred employees to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by the right of proxy, more than twenty votes.

Policies issue, when. SEC. 9. No policy shall be issued by the association until not less than one hundred employers have subscribed, who have not less than ten thousand employees to whom the association may be bound to pay compensation.

Same. SEC. 10. No policy shall be issued until a list of the subscribers, with the number of employees of each, together with such other information as the insurance commissioner may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the

list so filed is genuine and made with an agreement by every subscriber that he will take the policies subscribed for by him within thirty days of the granting of a license to the association by the insurance commissioner to issue policies.

SEC. 11. If the number of subscribers falls below one hundred, or the number of employees to whom the association may be bound to pay compensation falls below ten thousand, no further policies shall be issued until other employers have subscribed, who, together with existing subscribers, amount to not less than one hundred who have not less than ten thousand employees, said subscriptions to be subject to the provisions contained in the preceding section. Issues cease when.

SEC. 12. Upon the filing of the certificate provided for in the two preceding sections the insurance commissioner shall make such investigation as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies. License.

SEC. 13. The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of the risk of injury. Risk groups.

Subscribers within each group shall annually pay in cash, or notes absolutely payable, such premiums as may be required to pay the compensation herein provided for the injuries which may occur in that year.

SEC. 14. The association may in its by-laws and policies fix the contingent mutual liability of the subscribers for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium. Liabilities.

SEC. 15. If the association is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscribers liable to assessment therefor in proportion to their several liability. Assessments.

Every subscriber shall pay his proportional part of any assessments which may be laid by the association, in accordance with law and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

SEC. 16. The board of directors may, from time to time, by vote fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation which may be payable on account of injuries sustained and expenses incurred. Dividends.

All premiums, assessments, and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of each group, but all the funds of the association and the contingent liability of all the subscribers shall be available for the payment of any claim against the association.

SEC. 17. Any proposed premium, assessment, dividend, or distribution of subscribers shall be filed with the insurance department and shall not take effect until approved by the insurance commissioner after such investigation as he may deem necessary. Rates, etc., to be approved.

SEC. 18. [Powers as to safety rules; transferred to department of labor and industries.]

SEC. 19. If any officer of the association shall falsely make oath to any certificate required to be filed with the insurance commissioner, he shall be guilty of perjury. False statements.

SEC. 20. Every subscriber shall, as soon as he secures a policy, give notice, in writing or print, to all persons under contract of hire with him that he has provided for payment to injured employees by the association. Notice to employees.

SEC. 21 (as amended by ch. 571, acts of 1912). Every subscriber shall give notice in writing or print to every person with whom he is about to enter into a contract of hire that he has provided for payment to injured employees by the association. If an employer ceases to be a subscriber he shall, on or before the day on which his policy expires, give notice thereof in writing or print to all persons under contract with him. In case of the renewal of the policy no notice shall be required under the provisions of this act. He shall file a copy of said notice. Same.

with the industrial accident board. The notices required by this and the preceding section may be given in the manner therein provided or in such other manner as may be approved by the industrial accident board.

Employers re-imbursed, when.

Sec. 22. If a subscriber, who has complied with all the rules, regulations, and demands of the association, is required by any judgment of a court of law to pay to an employee any damages on account of personal injury sustained by such employee during the period of such subscription, the association shall pay to the subscriber the full amount of such judgment and the cost assessed therewith, if the subscriber shall have given the association notice in writing of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend the same.

Sec. 23. [Repealed.]

Expenses.

Sec. 24. The board of directors appointed by the governor under the provisions of Part IV, section two, may incur such expenses in the performance of its duties as shall be approved by the governor and council. Such expenses shall be paid from the treasury of the Commonwealth and shall not exceed in amount the sum of fifteen thousand dollars.

PART V.

MISCELLANEOUS PROVISIONS.

Compensation proceedings barred to suit.

SECTION 1. If an employee of a subscriber files any claim with or accepts any payment from the association on account of personal injury, or makes any agreement, or submits any question to arbitration, under this act, such action shall constitute a release to the subscriber of all claims or demands at law, if any, arising from the injury.

Definitions.

SEC. 2 (as amended by ch. 708, acts of 1914). The following words and phrases, as used in this act, shall, unless a different meaning is plainly required by the context, have the following meaning:

"Employer" shall include the legal representative of a deceased employer.

"Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except masters of and 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. 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.

"Dependents" shall mean members of the employee's family or next of kin who were wholly or partly dependent upon the earnings of the employee for support at the time of the injury.

"Average weekly wages" shall mean the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted. Where, by reason of the shortness of the time during which the employee has been in the employment of his employer, or the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above defined, regard may be had to the average weekly amount which, during the twelve months 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 and in the same district.

"Association" shall mean the Massachusetts Employees Insurance Association.

"Subscriber" shall mean an employer who has become a member of the association by paying a year's premium in advance and receiving the receipt of the association therefor: *Provided*, That the association holds a license issued by the insurance commissioner as provided in Part IV, section twelve.

SEC. 3 (as amended by ch. 571, acts of 1912). Any liability insurance company authorized to do business within this Commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for by Part II of this act, and when such liability company issues a policy conditioned to pay such compensation the holder of such policy shall be regarded as a subscriber so far as applicable within the meaning of this act, and when any such company insures such payment of compensation it shall be subject to the provisions of Parts I, II, III, and V and of section twenty-two of Part IV of this act, and shall file with the insurance department its classifications of risks and premiums relating thereto and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply.

Who may write insurance.

SEC. 4. [Repealer.]

SEC. 5. The provisions of this act shall not apply to injuries sustained prior to the taking effect thereof.

Prior injuries.

SEC. 6. [Time for taking effect.]

SEC. 7 (added by ch. 708, acts of 1914). The association and all insurance companies insuring employees under the provisions of this act shall, at the request of the industrial accident board, furnish to said board in writing any information required in connection with the administration by said board of said act, including any statistical facts and figures and the names of all employers insured by them.

Information to be furnished.

SEC. 8 (added by ch. 708, acts of 1914). There may be established and maintained under the care and direction of the industrial accident board not more than four branch offices, in such cities as may be selected by said board from time to time after proper investigation, for the purpose of the better adjustment of disputed cases, and for the better information of all parties as to their rights under this act. Said board is hereby authorized to provide such offices with useful rooms, furniture, and equipment required for the transaction of the business authorized by this act, also to appoint such officers, agents, clerks, and assistants as are necessary to discharge in connection with such offices the duties required by said act, under the direction of said industrial accident board.

Branch offices.

SEC. 9 (added by ch. 708, acts of 1914, amended by ch. 299, acts of 1919). The industrial accident board may appoint a medical adviser who shall be a duly qualified physician. The board shall prescribe the duties of said medical adviser. His compensation shall be fixed by said board, subject to the approval of the governor and council, and shall not exceed the sum of forty-five hundred dollars a year

Medical adviser.

ACTS OF 1912.

CHAPTER 666.—*Compensation of workmen for injuries—Regulation of insurance.*

SECTION 1. The insurance commissioner may withdraw his approval of any premium or distribution of subscribers given by him to the Massachusetts Employees Insurance Association under the provisions of section seventeen of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, or of any premium or rate made by an insurance company and approved by him under the provisions of section three of Part V of said chapter seven hundred and fifty-one as amended by section seventeen of chapter five hundred and seventy-one of the acts of the year nineteen hundred and twelve.

Disapproval of rates, etc.

SEC. 2. The notices required by section five of part I of said chapter seven hundred and fifty-one shall be given in such manner as the industrial accident board may approve.

Approved May 28, 1912.

ACTS OF 1913.

CHAPTER 807.—*Compensation for injuries to public employees.*

SECTION 1. The Commonwealth shall and any county, city, town, or district having the power of taxation, may pay the compensation provided by Part II of chapter seven hundred and fifty-one of the acts of

Employees of State and municipalities.

the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto to such laborers, workmen, and mechanics employed by it as receive injuries arising out of and in the course of their employment, or, in case of death resulting from any such injury, may pay compensation as provided in sections six, seven, and eight of said Part II, and in any amendments thereof, to the persons thereto entitled.

Procedure and jurisdiction.

SEC. 2. Procedure under this act and the jurisdiction of the industrial accident board shall be the same as under the provisions of said chapter seven hundred and fifty-one, and the Commonwealth or a county, city, town, or district which accepts the provisions of this act shall have the same rights in proceedings under said chapter as the association thereby created. The treasurer and receiver general, or the treasurer or officer having similar duties of a county, city, town, or district which accepts the provisions of this act, shall pay any compensation awarded for injury to any person in its employment upon proper vouchers without any further authority.

Submission to vote of municipalities.

SEC. 3. Counties, cities, towns, and districts having the power of taxation, may accept the provisions of this act by vote of a majority of those legal voters who vote on the question of its acceptance at an annual meeting or election as hereinafter provided. In towns and districts which have an annual meeting of the legal voters, this act shall be submitted for acceptance to the voters of the town or district at the next annual meeting after its passage. In cities, and in towns which do not have annual meetings, this act shall be submitted to the voters at the next municipal election, and in counties and in districts which do not have an annual meeting, at the next State election after its passage. At every such election, and at every annual meeting where ballots are used, the following question shall be printed on the ballot:

"Shall chapter [807] of the acts of nineteen hundred and thirteen, being an act to provide for compensating laborers, workmen, and mechanics for injuries sustained in public employment, and to exempt from legal liability counties and municipal corporations which pay such compensation, be accepted by the inhabitants of this (county, city, town, water district, fire district, etc.) of —?"

| | |
|------|--------------------------|
| YES. | <input type="checkbox"/> |
| NO. | <input type="checkbox"/> |

The vote shall be canvassed by the county commissioners, city council or commission, or selectmen, or, in the case of a district, by the district commissioners or other governing board of the district. A notice stating the result of the vote shall be posted in the county courthouse, or city or town hall, or, in the case of a district, in the public building where the employees of the district are paid. Except as provided in section four, a county, city, town, or district which accepts the provisions of this act shall not be liable in any action for a personal injury sustained by a laborer, workman, or mechanic in the course of his employment by such county, city, town, or district, or for death resulting from such injury.

Option of employees.

SEC. 4. A laborer, workman, or mechanic entering or remaining in the service of a county, city, town, or district, who would, if injured, have a right of action against the county, city, town, or district by existing law, may, if the county, city, town, or district has accepted the provisions of this act, before he enters its service, or accepts them afterward, claim or waive his right of action as provided in section five of Part I of said chapter seven hundred and fifty-one, and shall be deemed to have waived such right of action unless he claims it. Section four of said Part I shall apply to actions by laborers, workmen, or mechanics employed by a county, city, town, or district which accepts the provisions of this act.

Election as to compensation or pension.

SEC. 5. Any person entitled to receive from the Commonwealth or from a county, city, town, or district the compensation provided by Part II of said chapter seven hundred and fifty-one, who is also entitled to a pension by reason of the same injury, shall elect whether he will receive such compensation or such pension, and shall not receive both. In case a person entitled to such compensation from the Commonwealth or from a county, city, town, or district receives by special

act a pension for the same injury, he shall forfeit all claim for compensation, and any compensation received by him or paid by the Commonwealth or by the county, city, town, or district which employs him for medical or hospital services rendered to him may be recovered back in an action at law. No further payment shall be awarded by vote or otherwise to any person who has claimed and received compensation under this act.

Sec. 6. This act shall apply to all laborers, workmen, and mechanics in the service of the Commonwealth or of a county, city, or town, or district having the power of taxation, under any employment or contract of hire, expressed or implied, oral or written, including those employed in work done in performance of governmental duties as well as those employed in municipal enterprises conducted for gain or profit. For the purposes of this act all laborers, workmen, and mechanics paid by the Commonwealth, but serving under boards or commissions exercising powers within defined districts, shall be deemed to be in the service of the Commonwealth. Scope of law.

Sec. 7 (as amended by ch. 307, acts of 1910). The provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, and acts in amendment thereof and in addition thereto shall not apply to any persons in public employments other than laborers, workmen, and mechanics employed by counties, cities, towns, or districts having the power of taxation. Same.

Approved June 16, 1913.

ACTS OF 1914.

CHAPTER 656.—*Industrial accident board—Reports.*

SECTION 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 shall make an annual report to the general court; of which report there shall be printed four thousand five hundred copies, fifteen hundred to be bound, and the remainder to be unbound. Of the said copies, five hundred bound and five hundred unbound shall be distributed by the secretary of the Commonwealth, and the remainder shall be distributed by the board. Reports to be annual.

CHAPTER 708.—*Compensation of workmen for injuries.*

[This chapter is mainly amendatory of the principal act. The following is, however, an independent section:]

SECTION 16. All insurance rates under said chapter seven hundred and fifty-one and acts in amendment thereof and in addition thereto, now on file and approved by the insurance commissioner, shall continue to apply to the several classifications after the taking effect of the provisions of this act, unless the insurance commissioner withdraws approval in accordance with the provisions of chapter six hundred and sixty-six of the acts of the year nineteen hundred and twelve. Insurance rates.

ACTS OF 1915.

CHAPTER 132.—*Workmen's compensation—Appeals.*

SECTION 1. An order or decision of the industrial accident board, a decree of the superior court upon such an order, a decision 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 industrial accident board shall have effect, notwithstanding an appeal, until it is otherwise ordered by a justice of the supreme judicial court who may, in any county, suspend or modify such decree, order, or decision during the pendency of the appeal. Appeal not a suspension.

Approved April 2, 1915.

CHAPTER 236.—*Workmen's compensation—Inexperienced workmen.*Future increase
of wages.

SECTION 1. Whenever an employee is injured under circumstances that would entitle him to compensation under the provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, and acts in amendment thereof and in addition thereto, if it be established that the injured employee was of such age and experience when injured that, under natural conditions, his wages would be expected to increase, that fact may be taken into consideration in determining his weekly wages.

Approved May 10, 1915.

CHAPTER 244.—*Workmen's compensation—Public employees.*Agent to be ap-
pointed.

SECTION 1. Every board, commission, and department of the Commonwealth employing laborers, workmen, and mechanics, the Boston transit commission, and every county, city, town, and district which has accepted the provisions of chapter eight hundred and seven of the acts of the year nineteen hundred and thirteen, shall, through its executive officer or board, designate a person to act as its agent in furnishing the benefits due under chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto. Such agent shall be held responsible for the proper carrying out of this act under the direction and supervision of the industrial accident board until his agency is revoked and a new agent designated. The name and address of every such agent shall be filed with the industrial accident board immediately upon his designation; and each of the foregoing boards, commissions, departments, counties, cities, towns, and districts shall designate such an agent within thirty days after this act takes effect.

Exemption.

SEC. 2. This act shall not apply to counties, cities, towns, and districts which are insured under the provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and acts in amendment thereof.

Approved May 10, 1915.

CHAPTER 287.—*Workmen's compensation insurance—Approval of policies.*Separate lia-
bilities.

SECTION 1. Every policy of workmen's compensation insurance issued or delivered in this Commonwealth shall cover separately and for a separate consideration all the liabilities which are imposed upon an insurer by the provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven 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.

Classes.

Commissioner's
approval.

SEC. 2. No such policy of insurance or rider to be used therewith shall be issued or delivered until a copy thereof has been filed with the insurance commissioner at least thirty days prior to such issue or delivery, unless before the expiration of the thirty days the said 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 laws of this Commonwealth, 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 the supreme judicial court of this Commonwealth.

Approved May 27, 1915.

ACTS OF 1916.

CHAPTER 200.—*Workmen's compensation and liability insurance—Status of companies.*

SECTION 1. Any mutual liability company authorized to do business in this Commonwealth may, with the approval of the insurance commissioner, have and exercise any or all of the rights, powers and privileges relating to the transaction of the business of workmen's compensation insurance by law vested in or conferred upon the Massachusetts Employees Insurance Association. Rights of mutual companies.

SEC. 2. The Massachusetts Employees Insurance Association may, with the approval of the insurance commissioner have and exercise, within or without the Commonwealth, all the rights, powers and privileges vested in or conferred upon domestic mutual liability companies under general laws, and shall be subject to all the laws now or hereafter in force relating to such companies. Rights of employees insurance association.

Approved May 12, 1916.

ACTS OF 1918.

CHAPTER 231.—*Rehabilitation of injured workmen.*

SECTION 1. There is hereby established, under the direction and control of the industrial accident board, a division for the training and instruction of persons whose capacity to earn a living has in any way been destroyed or impaired through industrial accident: *Provided*, That at the time of the accident which incapacitated them they were residents of the Commonwealth. The said board shall in its annual report to the general court describe in detail the work of the division, and may from time to time issue bulletins containing information relative thereto. Division of training and instruction.

SEC. 2. The head of the said division shall be appointed and his salary determined by the industrial accident board, subject to the approval of the governor and council, and he may be removed by the said board. The division shall be furnished with suitable quarters in the state-house, and may expend for salaries and other necessary expenses such amount as shall annually be appropriated therefor by the general court. Head.

SEC. 3. The said division shall aid persons who are incapacitated as described in section one in obtaining such education, training and employment as will tend to restore their capacity to earn a livelihood. The division may cooperate with the United States Government and in cooperation with the board of education may establish or maintain, or assist in establishing or maintaining, in schools or institutions supported wholly or in part by the Commonwealth such courses as it may deem expedient, and otherwise may act in such manner as it may deem necessary to accomplish the purposes of this act. Expenses.

Approved May 28, 1918.

ACTS OF 1919.

CHAPTER 226.—*Payment of benefits by insurance companies.*

SECTION 1. The insurance commissioner, hereinafter called the commissioner, in his discretion, may at any time require an insurance company, hereinafter called the company, to deposit in cash or approved securities with the treasurer and receiver general, the present value as computed by the commissioner of all or any part of its outstanding claims incurred under the provisions of chapter seven hundred and fifty-one of the acts of nineteen hundred and eleven and acts in amendment thereof and in addition thereto. The treasurer and receiver general shall make from such deposit the payments to those entitled thereto under the said chapter, and in the manner provided therein, upon the written request and under the direction of the industrial accident board, hereinafter called the board, or may, if the company so elects, transfer from time to time to a trustee appointed by the company and approved by the board such part of the funds as Deposits as security.

may be reasonably necessary for making the said payments promptly and the trustee shall make the same in accordance with the instructions of the board. The treasurer and receiver general shall keep a separate account with the company of the amount so received, the amount of interest earned and the payments made. In case the amounts so deposited prove, or seem likely to prove, to be insufficient from transfer of funds or otherwise, the commissioner may require the company to deposit such additional sums as he may deem necessary. If the amounts deposited prove to be larger than are required, portions thereof may from time to time be refunded to the company by the treasurer and receiver general, subject to the approval of the board and the commissioner. If any balance remains after the payment of all sums due to injured workmen or their dependents, the treasurer and receiver general shall return the balance to the company upon notice from the board that there is no likelihood of further payments becoming due on account of the said claims.

Present value. SEC. 2. The commissioner shall compute the present value of outstanding claims on the basis of information to be furnished to him by the board, and shall assume a rate of interest not higher than four per cent.

Charges. SEC. 3. When a deposit is made with the treasurer and receiver general as provided in section one, the company shall pay to the treasurer and receiver general a reasonable amount for the expenses of his office, for the custody of the deposit and for making the payments therefrom.

Penalty. SEC. 4. An insurance company which fails to make the deposit aforesaid when it is required under this act shall cease to write policies of insurance in this Commonwealth until the required deposit is made.

Approved June 11, 1919.

CHAPTER 272.—*Special fund for second injuries.*

Payments if no dependents. SECTION 1. For every case of personal injury resulting in death, covered by the provisions of chapter seven hundred and fifty-one of the acts of nineteen hundred and eleven and acts in amendment thereof and in addition thereto, in which there are no dependents, the insurance company insuring the liability of the employer shall pay into the treasury of the Commonwealth the sum of one hundred dollars. All payments hereunder shall constitute a special fund, of which the treasurer and receiver general shall be the custodian. He shall make payments therefrom for the purposes specified in the following section upon the written order of the industrial accident board.

Second injury cases. SEC. 2. Whenever an employee who has previously suffered a personal injury resulting in the loss by severance, or the permanent incapacity, of one hand, at or above the wrist, one foot at or above the ankle, or the reduction to one-tenth of normal vision of one eye, with glasses, incurs further disability by reason of the occurrence of a subsequent personal injury arising out of and in the course of his employment, through the loss by severance, or the permanent incapacity, of either a hand, at or above the wrist, or a foot, at or above the ankle, or the reduction to one-tenth of normal vision in an eye, with glasses, he shall be paid the compensation provided for by sections nine and ten of Part II of said chapter seven hundred and fifty-one; or if death results from such subsequent injury, his dependents shall be paid the compensation provided for by sections six and seven of said Part II, in the following manner: One-half of such compensation shall be paid by the treasurer and receiver general from the fund established under section one, and the other half by the insurance company insuring the liability of the employer at the time of the subsequent injury; except that the additional compensation due under section eleven of said Part II for the specified injury so sustained, shall be paid solely by the company insuring liability at the time of the subsequent injury.

Other cases. SEC. 3. All cases not specifically provided for in the above section shall be covered by, and compensation shall be paid under, the provisions of said chapter seven hundred and fifty-one and acts in amendment thereof and in addition thereto.

Approved July 1, 1919.

RESOLVES.

CHAPTER 53.—*Investigation of use of appliances.*

The industrial accident board shall investigate the practicability of using for persons incapacitated by industrial accidents the various mechanical and surgical devices, and methods of training and education, that have been invented or developed during the present war for the purpose of restoring injured soldiers and sailors to health and to productive employment. The board shall determine what steps to this end should be taken by the Commonwealth, and shall make a survey of the resources, public and private, both actual and potential, which are available for the purpose. The board shall report to the next general court with drafts of such legislation as it may deem expedient, and may expend such sum not exceeding one thousand dollars as may hereafter be appropriated.

Approved June 24, 1919.

MICHIGAN.

FIRST EXTRA SESSION—1912.

ACT No. 10, *Compensation of workmen for injuries.*

PART I.

MODIFICATION OF REMEDIES.

- Defenses abrogated. SECTION 1. In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defence—
- (a) That the employee was negligent, unless and except it shall appear that such negligence was willful;
 - (b) That the injury was caused by the negligence of a fellow employee;
 - (c) That the employee had assumed the risks inherent in or incidental to, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances.
- Exemptions. SEC. 2. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by household domestic servants and farm laborers.
- Election by employers. SEC. 3. The provisions of section one shall not apply to actions to recover damages for the death of, or for personal injuries sustained by, employees of any employer who has elected, with the approval of the industrial accident board hereinafter created, to pay compensation in the manner and to the extent hereinafter provided.
- Effect of election. SEC. 4. Any employer who has elected, with the approval of the industrial accident board hereinafter created, to pay compensation as hereinafter provided, shall not be subject to the provisions of section one; nor shall such employer be subject to any other liability whatsoever, save as herein provided for the death of or personal injury to any employee, for which death or injury compensation is recoverable under this act, except as to employees who have elected in the manner hereinafter provided not to become subject to the provisions of this act.
- Who are employers. SEC. 5 (as amended by act No. 50, acts of 1913). The following shall constitute employers subject to the provisions of this act:
1. The State, and each county, city, township, incorporated village, and school district therein, and each incorporated public board or public commission in this State authorized by law to hold property and to sue or be sued generally;
 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 this act may be claimed, shall in the manner provided in the next section, 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 the next section.
- How election is made. SEC. 6 (as amended by act No. 64, acts of 1919): Such election on the part of the employers mentioned in subdivision two of the preceding section, shall be made by filing with the industrial accident board hereinafter provided for, a written statement to the effect that such employer accepts the provisions of this act for all his businesses, and to cover and protect all employees employed in any and all of his businesses, including all businesses in which he may engage and all employees he may employ [employ] while he remains under this act; and that he adopts, subject to the approval of said board, one of the four methods provided for the payment of the compensation hereinafter specified. The filing of such statement and the approval of said board shall operate

within the meaning of the preceding section, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least thirty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this act: *Provided, however*, That such employer so electing to become subject to the provisions of this act shall, within ten days after the approval by said board of his election filed as aforesaid, post in a conspicuous place in his plant, shop, mine, or place of work, of if such employer be a transportation company, at its several stations and docks, notice in the form as prescribed and furnished by the industrial accident board to the effect that he accepts and will be bound by the provisions of this act. Every employer filing an acceptance under this act and securing its approval by the industrial accident board, shall be held to have come under this act for any and all businesses in which he is engaged or in which he may engage during the time he remains under the act, and as to all employees employed by him in any of said businesses, and any employer not securing the permission of the industrial accident board to carry his own risk in the manner provided in part four of this act shall insure all his liability in all of his businesses in one and the same insurance company or organization hereinafter provided for in part four of this act.

Sec. 7 (as amended by act No. 64, acts of 1919). The term "employees" as used in this acts shall be construed to mean: Who are employees.

1. Every person in the service of the State, or of any county, city, township, incorporated village, or school district therein, under any appointment, or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city, township, incorporated village, or school district therein: *Provided*, That one employed by a contractor who has contracted with a county, city, township, incorporated village, school district, or the State, through its representatives, shall not be considered an employee of the State, county, city, township, incorporated village, or school district which made the contract;

2. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the State who, for the purposes of this act, shall be considered the same and have the same power to contract as adult employees.

Sec. 8. Any employees as defined in subdivision one of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employee as defined in subdivision two of the preceding section shall be deemed to have accepted and shall be subject to the provisions of this act and of any act amendatory thereof, if at the time of the accident upon which liability is claimed: Employees subject to act.

1. The employer charged with such liability is subject to the 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 his contract of hire, express or implied, with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this act; or, in the event that such contract of hire was made before such employer became subject to the provisions of this act, such employee shall have given to his employer notice in writing that he elects not to be subject to such provisions, or without giving either of such notices shall have remained in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act. An employee who has given notice to his employer in writing as aforesaid that he elects not to be subject to the provisions of this act, may waive such claim by a notice in writing, which shall take effect five days after it is delivered to the employer or his agent.

Sec. 9 (added by act No. 249, acts of 1917). 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 Investigation of act.

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.

PART II.

COMPENSATION.

- Who may receive compensation.** SECTION 1. If an employee who has not given notice of his election not to be subject to the provisions of this act, as provided in part one, section eight, or who has given such notice and has waived the same as hereinbefore provided, receives a personal injury arising out of and in the course of his employment by an employer who is at the time of such injury subject to the provisions of this act, he shall be paid compensation in the manner and to the extent hereinafter provided, or in the case of his death resulting from such injuries such compensation shall be paid to his dependents as hereinafter defined.
- Willful misconduct.** SEC. 2. If the employee is injured by reason of his intentional and willful misconduct, he shall not receive compensation under the provisions of this act.
- Waiting time.** SEC. 3 (as amended by act No. 64, acts of 1919). No compensation shall be paid under this act for any injury which does not incapacitate the employee for a period of at least one week from earning full wages, but if incapacity extends beyond the period of one week, compensation shall begin on the eighth day after the injury: *Provided, however,* That if such incapacity continues for six weeks or longer or if death results from the injury, compensation shall be computed from the date of the injury.
- Medical, etc., aid.** SEC. 4 (as amended by act No. 64, acts of 1919). During the first ninety days after the injury the employer shall furnish, or cause to be furnished, reasonable medical, surgical, and hospital services and medicines when they are needed.
- Death.** SEC. 5 (as amended by act No. 64, acts of 1919). If death results from the injury, the employer shall pay, or cause to be paid, subject, however, to the provisions of section twelve hereof, in one of the methods hereinafter provided, to the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to sixty per centum of his average weekly wages, but not more than fourteen dollars nor less than seven dollars a week for a period of three hundred weeks from the date of the injury. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the weekly compensation to be paid as aforesaid shall be equal to 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 earnings 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.
- Dependents.** SEC. 6 (as amended by act No. 64, acts of 1919). The following persons shall be conclusively 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, or from whom, at the time of his death, the industrial accident

board shall find the wife was living apart for justifiable cause or because he had deserted her;

(b) A husband upon a wife with whom he lives at the time of her death;

(c) A child or children under the age of sixteen years (or over said age, if physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of the death of such parent: *Provided*, That in the event of the death of an employee who has at the time of his or her death, a living child or children by a former husband or wife, under the age of sixteen years (or over said age, if physically or mentally incapacitated from earning), said child or children shall be conclusively presumed to be wholly dependent for support upon such deceased employee, even though not living with the deceased employee at the time of his or her death; and in all such cases the death benefit shall be divided between or among the surviving wife or husband and all the children of the deceased employee, and all other persons, if any, who are wholly dependent upon the deceased employee, in equal shares, the surviving wife or husband taking the same share as a child. In all cases mentioned in this section the total sum due the surviving wife or husband and her or his own child or children shall be paid directly to the surviving wife or husband for her or his own use, and for the use and benefit of her or his own child or children; but if during the time compensation payments shall continue, the industrial accident board shall find that the surviving wife or husband is not properly caring for said child or children, it shall be the duty of said board to order the share or shares of such child or children to be thereafter paid to their guardian or legal representative for their use and benefit, instead of to their father or mother; and in all cases the sums due to the child or children by the former wife or husband of the deceased employee shall be paid to their guardians or legal representatives for the use and benefit of said child or children. In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury. Where a deceased employee leaves a person or persons wholly dependent upon him or her for support, said person or persons shall be entitled to the whole death benefit and persons partly dependent, if any, shall receive no part thereof, while said persons wholly dependent are living. All persons wholly dependent upon a deceased employee, whether by conclusive presumption or as a matter of fact, shall be entitled to share equally in the death benefit in accordance with the provisions of this section. If there is no one wholly dependent, or if the death of all persons wholly dependent shall occur before all compensation is paid, and there is but one person partly dependent, such person shall be entitled to compensation according to the extent of his dependency; and if there is more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency. No person shall be considered a dependent, unless he or she is a member of the family of the deceased employee, or unless such person bears to said deceased employee the relation of husband or widow, or lineal descendant, or ancestor, or brother or sister.

SEC. 7. 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 subsequent 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. In case of the death of one such dependent his proportion of such compensation shall be payable to the surviving dependents pro rata. Upon the death of all such dependents compensation shall cease. No person shall be excluded as a dependent who is a nonresident alien. 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 of collection of any claim for compensation, nor as respects the compromise thereof by such employee.

SEC. 8 (as amended by act No. 64, acts of 1919). If the employee leaves no dependents the employer shall pay, or cause to be paid as hereinafter provided, the reasonable expense of his last sickness and

Determination
of dependency.

If no dependents.

burying, which shall not exceed two hundred dollars, in addition to any sums the employer may be required to pay under the provisions of section four of part two of this act.

Total disability.

SEC. 9 (as amended by act No. 64, acts of 1919) While 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 a weekly compensation equal to sixty per centum of his average weekly wages, but not more than fourteen dollars nor less than seven dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury, nor shall the total amount of all compensation exceed six thousand dollars.

Partial disability.

SEC. 10 (as amended by act No. 64, acts of 1919). While 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 a weekly compensation equal to sixty per centum of 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 fourteen dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury. In cases included by the following schedule the disability in each such case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be as specified therein, to wit:

Schedule.

For the loss of a thumb, sixty per centum of the average weekly wages during sixty weeks;

For the loss of a first finger, commonly called index finger, sixty per centum of average weekly wages during thirty-five weeks;

For the loss of a second finger, sixty per centum of average weekly wages during thirty weeks;

For the loss of a third finger, sixty per centum of average weekly wages during twenty weeks;

For the loss of a fourth finger, commonly called the little finger, sixty per centum of average weekly 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 one-half 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, sixty per centum of average weekly wages during thirty weeks;

For the loss of one of the toes other than a great toe, sixty per centum of average weekly 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 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, sixty per centum of average weekly wages during one hundred and fifty weeks;

For the loss of an arm, sixty per centum of average weekly wages during two hundred weeks;

For the loss of a foot, sixty per centum of average weekly wages during one hundred and twenty-five weeks;

For the loss of a leg, sixty per centum of average weekly wages during one hundred and seventy-five weeks;

For the loss of an eye, sixty per centum of average weekly wages 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 provisions of section nine;

The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated.

Computation of wages.

SEC. 11 (as amended by act No. 41, acts of 1917). (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.

(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 arrived at according to and subject to the provisions of this section.

(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.

SEC. 12 (as amended by act No. 64, acts of 1919). The death of the injured employee prior to the expiration of the period within which he would receive such weekly payments shall be deemed to end such disability, and all liability for the remainder of such payments which he would have received in case he had lived shall be terminated, but the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity:

If the injury so received by such employee was the proximate cause of his death, and such deceased employee leaves dependents, as hereinbefore specified, wholly or partially dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of this act to such deceased employee, to make the total compensation for the injury and death exclusive of medical, surgical and hospital services and medicines furnished as provided in section four hereof, equal to the full amount which such dependents would have been entitled to receive under the provisions of section five hereof, in case the accident had resulted in immediate death, and such benefits shall be payable in weekly installments in the same manner and subject to the same terms and conditions in all respects as payments made under the provisions of said section five.

SEC. 13. No savings or insurance of the injured employee, nor any contribution made by him to any benefit fund or protective association independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than those paid or caused to be paid by the employer as herein provided, be considered in fixing the compensation under this act.

SEC. 14. If an injured employee is mentally incompetent or is a minor at the time when any right or privilege accrues to him under

Death while receiving compensation.

Insurance, etc., of employees.

Incompetence.

this act, his guardian or next friend may in his behalf claim and exercise such right or privilege.

Notice and
claim.

SEC. 15 (as amended by act No. 64, acts of 1919). No proceedings for compensation for an injury under this act shall be maintained, unless a notice of the injury shall have been given to the employer within three months after the happening thereof, and unless the claim for compensation with respect to such injury, which claim may be either oral or in writing, shall have been made within six months after the occurrence of the same; or, in case of the death of the employee, within six months after said death; or, in the event of his physical or mental incapacity, within the first six months during which the injured employee is not physically or mentally incapacitated from making a claim: *Provided, however,* That in all cases in which the employer has been given notice of the injury, or has notice or knowledge of the same within three months after the happening thereof, but the actual injury, disability or incapacity does not develop or make itself apparent within six months after the happening of the accident, but does develop and make itself apparent at some date subsequent to six months after the happening of the same, claim for compensation may be made within three months after the actual injury, disability or incapacity develops or makes itself apparent to the injured employee, but no such claim shall be valid or effectual for any purpose unless made within two years from the date the accidental personal injury was sustained: *And provided further,* That any time during which an injured employee shall be prevented by reason of his physical or mental incapacity from making a claim, shall not be construed to be any part of the six months' limitation mentioned in this section: *And provided further,* That in all cases in which the employer has been given notice of the happening of the accident, or has notice or knowledge of the happening of said accident, within three months after the happening of the same, and fails, neglects, or refuses to report said accident to the industrial accident board as required by the provisions of this act, the statute of limitations shall not run against the claim of the injured employee or his dependents, or in favor of either said employer or his insurer, until a report of said accident shall have been filed with the industrial accident board.

Form of notice.

SEC. 16. The said notice shall be in writing, and shall state in ordinary language the time, place, and cause of the injury; and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his dependents or by a person in their behalf.

Service.

SEC. 17. The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering said notice to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

Defects.

SEC. 18. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, or cause of the injury, unless it is shown that it was the intention to mislead, and the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, was in fact misled thereby. Want of such written notice shall not be a bar to proceedings under this act, if it be shown that the employer had notice or knowledge of the injury.

Medical exami-
nation.

SEC. 19. After an employee has given notice of an injury, as provided by this act, and from time to time thereafter during the continuance of his disability, he shall, if so requested by the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the State, furnished and paid for by the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be. The employee shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited. Any physician who shall make or be present at any such examination may be required to testify under oath as to the results thereof.

Sec. 20. No agreement by an employee to waive his rights to compensation under this act shall be valid.

Waivers.

Sec. 21. No payment under this act shall be assignable or subject to attachment or garnishment, or to be held liable in any way for any debts. In case of insolvency every liability for compensation under this act shall constitute a first lien upon all the property of the employer liable therefor, paramount to all other claims or liens except for wages and taxes, and such liens shall be enforced by order of the court.

Assignments, etc.

Sec. 22. Whenever any weekly payment has been continued for not less than six months, the liability therefor may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the industrial accident board, and said board may at any time direct in any case, if special circumstances be found which in its judgment require the same, that the deferred payments be commuted on the present worth thereof at five per cent per annum to one or more lump sum payments, and that such payments shall be made by the employer of the insurance company carrying such risk, or commissioner of insurance, as the case may be.

Lump sum payments.

Sec. 23 (added by act No. 50, acts of 1913). All compensation paid or to be paid under this act by any employer, being an incorporated public board, or public commission shall be treated as part of the necessary operating expenses thereof, and all sums and amounts of money required therefor may be embraced in any requisition authorized by law to be made upon any other public corporation, body, or officer for moneys for the use of such employer in addition to all other sums authorized by law, or separate requisition therefor may be made in like manner; and the same shall be allowed and paid to such employer in the same manner as other moneys are required to be allowed and paid for the use of such employer; or the same may be embraced in any report or requirement authorized by law to be made to or upon any other public corporation, or officer, of sums of money to be levied as taxes for the use of such employer, in addition to all other sums authorized by law, or separate report or requirement thereof may be made in like manner; and the same shall be levied, collected, and paid as other amounts for taxes are required to be levied, collected, and paid for the use of such employer.

Payments by public boards and commissions.

PART III.

PROCEDURE.

SECTION 1. There is hereby created a board which shall be known as the industrial accident board, consisting of three members to be appointed by the governor, by and with the consent of the senate, one of whom shall be designated by the governor as chairman. Appointments to fill vacancies 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. The term of office of members of this board shall be six years, except that when first constituted one member shall be appointed for two years, one for four years, and one for six years. Thereafter one member shall be appointed every second year for the full term of six years. No more than two members of this board shall belong to the same political party.

Industrial accident board.

Sec. 2 (as amended by act No. 64, acts of 1919). The salary of each of the members so appointed by the governor shall be three thousand five hundred dollars per year. The board may appoint a secretary at a salary of not more than two thousand five hundred dollars a year, and may remove him. The board shall be provided with an office in the capitol, or in some other suitable building in the city of Lansing, in which its records shall be kept, and it shall also be provided with necessary office furniture, stationery and other supplies. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, upon which shall be inscribed the words "Industrial Accident Board—Michigan—Seal." It shall employ such assistants and clerical help as it may deem necessary and fix the compensation of all persons so employed: *Provided*, That the average compensation paid to such employees shall not exceed eleven hundred

Salaries, etc.

dollars per annum for each person employed, and all such clerical assistants shall be subject to existing laws regulating the grading and compensation of department clerks. The members of the 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 expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board before payment is made. Said board shall have the power to maintain an office in the city of Detroit. All such salaries and expenses when audited and allowed by the board of State auditors, shall be paid by the State treasurer out of the general fund, upon warrant of the auditor general.

Rules.

SEC. 3. The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The board or any member thereof shall have the power to administer oaths, subpoena witnesses and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

Forms.

SEC. 4. The board shall cause to be printed and furnish free of charge to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of any employer who shall file a statement of election under this act, and the date of the filing thereof, and its approval by such board, and a separate book in which shall be entered and indexed the name of every employer who shall file his notice of withdrawal of said election, and the date of the filing thereof; and books in which shall be recorded all orders and awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause such notice of the fact to be given by requiring said employer to post such notice as hereinbefore provided; and the board 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 all filed statements of election and notices of withdrawal of election, and of the time of the filing of the same, shall conclusively be imputed to all employees.

Agreements to be filed.

SEC. 5. If the employer, or the insurance company carrying such risk, or commissioner of insurance, as the case may be, and the injured employee reach an agreement in regard to compensation under this act, a memorandum of such agreement shall be filed with the industrial accident board, and, if approved by it, shall be deemed final and binding upon the parties thereto. Such agreement shall be approved by said board only when the terms conform to the provisions of this act.

Arbitration.

SEC. 6 (as amended by act No. 64, acts of 1919). If the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, and the employee fail to reach an agreement in regard to compensation under this act, either party may notify the industrial accident board, who shall thereupon call for the formation of a committee of arbitration. The committee of arbitration shall consist of three members, one of whom shall be a member, or deputy member, of the industrial accident board and shall act as chairman. The other two members shall be named, respectively, by the two parties.

Duty of board.

SEC. 7 (as amended by act No. 64, acts of 1919). It shall be the duty of the industrial accident board, upon notification that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The board shall designate one of its members, or deputy members, to act as chairman, and if either party does not appoint its member on this committee, before or at the time of arbitration, the board or any member, or deputy member, thereof shall fill the vacancy.

Investigations.

SEC. 8 (as amended by act No. 64, acts of 1919). The committee of arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be held at the locality where the injury occurred, and the decision of the committee

shall be filed with the industrial accident board. Unless a claim for a review is filed by either party within ten days, the decision shall stand as the decision of the industrial accident board: *Provided*, That said industrial accident board may, for sufficient cause shown, grant further time in which to claim such review.

SEC. 9. 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 five dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases. Examination of
physician.

SEC. 10. The arbitrators named by or for the parties to the dispute shall each receive five dollars a day for his services, but the industrial accident board or any member thereof may allow additional reasonable amounts in extraordinary cases. The fees of such arbitrators and other costs of such arbitration, not exceeding, however, the taxable costs allowed in suits at law in the circuit courts of this State, shall be fixed by the board and paid by the State as the other expenses of the board are paid. The fees and the payment thereof of all attorneys and physicians for services under this act shall be subject to the approval of the industrial accident board. Fees, etc.

SEC. 11. If a claim for review is filed, as provided in part three, section eight, the industrial accident board shall promptly review the decision of the committee of arbitration and such records as may have been kept of its hearings, and shall also if desired hear the parties, together with such additional evidence as they may wish to submit, and file its decision therein with the records of such proceedings. Such review and hearing may be held in its office at Lansing or elsewhere as the board shall deem advisable. Review.

SEC. 12. The findings of fact made by said industrial accident board acting within its powers, shall, in the absence of fraud, be conclusive, but the supreme court shall have power to review questions of law involved in any final decision or determination of said industrial accident board: *Provided*, That application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus, or any other method permissible under the rules and practice of said court or the laws of this State, and to make such further orders in respect thereto as justice may require. Findings.

SEC. 13. Either party may present a certified copy of the decision of such industrial accident board approving agreements of settlement as provided in part three, section five hereof, or of the decision of such committee of arbitration when no claim for review is made as provided in part three, section eight, or of the decision of such industrial accident board when a claim for review is filed as provided in part three, section eleven, providing for payment of compensation under this act, to the circuit court for the county in which such accident occurred, whereupon said court shall, without notice, render a judgment in accordance therewith against said employer and also against any insurance company carrying such risk under the provisions of this act; which judgment, until and unless set aside, 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. Court decrees.

SEC. 14. Any weekly payment under this act may be reviewed by the industrial accident board at the request of the employer, or the insurance company carrying such risks, or the commissioner of insurance as the case may be, or the employee; and on such review it may be ended, diminished, or increased, subject to the maximum and minimum amounts above provided, if the board finds that the facts warrant such action. Review.

SEC. 15. 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 employer 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 employer for compensation under this act, but not against both, and if compensation be paid under this act the employer may enforce for his benefit or for that of the insurance company carrying such risk, or the commissioner of insurance, as the case may be, the liability of such other person. Injuries by
third parties.

Settlement of disputes. SEC. 16. All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board.

Records of accidents. SEC. 17 (as amended by act No. 64, Acts of 1919). Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. On the eighth day after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for that purpose, as follows:

Reports. (a) In all cases in which the injured employee is injured so slightly that he loses no time, or little time, or returns to work within seven days, the employer shall on the eighth day after the occurrence of the accident make and send to the industrial accident board a report of said accident in which shall be stated the name and address of the employer; the name and address of the employee, including street, house number and post-office; the date of the accident; the nature of the injury; the length of time lost by the injured employee, if any; the date upon which the injured employee returned to work; the amount of the medical, surgical, and hospital expense, if any, incurred up to the time of the making of the report; the name of the insurance company carrying the employer's risk on the date of the accident; and such other information as the industrial accident board may require. Said report shall be dated and signed in ink by the employer, or his duly authorized agent, and made and mailed to the industrial accident board, at Lansing, Michigan, on the eighth day after the accident occurred. All noncompensable accidents shall be reported by the employer under this subdivision of this section. If any accident reported under this subdivision as a noncompensable accident shall later prove to be a compensable accident, the employer shall as soon as he learns the same to be a compensable accident make a report of the same under subdivision (b) below, and shall state in said report the fact that said accident was previously erroneously reported as a noncompensable accident;

(b) In all cases in which the employee is injured to such an extent that he does not return to work within seven days after the accident, and in all cases in which the disability of the injured employee continues for more than seven days after the accident, and in all cases in which the accident results in the loss of a member of the employee's body, and in all cases in which the accident causes the death of the employee, the employer shall report said accident to the industrial accident board, at Lansing, Michigan, on the eighth day after the accident, in the manner hereinafter stated. Said report to be made under this subdivision of this section shall state the name and address of the employer; the nature of his business; the location of the plant or place of work where the accident occurred; the name and address of the injured employee, including street, house number, and post-office; the occupation of the injured employee; the department or branch of work in which the employee was injured; whether the employee was injured in his regular occupation, and if not, what the regular occupation of the injured employee was; how long the injured employee was employed; the place of birth, sex, and age of said employee; whether he was single, married, widowed or divorced; the number of children of the said injured employee under sixteen years of age; the date and hour of the accident; the hour the injured employee began work that day; whether full wage was paid for the day on which the employee was injured; the daily wage, salary, or emolument the injured employee was earning at the time of the accidental injury; the average weekly wage of the injured employee, computed according to the provisions of this act; the working hours per day of said injured employee; the number of days the injured employee worked per week; the place of accident in detail; the cause and manner of the accident stated fully; the nature and extent of the injury fully and in detail; the name and address of the physician who attended the injured employee; the fact as to whether the injured employee was taken to a hospital, and if so, the name and address of the hospital; the name of the insurance company carrying the risk of the employer, if any; and such other information as may be required by the industrial accident board. When the accident causes the loss of a member, said report shall state exactly what

Items to be reported.

member, or portion of the member, was lost. The report shall be dated and signed in ink by the employer, or by some person by him duly authorized, and shall on the eighth day after the accident be made out and signed by the employer and mailed to the industrial accident board, at Lansing, Michigan.

(c) In all cases of compensable accidents reported under subdivision (b) of this section, the employer, or his insurer, shall immediately after the making of the report to the industrial accident board showing said accident to be a compensable one, prepare and sign an agreement to pay compensation to said employee under the terms of this act, and present said agreement to the injured employee for his signature, and when said agreement is signed by said injured employee, and within the second week after the accident, the said employer or insurer shall forward said agreement so signed to the industrial accident board. Said agreement shall be prepared, signed, and mailed so that it shall reach the office of the industrial accident board on or prior to the fourteenth day after the accident. In all cases in which an accident is first erroneously reported as noncompensable and afterwards ascertained to be compensable, the employer or insurer shall prepare, sign, and submit to the injured employee for his signature an agreement to pay said injured employee the compensation to which he is entitled under the terms of this act, within one week after said employer or insurer learns that said accident is compensable, and during the same time shall forward said agreement signed as aforesaid to the industrial accident board;

Agreement to be signed.

(d) Every employer or insurer obligated to pay workmen's compensation to any employee under the terms of this act shall make the first weekly payment of compensation to the injured employee at the end of one week after the compensation period begins to run, and shall make like weekly payments of compensation at the end of each week thereafter as long as compensation is payable to the injured employee on account of his injury;

Payments.

(e) In all cases in which an accidental injury suffered by an employee shall result in his death, the employer of the employee whose death results shall on the eighth day after the accident, or after the death of the said injured employee, make to the industrial accident board a supplemental report, which report shall state the name of the employer; his address; the name of the deceased employee; his nationality; the last address of the deceased employee, including street, house number, and post office; the date of the accident which resulted in the death of the deceased employee; the date of the death of the deceased employee; whether employer furnished all medical aid required during the final illness; the amount of compensation, if any, paid to the deceased employee before his death; name and address of person who incurred the expense of the burial of the deceased; name and address of the person to whom any expense of final illness is due; and the names, ages, and relationship to the deceased, and post-office address of all dependents of deceased as far as said employer is able to ascertain the same, and whether said persons appear to be dependent upon the deceased in whole or in part. Said report shall be dated and signed in ink by the employer or by some person by him duly authorized and shall be within fourteen days after the death of the deceased employee mailed to the industrial accident board, at Lansing, Michigan.

Death cases.

And in all cases in which the employer shall be liable to pay compensation or death benefits to the dependents of the deceased employee, said employer or his insurer shall within said fourteen days prepare and sign an agreement to pay the same to the dependents entitled thereto, and present said agreement to the dependents of the deceased employee for their signatures; and when said agreement is signed by said dependents, and within fourteen days after the death of said employee, the said employer or his insurer shall forward said agreement to the industrial accident board.

If any employer shall, after he has notice or knowledge of an accident happening to one of his employees, refuse or neglect to make any of the reports required by this section, neither he nor his insurer shall have the right to raise the defense of the statute of limitations contained in section fifteen of part two of this act in any proceedings by injured employees, or their dependents, to recover compensation, and said

Violations.

employer shall be punished by a fine of not more than fifty dollars for each offense.

Assistant secretary.

SEC. 18 (as amended by act No. 64, acts of 1919). The board may appoint an assistant secretary at a salary of not more than two thousand dollars a year to be paid as other State employees are paid.

Deputies.

SEC. 20 (as amended by act No. 64, acts of 1919). The board may appoint not to exceed three deputy members who shall hold office during its pleasure. Such deputy members shall take and subscribe the constitutional oath of office, have power to administer oaths, certify official acts, take depositions, issue subpoenas to compel the attendance of witnesses and the production of books, accounts and papers, and under the direction of the board any such deputy member may conduct an investigation, inquiry, hearing or arbitration in the same manner and with like effect as if done by a member of the board. The salary of each of such deputy members shall be fixed by the board, not exceeding in any case two thousand five hundred dollars per year.

PART IV.

METHOD OF PAYMENT.

Security of payments.

SECTION 1 (as amended by act No. 64, acts of 1919). Every employer filing his election to become subject to the provisions of this act, as hereinbefore set forth, shall have the right to specify at the time of doing so, subject to the approval of said industrial accident board, which of the following methods for the payment of such compensation he desires to adopt, to-wit:

First. Upon furnishing satisfactory proof to said board of his solvency and financial ability to pay the compensation and benefits hereinbefore provided for, to make such payments directly to his employees, as they may become entitled to receive the same under the terms and conditions of this act; or

Second. To insure against such liability in any employer's liability company authorized to take such risks in the State of Michigan; or

Third. To insure against such liability in any employer's insurance association organized under the laws of the State of Michigan; or

Fourth. To request the commissioner of insurance of the State of Michigan to assume the administration of the disbursement of such compensation and the collection of the premiums and assessments necessary to pay the same, as provided in part five hereof. Said board, however, shall have the right from time to time to review and alter its decision in approving the election of such employer to adopt any one of the foregoing methods of payment, if in its judgment such action is necessary or desirable for any reason.

Policies.

Every insurance company or organization mentioned in this section issuing an insurance policy to cover any employer not permitted to carry his own risk under subdivision first of this section, shall in one and the same insurance policy insure, cover and protect all the businesses, employees, enterprises, and activities of such employer, and each and every policy of insurance covering workmen's compensation in this State shall contain the following provisions:

“Notwithstanding any language elsewhere contained in this contract or policy of insurance, the insurance company or organization issuing this policy hereby contracts and agrees with the insured employer;

(a) That it will pay to the persons that may become entitled thereto all workmen's compensation for which the insured employer may become liable under the provisions of act number ten, of the Public Acts of Michigan of the first extra session of nineteen hundred twelve, as amended, or as it may be hereafter amended on account of all accidents happening to his employees during the life of this contract or policy;

(b) That it will furnish or cause to be furnished to all employees of the said employer, all reasonable medical, surgical and hospital services and medicines when they are needed which the employer may be obligated to furnish or cause to be furnished to his employees under the provisions of the said Michigan workmen's compensation law; and that it will pay to the persons entitled thereto for all said reasonable medical, surgical, and hospital services and medicines when they are

needed on account of all accidents happening to his employees during the life of this contract or policy;

(c) That it will pay or cause to be paid the reasonable expense of the last sickness and burying of all employees, whose deaths are caused by accidental injuries happening during the life of this contract or policy and arising out of and in the course of their employment with the said employer, which the said employer may be obligated to pay under the provisions of said workmen's compensation law, the amount in each case, however, not to exceed two hundred dollars;

(d) That this insurance contract or policy shall for all purposes be held and deemed to cover all the businesses the said employer is engaged in at the time of the issuance of this contract or policy and all other businesses, if any, said employer may engage in during the life thereof, and all employees the said employer may employ in any of his businesses during the period covered by this policy;

(e) That it hereby assumes all obligations imposed upon the said employer by his acceptance of the Michigan workmen's compensation law, as far as the payment of compensation, death benefits, or for medical, surgical or hospital care or medicines is concerned;

(f) That it will file with the industrial accident board, at Lansing, Michigan, at least ten days before the taking effect of any termination or cancellation of this contract or policy, a notice giving the date at which it is proposed to terminate or cancel this contract or policy; and that any termination of this policy, shall not be effective as far as the employees of the insured covered thereby are concerned until ten days after such notice of such proposed termination or cancellation is received by the said industrial accident board;

(g) That all the provisions of this contract, if any, which are not in harmony with this paragraph are to be construed as modified hereby, and all conditions and limitations in said policy, if any, conflicting herewith are hereby made null and void."

The said provisions shall be printed upon or attached to the first page of every insurance contract or policy issued by any insurance company or organization for the purpose of protecting any employer accepting the Michigan workmen's compensation law, in type not smaller than long primer and shall constitute a separate paragraph of the said policy; and any provision of the policy, if any, inconsistent with the said undertakings and agreements of the insurance company or organization, contained in the said provisions shall be null and void.

SEC. 2. Nothing herein shall affect any existing contract for employers' liability insurance or affect the organization of any mutual or other insurance company, or any arrangement now existing between employers and employees, providing for the payment to such employees, their families, dependents or representatives, sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act 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 this act the liability of any insurance company or of any employers' association organized under the laws of the State of Michigan, or the commissioner of insurance, who may, in whole or in part, have insured the liability for such compensation: *Provided, however,* That payment in whole or in part of such compensation by either the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, shall to the extent thereof be a bar to recovery against the other, of the amount so paid.

SEC. 3. 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 this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract for insurance, unless such company shall have been approved by the commissioner of insurance as provided by law.

SEC. 4. Any employer against whom liability may exist for compensation under this act may, with the approval of the industrial accident board, be relieved therefrom by:

Existing con-
tracts.

Contracts sub-
ject to act.

Discharge of li-
ability.

1. Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at three per centum per annum, with such trust company of this State as shall be designated by the employee, or by his dependents in case of his death, and such liability exists in their favor, or in default of such designation by him, or them, after ten days' notice in writing from the employer, with such trust company of this State as shall be designated by the industrial accident board; or

2. By the purchase of an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this State, which may be designated by the employee or his dependents, or the industrial accident board, as provided in subsection one of this section.

PART V.

ADMINISTRATION BY COMMISSIONER OF INSURANCE.

Collection of premiums. SECTION 1 (as amended by act No. 153, acts of 1915). Whenever five or more employers, who have become subject to the provisions of this act, and who have on their pay rolls an aggregate number of not less than three thousand employees, shall in writing request the commissioner of insurance so to do, he shall assume charge of levying and collecting from them such premiums or assessments as may from time to time be necessary to pay the sums which shall become due their employees, or dependents of their employees as compensation under the provisions of this act, and also the expense of conducting the administration of such funds; and shall disburse the same to the persons entitled to receive such compensation under the provisions of this act: *Provided, however,* That neither the commissioner of insurance nor the State of Michigan shall become or be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the funds so collected and received by him as hereinafter provided.

Administration of fund. SEC. 2 (as amended by act No. 153, acts of 1915). The commissioner of insurance shall immediately upon assuming the administration of the collection and disbursement of the moneys referred to in the preceding section cause to be created in the State treasury a fund to be known as "accident fund." Each such employer shall contribute to this fund to the extent of such premiums or assessments as the commissioner shall deem necessary to pay the compensation accruing under this act to employees of such employers or to their dependents, and also the expense of the administration of said accident fund, which premiums and assessments shall be levied in the manner and proportion hereinafter set forth. There shall be maintained in said accident fund a sufficient amount of cash to pay current losses and expenses, and the balance may be invested by the commissioner of insurance and the State treasurer acting together, in such securities as are specified in section four of act number seventy-seven of the Public Acts of eighteen hundred sixty-nine, for deposit by insurance companies with the State treasurer. All such securities shall be purchased and may be sold at such time, in such manner and in accordance with such rules and conditions as may be prescribed and required by the joint action of said insurance commissioner and State treasurer: *Provided, however,* That no such investment shall be made nor any securities sold or disposed of except by and with the consent and approval in writing of the board of State auditors. The commissioner of insurance shall give a good and sufficient bond in the sum of twenty-five thousand dollars, executed by some surety company authorized to do business in the State of Michigan, covering the collection and disbursement of all moneys that may come into his hands under the provisions of this act. The premium on said bond shall be paid out of the general funds of the State on an order of the auditor general. Said bond must be approved by the board of State auditors.

Premium rates. SEC. 3. It is the intention that the amounts raised for such fund shall ultimately become neither more nor less than self-supporting, and the premiums or assessments levied for such purpose shall be subject to readjustment from time to time by the commissioner of insurance as may become necessary.

Sec. 4 (as amended by act No. 153, acts of 1915). The commissioner of insurance may classify the establishments or works of such employers in groups in accordance with the nature of the business in which they are engaged and the probable risk of injury to their employees under existing conditions. He shall determine the amount of the premiums or assessments which such employers shall pay to said accident fund, and may prescribe when and in what manner such premiums and assessments shall be paid, and may change the amount thereof both in respect to any or all of such employers from time to time, as circumstances may require, and the condition of their respective plants, establishments or places of work in respect to the safety of their employees may justify, but all such premiums or assessments shall be levied on a basis that shall be fair, equitable and just as among such employers.

Classifications.

Sec. 5 (as amended by act No. 153, acts of 1915). All premiums or assessments shall be due and payable within forty-five days from the date on which the insurance became effective, and formal demand for the payment of such premium shall be made within thirty days from said date. If any employer shall make default in the payment of any contribution, premium or assessment required as aforesaid by the commissioner of insurance, the insurance of such employer shall become void and the sum due for the period insured shall be collected by an 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. In case any injury happens to any of the workmen of such employer after the default in the payment of any such premium, assessment, or contribution, the defaulting employer shall not, if such default be fifteen days after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman, or by his dependents in case death results from such accident, as if he had not elected to become subject to this act.

Default in payment of assessments.

Sec. 6 (as amended by act No. 153, acts of 1915). Every employer requesting insurance under the administration of the commissioner of insurance shall, upon complying with the rules and regulations adopted by said commissioner of insurance, be furnished with a certificate showing the date on which such insurance becomes effective. Such insurance shall be in force for a period of one year, and may be renewed for subsequent periods of one year: *Providing*, Such employer shall have complied with all of the rules and regulations adopted by the commissioner of insurance.

Certificate of insurance.

Sec. 7. In case any controversy shall arise between the commissioner of insurance and any employer subject to the provisions of part five of this act, relative to any rule or regulation adopted by said commissioner of insurance, or any decision made by him in respect to the collection, administration and disbursement of such funds, or in case any controversy shall arise between any employee claiming compensation under the provisions of this act and said commissioner of insurance, all such controversies of every kind and nature shall be subject to review in like manner and with the same force and effect in all respects as is heretofore provided in respect to differences arising through the administration of such funds by the employer, or by a liability insurance company, or by an employers' mutual insurance association.

Disputes.

Sec. 8 (as amended by act No. 153, acts of 1915). The books, records, and pay rolls of each employer subject to the provisions of part five of this act shall always be open to inspection by the commissioner of insurance, or his duly authorized agent or representative, for the purpose of ascertaining the correctness of the amount of the pay roll reported, the number of men employed, and such other information as said commissioner may require in the administration of said funds. Refusal on the part of any such employer to submit said books, records and pay rolls for such inspection, shall subject the offending employer to a penalty of fifty dollars for each offense, to be collected by civil action in the name of the State and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor. Any such employer who shall knowingly submit to the commissioner of insurance a false statement of pay roll for the purpose of securing a lower premium charge, shall be guilty of a mis-

Inspection of pay rolls, etc.

- demeanor, and upon conviction shall be subject to a fine of not less than one hundred dollars, or imprisonment for not more than thirty days in the county jail or both such fine and imprisonment in the discretion of the court.
- Receipts, expenditures, etc.** SEC. 9 (as amended by act No. 206, acts of 1917). 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.
- Payments made, how.** SEC. 10 (as amended by act No. 153, acts of 1915). All payments on account of injuries to employees from said accident fund shall be made only upon the certificate of the commissioner of insurance, which certificate shall be in accordance with the agreement for compensation as approved by the industrial accident board; such certificate shall be filed with the auditor general, who shall thereupon draw his warrant on the State treasurer against said accident fund.
- Winding up of fund.** SEC. 11 (as amended by act No. 153, acts of 1915). If this act shall be hereafter repealed or (if it shall in the judgment of the commissioner of insurance become necessary to dissolve the accident fund), all moneys which are in the accident fund at such time shall be subject to disposition under the direction of the circuit court for the county of Ingham, with due regard, however, to the obligation incurred and existing to pay compensation under the provisions of this act.
- Advisory board.** SEC. 12 (as amended by act No. 110, acts of 1919). 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 a representative. Notice of the annual meeting shall be made 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 fifteen contributing members to constitute an advisory board, who, when so nominated and certified to the governor, shall receive an appointment as such by the governor to serve for the term of one year. 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 said board shall also elect four other members who, together with the chairman, shall constitute an executive committee, and said executive committee shall meet quarterly on the call of the chairman at the city of Lansing.
- Duties.** SEC. 13 (added by act No. 206, acts of 1917). 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.

PART VI.

MISCELLANEOUS PROVISIONS.

- Acceptance of benefits.** SECTION 1. If the employee, or his dependents, in case of his death, of any employer subject to the provisions of this act, files any claim with, or accepts any payment from such employer, or any insurance company carrying such risks, or from the commissioner of insurance on

account of personal injury, or makes any agreement, or submits any question to arbitration under this act, such action shall constitute a release to such employer of all claims or demands at law, if any, arising from such injury.

Sec. 2. If the provisions of this act relating to compensation for injuries to or death of workmen shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such repeal, or the 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.

Repeals, in-
validity, etc.

Sec. 3. This act shall not affect any cause of action existing or pending before it went into effect.

Prior causes.

Sec. 4. The provisions of this act shall apply to employers and workmen engaged in intrastate commerce, and also to those engaged in interstate or 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, except that any such employer and any of his workmen working only in this State, may, subject to the approval of the industrial accident board, and so far as not forbidden by any act of Congress, voluntarily accept and become bound by the provisions of this act in like manner and with the same force and effect in all respects as is hereinbefore provided for other employers and their workmen.

Interstate com-
merce.

Sec. 5. [Repealer.]

Sec. 6. The legislature intends that part five of this act shall be deemed separate from the other parts thereof, so that if said part five should fail or be adjudged invalid or unconstitutional it shall in no way affect any other part of this act.

Part 5 separate.

Sec. 7. [Repealed.]

Approved March 20, 1912.

ACTS OF 1913.

ACT No. 388.—*Compensation of workmen for injuries—Insurance of State employees.*

SECTION 1. On and after the passage of this act no officer or agent of this State * * * shall pay out any public moneys or funds on account of any insurance * * * against any liability arising or that may arise under the provisions of act number ten of the first special session of nineteen hundred twelve [workmen's compensation bill], except in a manner hereinafter provided.

Limitation of
insurance.

Sec. 6. Upon July first, nineteen hundred thirteen, and annually thereafter the commissioner of insurance shall determine the premium or assessment necessary to pay the compensation accruing under act number ten of the first special session of nineteen hundred twelve to persons in the service of the State, except that such premium shall not cover the medical and hospital services and medicines as required by said act, but the cost of same shall be paid by each State institution out of its current expense fund, and he shall then certify the same to the auditor general, and the auditor general shall order the State treasurer to credit to the "accident fund" created by the above-mentioned act the amount so certified, and the amount so credited by the State treasurer to said accident fund shall be debited by him to the current expense fund appropriated by the legislature for each State institution or department, and for the purposes of this act the State shall be entitled to all of the benefits and subject to all of the liabilities of an individual employer who has availed himself of the provisions of part five of said act number ten of the first special session of nineteen hundred twelve: *Provided, however,* That any credits that may be due the State under said act shall be credited to the respective funds or accounts contributing to said accident fund.

Insurance by
State for liability
to employees.

Approved May 14, 1913.

MINNESOTA.

ACTS OF 1913.

CHAPTER 467.—Employers' liability—Compensation of workmen for injuries.

PART 1.

EMPLOYERS' LIABILITY.

- Damages.** SECTION 1. When personal injury or death is caused to an employee by accident arising out of and in the course of his employment, of which injury the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he, or, in case of death, his personal representative, for the exclusive benefit of the surviving spouse and next of kin, shall receive compensation by way of damages therefor from his employer: *Provided*, The employee was himself not willfully negligent at the time of receiving such injury; and the question of whether the employee was willfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence, or to law.
- Defenses abrogated.** SEC. 2. In all cases brought under part 1 of this act it shall not be a defense (a) that the employee was negligent, unless and except it shall also appear that such negligence was willful; (b) that the injury was caused by the negligence of a fellow employee; (c) that the employee had assumed the risks inherent in, or incidental to the work, or arising out of and in the course of his employment from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished except as provided in section 4.
- Abrogation operates, when.** SEC. 3. If the employer elects not to come under part 2 of this act, he loses the right to interpose the three defenses named in section 2 in any action brought against him for personal injury or death of an employee.
- Defenses allowed, when.** SEC. 4. If the employer becomes subject to part 2 of this act and the employee does not, then the employer may set up such defenses as are available at the time of the passage of this act.
- Death by wrongful act.** SEC. 5. The provisions of sections 1, 2, 3, and 4 shall apply to any claim for the death of an employee arising under section 4503 of chapter 84, Revised Laws of Minnesota, 1905, and the acts or parts of acts amendatory thereof, concerning death by wrongful act.
- Burden of proof.** SEC. 6. In all actions at law brought pursuant to part 1 of this act, the burden of proof to establish willful negligence of the injured employee shall be upon the defendant.
- Lien for fees.** SEC. 7. No claim for legal services or disbursements pertaining to any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or in case of settlement without trial, by a judge of the district court: *Provided*, That if notice in writing be given the defendant of such claims for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided. All sums allowed as liens against such compensation or paid for legal, medical, and hospital services and other disbursements, shall be reported by the employee to the labor commissioner with terms of settlement as provided in section 24 of this act.

PART 2.

ELECTIVE COMPENSATION.

SECTION 8 (as amended by chapter 193, acts of 1915). This act shall not be construed or held to apply to any common carrier by steam railroad, domestic servants, farm laborers, or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession or occupation of his employer. Employments exempt.

SEC. 9. If both employer and employee shall, by agreement, express or implied, or otherwise, as herein provided, become subject to part 2 of this act, compensation according to the schedules hereinafter contained shall be paid by every such employer, in every case of personal injury or death of his employee, caused by accident, arising out of and in the course of employment, without regard to the question of negligence, except accidents which are intentionally self-inflicted or when the intoxication of such employee is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer. Compensation payable, when.

SEC. 10. Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form, or amount of compensation or determination thereof than as provided in part 2 of this act, and an acceptance of all the provisions of part 2 of this act, and shall bind the employee himself, and for compensation for his death shall bind his personal representative, the surviving spouse and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency, for compensation for death or injury, as provided for by part 2 of this act. Method exclusive.

SEC. 11. All contracts of employment made after the taking effect of this act shall be presumed to have been made with reference, and subject to the provision of part 2, unless otherwise expressly stated in the contract, in writing, or unless written or printed notice has been given by either party to the other, as hereinafter provided, that he does not accept the provisions of part 2. Every employer and every employee is presumed to have accepted and come under part 2 hereof, unless thirty (30) days prior to accident he shall have signified his election not to accept or be bound by the provisions of part 2. This election not to accept part 2 shall be by notice as follows: Presumption as to contracts.

The employer shall post and keep posted in his shop or place of business a written or printed notice of his election not to be bound by part 2 hereof and file a duplicate thereof with the labor commissioner.

The employee shall give written or printed notice to the employer of his election not to be bound by part 2, and file a duplicate with proof of service attached thereto with the labor commissioner.

SEC. 12 (as amended by chapter 209, acts of 1915). Either party may terminate his acceptance or his election not to accept of the provisions of part 2 by thirty (30) days' written notice to the other, such notice to be given as provided in section 11. A duplicate of such notice, with proof of service attached thereto, shall be filed with the labor commissioner and the time shall not begin to run until the notice is so filed. Termination of agreement.

SEC. 12a (added by chapter 209, acts of 1915). Minors who are permitted to work by the laws of the State shall, for the purposes of part 2 of this act, have the same power to contract, make election of remedy, make settlements, and receive compensation as adult employees, subject, however, to the power of the court, in its discretion, at any time to require the appointment of a guardian to make such settlement and to receive moneys thereunder or under an award. Minors.

SEC. 13 (as amended by chapter 44, acts of extra session, 1919). Following is the schedule of compensation: (a) For injury producing temporary total disability, sixty-six and two-thirds per centum of the wages received at the time of the injury, subject to a maximum compensation of fifteen (\$15) dollars per week and a minimum of six and one-half (\$6.50) dollars per week: *Provided*, That if at the time of injury the employee receives wages of less than six and one-half (\$6.50) dollars per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, Temporary disability.

not, however, beyond three hundred weeks, payment to be made at the intervals when the wage was payable, as nearly as may be.

Partial dis- (b) In all cases of temporary partial disability the compensation shall
ability. be sixty-six and two-thirds per cent of the difference between the wage of the workman at the time of the injury, and the wage he is able to earn in his partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks, payment to be made at the intervals when the wage was payable, as nearly as may be and subject to the same maximum as stated in clause (a).

Schedule. (c) For the permanent partial disability, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to wit:

For the loss of a thumb, sixty-six and two-thirds per centum of daily wages during sixty (60) weeks.

For the loss of a first finger, commonly called index finger, sixty-six and two-thirds per centum of daily wages during thirty-five (35) weeks.

For the loss of a second finger, sixty-six and two-thirds per centum of daily wages during thirty (30) weeks.

For the loss of a third finger, sixty-six and two-thirds per centum of daily wages during twenty (20) weeks.

For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds per centum of daily wages during fifteen (15) weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered equal to the loss of one-half of such thumb or finger, and compensation shall be paid at the prescribed rate during one-half the time specified above for such thumb or finger.

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, sixty-six and two-thirds per centum of daily wages during thirty (30) weeks.

For the loss of one of the toes other than a great toe, sixty-six and two-thirds per centum of daily wages during ten (10) 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 paid at the prescribed rate during one-half the time specified above for such toe.

The loss of more than one phalange shall be considered as the loss of entire toe.

For the loss of a hand, sixty-six and two-thirds per centum of daily wages during one hundred and fifty (150) weeks.

For the loss of an arm sixty-six and two-thirds per centum of daily wages during two hundred (200) weeks.

For the loss of an arm below the elbow, sixty-six and two-thirds per centum of daily wages during one hundred and seventy-five (175) weeks.

For the loss of a foot, sixty-six and two-thirds per centum of daily wages during one hundred and twenty-five (125) weeks.

For the loss of a leg, sixty-six and two-thirds per centum of daily wages during one hundred and seventy-five (175) weeks.

For the loss of an eye, sixty-six and two-thirds per centum of daily wages during one hundred (100) weeks.

For the complete permanent loss of hearing in both ears, sixty-six and two-thirds per centum of daily wages during one hundred and fifty-six (156) weeks.

For the loss of an eye and a leg, sixty-six and two-thirds per centum of daily wages during three hundred and fifty (350) weeks.

For the loss of an eye and an arm, sixty-six and two-thirds per centum of daily wages during three hundred and fifty (350) weeks.

For the loss of an eye and a hand, sixty-six and two-thirds per centum of daily wages during three hundred and twenty-five (325) weeks.

For the loss of an eye and a foot, sixty-six and two-thirds per centum of daily wages during three hundred (300) weeks.

For the loss of two arms other than at the shoulder, sixty-six and two-thirds per centum of daily wages during four hundred (400) weeks.

For the loss of two hands, sixty-six and two-thirds per centum of daily wages during four hundred (400) weeks.

For the loss of two legs, sixty-six and two-thirds per centum of daily wages during four hundred (400) weeks.

For the loss of two feet, sixty-six and two-thirds per centum of daily wages during four hundred (400) weeks.

For the loss of one arm and the other hand, sixty-six and two-thirds per centum of the daily wages during four hundred (400) weeks.

For the loss of one hand and one foot, sixty-six and two-thirds per centum of the daily wages during four hundred (400) weeks.

For the loss of one leg and the other foot, sixty-six and two-thirds per centum of the daily wages during four hundred (400) weeks.

For the loss of one leg and one hand, sixty-six and two-thirds per centum of the daily wages during four hundred (400) weeks.

For the loss of one arm and one foot, sixty-six and two-thirds per centum of the daily wages during four hundred (400) weeks.

For the loss of one arm and one leg, sixty-six and two-thirds per centum of the daily wages during four hundred (400) weeks.

Where an employee sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which produced the longest period of disability, but this section shall not affect liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in subsection (e) below. Concurrent injuries.

In all cases of permanent partial disability it shall be considered that the permanent loss of the use of member shall 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. Loss of use.

In cases of permanent partial disability due to injury to a member, resulting in less than total loss of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the respective member, which the extent of injury to the member bears to its total loss.

All compensations provided in clause (c) of this section for loss of members or loss of use of members are subject to the same limitations as to maximum and minimum as are stated in clause (a).

In all other cases of permanent partial disability not above enumerated the compensation shall be sixty-six and two-thirds per centum of the difference between the wage of the workman at the time of the injury and the wage he is able to earn in his partially disabled condition subject to a maximum of fifteen (\$15) dollars per week. Compensation shall continue during disability, not, however, beyond three hundred (300) weeks. Cases not enumerated.

(d) For permanent total disability as defined in subsection (e) below, sixty-six and two-thirds per centum of the wages received at the time of the injury, subject to a maximum compensation of fifteen (\$15) dollars per week and a minimum compensation of six and one-half (\$6.50) dollars per week: *Provided*, That if at the time of injury the employee was receiving wages of less than six and one-half (\$6.50) dollars per week, then he shall receive the full amount of his wages per week. This compensation shall be paid during such permanent total disability not exceeding five hundred and fifty (550) weeks; but in all such cases drawing more compensation than six and one-half (\$6.50) dollars per week, the payments after the first four hundred (400) weeks shall be reduced to six and one-half (\$6.50) dollars per week for the remainder for the five hundred and fifty (550) weeks, while the permanent total disability continues; payments to be made at the intervals when the wage was payable as nearly as may be: *Provided, however*, That in case an employee who is permanently and totally disabled, becomes an inmate of a public institution, then no compensation shall be payable unless he has wholly dependent on him for support a person or persons. Permanent total disability.

named in subsections (1), (2), and (3), of section 14 (whose dependency shall be determined as if the employee were deceased); in which case the compensation provided for in this subsection shall be paid for the benefit of said persons so dependent during dependency, in such institution.

(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 an occupation which brings him an income, shall constitute total disability.

Death of em-
ployee receiving
compensation.

(f) In case a workman sustains an injury due to accident arising out of and in the course of his employment, and during the period of disability caused thereby, death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of death.

Dependents.

Sec. 14 (as amended by ch. 416, acts of 1919). 1. For the purposes of this act the following described persons shall be conclusively presumed to be wholly dependent: (a) Wife, unless it be shown that she was voluntarily living apart from her husband at the time of his injury or death; (b) minor children under the age of sixteen years.

(2) 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.

(3) Wife, child, husband, mother, father, grandmother, grandfather, sister, brother, mother-in-law, father-in-law, 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.

(3a) Any member of a class named in subdivision (3), 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 dependent, and payment of compensation shall be made to such dependents in the order named.

Benefits.

(4) In death cases, compensation payable to dependents shall be computed on the following basis and shall be paid to the persons entitled thereto, without administration:

(5) If the deceased employee leave a widow and no dependent child, there shall be paid to the widow, forty per centum of the monthly wages of the deceased.

(6) If the deceased employee leave a widow and one dependent child, there shall be paid to the widow for the benefit of herself and such child, fifty per centum of the monthly wages of the deceased.

(7) If the deceased employee leave a widow and either two or three dependent children, there shall be paid to the widow for the benefit of herself and such children, sixty per centum of the monthly wages of the deceased.

(8) If the deceased employee leave a widow and four or more dependent children, there shall be paid to the widow for the benefit of herself and such children sixty-six and two-thirds per centum of the monthly wages of the deceased.

(8a) In all cases where compensation is payable to the widow for the benefit of herself and dependent child or children, the court shall have power to determine in its discretion what portion of the compensation shall be applied for the benefit of any such child or children and may order the same paid to a guardian.

(9) In the case of remarriage of a widow without children, she shall receive a lump-sum settlement equal to one-half of the amount of the compensation remaining unpaid. This sum shall be paid to her within sixty (60) days after written notice to the employer of such remarriage. In case of remarriage of a widow who has dependent children, the unpaid balance of compensation which would otherwise become due to her, shall be paid to such children.

(10) If the deceased employee leave a dependent orphan, there shall be paid forty-five per centum of the monthly wages of deceased, with ten per centum additional for each additional orphan with a maximum of sixty-six and two-thirds per centum of such wages.

(11) If the deceased employee leave a dependent husband and no dependent child, there shall be paid to the husband thirty per centum of the monthly wages of deceased.

(12) If the deceased employee leave no widow or child or husband entitled to any payment hereunder, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one parent, thirty-five per centum of the monthly wages of the deceased, and if both parents, forty-five per centum of the monthly wages of the deceased to such parent or parents.

(13) If the deceased leave no widow or dependent child or husband, or parent entitled to any payment hereunder, but leaves a grandparent, brother, sister, mother-in-law, or father-in-law wholly dependent on him for support, there shall be paid to such dependent, if but one, thirty per centum of the monthly wages of deceased, or if more than one, thirty-five per centum of the monthly wages of the deceased, divided between or among them, share and share alike.

(14) If compensation is being paid under part 2 of this act to any dependent, such compensation shall cease upon the death or marriage of such dependent, unless otherwise provided herein.

(15) Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time. Partial dependents.

(16) In all cases where death results to an employee caused by accident arising out of and in the course of employment, the employer shall pay, in addition to the medical and hospital expenses provided for in section 18, the expense of last sickness and burial, not exceeding in amount one hundred (\$100) dollars, except, in cases where an insurer of the deceased or a benefit association is liable therefor, or for a part thereof; in which case the employer shall not be required to pay any part of such expense, for which such insurer or a benefit association is liable, unless such nonpayment by the employer would diminish the benefits received by the dependents of the deceased from any such insurer or a benefit association. In case any dispute arises as to the reasonable value of the services rendered in connection with the last sickness and burial, the same shall be approved by the court before payment, after such reasonable notice to interested parties as the court shall require. If the deceased leave no dependents, no compensation shall be payable except as provided by this subsection. Burial expenses.

(17) The compensation payable in case of death to persons wholly dependent shall be subject to a maximum compensation of fifteen (\$15) dollars per week and a minimum of six and one-half (\$6.50) dollars per week: *Provided*, That if at the time of injury the employee receives wages of less than six and one-half (\$6.50) dollars per week, then the compensation shall be the full amount of such wages per week. The compensation payable to partial dependents shall be subject to a maximum of fifteen (\$15) dollars per week and a minimum of six and one-half (\$6.50) dollars per week: *Provided*, That if the income loss of the said partial dependents by such death is less than six and one-half (\$6.50) dollars per week, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency, not exceeding three hundred (300) weeks, payments to be made at the intervals when the wage was payable as nearly as may be. Maximum limits.

(18) In computing and paying compensation to orphans or other children, in all cases, only those under eighteen years of age, or those over eighteen years of age who are physically or mentally incapacitated from earning, shall be included, the former to receive compensation only during the time they are under eighteen, the latter only for the time they are so incapacitated, within the period of three hundred (300) weeks. Children.

(19) Actual dependents shall be entitled to take compensation in the order named in subsection (3) above, until fifty-five per centum of the monthly wages of the deceased during the time specified in subsection (17) shall have been exhausted; but the total compensation to be paid to all actual dependents of a deceased employee, shall not exceed in the aggregate fifteen (\$15) dollars per week. Rank.

Second injuries. Sec. 15 (as amended by ch. 358, acts of 1919). If an employee receive an injury, which of itself would only cause permanent partial disability, but which combined with a previous disability does in fact cause permanent total disability, the employer shall only be liable for the permanent partial disability caused by the subsequent injury: *Provided, however,* That in addition to compensation for such permanent partial disability and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid by the State the remainder of the compensation that would be due for permanent total disability, out of a special fund created for such purpose in the following manner:

Every employer shall pay to the State treasurer for every case of injury occurring in his employ and causing death in which there are no persons entitled to compensation the sum of one hundred dollars (\$100). The State treasurer shall be the custodian of this special fund, and the court having jurisdiction over the compensation settlement shall direct the distribution thereof, the same to be paid as other payments of compensation are paid.

**Joint employ-
ers.** Sec. 16. In case any employee for whose injury or death compensation is payable under part 2 of this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, such employers shall contribute the payment of such compensation in the proportion of their several wage liability to such employee. If one or more but not all of such employers should be subject to part 2 of this act, and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employee: *Provided, however,* That nothing in this section shall prevent any arrangement between such employers for a different distribution as between themselves of the ultimate burden of such compensation.

Waiting time. Sec. 17 (as amended by ch. 302, acts of 1917). In cases of temporary total or temporary partial disability no compensation shall be allowed for the first week after the injury was received, except as provided by section 18, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 19.

**Medical, etc.,
aid.** Sec. 18 (as amended by ch. 354, acts of 1919). Such medical, surgical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus including artificial members, as may reasonably be required at the time of the injury, and during the disability for not exceeding ninety days and not exceeding one hundred dollars (\$100) in value, to cure and relieve from the effects of the injury: *Provided, however,* That upon request by the employee made during or after said period of ninety (90) days and necessity being shown therefor, the court may require the above treatment, articles, and supplies for the cure and relief from the effects of such injury for such further time and amount as is just under the facts shown.

The above treatment, articles, and supplies shall be provided by the employer, and in case of his inability or refusal seasonably to do so, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing the same.

The pecuniary liability of the employer for the treatment, articles, and supplies herein required shall be limited to such charges therefor as prevail in the same community for similar treatment, articles, and supplies furnished to injured persons of a like standard of living, when the same are paid for by the injured persons; and in all cases of dispute as to the value of the treatment, articles, and [or] supplies furnished to or for an injured employee, either party may require that the same, before payment, shall be approved by the court, upon such reasonable notice to interested parties as the court shall require.

**Notice of acci-
dent.** Sec. 19. Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the injured workman, or a dependent, or some one in behalf of either, shall give notice thereof to the employer in writing within fourteen (14) days after the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given or the knowledge obtained within

thirty (30) days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect, or inaccuracy, and then only to the extent of such prejudice. If the notice is given or the knowledge obtained within ninety (90) days, and if the employee, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of the employer or his agent, then compensation may be allowed, unless the employer shall show that he was prejudiced by failure to receive such notice, in which case the amount of compensation shall be reduced by such sum as shall fairly represent the prejudice shown. Unless knowledge be obtained or notice given within ninety (90) days after the occurrence of the injury, no compensation shall be allowed.

Sec. 20. The notice referred to in sec. 19 may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it by registered mail to the employer at the last known residence or business place thereof within the State, and shall be substantially in the following form:

Service.

NOTICE.

"You are hereby notified that an injury was received by (name) _____, who was in your employ at (place) _____, while engaged as (kind of work) _____ on or about the _____ day of _____ 19____ and who is now located at (give town, street, and number) _____, that so far as now known the nature of the injury was _____ and that compensation may be claimed therefor.

Form.

(Signed) _____
(Giving address.)

Dated _____, 19____."

But no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received a specified injury in the course of his employment on or about a specified time, at or near a certain place specified.

Sec. 20a (as amended by ch. 363, acts of 1919). The time within which the following acts shall be performed under part 2 of this act shall be limited to the following periods, respectively:

Limitations.

(1) Actions or proceedings by an injured employee to determine or recover compensation, one year after the employer has made written report of the injury to the commissioner of labor of the State.

(2) Actions or proceedings by dependents to determine or recover compensation one year after the receipt by the department of labor and industries of the State of notice in writing given by the employer stating his willingness to pay compensation when it is shown that the death is one for which compensation is payable: *Provided*, That in any such case, if a dependent of the deceased, or anyone in his behalf, shall give notice of such death to the department of labor and industries, said department shall forthwith notify in writing the employer of the time and place of such death. In case the deceased was a native of a foreign country, and leaves no known dependent or dependents within the United States, it shall be the duty of the department of labor to give written notice of said death to the consul or other representative of said foreign country forthwith.

(3) Proceedings to obtain judgment in case of default of employer for thirty (30) days to pay any compensation due under any settlement or determination; one year after such default.

(4) In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act required within the time in this section specified, the period of limitation in any such case shall be extended for one year from the date when such incapacity ceases.

Sec. 21 (as amended by ch. 209, acts of 1915). The injured employee must submit himself to examination by employer's physician, if requested by the employer, and at reasonable times thereafter upon employer's request. The employee shall be entitled upon

Medical examinations.

request to have his own physician present at any such examination. Each party shall defray the cost of his own physician.

(2) In case of dispute as to the injury, the court may, of its own motion, or upon request of any interested party, appoint a neutral physician of good standing and ability to make an examination of the injured person, and report his findings to the court. The expense of such examination shall be borne by the said parties.

(3) If the injured employee refuses to comply with any reasonable request for examination, his right to compensation shall be suspended, and no compensation shall be paid while he continues in such refusal.

(4) In all death claims where the cause of death is obscure or disputed, any interested party may require an autopsy; the cost of such autopsy shall be borne by the party demanding the same.

(5) Any physician whose services are furnished or paid for by the employer who treats, or who makes or is present at any examination, of an injured employee, may be required to testify as to any knowledge acquired by him in the course of such treatment or examination, relative to the injury or the disability resulting therefrom.

SEC. 22 (as amended by ch. 209, acts of 1915).

Settlements.

(1) The interested parties shall have the right to settle all matters of compensation between themselves. But all settlements shall be substantially in accordance with the provisions of sections 13 and 14 of this act, and shall be approved by a judge of the district court. When so approved such settlements shall be filed with the clerk of the district court, and in case of default by the employer in the payment of any compensation determined or agreed upon and the continuation of such default for the period of thirty (30) days after payment is due and payable, the employee may upon five (5) days' notice in writing to the employer of his intention to apply to the court for judgment, cause judgment to be entered on such settlement or determination for all compensation due and payable and unpaid; and such judgment shall have the same force and effect, and may be satisfied as other judgments of the same court. There shall be but one fee of twenty-five cents (25c.) charged by said clerk for services in each case under this subsection, and said fee shall cover all services performed by him.

Reference to courts.

(2) In case of a dispute over, or failure to agree upon, a claim for compensation between employer and employee, or the dependents of the employee, either party may submit the claim, both as to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the judge of the district court of the county which would have jurisdiction in a civil case, or, where there is more than one judge of said court, then to either or any of said judges of such court; which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding, subject to the right of appeal as hereinafter provided.

Nonresident aliens.

SEC. 23 (as amended by ch. 209, acts of 1915). 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 said judge shall direct payment of all compensation due to the deceased or to his dependents to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, if such consular officer reside within the State of Minnesota, or, if not, to his designated representative residing within the State, and such consular officer or his representative shall be the sole representative of such deceased employee and of such dependents to settle all claims for compensation and to receive for distribution to the persons entitled thereto all compensation arising hereunder, the distribution of said funds to be made only on order of the district court. Such consular officer or his representative shall furnish, if required by the district court, a good and sufficient bond, satisfactory to the court, conditioned upon the proper application of the moneys received by him. Before such bond is discharged, such consular officer or representative shall file with the court a verified account of the items of his receipts and disbursements of such compensation.

Such consular officer or his representative shall, before receiving the first payment of such compensation, and at reasonable times thereafter

upon request of the employer, furnish to the employer a sworn statement containing a list of the dependents, with the name, age, residence, extent of dependency, and relationship to the deceased of each dependent.

SEC. 24. Copies of all settlements and releases shall be filed by the employer with the labor commissioner within ten (10) days after such settlements are made, and shall become part of the permanent records of that department. Records of settlements.

SEC. 24a (as amended by ch. 209, acts of 1915). The commissioner of labor and the officers and employees of the department of labor and industries, upon demand of an employer or an employee or his dependent, shall advise such party or parties of his or their rights under this act, and shall assist so far as possible in adjusting differences between the employee or his dependent and the employer under part 2 hereof, and are hereby empowered to appear in person before the court in any proceeding under part 2 of this act as the representative or adviser of any such party; and in any such case such party shall not be required to be also represented by an attorney at law. The commissioner of labor shall observe in detail the operation of the act throughout the State and shall make report thereof to each session of the legislature, together with such suggestions and recommendations as to changes as he may deem necessary or advisable for the improvement thereof. Duty of commissioner of labor.

SEC. 25 (as amended by ch. 209, Acts of 1915). The amounts of compensation payable periodically hereunder, either by agreement of the parties, so approved by the court, or by decision of the court, may be commuted to one or more lump-sum payments, except compensation due for death or permanent total disability, or for permanent partial disability, or for permanent partial disability resulting from total loss of hearing or from the loss of an arm or a hand or a foot or a leg or an eye or of more than one such member. These may be commuted only with the consent of the district court. In making such commutations the lump-sum payments shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a six per cent basis. Lump sums.

SEC. 26. All settlements of compensation by agreement of the parties and all awards of compensation made by the court, where the amount paid or to be paid in settlement or by award does not exceed the compensation for six months' disability, shall be final and not subject to readjustment. What settlements final.

SEC. 27. All amounts paid by employer and received by the employees or his dependants, by lump-sum payment, shall be final; but the amount of any award payable periodically for more than six (6) months may be modified as follows: Reviews.

(a) At any time by agreement of the parties and approved by the court.

(b) If the parties can not agree, then at any time after six (6) months from the date of the 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. In such case the same procedure shall be followed as in section 30 in case of disputed claim for compensation.

SEC. 28. At any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum equal to the present value of all future installments of compensation calculated on a six per cent basis, 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 to any savings bank or trust company of this State to be approved and designated by the court, 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 receipts in duplicate of the trustee, one of which shall be filed with the labor commissioner, and the other filed with the clerk of the district court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by 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 Payments to trustees.

discretion of the court, to the choice of the injured employee or the dependents of the deceased employee, as the case may be.

Preferences.

Sec. 29. The right to compensation and all compensation awarded any injured employee or for death claims to his dependents, shall have the same preference against the assets of the employer as other unpaid wages for labor; but such compensation shall not become a lien on the property of third persons by reason of such preference. Claims for compensation owned by an injured employee or his dependents, shall not be assignable and shall be exempt from seizure or sale for the payment of any debt or liability.

Disputes.

Sec. 30 (as amended by ch. 209, acts of 1915). Procedure in case of dispute shall be as follows: Either party may present a verified complaint to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages being received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto.

Upon the presentation of such complaint it shall be filed with the clerk of the district court of the proper county, and the judge shall fix by order a time and place for the hearing thereof, not less than three (3) weeks after the date of the filing of said complaint. A copy of said complaint and order shall be served as summons in a civil action upon the adverse party within four (4) days after the filing the complaint. Within seven (7) days after the service of such complaint, the adverse party may file and serve a verified answer to said complaint, which shall admit or deny the substantial averments of the complaints, and shall state the contention of the defendant with reference to the matter in dispute as disclosed by the complaint. Within five (5) days after the service of the answer the complainant may file and serve a verified reply admitting or denying the matters set forth in the answer.

At the time fixed for hearing, or any adjournment thereof, the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the said court, and judgment shall be entered thereon in the same manner as in causes tried in the said district court, and shall contain a statement of facts as determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due: *Provided*, That nothing herein contained shall be construed as limiting the jurisdiction of the supreme court to review questions of law by certiorari. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected for like services and proceedings in civil cases: *Provided*, That if it shall appear that the employer, prior to the commencement of the action, made to the person or persons entitled thereto a written offer of compensation in specific terms, which terms were in accordance with the provisions of this act, then no costs shall be awarded or taxed against such employer. Whenever any decision or order is made and filed by the judge upon any matter arising under part 2 of this act, the clerk of the court shall forthwith make and forward to the commissioner of labor a certified copy of such decision or order with any memorandum of the judge and of any judgment entered. No fee or other charge shall be collected therefor.

Prior injuries.

Sec. 31. Every right of action for death, by wrongful act or for injury by negligence, accruing to an injured employee prior to the taking effect of this act is continued and preserved under the existing law.

Insurance of risks.

Sec. 31a (as amended by ch. 209, acts of 1915). Any employer who is responsible for compensation as provided under part 2 of this act may insure the risk in any manner then authorized by law. But those writing such insurance shall in every case be subject to the conditions in this section hereinafter named.

If the risk of the employer is carried by any insurer doing business for profit, or by any insurance association or corporation formed of employers, or of employers and workmen, to insure the risks under

part 2 of this act, operating by the mutual assessment or other plan or otherwise; then, in so far as policies are issued on such risks, they shall provide for compensation for injuries or death according to the full benefits of part 2 of this act; but nothing herein contained shall prevent an employer from insuring only a particular class or classes of employees or of risks.

Such policies shall contain a clause to the effect that, as between the workman and the insurer, that notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for arbitration or other purposes shall be jurisdiction of the insurer; and that the insurer will in all things be bound by and subject to the awards rendered against such employer upon the risks so insured.

Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer, and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workmen or dependents, thereby discharging all obligations under the policy to the employer and all of the obligations of the employer and insurer to the workman; but such policies shall contain no provisions relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise during the period the policy is in force, if the compensation remains owing.

The insurer must be one authorized by law to conduct such business in the State of Minnesota, and authority is hereby granted to all insurance companies writing such insurance to include in their policies, in addition to the requirements now provided by law, the additional requirements, terms, and conditions in this section provided

No agreement by an employee to pay to an employer any portion of the cost of insuring his risk under this act shall be valid; but it shall be lawful for the employer and the workman to agree to carry the risks covered by part 2 of this act in conjunction with other and greater risks and providing other and greater benefits, such as additional compensation, accident, sickness, or old-age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the commissioner of labor. Any employer who shall make any charge or deduction prohibited by this section shall be guilty of a misdemeanor.

If the employer shall insure to his employees the payment of the compensation provided by part 2 of this act, in a corporation or association authorized to do business in the State of Minnesota and approved by the insurance commissioner of the State of Minnesota, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is so insured and stating by whom insured, and if the employer shall further file copy of such notice with the labor commissioner of the State of Minnesota, then and in such case any suits or actions brought by an injured employee or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability: *Provided*, That in case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this act.

The return of any execution upon any judgment of an employee against any such insurance company unsatisfied in whole or in part, shall be conclusive evidence of the insolvency of such insurance company, and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction, proceedings may be brought by the employee against the employer in the first instance or against such employer and insurance company jointly or severally or in any pending proceeding against any insurance company, the employer may be joined at any time after such adjudication.

SEC. 32. (1) Any person who creates or carries into operation any fraudulent scheme, artifice, or device to enable him to execute work without himself being responsible to the workman for the provisions of act, shall himself be included in the term "employer," and be subject

Provisions of policies.

Insurance carriers.

Burden of cost.

Direct liability.

Avoiding responsibility as employer.

to all the liabilities of employers under this act. But this section shall not be construed to cover or mean an owner who lets a contract to a contractor in good faith, nor a contractor who, in good faith, lets to a contractor a portion of his contract: *Provided, however,* That no person shall be deemed a contractor or subcontractor, so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employers' premises and with the employers' tools or appliances and under the employers' direction; nor one who does what is commonly known as "piecework," or in any way where the system of employment used merely provides a method of fixing the workman's wages.

Basis of compensation.

(2) Where compensation is claimed from, or proceedings taken against, a person under subdivision 1 of this section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

Injuries by third parties.

(3) The employer shall not be liable or required to pay compensation for injuries due to the acts or omissions of third persons not at the time in the service of the employer, nor engaged in the work in which the injury occurs, except as provided in section 33 or under the conditions set forth in section 34 (i).

Alternative proceedings.

SEC. 33 (as amended by ch. 356, acts of 1919). (1) Where an injury or death for which compensation is payable under part 2 of this act is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party also being subject to the provisions of part 2 of this act, the employee in case of injury or his dependents in case of death, may, at his or their option, proceed either at law against such party to recover damages, or against the employer for compensation under part 2 of this act, but not against both.

If the employee in case of injury, or his dependents in case of death, shall bring an action for the recovery of damages against such party other than the employer, the amount thereof, manner in which and the persons to whom the same are payable, shall be as provided for in part 2 of this act, and not otherwise: *Provided,* That in no case shall such party be liable to any person other than the employee or his dependents for any damages growing out of or resulting from such injury or death.

Subrogation of employer.

If the employee or his dependents shall elect to receive compensation from the employer, then the latter shall be subrogated to the right of the employee or his dependents to recover against such other party, and may bring legal proceedings against such party and recover the aggregate amount of compensation payable by him to such employee or his dependents hereunder, together with the costs and disbursements of such action and reasonable attorney's fees expended by him therein.

Suits against third persons.

(2) That where the injury or death for which compensation is payable under part 2 of this act was caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party not being subject to the provisions of part 2 of this act, legal proceedings may be taken by the employee or dependents against such other party to recover damages, notwithstanding the payment by the employer, or his liability to pay compensation hereunder. But in such case, if the action against such other party is brought by the injured employee or in case of his death by his dependents, and judgment is obtained and paid, or settlement is made with such other party, either with or without suit, the employer shall be entitled to deduct from the compensation payable by him, the amount actually received by such employee or dependents after deducting costs, reasonable attorney's fees, and reasonable expenses incurred by such employee or dependents in making such collection or enforcing such liability: *Provided,* That if the injured employee or in case of his death his dependents shall agree to receive compensation from the employer or shall 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 dependents and may maintain, or in

case an action has already been instituted, may continue the action either in the name of the employee or dependents, or in his own name against such other party for the recovery of damages; but such employer shall nevertheless pay over to the injured employee or dependents all sums collected from such other party by judgment or otherwise in excess of the amount of such compensation payable by the employer under part 2 of this act, and costs, reasonable attorney's fees, and reasonable expenses incurred by such employer in making such collection or enforcing such liability: *Provided*, That in no case shall such party be liable to any person other than the employee or his dependents for any damages growing out of or resulting from such injury or death.

Sec. 34 (as amended by ch. 439, acts of 1919). Throughout this act the following words and phrases as used therein shall be considered to have the following meaning, respectively, unless the context shall clearly indicate a different meaning in the connection used:

Definitions.

(a) The word "compensation" has been used both in part 1 and part 2 of this act to indicate the money benefits to be paid on account of injury or death. Strictly speaking, the benefit which an employee may receive by action at law under part 1 of this act is damages, and this is indicated in section 1. To avoid confusion, the word "compensation" has been used in both parts of the act, but it should be understood that under part 1 the compensation by way of damages is determined by an action at law.

(b) "Child" or "children" shall include posthumous children and all other children entitled by law to inherit as children of the deceased, also stepchildren who were members of the family of the deceased at the time of his injury and dependent upon him for support.

(c) A dependent child or orphan shall be considered to mean an unmarried child under the age of eighteen years or one over that age who is physically or mentally incapacitated from earning.

(d) The term "employer" as used herein shall mean every person not excluded by section 8, who employs another to perform a service for hire, and to whom the "employer" directly pays wages, and shall include any person or corporation, copartnership or association or group thereof, and shall include county, village, town, city school district, and other public employers, except the State.

(e) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession within one of the United States and in good standing in his profession at the time.

(f) The term "workman" shall include the plural and all ages and both sexes.

(g) The terms "employee" and "workman" are used interchangeably and have the same meaning throughout this act, and shall be construed to mean:

(1) Every person in the service of a county, city, town, village or school district therein, under any appointment or contract of hire, express or implied, oral or written; but shall not include any official of any county, city, town, village, or school district therein, who shall have been elected or appointed for a regular term of office, or to complete the unexpired portion of any regular term, nor shall it include any employee of a city, operating under a home rule charter for whom a mode and manner of compensation is provided in said charter which is different from that provided by chapter 467, Laws of 1913, as amended.

(2) Every person not excluded by section 8 (8202), in service of another under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of the State, who for the purpose of making election of remedy under this act shall be construed the same, and have the same power of contracting and electing as adult employees.

(h) The word "accident" as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" 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 and violently, with or without human fault and producing at the time, injury to the physical structure of the body.

(i) Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of employment," it is hereby declared not to cover workmen except while engaged in, on, or about the premises where their services are being performed, or where their service requires their presence as a part of such service at the time of the injury, and during the hours of service as such workmen, and shall not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him, and not directed against him as an employee or because of his employment.

(j) Wherever 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.

(k) Amputations 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.

(l) The labor commissioner, referred to in this act, shall denote the commissioner of labor of the State of Minnesota.

(m) "The court," as used herein, shall mean the district court which would have jurisdiction in an ordinary civil case involving a claim for the injuries or death in question, and "the judge" shall mean a judge of said court.

Questions of
constitutional-
ity.

(n) In case for any reason any paragraph or any provision of this act shall be questioned in any court of last resort and shall be held by such court to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that parts 1 and 2 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 1 of this act shall not apply in cases where part 2 becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension or modification of the common law.

Approved April 24, 1913.

ACTS OF 1919.

CHAPTER 359.—*Reports of accidents.*

SECTION 1. Chapter 416 of the General Laws of 1913, the same being sections 3892, 3893, 3894 and 3895 of the General Statutes of 1913, is hereby amended to read as follows:

Reports re-
quired.

SEC. 3892. It is hereby made the duty of every employer of labor, engaged in industrial pursuits, to make or cause to be made, report of any accident to an employee, which occurs in the course of his or her employment and which causes death or serious injury, within forty-eight hours of the occurrence of such injury and of all other accidents which occur to any of its, his or their employees within the scope of their employment, and of which the employer or his foreman has knowledge, within fourteen days after the occurrence of such accident: *Provided*, That such injuries are sufficient to wholly or partially incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which the injury was incurred, which report shall be made in writing to the commissioner of labor of the State, giving:

- (a) Name, age, sex, and occupation of injured person.
- (b) Date on which accident occurred and hour of day.
- (c) Whether person injured could speak English.
- (d) Occupation of employer.
- (e) The cause of injury.
- (f) The nature and extent of the injury and the probable length of disability.
- (g) The name and address of the attending surgeon.
- (h) Wages injured person was earning.

(i) Length of time in service of employer and length of time at employment at which injured.

(j) Dependents or nearest relative, in fatal cases if known.

Provided, That accidents required to be reported within forty-eight hours may be reported by telegram, telephone, or personal notice. The written report of such accident shall then be made within fourteen days or at such time as the commissioner of labor shall designate. The commissioner of labor may require such supplementary reports on any accident as he deems necessary for the securing of the information required by this law: *Provided further*, That when an accident has been reported which subsequently terminates fatally, a supplementary report shall be filed with the commissioner of labor by the employer within forty-eight hours after he receives knowledge of such death, stating that the injury has proved fatal.

Sec. 3893. Copies of all settlements made or releases obtained in respect to industrial accidents occurring in the State of Minnesota shall be filed with the labor commissioner within ten days after such settlements are made and shall become part of the permanent records of the department.

Settlements and releases.

Sec. 3894. The failure to make such reports or file such copies of settlements or releases, on the part of any person, copartnership or corporation required hereby to make or file the same, within the time herein specified, is hereby declared to be a misdemeanor.

Violations.

Sec. 3895. No report herein required to be made, or any part thereof, shall be admitted in evidence or referred to at the trial of any action, or in any judicial proceedings whatsoever, except prosecutions for the violation of this act.

Reports not evidence.

No such report nor any part thereof, nor any copy of the same, nor any part thereof, shall be open to the public, nor shall any of the contents thereof be disclosed in any manner, by any official or clerk or other employee of the State having access thereto, but the same may be used for State investigations and statistics only. Any such disclosure is hereby declared to be a misdemeanor and punishable as such.

Approved April 22, 1919.

CHAPTER 367.—*Discrimination against handicapped workmen.*

SECTION 1. No person, partnership, association, or corporation, or their agents or employees writing workmen's compensation insurance in this State shall make or charge any rate which discriminates against the employment by the insured of any person who is physically handicapped by reason of loss or loss of use of any member due to accident or other cause.

Discrimination by insurers.

SEC. 2. Any person, partnership, association, or corporation, or their agents or employees, offering a rate of compensation insurance forbidden by section 1 of this act shall be guilty of a misdemeanor.

Act a misdemeanor.

SEC. 3. Whenever any company or its agents or employees shall have been convicted of a violation of this act, such fact shall be sufficient cause for the cancellation of its license by the commissioner of insurance.

Penalty.

Approved April 23, 1919.

MISSOURI.

ACTS OF 1919.

Compensation of workmen for injuries.

(Page 456.)

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| Title. | SECTION 1. This act shall be known as the workmen's compensation act. |
| Presumption as to election. | SEC. 2. Every employer and every employee, except as in this act otherwise provided, shall be conclusively presumed to have elected to accept all of the provisions of this act and respectively to furnish and accept compensation as herein provided, unless prior to the accident he shall have filed with the commission a written notice that he elects to reject this act. The presumption of election shall be reestablished by filing with the commission a written notice withdrawing the rejection. All such notices shall take effect on the day of their receipt by the commission. They may be sent by mail and the commission shall immediately acknowledge receipt thereof. The notice given by the employee shall take effect upon all employments at which he may then or thereafter be employed until the rejection is withdrawn, and on application the commission shall inform any employer thereof. The employee shall also immediately inform his employer of all such notices, and the same shall not operate as to any employer until the employee informs him thereof in writing. The commission shall also furnish to each employer rejecting the act a notice thereof, which the employer shall keep posted in a conspicuous place on his premises where it can be seen by his employees. |
| Remedy exclusive. | SEC. 3. If both employer and employee have elected to accept the provisions of this act, the employer shall be liable, irrespective of negligence, to furnish compensation under the provisions of this act for personal injury or death of the employee by accident arising out and in the course of his employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of such employee, her husband, wife, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such injury or death. Nor shall compensation be allowed for an injury or death due to the employee's or another's willful misconduct, including intentional self-inflicted injury, intoxication, and willful failure or refusal to use a safety appliance or perform a duty required by statute, or failure to obey any reasonable rule adopted by the employer for the safety of the employee, as to all of which the burden of proof shall rest upon the employer. |
| Defenses abrogated, when. | SEC. 4. If the employer has elected not to accept the provisions of this act, in any action to recover damages for personal injury or death of his employee in the course of his employment it shall not be a defense that the same was caused by the negligence of a fellow employee, or that the employee had assumed the risk of the injury or death, or that the same was caused in any degree by the negligence of the employee. Such defenses shall not be allowed in such action whether or not the employee accepted this act, nor shall they be allowed in any proceeding for compensation under this act. Such defenses shall be allowed to an employer who has elected to accept this act, if the employee has elected to reject it. |
| Exemptions. | SEC. 5. Sections two, three, and four of this act shall not apply to employments of farm labor and domestic servants, including family chauffeurs. The said sections shall not apply to employments which are but casual and not incidental to the operation of the usual business |

of the employer, or to employments in which articles and materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in the home of the employee or on premises not under the control or management of the employer. If the employer has less than five employees regularly employed in his business the said sections shall not apply to such employment unless such employees and their employers voluntarily elect in the manner herein specified to be bound by this act. Any employer in this section exempted from the operation of sections two, three, and four of this act, may bring himself within the provisions of the act by filing with the commission notice of his election to accept the same, and any employee thereafter entering the service of such employer, and any employee remaining in such service thirty days after such election, shall be conclusively presumed to have elected to accept this act unless he shall have filed with the commission and his employer a written notice that he elects to reject the same.

Sec. 6. The word "employer" as used in this act shall be construed to mean Who are employers.

(a) Every person, partnership, association, corporation, trustee, receiver, and every other person, including any person or corporation operating a railroad, and any public service corporation, using the service of another for pay, and

(b) The state and every county, municipal corporation, township, school, road, drainage, swamp and levee district, school board, board of education, regents, curators, managers, or control, commission, board, and every other political subdivision, corporation, and quasi-corporation thereof, all of which public employers are hereby made liable to furnish compensation under the provisions of this act for personal injury or death of their employees by accident arising out of and in the course of their employment, without the right of such public employers to elect to reject the provisions of this act, but such liability shall not exist if the employee elects to reject this act.

(c) Any reference to the employer shall also include his insurer.

Sec. 7. (a) The word "employee" as used in this act shall be construed to mean every person in the service of any employer as defined in this act, under any contract of hire, express or implied, oral or written, but shall not include persons whose average annual earnings exceed three thousand dollars, nor officials of political subdivisions. Any reference to any employee who has been injured, shall, when the employee is dead, also include his personal representatives, dependents, and other persons to whom compensation may be payable. The word employee shall also include all minor employees, and all such minor employees are hereby made of full age for all purposes under, in connection with or arising out of this act. Employees.

(b) 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 and violently, with or without human fault and producing at the time objective symptoms of an injury. The terms "injury" and "personal injuries" shall mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom. The said terms shall in no case be construed to include occupational disease in any form, or any contagious or infectious disease contracted during the course of employment, or death due to natural causes but occurring while the workman is at work. "Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred and fifty weeks after the accident. Accident.

(c) Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of employment," it is hereby declared not to cover workmen except while engaged in, on or about the premises where their duties are being performed, or where their service requires their presence as a part of such services at the time of the injury, and during the hours of service as such workmen. Course of employment.

Sec. 8. Nothing in this act shall be construed as amending or repealing any statute or ordinance relating to associations or funds for the Relief funds.

relief, pensioning, retirement, or other benefit of firemen, policemen, or other public employees, their widows, children or dependents, or as in any manner interfering with such associations, funds or benefits, now or hereafter established, but any such public employee, his widow, children or dependents, who shall receive compensation under this act shall have deducted from any benefit otherwise payable by any pension or other benefit fund to which the municipal corporation or other public employer contributes, a part of such benefit proportionate to the amount then being contributed to such fund by such employer, which deductions shall be made only during the compensation period. Nor shall anything in this act be construed as interfering with the right of any public employee to draw full wages, or collect and retain his full fees, so long as he holds his office, appointment, or employment, but the period during which the same are received after the injury shall be deducted from the period of compensation payments due hereunder.

Joint employ-
ers.

SEC. 9. In case any employee for whose injury or death compensation is payable under this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, such employers shall contribute the payment of such compensation in the proportion of their several wage liability to such employee. If one or more but not all of such employers should be subject to this act, and otherwise subject to liability for compensation hereunder, then the liability of the entire compensation which their proportionate wage liability bears to the entire wages of the employee:⁵ *Provided, however,* That nothing in this section shall prevent any arrangement between such employers for a different distribution, as between themselves, of the ultimate burden of such compensation.

Liability
principals.

SEC. 10. (a) Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on, shall be deemed an employer and shall be liable under this act to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business.

(b) The provisions of this section shall apply to the relationships of landlord and tenant, and lessor or lessee, when created for the fraudulent purpose of avoiding liability, but not otherwise. In such cases the landlord or lessor shall be deemed the employer of the employees of the tenant or lessee.

(c) The provisions of this section shall not apply to the owner of premises upon which improvements are being erected, demolished, altered, or repaired by an independent contractor, but such independent contractor shall be deemed to be the employer of the employees of his subcontractors and their subcontractors when employed on or about the premises where the principal contractor is doing work.

Contractors.

(d) In all cases mentioned in the preceding subsections the immediate contractor or subcontractor shall be liable as an employer of the employees of his subcontractors. All persons so liable may be made parties to the proceedings on the application of any party. The liability of the immediate employer shall be primary, and that of the others secondary in their order, and any compensation paid by those secondarily liable may be recovered from those primarily liable, with attorneys' fees and expenses of the suit. Such recovery may be had on motion in the original proceedings.

(e) No such employer shall be liable as in this section provided, if the employee was insured by his immediate or any intermediate employer.

Alternative
remedies.

SEC. 11. If a third person not in the same employ is also liable, the employee may elect to hold either the employer or the third person. Election to hold the third person shall release the employer. Election to hold the employer shall operate as an assignment of the cause of action against third person which the employer or his insurer may enforce in his own name or that of the employee, and in such actions recovery may be had of the amount of compensation awarded, with the reasonable expense of the suit, including attorneys' fees. Election to hold

⁵ Reproduced as enacted; it is reported that it was intended to read as follows: "If one or more but not all of such employers should be subject to this act, those subject to the act shall pay such proportion of the entire compensation due hereunder, as their proportionate wage liability bears to the entire wages of the employee."

the employer shall not be deemed to have been made until a claim for compensation is filed with the commission.

SEC. 12. (a) This act shall apply to all cases within its provisions, except those exclusively covered by any Federal law.

Federal laws.

(b) This act shall apply to all injuries received in this State, regardless of where the contract of employment was made, and also to all injuries received outside of this State under contract of employment made in this State, unless the contract of employment in any such case shall otherwise provide.

Injuries outside State.

SEC. 13. (a) In addition to all other compensation, the employee shall receive such medical, surgical, and hospital treatment, including nursing, ambulance, and medicines, as may reasonably be required for the first eight weeks after the injury or disability, to cure and relieve from the effects of the injury, and not exceeding the amount of two hundred dollars. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where such requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities.

Medical, etc., aid.

(b) If it be shown to the commission that such requirements are being furnished in such manner that there is reasonable ground for believing that the life, health, or recovery of the employee is endangered thereby, the commission may order a change in the physician, surgeon, hospital, or other requirement.

(c) All fees and charges under this section shall be fair and reasonable, shall be subject to regulation by the commission, and shall be limited to such as are fair and reasonable for similar treatment of injured persons of a like standard of living. The commission shall also have jurisdiction to hear and determine all disputes as to such charges.

(d) No compensation shall be payable for the death or disability of an employee if and in so far as the same may be caused, continued, or aggravated by an unreasonable refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the opinion of the commission, inconsiderable in view of the seriousness of the injury. If the employee dies as a result of an operation made necessary by the injury such death shall be deemed to be caused by the injury.

Refusing treatment.

(e) The testimony of any physician who treated the employee shall be admissible in evidence on any proceedings for compensation under this act.

Evidence.

(f) Every hospital or other person furnishing the employee with medical aid shall permit its records to be copied by and shall furnish full information to the commission, the employer, the employee or his dependents, and any other party to any proceedings for compensation under this act, and certified copies of such records shall be admissible in evidence in any such proceedings.

SEC. 14. (a) Except as provided in section 13, no compensation shall be payable for the first seven days or less of disability unless the disability shall last longer than six weeks.

Waiting time.

(b) Compensation shall be payable as the wages were paid prior to the injury or at least once every two weeks. Each installment shall bear interest at the rate of six per cent per annum from date when due until paid. Compensation shall be payable on the basis of 66 2/3 per cent of the average earnings of the employee computed in accordance with the rules given in section 22 of this act.

Payments.

(c) The employer shall be entitled to credit for wages paid the employee after the injury, and for any sum paid to or for the employee or his dependents on account of the injury except for liability under section thirteen.

Credits.

SEC. 15. For temporary total disability the employer shall pay compensation for not more than four hundred weeks during the continuance of such disability, but not less than six dollars nor more than fifteen dollars a week, with full wages if his average earnings amount to less than six dollars a week.

Temporary disability; Total;

SEC. 16. For temporary partial disability compensation shall be paid during such disability but not for more than two hundred weeks, and shall be 66 2/3 per cent of the difference between the average earnings

Partial.

prior to the accident and the amount which the employee, in the exercise of reasonable diligence, will be able to earn during the disability, to be determined in view of the nature and extent of the injury and the ability of the employee to compete in an open labor market, not to exceed, however, twelve dollars per week.

Permanent partial disability.

SEC. 17. (a) For permanent partial disability, in addition to all other compensation, the employer shall pay to the employee $6\frac{2}{3}$ per cent of his average earnings as computed in accordance with section 22, but not less than six dollars nor more than fifteen dollars per week for the periods hereinafter provided:

| Schedule. | Nature of injury. | Weeks. |
|-----------|---|--------|
| | Loss of major arm at shoulder | 220 |
| | Loss of minor arm at shoulder | 200 |
| | Loss of major arm between shoulder and elbow | 210 |
| | Loss of minor arm between shoulder and elbow | 190 |
| | Loss of major arm at elbow joint | 200 |
| | Loss of minor arm at elbow joint | 180 |
| | Loss of major arm between elbow and wrist | 190 |
| | Loss of minor arm between elbow and wrist | 170 |
| | Loss of major hand at the wrist joint | 165 |
| | Loss of minor hand at the wrist joint | 150 |
| | Loss of thumb of major hand at proximal joint | 55 |
| | Loss of thumb of minor hand at proximal joint | 50 |
| | Loss of thumb of major hand at distal joint | 40 |
| | Loss of thumb of minor hand at distal joint | 30 |
| | Loss of index finger at proximal joint, major hand | 40 |
| | Loss of index finger at proximal joint, minor hand | 36 |
| | Loss of index finger at second joint, major hand | 32 |
| | Loss of index finger at second joint, minor hand | 28 |
| | Loss of index finger at distal joint, major hand | 28 |
| | Loss of index finger at distal joint, minor hand | 24 |
| | Loss of either the middle or ring finger at the proximal joint, major hand | 32 |
| | Loss of either the middle or ring finger at the proximal joint, minor hand | 28 |
| | Loss of either the middle or ring finger at second joint, major hand | 28 |
| | Loss of either the middle or ring finger at second joint, minor hand | 24 |
| | Loss of either the middle or ring finger at the distal joint, major hand | 24 |
| | Loss of either the middle or ring finger at the distal joint, minor hand | 22 |
| | Loss of little finger at proximal joint, major hand | 20 |
| | Loss of little finger at proximal joint, minor hand | 15 |
| | Loss of little finger at second joint, major hand | 18 |
| | Loss of little finger at second joint, minor hand | 15 |
| | Loss of little finger at distal joint, major hand | 15 |
| | Loss of little finger at distal joint, minor hand | 12 |
| | Loss of one leg at the hip joint or so near thereto as to preclude the use of artificial limb | 195 |
| | Loss of one leg at or above the knee, where the stump remains sufficient to permit the use of artificial limb | 150 |
| | Loss of one leg at or above ankle and below knee joint | 125 |
| | Loss of one foot, in tarsus | 140 |
| | Loss of one foot, in metatarsus | 100 |
| | Loss of great toe of one foot at proximal joint | 35 |
| | Loss of great toe of one foot at distal joint | 20 |
| | Loss of any other toe at proximal joint | 12 |
| | Loss of any other toe at second joint | 8 |
| | Loss of any other toe at distal joint | 6 |
| | Complete loss of one eye | 110 |
| | Complete loss of the sight of one eye | 100 |
| | Complete deafness of both ears | 160 |
| | Complete deafness of one ear, the other being normal | 40 |

Other injuries.

For permanent injuries other than those above specified, the said compensation shall be paid for such periods as are proportionate to the rela-

tion which the other injury bears to the injuries above specified, but no such period shall exceed four hundred weeks. Such other injuries shall include permanent injuries causing a loss of earning power, disfigurement, and mutilation. If an employee be seriously and permanently disfigured about the face or head, the board may allow such sum for compensation on account thereof, as it may deem just, based upon the handicap suffered by the injured employee in obtaining employment, but such sum shall not exceed \$750.

Disfigurement.

(b) In all claims for compensation for hernia resulting from injury arising out of and in the course of the employment, it must be definitely proved to the satisfaction of the board: First, that there was an accident resulting in hernia; second, that the hernia appeared suddenly, accompanied by intense pain; third, that the hernia immediately followed the accident; fourth, that the hernia did not exist in any degree prior to the accident resulting in the injury for which compensation is claimed. All hernia, inguinal, femoral, or otherwise, so proved to be the result of an accident arising out of and in the course of the employment, shall, when necessary, 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 21 (b). In nonfatal cases, time loss only shall be paid, unless it is shown by special examination that the injured employee has a permanent partial disability resulting after the operation. If so, compensation shall be paid in accordance with the provisions hereof applicable to permanent partial disability. In case the injured employee refuses to undergo the radical operation for the reduction of said hernia, when such operation is necessary, 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 it is considered unsafe for him to undergo said operation, he shall be paid 66-2/3 per cent on his average wages for a period of 10 weeks.

Hernia.

SEC. 18. (a) For permanent total disability compensation shall be paid on the basis of 66-2/3 per cent of the annual earnings during two hundred forty (240) weeks, and thereafter on the basis of 40 per cent of the average annual earnings for life, but not less than six dollars nor more than fifteen dollars a week.

Permanent total disability.

(b) When caused by the accident the loss of both eyes or the sight thereof, the loss of both hands or the use thereof, an injury resulting in practically total and permanent paralysis or an injury resulting in incurable imbecility or insanity, shall be conclusively presumed to be permanent total disabilities, and in all other cases permanent total disability shall be determined in accordance with the facts.

SEC. 19. (a) In all cases of permanent disability where there has been a previous disability there shall be deducted from the amount of compensation payable the amount paid for the previous disability, and compensation shall be paid for the difference. If the resulting condition be a total permanent disability, the compensation period of such total disability shall be five hundred weeks, and the period of the previous disability shall be deducted therefrom.

Second injuries.

(b) If more than one injury in the same employ causes concurrent temporary disabilities, compensation shall be payable only for the longest and largest paying disability.

(c) If more than one injury in the same employ causes concurrent and consecutive permanent disabilities, compensation payments for each subsequent disability shall not begin until the end of the compensation period of the prior disability.

SEC. 20. The death of the injured employee shall not affect the liability of the employer to furnish compensation as in this act provided, so far as such liability has accrued and become payable at the time of the death, and any accrued and unpaid compensation due the employee shall be paid to his dependents without administration, or if there be no dependents, to his personal representative or other person entitled thereto, but such death shall be deemed to be the termination of the disability.

Death of work men receiving benefits.

SEC. 21. If the injury causes death, either with or without disability, the compensation therefor shall be as provided in this section.

Compensation
for death.

(a) In all cases the employer shall pay direct to the persons furnishing the same the reasonable expense of the burial of the deceased employee not exceeding one hundred dollars, and if not covered by the provisions of section 13, the reasonable expense of his last sickness not exceeding two hundred dollars. But no person shall be entitled to compensation for the burial expenses of a deceased employee unless he shall have furnished the same by authority of the widow or widower, the nearest relative of the deceased employee in the county of his death, his personal representative, or the employer, who shall have the right to give such authority, in the order named. All fees and charges under this section shall be fair and reasonable, shall be subject to regulation by the commission, and shall be limited to such as are fair and reasonable for similar service to persons of a like standard of living. The commission shall also have jurisdiction to hear and determine all disputes as to such charges. If the deceased employee leaves no dependents the death benefit in this subsection provided shall be the limit of the liability of the employer under this act on account of such death.

(b) The employer shall also pay to the total dependents of the employee a death benefit of two-thirds of his average annual earnings for the year immediately preceding the injury, but not less than six dollars a week nor more than fifteen dollars a week for three hundred weeks, less the number of weeks during which compensation for the injury was paid to the employee during his lifetime. If there be total dependents no compensation shall be payable to partial dependents or any other person, except as provided in paragraph (a) of this section.

(c) If there be partial dependents, and no total dependents, a part of the death benefit herein provided in the case of total dependents, determined by the proportion of his contributions to all partial dependents by the employee at the time of the injury, shall be paid by the employer to each of such dependents proportionately.

Dependents.

(d) The word "dependent" as used in this act shall be construed to mean a relative by blood or marriage of a deceased employee who is actually dependent for support, in whole or in part, upon his wages at the time of the injury. The following persons shall be conclusively presumed to be solely and totally dependent for support upon a deceased employee:

1. A wife upon a husband, and a husband mentally or physically incapacitated from wage earning upon a wife, with whom he or she is living at the time of the injury.

2. A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of seventeen years, or over that age if physically or mentally incapacitated from wage earning, with whom he is living at the time of the death of such parent, there being no surviving dependent parent or step-parent. In case there is more than one child thus dependent, the death benefit shall be divided among them in such proportion as may be determined by the commission after considering their ages and other facts bearing on such dependency. In all other cases questions of total or partial dependency shall be determined in accordance with the facts at the time of the injury, and in such other cases, if there is more than one person wholly dependent the death benefit shall be divided equally among them.

(e) All death benefits provided for in this act shall be paid in installments in the same manner as provided for disability compensation.

(f) Every employer shall keep a record of the correct names and addresses of the dependents of each of his employees, so far as possible, and upon the death of an employee by accident arising out of and in the course of his employment, shall immediately furnish the commission with the correct names and addresses of all dependents of such employee.

Basis for com-
pensation.

SEC. 22. The basis for computing the compensation provided for in 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 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 earnings of adults of the same 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 period per annum.

SEC. 23. The compensation payable under this act, whether awarded or due, or not, shall not be assignable, shall be exempt from attachment, garnishment and execution, shall not be subject to set-off or counter-claim or be in any way liable for any debt, and in case of insolvency or the levy of an attachment or execution shall be entitled to the same preference and priority as claims for wages, without limit as to time or amount, save that if written notice is given to the employer of the nature and extent thereof, if such services are found to be necessary, the commission may allow as a lien on the compensation, reasonable attorney's fees for services in connection with the proceedings for compensation and may order the amount thereof paid direct to the attorney in a lump sum or in installments. All attorneys' fees for services in connection with this act shall be subject to regulation by the commission and shall be limited to such charges as are fair and reasonable, and the commission shall have jurisdiction to hear and determine all disputes concerning the same.

Assignments, etc.

SEC. 24. No savings or insurance of the injured employee, or any benefit derived from any other source than the employer or the employer's insurer for liability under this act, shall be considered in determining the compensation due hereunder.

Savings of employee.

SEC. 25. Every employer electing to accept the provisions of this act shall insure his entire liability thereunder except as hereafter provided, with some insurance carrier authorized to insure such liability in this State, except that an employer may himself carry the whole or any part of such liability without insurance upon satisfying the commission of his ability so to do. If the employer fail to comply with this section, an injured employee or his dependents may elect after the injury to recover from the employer as though he had rejected this act, or to recover under this act with the compensation payments commuted and

Insurance required.

immediately payable. If the employer be carrying his own insurance, on the application of any person entitled to compensation and on proof of default in the payment of any installment, the commission shall require the employer to furnish security for the payment of the compensation, and if not given, all of the compensation shall be commuted and become immediately payable: *Provided*, That employers engaged in the mining business shall be required to insure only their normal liability.

Burden of cost. SEC. 26. No part of the cost of such insurance shall be assessed against, collected from, or paid by any employee.

Liability. SEC. 27. If the employer be not insured his liability hereunder shall be primary and direct. If he is insured, his liability shall be secondary and indirect, and his insurer shall be primarily and directly liable hereunder to the injured employee, his dependents, or other persons entitled to rights hereunder. On request of the commission and at every hearing the employer shall produce and furnish it with a copy of his policy of insurance, and on demand the employer shall furnish the injured employee, or his dependents, with the correct name and address of his insurer, and his failure to do so shall be prima facie evidence of his failure to insure. Both the employer and his insurer shall be parties to all agreements or awards of compensation, but the same shall not be enforceable against the employer, except on motion and proof of default by the insurer. Service on the employer shall be sufficient to give the commission jurisdiction over the person of both the employer and his insurer, and the appearance of the employer in any proceeding shall also constitute the appearance of his insurer.

Policies. SEC. 28. Every policy of insurance against liability under this act shall be in accordance with the provisions of this act and shall be in a form approved by the superintendent of the insurance department. Such policy shall contain an agreement that the insurer accepts all of the provisions of this act, that the same may be enforced by any person entitled to any rights under this act as well as by the employer, that the insurer shall be a party to all agreements or proceedings under this act, and his appearance may be entered therein and jurisdiction over his person may be obtained as in this act provided, and such covenants shall be enforceable notwithstanding any default of the employer.

Rates. SEC. 29. All charges for insurance against liability under this act and against the liability of employers rejecting this act, shall be fair, reasonable and adequate with due allowances for merit rating. Every insurance carrier or group of carriers authorized to insure against liability under this act shall, within thirty days after this section becomes effective, file with the superintendent of the insurance department its classification of risks and premium rates relating thereto with its system of schedule rating (or merit rating so-called) if any. The superintendent then shall hold a hearing to determine upon a uniform classification of risks and premium rates relating thereto, and in his discretion a uniform system of schedule rating (or merit rating so-called). Within sixty days after this section becomes effective, the superintendent shall approve or issue as fair, reasonable, and adequate for all insurance carriers or groups of carriers, authorized by law to transact liability or compensation insurance business in this State, a uniform classification of risks and premium rates relating thereto, and may in his discretion approve or issue a system of schedule rating (or merit rating so-called) which shall be a uniform system of schedule rating (or merit rating so-called) for all such insurance carriers. The superintendent may subsequently approve or issue a uniform system of schedule rating (or merit rating so-called) for all insurance carriers, or may modify or change any such system previously approved or issued after holding a hearing to determine its effect upon the fairness, reasonableness, adequacy or unfairness, unreasonableness or inadequacy of rates, and may approve or issue changes in rates or classifications after holding a hearing to determine upon the fairness, reasonableness, adequacy or unfairness unreasonableness or inadequacy of such additions or charges. No insurance carrier or group of carriers shall issue, renew or carry insurance for employers or employees as provided in this section at premium rates which are less than the rates approved or issued by the superintendent for all insurance carriers or groups of carriers as fair,

reasonable and adequate for the risk to which they respectively apply: *Provided, however,* That if the superintendent shall have previously approved or issued a uniform system of schedule rating (or merit rating so-called), insurance carriers may apply the same to any risks subject thereto, but basic rates no less than the rates previously approved or issued by the superintendent, and any additions thereto or reductions therefrom on account of the application of such system of schedule rating or (merit rating so-called) shall be clearly set forth in the insurance contracts or endorsements attached thereto: *And provided, however,* That nothing contained in this section shall affect the right of any insurance carrier or carriers to issue participating policies or to pay savings or dividends actually earned or saved: *And provided further,* That the provisions of this section as to rates shall not apply to employers who provide among themselves insurance against liability under this act, on the reciprocal or interinsurance plan, except that the rate [for such insurance shall not be less than the rates] ⁶ fixed by the superintendent of insurance as sufficient to provide for the payment of the compensation provided by this act.

Sec. 30. No insurance carrier shall write any insurance against liability hereunder unless it maintains such reserves as are required by law or in the absence thereof such reserves as may be required by the superintendent of the insurance department, the power to require and regulate which is hereby vested in said superintendent.

Sec. 31. Every insurance carrier writing insurance for liability hereunder, or the liability of employers rejecting this act, shall report to the superintendent of the insurance department, in accordance with such rules as he may adopt, such information as he may at any time require for the purpose of determining the solvency of the carrier or the fairness, reasonableness, and adequacy of its rates, and for such purposes the superintendent may inspect the books and records of such carrier and examine its officers, agents, and servants under oath.

Sec. 32. For any violation of the provisions of this act the superintendent of the insurance department may suspend or revoke the authority of any insurance carrier to do business in this State. If any insurance carrier fails or delays to pay any compensation finally determined to be due, the superintendent shall hear the complaint, and if such failure is without reasonable excuse he may revoke or suspend the authority of such carrier to do business in this State, and in a proper case may apply for the appointment of a receiver for same.

Sec. 33. Any employer or group of employers may enter into or continue any agreement with his or their employees to provide a system of compensation benefits or insurance in lieu of the compensation and insurance provided by this act. Such substitute system and insurance shall be subject to the approval of the superintendent of the insurance department, and shall not be approved by him unless they confer benefits upon injured employees or their dependents at least equivalent to the benefits provided by this act, nor if they require contributions from employees, unless they confer benefits in addition to those provided under this act at least commensurate with such contribution. Such substitute system and insurance may be terminated by the superintendent of the insurance department 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 latent defects threatening its solvency or if for any other substantial reason it fails to accomplish the purposes of this act; and in this case the superintendent of the insurance department shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to have such action reviewed by a court of competent jurisdiction.

Sec. 34. Every employer in this State, whether he has accepted or rejected the provisions of this act, shall within ten days after knowledge of such accident, notify the commission thereof, and shall, within one month, file with the commission under such rules and regulations and in such form and detail as the commission may require, a full and complete report of every injury or death to any employee for which the employer would be liable to furnish medical aid or compensation hereunder had

Reserves.

Reports.

Violations.

Substitute plans.

Notice of accidents.

⁶ Words in brackets reported to have been omitted through error.

he accepted this act and every such employer shall also furnish the commission with such supplemental reports in regard thereto as the commission shall require. Every such employer and his insurer, and every injured employee, his dependents, and every person entitled to any right hereunder, and every other person, receiving from the commission any blank reports with direction to fill out the same, shall cause the same to be promptly returned to the commission properly filled out and signed so as to answer fully and correctly each question propounded therein and a good and sufficient reason shall be given for failure to answer any question. No information obtained under the provisions of this section shall be disclosed to persons other than the parties to compensation proceedings and their attorneys, save by order of the commission, or at a hearing or compensation proceedings but such information may be used by the commission for statistical purposes. Every person who violates any of the provisions of this section or who knowingly makes a false report or statement in writing to the commission shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than one week nor more than one year, or by both such fine and imprisonment.

Voluntary agreements.

Sec. 35. Nothing in this act shall be construed as preventing the parties to claims hereunder from entering into voluntary agreements in settlement thereof, but no agreement by an employee or his dependents to waive his rights under this act shall be valid, nor shall any agreement of settlement of [or] compromise of any dispute or claim for compensation under this act be valid until approved by the commission, nor shall the commission approve any settlement which is not in accordance with the rights of the parties as given in this act. No such agreement shall be valid unless made after seven days from the date of injury or death.

Duty of commission.

Sec. 36. Upon receipt of notice of any accident the commission shall forward to the employer and to the employee or his dependents a form of agreement to pay and accept compensation, providing for payment of compensation in accordance with the provisions of this act, which agreement shall be promptly executed by both parties and returned to the commission, and if in any case the employer disputes the claim for compensation and for that reason refuses to execute the agreement to pay compensation, the commission shall assist the person who claims to be entitled thereto, in filing his claim and securing an early adjudication thereof; and where such agreements to pay and receive compensation are executed and filed it shall be the duty of the commission, in case payments hereunder are not promptly made, to provide prompt measures for the payment of such compensation and for hearing disputes with reference thereto. If the parties agree they shall file with the commission a report of the facts and their agreement, and if the agreement is approved by the commission it shall make an award of compensation thereon in accordance therewith.

Discharge, etc., of workmen.

Sec. 37. Every employer, his director, officer, or agent, who discharges or in any way discriminates against an employee for exercising any of his rights under this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punishable by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than one week nor more than one year, or by both such fine and imprisonment.

Notice.

Sec. 38. No proceedings for compensation under this act shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, shall have been given to the employer as soon as practicable after the happening thereof, unless the commission shall find that there was good cause for failure to give such notice. No defect or inaccuracy in such notice shall invalidate the same unless the commission shall find that the employer was in fact misled and prejudiced thereby.

Claim.

Sec. 39. No proceedings for compensation under this act shall be maintained unless a claim therefor be filed with the commission within six months after the injury or death, or in case payments have been made on account of the injury or death, within six months from the date of the last payment. In all other respects such limitations shall be

governed by the law of civil actions other than for the recovery of real property, but the appointment of a guardian shall be deemed the termination of legal disability from minority or insanity.

SEC. 40. 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 an application to the 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.

Hearing on application.

SEC. 41. The commission or any of its members or referees shall hear in a summary proceeding the parties at issue and their representatives and witnesses and shall determine the dispute. All evidence introduced at any such hearing shall be reported by a competent stenographer appointed by the commission. The award, together with a statement of the findings of fact, ruling of law, and any other matters pertinent to the question at issue, shall be filed with the record of proceedings, and a copy of the award shall immediately be sent by registered United States mail to the parties in dispute.

Procedure.

SEC. 42. Upon its own motion or upon the application of any party in interest on the ground of a change in condition, the 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.

Review.

SEC. 43. If an application for review is made to the commission within ten 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 same in like manner as specified in the foregoing section.

Same.

SEC. 44. An award of the commission as provided in section 41, if not reviewed in due time, or an award of the commission upon such review as provided in section 43, 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 the action or award of the full commission, appeal to the circuit court of the county in which the accident occurred, or if the accident occurred outside of this State, then in the county where the contract was made, for errors of law, by filing notice of appeal with the commission, whereupon the commission shall order under its certificate return to the court all documents and papers on file in the matter together with a transcript of the evidence, the findings and award, which shall thereupon become the record of the cause. Appeal from the circuit court shall be allowed the same as in civil actions and all appeals to the circuit and appellate courts shall have precedence over all other cases except election contests. Upon the setting aside of the award, the court may remand the cause to the commission for further hearing or proceedings, or it may enter the proper judgment upon the findings, as the nature of the case may demand: *Provided*, That in all appeals from awards of the commission the party taking the appeal shall, together with his notice of appeal, transmit to the commission twenty-five dollars, as security for costs, which sum the commission shall together with the record of the case transmit to the clerk of the circuit court of the county to which the appeal is taken, and in all appeals from the commission or circuit court the costs thereof shall be assessed against the losing party as provided by law in civil cases.

Awards binding, when.

SEC. 45. Any party in interest may file in the circuit court of the county in which the accident occurred 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, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect

Enforcement.

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. Any such judgment of said circuit court unappealed from or affirmed on appeal or modified, in obedience to the mandate of the appellate court, shall be modified to conform to any decision of the commission, ending, diminishing, or increasing any weekly payment under the provisions of section 42 of this act upon the presentation to it of a certified copy of such decision.

Temporary awards.

SEC. 46. In any case a temporary or partial award of compensation may be made, and the same may be modified from time to time, to meet the needs of the case, and the same may be kept open until a final award can be made, and if the same be not complied with, the amount thereof may be doubled in the final award, if the final award shall be in accordance with the temporary or partial award.

Service of notice.

SEC. 47. Any notice required under this act shall be deemed to have been properly given and served when sent by registered mail properly stamped and addressed to the person to whom given, at his last known address, in time to reach him in due time to act thereon. Notice may also be given and served in like manner as summons in civil actions.

Lump sums.

SEC. 48. The compensation herein provided may be commuted by said commission and redeemed by the payment in whole or in part, 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, taking account of life contingencies, such payment to be commuted at its present value upon the basis of interest calculated at four per centum with annual rests, upon application to either party, with due notice to the other, if it appears that such commutation will be for the best interest of the employee or of 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 greater part of his business or assets. In determining whether the commutation asked for 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, the commission will constantly bear in mind that it is the intention of this act that the compensation payments are in lieu of wages and are to be received by the injured employee or his dependents in the same manner in which wages are ordinarily paid. Therefore, commutation is a departure from the normal method of payment and is to be allowed only when it clearly appears that some unusual circumstances warrant such a departure. Commutation shall not be allowed for the purpose of enabling the injured employee, or the dependents of a deceased employee, to satisfy a debt, or to make payments to physicians, lawyers, or any other persons.

Employee relieved, when re-

SEC. 49. On notice to the other parties the commission may permit the employer to be discharged from further liability under any agreement, award, or judgment for compensation by furnishing to the person entitled thereto an annuity or other obligation, approved by the commission or court, by which payment is assumed by some responsible person, or by depositing the commutable value thereof with the commission to be disbursed to the persons entitled thereto in such manner as the commission shall determine.

Medical examinations.

SEC. 50. (a) After an employee has received an injury he shall from time to time thereafter during disability submit to reasonable medical examination at the request of the employer, his insurer, the commission or any of its commissioners, the time and place of which shall be fixed with due regard to the convenience of the employee and his physical condition and ability to attend. The employee may have his own physician present, and if the employee refuses to submit to such examination, or in any way obstructs the same, his right to compensation shall be forfeited during such period.

(b) The commission or any of the commissioners, or referees, may appoint a duly qualified impartial physician to examine the injured employee and to report, his fees and traveling expenses for which shall be fixed and allowed by the commission and paid as other costs

under this act. If all the parties shall have had reasonable access thereto, the report of such physician shall be admissible in evidence.

(c) The testimony of any physician who examined the employee shall be admissible in evidence in any proceedings for compensation under this act.

(d) Certified copies of the proceedings before any coroner holding an inquest over the body of any employee receiving an injury in the course of his employment resulting in death, shall be admissible in evidence in any proceedings for compensation under this act, and it shall be the duty of the coroner to give notice of such inquest to the employer and the dependents of the deceased employee, who shall have the right to cross-examine the witnesses.

Sec. 51. All proceedings before the commission or any commissioner or referee shall be simple, informal, and summary, and without regard to the technical rules of evidence, and no defect or irregularity therein shall invalidate the same. Except as herein otherwise provided, all such proceedings shall be according to such rules and regulations as may be adopted by the commission.

Procedure.

Sec. 52. The commission, or any commissioner or referee, shall have power to issue process, subpoena witnesses, administer oaths, examine books and papers, and require the production thereof and to cause the deposition of any witness to be taken and the costs thereof paid as other costs under this act. Any party shall be entitled to process to compel the attendance of witnesses and the production of books and papers, and at his own cost to take and use depositions in like manner as in civil cases in the circuit court. Subpoena shall extend to all parts of the State and may be served as in civil actions in the circuit court, but the costs of such service shall be as in other civil actions. Each witness shall receive the fees and mileage prescribed by law in civil cases, but the same shall not be allowed as costs to the party in whose behalf the witness was summoned unless the persons before whom the hearing is had shall certify that the testimony of such witness was necessary. All costs under this act shall be approved by the commission and paid out of the State treasury from the fund for the support of the Missouri workmen's compensation commission: *Provided, however,* That if the commission shall determine that any proceedings before it or any of its members or before any referee have been brought, prosecuted, or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted, or defended them.

Powers of commission.

Sec. 53. If any person subpoenaed to appear at any hearing or proceeding fails to obey the command of such subpoena without reasonable cause, or if any person in attendance at any hearing or proceeding shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce a book or paper or to subscribe or swear to his deposition he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and may be prosecuted therefor in any court of competent jurisdiction, and in case of a continuing violation each day's continuance thereof shall be, and deemed to be, a separate and distinct offense.

Witnesses.

Sec. 54. If any party shall die pending any proceedings under this act, the same shall not abate, but on notice to the parties may be revived and proceed in favor of the successor to the rights or against the personal representative of the party liable, in like manner as in civil actions.

Death of party.

Sec. 55. Any person who shall make, or conspire with, aid, or abet another to make, any false or fraudulent claim to compensation or other benefits under this act, and any person who shall by fraud, deceit, or misrepresentation, receive, make, or cause to be made, or conspire with, aid, or abet another to receive, make, or cause to be made, any payment of compensation under this act to which the recipient is not lawfully entitled, and any person who shall by fraud, deceit, or misrepresentation and with intent to defraud, cause or procure, or conspire with, aid, or abet another in causing or procuring any person entitled to any benefits under this act to fail to make claim therefor or to accept in

False claims.

payment thereof less than is due under this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than one week nor more than one year, or by both such fine and imprisonment.

Commission created.

SEC. 56. There is hereby created the Missouri workmen's compensation commission consisting of four members to be appointed by the governor, by and with the advice and consent of the senate, and the commission shall organize by selecting one of their members as chairman. The term of office of each commissioner shall be six years, except that when first constituted two members of the commission shall be appointed for four years and two for six years, and thereafter all vacancies shall be filled as they occur. The terms of office of the first commissioners shall begin on the date of their appointment, which shall be immediately after the adjournment of the general assembly. Two members of the commission shall be appointed from each of the two dominant political parties, and at least 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 at least 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 employees: *Provided, however,* That for the first four years after the approval of this act the members of the commission shall be honorably discharged United States soldiers, sailors, or marines. Such commissioner may be removed in like manner as is provided by law for members of the public service commission. Vacancies shall be filled by the governor for the unexpired term, and during any vacancy the remaining members shall exercise all of the powers of the commission. The annual salary of each commissioner shall be four thousand dollars.

Representation.

Oath.

SEC. 57. Each commissioner and each person appointed to office or employment by the commission shall, before entering upon his duties, take and subscribe to an oath or affirmation to support the Constitution of the United States and of this State, and to faithfully and honestly discharge the duties of such office or employment. Each commissioner and each person appointed to office by the commission shall give his whole time to his duties, nor shall he serve on any committee of any political party. Each commissioner shall before entering upon his duties give a bond to the State of Missouri in the sum of fifty thousand dollars conditioned that he will faithfully perform the duties of his office, and if a surety company bond be given the premium therefor shall be paid by the State as other expenses under this act.

Bond.

Seal.

SEC. 58. The commission may sue and be sued in its official name and shall have a seal bearing the inscription "Missouri workmen's compensation commission." The seal shall be affixed to all writs and authentication of copies of records, papers on file, and to such other instruments as the commission shall direct, and all courts shall take judicial notice of such seal. Copies of the records and proceedings of the commission, and of all papers on file in its office, certified under the said seal, shall be evidence in all courts of the State.

Secretary.

SEC. 59. The commission shall appoint and prescribe the duties of a secretary whose salary shall be \$3,500 per annum, and he shall hold office at the pleasure of the commission. The commission may appoint or employ during its pleasure and prescribe the duties of such employees as may be necessary to the proper administration of this act at salaries to be fixed by the commission and approved by the governor: *Provided, however,* That such salaries shall in no case exceed \$100 per month to any stenographer, \$100 per month to any clerical employee, or \$150 per month to any other employee or assistant. The commission may also

Employees.

Medical adviser.

appoint a medical adviser, whose salary shall be fixed by the commission, but shall not exceed \$4,000 per annum. The commission may also appoint to hear any case any circuit judge who shall act without compensation therefor: *Provided, however,* That for the first four years after the approval of this act all paid appointees and employees of the commission shall be honorably discharged United States soldiers, sailors and marines.

Sec. 60. It shall be the duty of the attorney general to furnish the commission with such legal services as it may require, and to appear on its behalf in all actions or proceedings to which it may be a party.

Attorney gen-
eral.

Sec. 61. The commission shall prepare and furnish free of charge blank forms of all notices, claims reports, proofs, and other blank forms and literature which it may deem proper and requisite to the efficient administration of this act. It may also authorize the publication and distribution of such blanks by employers and other persons.

Forms.

Sec. 62. The commission shall be provided with an office at the State capitol in which its records shall be kept and may maintain offices in such parts of the State as may be fixed by it. The commission shall also be provided with the necessary office furniture, books, stationery and other supplies. Paper and stationery shall be furnished, and printing done for the commission as provided by chapter 99, R. S. 1909. The commissioners and each of their appointees and employees shall have reimbursed to them their actual traveling expenses and disbursements incurred in the discharge of their duties while away from their regular offices and places of residence, but the same shall not be paid until verified by the affidavit of the person who incurred them and approved by the chairman of the commission. All salaries, expenses, and costs under this act shall be paid monthly out of the State treasury from the fund for the support of the Missouri workmen's compensation commission.

Office, etc.

Expenses.

Sec. 63. The commission and its members shall have such powers as may be necessary to carry out all the provisions of this act, and it may make such rules and regulations as may be necessary for any such purpose.

Rules.

Sec. 64. The commission shall charge and collect the following fees, to be paid at least once each month into the State treasury to the credit of the fund for the support of this act: For copies of papers and records not required to be certified or otherwise authenticated by the commission, ten cents for each one hundred words and figures; for certified copies of official documents, awards or other records, fifteen cents for each one hundred words and figures, and one dollar for every certificate under seal affixed thereto, for each certified copy of annual report of the commission, one dollar and fifty cents; for copies of evidence and proceedings, fifteen cents for each one hundred words and figures; also all other fees and charges allowed or required to be collected under this act or any other law. The commission shall also fix and collect from the employer the reasonable expense of any investigation necessary to determine his ability to carry his own insurance. No fees shall be charged or collected for copies of papers, records, or official documents furnished to public officers for use in their official capacity, or for annual reports or other matters published by the commission, in the ordinary course of distribution, but the commission may fix reasonable charges for publications issued under its authority.

Fees.

Sec. 65. Every public officer, without exacting a fee or charge therefor, shall furnish the commission on application, with a certified copy of any document, or part thereof, on file in his office, and no public officer shall be entitled to receive from the commission any fee for entering, filing, docketing, or recording any document required or authorized by law to be filed in his office.

Documents to
be furnished.

Sec. 66. The commission shall make and submit to the governor, on or before the second Monday of January, in each year, a report containing a full and complete account of its transactions and proceedings for the preceding year, together with all statistics and information collected by it, and such other facts, suggestions, and recommendations as it may deem of value, which report shall be laid before the legislature.

Reports.

Sec. 67. For the purpose of providing for the expense of administering this act, every person, partnership, association, corporation, whether organized under the laws of this or any other State or country, company, mutual company, the parties to any interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring employees in this State against liability for personal injuries to their employees, or for death caused thereby, under this act, shall, as hereinafter provided, pay tax upon the deposits or premiums received whether in cash or notes, in this State, or on account of business done in this State, for

Tax on pre-
miums, etc.

such insurance in this State at the rate of two per cent in lieu of all other taxes on such deposits or premiums, which amount of taxes shall be assessed and collected as hereinafter provided: *Provided*, That such insurance carriers shall be credited with canceled or returned premiums or savings actually paid to the insured in this State, and with premiums or reinsurance with insurance carriers authorized and licensed to transact business in Missouri, which reinsurance shall be reported by the carrier reinsuring such business; but no credit shall be allowed for reinsurance in insurance carriers not licensed to transact business in Missouri.

- Assessments.** SEC. 68. If any such insurance carrier shall fail or refuse to make the return required by this act, the said superintendent shall assess the tax against such insurance carrier or self-insurer at the rate herein provided for, on such amount or premiums or deposits as he shall deem just, and the proceedings thereon shall be the same as if the return had been made.
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- Tax on self-insurers.** SEC. 71. Wherever the employer carries his own risk, or wherever substitute schemes for insurance provided for in section 33 have been approved, the commission shall inform the superintendent of insurance, who, thereupon, shall assess and in like manner collect a similar tax from the employer carrying his own risk at the same rate and on the same basis as taxes are assessed against insurance carriers, of any character, carrying like risks in this State under the provisions of this act.
- Violations.** SEC. 75. Any person, corporation, his or its directors, officers or agents, or any other person who violates any of the provisions of this act for which a penalty has not hereinbefore been specifically provided, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment in the county jail for not less than one week and not more than one year, or both such fine and imprisonment.
- Construction.** SEC. 76. All of the provisions of this act shall be liberally construed, with a view of the public welfare, and a substantial compliance therewith shall be sufficient to give effect to all rules, regulations, requirements, awards, orders, or decisions of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.
- Provisions severable.** SEC. 77. If any section, subsection, 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 general assembly hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more of the same shall be declared unconstitutional.
- Appropriation.** SEC. 78. [Repealer.] SEC. 79. For the purpose of paying the salaries and expenses of the members of the commission and its employees, the sum of \$50,000 per year or so much thereof as may be necessary is hereby appropriated, and shall be known as the workmen's compensation fund. The amount of said appropriation to be refunded as provided in section 69.
- Act in effect.** SEC. 80. Notwithstanding the emergency clause hereto attached, sections two to four, inclusive, and section thirty-four, of this act shall not take effect until November, 1919.
- Emergency.** SEC. 81. It being necessary for the commission herein created to be fully organized and make preliminary preparations, and there being an immediate necessity therefor, creates an emergency within the meaning of the Constitution, and except as in this act otherwise provided, this act shall take effect from and after the date of its approval.⁷
- Approved April 28, 1919.

⁷ This act did not come into effect on account of petition for a referendum, to be decided November 2, 1920.

MONTANA.

ACTS OF 1915.

CHAPTER 96.—*Compensation of workmen for injuries—Provisions for safety.*

PART I.

GENERAL PROVISIONS.

SECTION 1. (a) This act shall be known and may be cited as the workmen's compensation act. Part I shall contain those sections which have a general application to the whole of the act and may be referred to as the "general provisions"; Part II shall contain those sections which refer to compensation plan number one; Part III shall contain those sections which refer to compensation plan number two; Part IV shall contain those sections which refer to compensation plan number three; Part V shall contain those sections which may be referred to as the "safety provisions."

Citation of act.

Parts.

(b) Whenever compensation plan number one, two, three, or the safety provisions of this act shall be referred to, such reference shall also be held to include all other sections which are applicable to the subject matter of such reference.

(c) The "compensation provisions" of this act, whenever referred to, shall be held to include the provisions of compensation plans number one, two, or three, and all other sections of this act applicable to the same or any part thereof.

SEC. 2 (as amended by chapter 95, acts of 1919). (a) There is hereby created a board to consist of three members. The commissioner of labor and industry shall be one member, the State auditor shall be one member, and one member shall be appointed by the governor, which board shall be known as the industrial accident board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall have been appointed and qualified. He shall receive an annual salary of six thousand dollars, payable monthly, and shall be the chairman of the board. The board shall elect one of their number as treasurer of the board.

Industrial accident board.

(b) A vacancy in the office of the appointed member of the board shall be filled in the same manner as the original appointment, but shall only be for the unexpired term of such vacancy. The appointed member shall not be removed except for cause, and after a hearing had before and a finding made by the remaining members of the board, and both of the remaining members of the board must concur in the removal of the appointed member.

(c) Each member shall, upon entering upon the duties of his office, execute to the State of Montana and file with the secretary of State a bond in the sum herein prescribed, executed by not less than four responsible sureties or by some surety company authorized to become sole surety on bonds in the State of Montana, such bonds to be approved by the governor, and conditioned that he will faithfully and impartially discharge the duties of his office. Such bonds shall be in addition to any other bonds required by law to be furnished.

(d) The bond of the treasurer of the board shall be in a sum to be fixed by the governor, not less than twenty-five thousand dollars (\$25,000) nor more than one hundred thousand dollars (\$100,000). The bonds of the members of the board other than the treasurer shall be in the sum of ten thousand dollars (\$10,000).

- (e) Neither the commissioner of labor and industry nor the State auditor shall receive any additional compensation for the duties imposed upon them by this act.
- Quorum.** (f) A majority of the board shall constitute a quorum for the transaction of any business. A vacancy on the board shall not impair the right of the remaining members to perform all of the duties and exercise all the powers and authority of the board. The act of the 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.** (g) The board shall have a seal bearing the following inscription: "Industrial Accident Board, State of Montana, Seal." 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.** (h) 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.
- Secretary.** (i) The board shall appoint a secretary, who shall hold office at the pleasure of the board. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the board, to issue all necessary processes, writs, warrants, and notices which the board is required or authorized to issue, and generally to perform such other duties as the board may prescribe.
- (j) The board shall employ such assistants and other employees as it may deem necessary to carry out the provisions of this act.
- Salaries.** (k) 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, shall perform such duties as are imposed on them by law or by the board.
- (l) The salaries of members of the board, secretary, and every other 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.** (m) 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 and records.** (n) 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.** (o) 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.** (p) 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, 15 cents for each folio; for certi-

fied copies of official documents and orders filed in its office or of the evidence taken at any hearing, 20 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.

(q) 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.

Sec. 3 (as amended by chapter 100, acts of 1919). (a) 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 injuries so sustained, it shall not be a defense (1) that the employee was negligent, unless such negligence was willful; (2) that the injury was caused by the negligence of a fellow employee; (3) that the employee had assumed the risks inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

Defenses abrogated.

(b) The provisions of section 3 (a) shall not apply to actions to recover damages for personal injuries sustained by household or domestic servants, farm, or other laborers engaged in agricultural pursuits, or persons whose employment is of a casual nature.

Exceptions.

(c) Any employer who elects to pay compensation as provided in this act shall not be subject to the provisions of section 3 (a), nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employee except as in this act provided; and except as specifically provided in this act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common-law rights and remedies for, and on account of such death of or personal injury to any such employee are hereby abolished: *Provided*, That section 3 (a) shall not apply to actions brought by an employee who has elected not to come under this act, or by his representatives, for damages for personal injuries or death against an employer who has elected to come under this act.

Employers accepting act.

(d) Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and such employee of their right to any other method, form, or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action, action at law, suit in equity, or statutory or common law, right, or remedy, or proceeding whatever, for, or on account of, any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself and in case of death shall bind his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer, and those conducting his business during liquidation, bankruptcy, or insolvency.

Act exclusive remedy when.

(e) Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions, and provisions of compensation plan number three shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation 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 into the accident or administration fund, as the case may be, at the time and in the manner provided for in this act, 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. Whenever any contractor engaged in the performance of contract work for any public corporation is the employer, such public corporation upon final settlement with the

Public employments.

contractor shall deduct for the benefit of the industrial accident fund the amount of all premium assessments necessary to be paid by such contractor under the provisions of this act.

Hazardous employments.

(f) Every employer engaged in the industries, works, occupations, or employments in this act specified as "hazardous" may on or before the 1st day of July, 1915, if such employer be then engaged in such hazardous industry, work, occupation, or employment or at any time thereafter, or, if such employer be not so engaged on said date, may on or after thirty days before entering upon such hazardous work, occupation, or employment, or at any time thereafter, elect whether he will be bound by either of the compensation plans mentioned in this act. Such election shall be in the form prescribed by the board, and shall state whether such employer shall be bound by compensation plan number one or compensation plan number two or compensation plan number three, and a notice of such election, with the nature thereof, shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the board.

Election by employers.

By employees.

(g) Every employee in the industries, works, occupations, or employment in this act specified as "hazardous" shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer, unless such employee shall elect not to be bound by any of the compensation provisions of this act and until such employee shall have made such election. Such election shall be made by written notice in the form prescribed by the board, served upon the employer, and a copy filed with the board, together with the proof of such service.

Presumption in case of nonelection.

(h) If the employer shall fail to make the election herein provided for at the time and in the manner herein prescribed such employer shall be presumed to have elected not to be bound by the provisions of either compensation plan number one or compensation plan number two or compensation plan number three for that fiscal year, unless such employer shall elect to become subject to or bound by this act in the manner provided for such election in the first instance. After having once elected to be bound by one or the other of the compensation plans provided in this act, such employer shall be bound by such election for said first fiscal year and each succeeding fiscal year, unless such employer shall, not less than thirty or more than sixty days prior to the end of any fiscal year, elect not to be bound by either of such compensation plans, after the expiration of said fiscal year or unless he shall elect to be bound for the succeeding fiscal year by a different compensation plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this act.

Action to be affirmative.

(i) It is the intention of this act that any employer engaged in hazardous occupations as defined herein shall, before being bound by either of the compensation plans herein provided, elect to be so bound thereby, and that the employee shall be presumed to have elected to be the subject to and bound by the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this act.

Revocations.

(j) Any employee who has elected not to be bound by the provisions of this act in the manner herein provided may revoke such election and elect to come thereunder at any time. Any employer who has failed to elect to be bound by either one or the other of the compensation plans herein mentioned may, at any time during any fiscal year, elect to be bound thereby, which said election shall be made as hereinbefore provided; but whenever any employer or employee shall have elected to come under the provisions hereof, such election, when it shall have been made, shall bind such employer and employee for the rest of the then fiscal year.

Employee nonelecting of employer.

(k) No compensation shall be paid to any employee, whether such employee has elected to come under this act or not, where his employer has failed to elect and has failed to come under one or the other of the compensation plans herein provided.

Sec. 4 (as amended by ch. 100, acts of 1919). (a) This act is intended to apply to all inherently hazardous works and occupations within this State, and it is the intention to embrace all thereof in sections 4 (b), 4 (c), 4 (d), and 4 (e), and the works and occupations enumerated in said sections are hereby declared to be hazardous, and any employer having any workmen engaged in any of the hazardous works or occupations herein listed shall be considered as an employer engaged in hazardous works and occupations as to all his employees.

What are hazardous employments.

(b) *Construction work.*—Tunnels, bridges, trestles, subaqueous works, ditches and canals (other than irrigation without blasting), dock excavations, fire escapes, sewers, house moving, house wrecking, iron or steel frame structures or parts of structures, electric light or power plants or systems, telegraph or telephone systems, pile driving; steam railroads, steeples, towers, or grain elevators not metal framed; dry docks, without excavation; jetties, breakwaters, chimneys, marine railways, waterworks or water systems; electric railways, cable railways, street railways, with or without rock work or blasting; erecting fireproof doors or shutters; steam heating plants; blasting; tanks, water towers, or windmills, not metal framed; shaft sinking; concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; gas works or systems; marble, stone, or brick work; road making, with or without blasting; roof work; safe moving; slate work; plumbing work, inside or outside; metal smokestacks or chimneys; excavations not otherwise specified; blast furnaces; street or other grading; advertising signs; ornamental work on buildings; ship or boat building or rigging, with or without scaffolding; carpenter work not otherwise specified; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; marble mantel, stone, or tile setting; metal ceiling work; mill or shipwrighting; painting of buildings or structures; installation of automatic sprinklers; concrete laying in floors, foundations, or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified; drilling wells; installing electrical apparatus or fire-alarm apparatus in buildings; house heating or ventilating systems; glass setting; building hothouses; lathing, paper hanging, plastering, wooden-stair building.

(c) *Operation* (including repair work) of logging, cable, electric, street, steam, or other railroads; dredges; interurban electric railroads using third-rail systems; electric light or power plants; quarries; telegraph systems; stone crushers; blast furnaces; smelters; coal mines; gas works; steamboats; tugs and ferries; mines other than coal; steam heating or power plants; grain elevators; laundries; waterworks; paper mills; pulp mills; garbage and fertilizer works.

(d) *Factories using power-driving machinery.*—Stamping tin metal; bridge work; railroad, car, or locomotive making or repairing; cooperage; logging, with or without machinery; sawmills; shingle mills, staves, veneer, box, lath, packing cases, sash, doors, blinds, barrel, keg, pail, basket, tub, woodenware, or wooden fiber ware; rolling mills; making steam shovels or dredges; tanks; water towers; asphalt; building material not otherwise specified; fertilizer; cement, stone with or without machinery; kindling wood, masts or spars, with or without machinery; canneries; metal stamping; creosoting works; excelsior; iron, steel, copper, zinc, brass, or lead articles or wares, not otherwise specified; working in wood not otherwise specified; hardware; tile, brick, terra cotta, fire clay, pottery, earthenware, porcelain ware; peat fuel; briquettes; breweries; bottling works; boiler works; foundries; machine shops not otherwise specified; cordage; working in foodstuffs, including oils, fruits, and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber, or textiles not otherwise specified; making jewelry; making soap, tallow, lard, grease, condensed milk; creameries; printing, electrotyping, photo-engraving, engraving and lithographing; sugar factories.

(e) *Miscellaneous work.*—Operating stockyards, with or without railroad entry; packing houses; wharf operations; artificial ice and refrigerating or cold-storage plants; tanneries; electric systems not otherwise specified; theater stage employees, including moving-picture machine operators; fireworks manufacturing, powder works.

Employments not enumerated. SEC. 5. If there be or arise any hazardous occupation or work other than hereinbefore enumerated it shall become under this act and its terms, conditions, and provisions as fully and completely as if hereinbefore enumerated.

Definitions. SEC. 6. Unless the context otherwise required, words and phrases employed in this act shall have the meaning hereinafter defined.

(a) "Factories" means undertakings in which the business of working at commodities is carried on with power-driven machinery, whether in manufacture, repair, or change, and shall include the premises, yards, and plant of the concern.

(b) "Workshop" means any plant, yard, premises, room, or place where power-driven machinery is employed and manual labor is exercised by way of trade or 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 article, machinery, or thing 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 a part of the plant, including elevators, warehouses, and bunkers.

(d) "Mine" means any mine where coal, clay, ore, mineral, gypsum, or rock is dug or mined underground.

(e) "Quarry" means an open cut from which coal is mined or clay, ore, mineral, gypsum, sand, shale, gravel, or rock is cut or taken for manufacturing, building, or construction purposes.

(f) "Engineering work" means any work of construction, improvement, or alteration or repair of buildings, streets, highways, sewers, street railways, railroads, logging roads, interurban roads, harbors, docks, canals; electric, steam, or water power plants; telegraph and telephone plants and lines; electric light and power lines, and includes any other work for the construction, alteration, or repair of which machinery driven by mechanical power is used.

(g) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(h) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished, and shall embrace all safety devices and safeguards provided or prescribed by the "safety provisions" of the act for the purpose of mitigating or preventing a specific danger.

(i) "Employer" means any person, firm, association, or corporation, and includes the State, counties, municipal corporations, cities under special charter and commission form of government, school districts, towns, or villages, and independent contractors, and shall include the legal representatives of a deceased employer.

(j) "Employee" and "workman" are used synonymously, and mean every person in this State, including a contractor other than "an independent contractor," who, after July first, 1915, is engaged in the employment of an employer carrying on or conducting any of the industries classified in sections 4 (a), 4 (b), 4 (c), 4 (e), and 5 of this act, whether by way of manual labor or otherwise or whether upon the premises or at the plant of such employer, or who is engaged in the course of his employment away from the plant of his employer: *Provided, however,*

Injury due to negligence of third party. 1. 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 results from such injury, beneficiaries or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such others; such election shall be made in advance of the commencement of the action.

2. If he take under this act, the cause of action against such other shall be assigned to the State for the benefit of the industrial accident fund, or the employer or insurer, as the case may be.

3. Any such cause of action assigned to the State may be prosecuted or compromised by the board in its discretion.

4. If such workman, his beneficiaries, or dependents, as the case may be, shall elect to proceed against the person responsible for the injury, such election shall constitute a waiver of any right to compensation under the provisions of this act.

Waiver by suit.

(k) "Injury" means and shall include death resulting from injury.

Definitions.

(l) "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of sixteen years, and an invalid child or invalid children over the age of sixteen years, or if no surviving wife or husband, then the surviving child or children under the age of sixteen years, and any invalid child or children over the age of sixteen years in whom shall vest a right to receive compensation under this act.

(m) "Major dependent" means if there be no beneficiaries as defined in section 6 (l), the father and mother of the survivor of them, if actually dependent to any extent upon the decedent at the time of his injury.

(n) "Minor dependent" means, if there be no beneficiary as defined in section 6 (l), and if there be no major dependent as defined in sections [sic] 6 (m), the brothers and sisters, if actually dependent upon the decedent at the time of his injury.

(o) "Invalid" means one who is physically or mentally incapacitated.

(p) "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

(q) "Injury" or "injured" refers only to an injury resulting from some fortuitous event as distinguished from the contraction of disease.

(r) Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

(s) Wherever the masculine gender is used the feminine and neuter shall be included.

(t) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession in this State.

(u) "Week" means six working days, but includes Sundays.

(v) "Wages" mean the average daily wages received by the employee at the time of the injury for the usual hours of employment in a day, and overtime is not to be considered.

(w) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(x) "Husband" or "widower" means only a husband or widower incapable of supporting himself and living with or legally entitled to be supported by the deceased at the time of her injury.

(y) "Board" means the Industrial Accident Board of the State of Montana.

(z) "Commissioner" means one of the members of the industrial accident board.

(aa) "Appointed member of the board" means that member of the industrial accident board appointed by the governor.

(bb) "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders, as herein specified.

(cc) "General order" shall mean and include such order made under the safety provisions of this act as applies generally throughout the State to all persons, employments, or places of employment, or employees working in such places of employment classed as hazardous in this act.

(dd) "Local order" shall mean and include any ordinance, order, rule, or determination of any public corporation, or any order or direction of any other public official, board, or department upon any matter over which the industrial accident board has jurisdiction.

(ee) "Pay roll," "annual pay roll," or "annual pay roll for the preceding year" means the average annual pay roll of the employer

for the preceding calendar year, or if the employer shall not have operated a sufficient, or any, length of time during such calendar year, twelve times the average monthly pay roll for the current year: *Provided*, That an estimate may be made by the board for any employer starting in business where no average pay rolls are available, such estimate to be adjusted by additional payment by the employer or refund by the board, as the case may actually be, on December 31st of such current year.

(ff) "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the 30th day of the succeeding June.

(gg) "Public corporation" means the State, or any county, municipal corporation, school district, city, city under commission form of government, or special charter, town or village.

(hh) "Insurer" means any insurance company authorized to transact business in this State insuring any employer under this act.

(ii) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(jj) "The plant of the employer" shall include the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(kk) "An independent contractor" is one who renders service in the course of an occupation, representing the will of his employer only as the result of his work and not as to the means by which it is accomplished.

Payments to
children, etc.,
cease, when.

SEC. 7. (a) In computing compensation to children and to brothers and sisters, only those under sixteen years of age, or invalid children over the age of sixteen years, shall be included, and in the case of invalid children only during the period in which they are under that disability (within the maximum time limitations elsewhere in this act provided) after which payment on account of such person shall cease. Compensation to children or brothers or sisters (except invalids) shall cease when such persons reach the age of sixteen years.

(b) If any beneficiaries or major or minor dependents of a deceased employee die, or if the widow or widower remarry, the right of such beneficiary or major or minor dependent, or such widow or widower, to compensation under this act shall cease.

Non resident
beneficiaries.

SEC. 8. (a) No compensation under this act, except as otherwise provided by treaty, shall be paid to any major or minor dependents not residing within the United States at the time of the injury to the decedent.

(b) Except as otherwise provided by treaty, no compensation in excess of fifty per centum of the compensation provided in this act shall be payable to any beneficiary not residing within the United States at the time of the injury to the decedent: *Provided, however*, That no compensation shall be allowed to any nonresident, alien beneficiary who 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 the same degree as herein extended to nonresident beneficiaries.

(c) Nothing in section 8 (b) shall prevent the compromise of any sums due a beneficiary not residing in the United States at the time of the injury to the decedent for a sum less than fifty per centum of the compensation provided in this act, upon the approval of the board of such compromise settlement.

(d) Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this act shall be furnished by such beneficiary duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the board. And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

To whom pay-
ments may be
made.

SEC. 9. (a) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary or consul or consular agent within the United States representing

the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary or consul or consular agent shall acquit the employer, the insurer, or the board, as the case may be.

(b) Where payment is due to a child under sixteen years of age or to a person adjudged incompetent the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or board, as the case may be. In other cases payment shall be made to the person entitled thereto or to his duly authorized representative.

Payments to guardians.

SEC. 10 (as amended by chapter 100, acts of 1919). (a) In case of personal injury or death all claims shall be forever barred unless presented in writing under oath to the employer, the insurer, or the board, as the case may be, within six months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for him in his behalf.

Limitations.

(b) No limitations of time, as provided in this act, shall run as against any injured workman who is mentally incompetent and without a guardian or an injured minor under sixteen years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitation, as provided in section 10 (a), shall begin to run on the date of the appointment of such guardian, or when such minor arrives at the age of sixteen years.

SEC. 11. (a) 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."

Contractors' employees.

(b) Where any employer procures work to be done as specified in section 11 (a), such contractor and his employees shall be presumed to have elected to come under that plan of compensation adopted by the employer, unless they shall have otherwise elected, as provided herein.

(c) 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.

(d) Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the board in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed: *Provided, however,* That where an employer procures any work to be done by any contractor, or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event the employer shall not be liable for compensation, but such liability shall fall upon the contractor or subcontractor, as the case may be.

SEC. 12. (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary or the major or minor dependents of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during or for which compensation was paid for the injury.

Injury proximate cause of death.

(b) If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

Death from other cause.

(c) The question as to who constitutes a beneficiary or a major or minor dependent shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

Dependency determined, when.

Medical examinations. SEC. 13. (a) Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination from time to time by any physician selected by the board or any members or examiner or referee thereof.

(b) The request or order for such examination shall fix a time and place therefor, due regard being had 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 such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination, or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the board who shall make or be present at any such examination may be required to testify as to the results thereof.

Contracts for hospital benefits. SEC. 14. (a) Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of section 16 (f) of this act and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee.

(b) Such hospital contract 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.

Limit on assessments. (c) No assessment of employees for such hospital contracts or benefits shall exceed \$1 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 \$1 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.

Profits. (d) No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent of this act to provide that where hospitals are maintained by employers such hospitals shall be no more than self-supporting from assessment of employees, and that where hospitals are maintained by other than the employer all sums derived by assessment of employees shall be paid in full to such hospital without deduction by the employer.

Supervision by board. (e) 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 the services and treatment rendered such employees, and shall from time to time make reports of such services, attendance, treatments, receipts, and disbursements as the board may require.

Malpractice. (f) Neither an employer, an insurer, nor the board shall be liable in any way for any act in connection with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employee or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatment is caused, or alleged to have been caused, by any physician, hospital, or attendant furnished by such employer, insurer, or the board. In any action for malpractice arising out of the operations of this act the merits of such action shall be investigated by the industrial accident board, and the finding of the board in relation thereto shall be filed with the clerk of the court in which such action is pending.

Same. SEC. 15. In any action to recover damages for any act connected with the treatment or care or malpractice in treatment or care of any sickness or injury sustained by an employee the question of whether or not due care was given by the defendants shall be a question of law or the court.

Sec. 16 (as amended by chapter 100, acts of 1919). Every employer who shall become bound by and subject to the provisions of compensation plan number one, and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two, and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan number three, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act and who shall receive an injury arising out of and in the course of his employment, or in the case of his death from such injury to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

What parties liable.

(a) For an injury producing temporary total disability, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of twelve dollars and fifty cents per week and a minimum compensation of six dollars per week: *Provided*, That if at the time of injury the employee received wages of less than six dollars per week, he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, but not, however, in any event, exceeding 300 weeks.

Compensation for—
Temporary total disability;

(b) For an injury producing total disability permanent in character, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of twelve and one-half dollars per week and a minimum compensation of six dollars per week: *Provided*, That if at the time of the injury the employee received wages of less than six dollars per week, then he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, not exceeding 400 weeks, after which time payment shall continue during disability at the rate of five dollars per week.

Permanent total disability;

(c) For an injury producing partial disability, one-half of the difference between the wages received at the time of the injury and the wages which such injured employee is able to earn thereafter, not exceeding, however, one-half the maximum compensation allowed in cases of total disability, and not exceeding seventy-five per cent of the total compensation provided in this act for the total loss of the member causing such partial disability. Such compensation shall be paid during the period of disability, not exceeding, however, one hundred and fifty week [weeks] in cases of permanent partial disability and fifty weeks in cases of temporary partial disability.

Partial disability;

(d) Where the injury causes death, fifty per centum of the wages received at the time of the injury to his beneficiaries, if any, residing within the United States at the date of the happening of the injury, or if residing outside of the United States, fifty per centum of such compensation, or if none, then forty per centum of the wages received at the time of the injury to his major dependents, if any, if residing in the United States at the date of the happening of the injury, or if none, then thirty per centum of the wages received at the time of the injury to his minor dependents, if any, residing within the United States at the date of the happening of the injury, subject to a maximum compensation of twelve and 50/100 dollars per week and a minimum compensation of six dollars per week, for a period not exceeding four hundred weeks: *Provided*, That if at the time of the injury the employee received wages of less than six dollars per week, the full amount of such wages per week for a period of not exceeding four hundred weeks.

Death.

(e) There shall be paid, in addition to other compensation, if death occurs within six months of the happening of the injury, the reasonable burial expenses of the employee, not exceeding \$75. If the employee leaves no beneficiaries or major or minor dependents, this shall be the only compensation.

Burial expenses.

(f) During the first two weeks after the happening of the injury the employer or insurer or the accident fund, as the case may be, shall furnish reasonable medical and hospital services and medicines as and when needed, in an amount not to exceed fifty dollars in value, except as otherwise in this act provided, and when the employer is a party to a hospital contract, unless the employee shall refuse to allow them to be furnished.

Medical and hospital services.

Waiting time. (g) No compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of section 16 (f).

- Order of pay- (h) Compensation for all classes of injuries shall run consecutively and not concurrently, and as follows: First, the two weeks' medical and hospital services and medicines as provided in section 16 (f), unless the employee is a contributor to a hospital fund, as otherwise in this act provided; after the first two weeks, compensation as provided in section 16 (a) or 16 (b) or 16 (c); following either or none of the above, compensation as provided in section 16 (i); following any or either or none of the above, if death results from the accident within six months of the date of the injury, burial expenses as provided in section 16 (e); following which, compensation to beneficiaries, if any; following which, if no beneficiaries, compensation to major dependents; following which, if no beneficiaries and no major dependents, compensation to minor dependents, if any: *Provided*, That no compensation shall be paid to a major or minor dependent who does not reside within the United States or who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. Compensation due to major dependents, where there be more than one, shall be divided equally among them.

Specified in- (i) In case of the following specified injuries, the compensation in lieu of any other compensation provided by this act other than that provided in section 16 (f), unless the employee is a contributor to a hospital fund, as otherwise in this act provided, shall be fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of twelve and one-half dollars (\$12.50) per week and a minimum compensation of six dollars per week: *Provided*, That, if at the time of the injury the employee received wages of less than six dollars per week, then he shall receive the full amount of such wages per week, and shall be paid for the following periods:

For the loss of:

| | |
|--|-----------|
| One arm at or near shoulder..... | 200 weeks |
| One arm at the elbow..... | 180 weeks |
| One arm between wrist and 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 |
| 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 blind by enucleation..... | 120 weeks |
| Total blindness of one eye..... | 100 weeks |

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.

(j) A workman in order to be entitled to compensation for 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, the insurer, or the board, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation will not be compensated.

Hernia.

(k) For the purpose of section 16 (i) the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of section 16 (i) the complete paralysis of both arms, both hands, both feet, or both legs, or any two of them, shall be considered the loss of such members.

Paralysis.

(l) Should a further accident occur to a workman who is already receiving compensation hereunder, or who has been previously the recipient of a payment or payments under this act, his further compensation shall be adjusted according to the other provisions of this act, and with regard to the combined effect of his injuries and his past receipt of compensation.

Subsequent injuries.

(m) 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, where the maximum payments for disabilities as provided in this act have not been reached, such changes may be adjusted for future application of compensation in accordance with the provisions hereof, or in a proper case terminate the payments.

Revision of awards.

(n) All payments of compensation, as provided in this act, shall be made monthly, except as otherwise provided herein.

Payments monthly.

(o) The monthly payments provided for in this act may be converted, in whole or in part, into a lump-sum payment, which lump-sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of five per centum per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary, or major or minor dependents, as the case may be, and shall rest in the discretion of the board, both as to the amount of such lump-sum payment and the advisability of such conversion. The board is hereby vested with full power, authority, and jurisdiction to compromise claims and to approve compromises of claims under this act; and all settlements and compromises of compensation provided in this act shall be absolutely null and void without the approval of the board.

Lump sums.

Sec. 17: (a) No payments under this act shall be assignable, subject to attachment or garnishment, or be held liable in any way for any debts.

Payments exempt.

(b) In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this act, every liability which may be due under this act shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this act the deficiency shall be a lien upon all the property of such employer or insurer within this State, and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

Preferences of payments.

- Waivers. (c) No agreement by an employee to waive any rights under this act for an injury to be received shall be valid.
- Misrepresentation. (d) Any employer who shall misrepresent to the board the amount of a pay roll upon which the premiums or assessments under compensation plan number three are to be levied, or upon which fees for factory inspection, subsequent inspection, or reinspection, as elsewhere provided in this act, are based, shall be liable to the State in ten times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the State. All sums collected under this section shall be paid into the fund to which the original payments were or should have been credited.
- Interstate commerce. (e) The provisions of this act shall not apply to any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this act.
- Reports of payments. (f) Every employer coming under the provisions of compensation plan number one and every insurer coming under the provision of compensation plan number two shall, on or before the fifteenth day of each and every month, file with the industrial accident board duplicate receipts for all payments made during the previous month to injured workmen or their beneficiaries or dependents, and statements showing the amounts expended during the previous month for medical, surgical, and hospital services and for the burial of injured workmen.
- Notice. (g) No claims to recover compensation under this act for injuries not resulting in death shall be maintained unless, within sixty days after the occurrence of the accident which is claimed to have caused the injury, notice in writing, stating the name and address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer: *Provided, however,* That actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury shall be equivalent to such service.
- Reports of accidents. (h) Every employer of labor and every insurer is hereby required to file with the board, under such rules and regulations as the board may from time to time make, a full and complete report of every accident 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 reports shall be furnished to the board in such form and such detail as the board shall from time to time prescribe, and shall make specific answer to all questions required by the board under its rules and regulations, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.
- Information confidential. (i) No information furnished to the board by an employer or an insurer shall be open to public inspection or made public except on order of the board, or by the board or a member of the board in the course of a hearing or proceeding. Any officer or employee of the board who, in violation of the provisions of this section, divulges any information shall be guilty of a misdemeanor.
- Mortality table. (j) Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American Experience Table of Mortality shall be used.
- Deducting wages. (k) It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this act from the wages or earnings of his workmen, or any of them, and the making or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this act provided.
- Hearings by board. SEC. 18. (a) All hearings and investigations before the board, or any member thereof, shall be governed by this act and by rules of practice and procedure to be adopted by the board, and in the conduct thereof neither the board nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings or in the manner of taking testimony shall invalidate any order, decision, award, rule, or regulation made, approved, or confirmed by the board.

(b) The board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, 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 district courts of this State, and to that end may compel the attendance of witnesses and the production of books, documents, papers, and accounts.

(c) The board 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.

Powers.

(d) The board and each member thereof shall have power to issue writs of 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 board, 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 board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed by law for similar service and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

(e) The board and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry [inquiry], investigation, hearing, or proceeding in any part of the State. Each witness who shall appear by order of the board, or any member thereof, shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board his fees and mileage may be paid from the funds appropriated for the use of the board in the same manner as other expense[s] of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, 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 board, or a member thereof or referee, as directed in the subpoena.

(f) The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board or any member thereof. The board, or any member thereof, 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 subpoena, may report to the district court in and for the county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board, or any member thereof, in the case or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order not more than ten days from the date of the

Aid by courts.

- order, and then and there show cause why he had not attended or testified or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said 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 board, 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.
- Copies as evidence. (g) Copies of official documents and orders filed or deposited according to law in the office of the board, certified by a member of the board or by the secretary under the official seal of the board to be true copies of the original, shall be evidence in like manner as the originals.
- Costs. (h) The costs and disbursements, incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides in the discretion of the board.
- Records to be open. SEC. 19. The books, records, and pay rolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the pay roll, the number of men employed, and such other information as may be necessary for the board and its management under this act. Refusal on the part of the employer to submit said books, records, and pay rolls for such inspection shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the State and paid into the industrial administration fund.
- Proceedings. SEC. 20. (a) All proceedings to determine disputes or controversies arising under this act shall be instituted before the board and not elsewhere, and heard and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority, and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.
- Orders, etc. (b) All orders, rules, and regulations, findings, decisions, and awards of the board in conformity with law 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 board or upon review.
- Awards. (c) After the final hearing by the board it shall, within thirty days, make and file its findings upon all facts involved in the controversy and its award, which shall state its determination as to the right of the parties.
- Forms of awards. (d) The board 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 indemnity to be paid, and order payment thereof during the continuance of such disability: *Provided, however,* That the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which said award and indemnity belong.
- Nominal award. (e) If in any proceeding it is proved that an accident has happened for which the employer would be liable to pay compensation if disability has resulted therefrom, but it is not proved that an incapacity has resulted, the board may, instead of dismissing the application, award a nominal disability indemnity if it appears that disability is likely to result at a future time.
- Reviews. (f) The board shall have continuing jurisdiction over all its orders, decisions, and awards, 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. Any order, decision, or award rescinding,

altering, or amending a prior order, decision, or award shall have the same affect [effect] as original orders or awards.

(g) A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof, shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney. In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause, shall constitute the record of the board.

Records.

(h) No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided herein.

Review of orders.

Sec. 21. (a) At any time within twenty days after the service of any order or decision of the board any party or parties aggrieved thereby may apply for a rehearing upon one or more of the following grounds and upon no other grounds:

Rehearings.

1. That the board 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.
4. That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and produced at the hearing.
5. That the findings do not support the order, decision, or award.
6. That the order, decision, or award is unreasonable.

(b) Nothing contained in section 21 (a) shall, however, be construed to limit the right of the board, at any time after the date of its award, and from time to time after due notice and upon the application of any party interested, to review, diminish, or increase within the limits provided by this act any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

(c) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers said order, decision, award, rule, or regulation to be unjust or unlawful, and shall in other respects conform to such rules and regulations as the board may prescribe.

(d) The board shall have full power and authority to make and prescribe rules to govern the procedure upon rehearing, and any matter before it and any order made after such rehearing abrogating or changing the original order shall have the same force and effect as an original order and shall not affect any right, or enforcement of any right, arising from or by virtue of the original order.

(e) An application for rehearing or the appeal hereinafter provided shall not excuse any employer, employee, or other person from complying with or obeying any order or requirement of the board or operate in any manner to stay or postpone the enforcement of an order or requirement thereof, except as the board or the court may direct.

Sec. 22. (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, and within twenty days after notice thereof, any party affected thereby may appeal to the district court of the judicial district of the State of Montana, including the county in said State wherein the employer may have his place of residence, or if such employer be a corporation may have its principal office or place of business, or if said appeal be prosecuted by an injured workman or his dependents, such appeal may be taken to the district court wherein is located the county within which such workman was injured, which said appeal shall be for the purpose of having the lawfulness of the original order, decision, or award, or the order, decision, or award on rehearing inquired into and determined.

Appeals.

(b) Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such industrial accident commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is

taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board, then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said board of said notice the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but in the absence of such permission from the court the cause shall be heard on the record of the board as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

(c) The board and each party to the action or proceeding before the board shall have the right to appear in the proceeding, and it shall be the duty of the board to so appear. If the court shall find from such trial as aforesaid that the findings and conclusions of the board are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the board, or that any finding and conclusion or any order, rule, or requirement of the board is unreasonable, the court shall set aside such finding, conclusion, order, judgment, decree, rule, or requirement of said board, or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order, or judgment that shall be required or shall be legal and proper in the premises.

Appeal to
preme court.

(d) Either the board or the appellant or any adversary party, if there be one, may appeal to the Supreme Court of the State of Montana from any final order, judgment, or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried anew by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

Appropriation.

SEC. 23. (a) There is hereby appropriated out of the State treasury the sum of fifty thousand (\$50,000) dollars, or so much thereof as may be necessary, to be known as the industrial administration fund, out of which the salaries, traveling and office expenses of the board shall be paid, and all other expenses incident to the administration of this act.

(b) There is hereby appropriated out of the industrial accident fund such sums as may be necessary to pay the compensation provided for in this act.

Construction of
act.

SEC. 24. (a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

(b) If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act, so long as sufficient remains of the act to render the same operative and reasonably affective [effective] for carrying out the main purpose and intention of the legislature in enacting the same as such purpose and intention may be disclosed by the act.

Disposition
of funds.

(c) The moneys coming into the industrial accident fund shall be held in trust for the purpose for which such fund is created, and if this act shall be hereafter repealed, such moneys shall be subject to such dis-

position as may be provided by the legislature repealing this act; in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

(d) This act shall not affect any action pending or any cause of action existing on the thirtieth day of June, 1915

Prior causes.

SEC. 25. (a) The board shall, not later than the first day of October of each year, make a report to the governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such report shall be printed for general distribution.

Annual reports.

(b) This act shall take effect and be in force from and after its passage and approval, except as to its compensation provisions, which shall not take effect until the first day of July, 1915.

Act in effect.

PART II.

COMPENSATION PLAN NUMBER ONE.

SECTION 30. (a) Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and be bound by compensation plan number one, upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may, by order of the said board, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

Election of system of direct payments.

(b) Every such employer now or hereafter engaged in the State of Montana in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan number one, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

Proof of solvency.

If such employer making such election shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such compensation plan number one, shall, at least thirty days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

(c) The board may at any time require from any employer acting under compensation plan number one additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten or more than twenty days, after and upon a full hearing, revoke any order or approval theretofore made.

Additional proof.

(d) If said industrial accident board shall find that such employer has not financial responsibility for the payment of the compensation herein provided to be paid which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said industrial accident board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan number one, to give security for such pay-

Security required, when.

ment, which security must be in such an amount as said board shall find it reasonable and necessary to meet all liabilities of such employer which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board and may be a certain estimated per centum of said employer's last preceding annual pay roll, or a certain per centum of the established amount of his annual pay roll for said fiscal year, or said security may be in the form of a bond or undertaking executed to said industrial accident board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year, or such security may consist of any State, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safe-keeping of all such deposits or securities, and shall at any time upon demand of the bondsmen or the depositor or the board account for the same and the earnings thereof.

Failure to make payments.

(e) Upon the failure of said employer to pay any compensation provided for in this act upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such State accident board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer accruing under the terms of this act, and it shall be its duty, in so far as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends and for these purposes the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes and may proceed in its own name to recover upon such bonds or foreclose and liquidate said securities.

Deposits.

(f) Within thirty days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability in such sum as the board may direct: *Provided, however,* That if sufficient securities are already on deposit with the said board or if the said board shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

How employer may be discharged.

(g) Any employer against whom liability may exist for compensation under this act may, with the approval of the board, be relieved therefrom by (1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or (2) purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this State, subject to the approval of the board.

PART III.

COMPENSATION PLAN NUMBER TWO.

Insurance.

SECTION 35 (as amended by chapter 100, acts of 1919). (a) Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject

to and bound by compensation plan number two, may insure his liability to pay the compensation and benefits herein provided for in any insurance company authorized to transact such business in this State.

(b) Any employer electing to become subject to and bound by compensation plan number two shall file with the board written acceptance of the provisions of compensation plan number two, together with a statement, upon forms provided by the board, of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election; and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amounts so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of compensation plan number two, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and necessary investigation, and the said employer shall furnish to such board all information which it may require.

Statements to be filed.

(c) All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employee and the insurer the notice 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 insurer; 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, orders, judgments, or decrees rendered against such insured.

Provisions of policies.

(d) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, 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 by this act or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the State of Montana or of any school district, county, city or town in the State of Montana, in an amount not less than five thousand dollars (\$5,000.00) or more than twenty thousand dollars (\$20,000.00) as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds or such part thereof as is necessary into cash, and from the proceeds liquidate such liability, and thereafter said insurer must make an additional deposit to meet any deficiency caused thereby.

Direct payments.

(e) Every policy for the insurance of the compensation herein provided for or against liability therefor shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board and as otherwise provided by law.

Requirements as to policies.

(f) Every renewal of such policy shall be made and delivered to said board at least thirty days prior to the expiration of the expiring policy.

Renewals.

(g) Within thirty days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit as herein defined with the treasurer of the board for the protection and guaranty

Deposits.

of the payment of such liability in such sum as the board may direct: *Provided*, That if the board deems the amount on deposit by said insurer under the provisions of section 35 (d) sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

How insurer
may be dis-
charged.

(h) Any insurer against whom liability may exist for compensation under this act may, with the approval of the board, be relieved therefrom by (1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or (2) by purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this State, subject to the approval of the board.

Cancellation.

(i) No policy of insurance issued under the provisions of compensation plan number two shall be canceled within the time limited for its expiration, except upon thirty days' notice to the employer in favor of whom such policy is issued, and to the board, unless such policy sought to be canceled shall have been sooner replaced by other insurance.

Reports of ac-
cidents.

(j) Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

Provision for
direct liability.

(k) Every policy or contract insuring against liability for compensation under compensation plan number two must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change, or revision by the board, and shall contain the clauses, agreements, and promises required by this act.

(1) Any deposit made under the provisions of compensation plan number two shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such liability exists then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of such deposits, and shall at any time upon demand of his bondsmen, the depositor, or the board account for the same and the earnings thereof.

PART IV.

COMPENSATION PLAN NUMBER THREE.

Classified pre-
mium rates.

SECTION 40. (a) Every employer, subject to the provisions of compensation plan number three, shall, in the manner and at the times herein specified, pay into the State treasury, in accordance with the following schedule, a sum equal to the percentage of his total annual pay roll specified in this section, which said schedule is subdivided into classes, and the percentage of payments of premiums or assessments to be required from each of said classes is as follows:

Class one.—Broom or brush manufacturing, without sawmill; theater stage employees; moving-picture operators; electrotyping; engraving; lithographing; photo-engraving; stereotyping; embossing; bookbinding; printing; jewelry manufacturing; not otherwise specified; sixty-five one-hundredths of one per centum.

Class two.—Cloth, textile, and wool manufacturing, not otherwise specified; wharf employees, other than stevedores and longshoremen; eight-tenths of one per centum.

Class three.—Manufacturing alcohol, drugs, other than ammonia; candy, crackers, saddles, harness, leather novelties, mattresses, not including spring or wire, paint, varnish, wagons, buggies, carriages, sleighs, cutters; operation of tugs and steamboats; manufacturing roofing paper and articles of paper not otherwise specified, paper boxes, automobiles, motor trucks, hardware; working in rubber, not otherwise specified; manufacturing boots and shoes; manufacturing articles of and working in leather not otherwise specified; one and three-tenths per centum.

Class four.—Manufacturing cheese, condensed milk; operating creameries, manufacturing spices and condiments; paper hanging; kalsomining; whitewashing; making willow baskets; setting tiles; mantels and marble work, inside work only; making grease, lard, soap, tallow; inside plumbing work; installing heating systems; painting and decorating, inside work only; metal ceiling work; one and four-tenths per centum.

Class five.—Manufacturing glass; operating breweries, bottling works, grain warehouses, grain elevators; manufacturing articles of brass, copper, lead, and zinc; operating machine shops, not otherwise specified; lathing, plastering; canneries of meat, fruit, vegetables, or fish, not including can manufacturing; cutting stone or paving blocks, other than in quarries, with or without machinery; installing electrical apparatus inside; installing fire-alarm apparatus inside; covering boilers or steam pipes; concrete laying in floors, street paving, or sidewalks, not otherwise specified; laying asphalt and other paving not otherwise specified, including shop and yard; manufacturing canoes and rowboats; well drilling; constructing and repairing of paving of bricks or blocks; one and five-tenths per centum.

Class six.—Operating of laundries with power, dyeing, bleaching, and cleaning works; manufacturing of furniture, show cases, office and store furniture and fixtures; cabinetmaking; manufacture of wire mattresses, bed springs, wooden coffins, caskets, rough wooden boxes for coffins; building hothouses; working in foodstuffs, fruits, edible oils or vegetables, not otherwise classified; operating flour mills, chop mills, feed mills; one and six-tenths per centum.

Class seven.—Manufacturing wood fiber ware; installing automatic sprinklers or ventilating systems; setting glass; erecting fireproof doors and shutters inside of buildings; operating tanneries, sugar factories; beveling glass; manufacturing peat fuel; building wooden stairs; manufacturing brick, including kilns and buildings and digging in pits, briquettes; brooms with sawmills, earthenware, fire clay, porcelain ware, pottery, tile, terra cotta; brush making with sawmills; one and eight-tenths per centum.

Class eight.—Manufacturing of ammonia; operating waterworks, gas works; grading, either of streets or otherwise, or road making, without blasting; construction of plank road, plank street, or plank sidewalk; operating creosoting works; pile treating works; treating ties or other timber products; plumbing, both at and away from the shop, including house connections, without blasting; construction of waterworks, gas works, and coke ovens, including laying of mains and connections, without blasting; one and nine-tenths per centum.

Class nine.—Manufacturing artificial ice; operating refrigerator plants, cold-storage plants, foundries, packing houses, including slaughtering; manufacturing agricultural implements, threshing machinery, traction engines, harvesting machinery; manufacturing asphalt; operating steam heating and power plants; manufacturing gas or gasoline engines; operating ferries; stone crushing, not at quarries; boat or ship building, other than canoes or rowboats, without scaffolds; laying hot flooring composition, not otherwise specified; operating stockyards; two per centum.

Class ten.—Operating paper mills, pulp mills; longshoring; stevedoring; manufacturing fertilizers; operating garbage works; incinerators, crematories, lime kilns, or burners, no quarrying; installing boilers, steam engines, dynamos, machinery, not otherwise specified; putting up belts for machinery; manufacturing barrels, kegs, pails, staves, tubs, excelsior, veneer, packing cases, sash, doors, and blinds;

operation and maintenance of interurban railways without third rail; two and two-tenths per centum.

Class eleven.—Millwrighting, not otherwise specified; manufacturing building material, not otherwise specified; working in building material, not otherwise specified; two and one-quarter per centum.

Class twelve.—Operation of smelters; manufacturing of metallic coffins; manufacturing of iron or steel; boat or ship rigging; planing mills, independent; cement manufacturing; operating blast furnaces; two and three-tenths per centum.

Class thirteen.—Street or road making, with blasting; manufacturing wood baskets, kindling wood, window and door screens, cordage, and rope; manufacturing and refining oil; placing wires in conduits; two and four-tenths per centum.

Class fourteen.—Concentrating and amalgamating of ores; wood-working, not otherwise specified; operating gravel bunkers; hauling gravel; operating gravel pits; operating wood saws; painting, exterior work; operating boiler works; making steam shovels; boilers; shipwrighting; operating sawmills, lath mills; bridgework factories; operation of and work in mines, other than coal; two and five-tenths per centum.

Class fifteen.—Operating rolling mills; manufacturing tanks, not otherwise specified; erecting and repairing advertising signs; harvesting and storing of ice, including loading on cars; making and repairing of locomotives and railroad cars; cutting stone at stoneyards connected with quarries; boat or ship building with scaffolds; logging operations, with or without machinery; booming or driving logs, ties, or other timber products; operating shingle mills; operating quarries; two and three-quarters per centum.

Class sixteen.—Operating dredges; construction of telephone and telegraph systems; construction of dams and reservoirs, electric light and power plants, waterworks, and water systems; installing furnaces; constructing blast furnaces; sewer building, maximum depth of excavation at any point seven feet; operation and maintenance of steam railways, including logging railways; operating coal mines; three per centum.

Class seventeen.—Operating dry docks, including floating dry docks; ornamental metal work within building; electric railway construction, without rock work or blasting; railroad construction, including street and cable railways, without rock work or blasting; building canals, without rock work or blasting; installing freight or passenger elevators; operation of telephone and telegraph systems; making dredges; constructing dry docks; three and one-quarter per centum.

Class eighteen.—Carpenters not otherwise specified; constructing grain elevators, not metal framed; stump pulling with donkey engines; steam, electric, and cable railway construction, with rock work or blasting; construction of logging railways, with rock work or blasting; operation and maintenance of electric railways using third rail, and street railways, all systems, including electric and cable; operation and maintenance of electric light and power plants, including transmission systems and extensions of lines; electric systems, not otherwise specified; three and one-half per centum.

Class nineteen.—Pile driving; clearing land with blasting; galvanized iron or tin works; marble works; fireproofing of buildings, by means of wire netting and concreting; cellar excavation, with or without blasting; three and three-quarters per centum.

Class twenty.—Constructing breakwaters, marine railways, and jetties; installation and repair of electrical apparatus, not otherwise specified, outside work only; stamping of metal or tin; building trestles and tunnels other than mining; shaft sinking, not otherwise specified; four per centum.

Class twenty-one.—Moving safes, boilers, machinery; construction of tanks, water towers, windmills, not metal frame; plumbers making house connections with blasting; roof work; slate work; stonework; stone setting; brickwork construction, not otherwise specified; construction of canals, with rockwork or blasting; bridge building, wooden; construction of floating docks; constructing chimneys of metal or concrete; four and one-half per centum.

Class twenty-two.—Excavations, not otherwise specified; laying of mains and connections, with blasting; sewer building, where maximum depth of excavation at any point exceeds seven feet; blasting, not otherwise specified; manufacturing fireworks; five per centum.

Class twenty-three.—Erecting fire escapes, fireproof doors and shutters outside of buildings; building concrete structures, not otherwise specified; concrete or cement work not otherwise specified; six per centum.

Class twenty-four.—Constructing iron or steel frame structures or parts; constructing and repairing steel frames and structures; subaqueous work; caisson works; six and one-half per centum.

Class twenty-five.—House moving, house wrecking; construction or repair of steeples; construction of brick chimneys; six and three-quarters per centum.

Class twenty-six.—Manufacturing powder, dynamite, and other explosives, not otherwise specified; ten per centum.

Class twenty-seven.—Any employer and his employees engaged in nonhazardous work or employment, by their joint election, filed with and approved by the board, may accept the provisions of compensation plan number three. In such event such employer and employees shall be known as class twenty-seven, the rate of assessment in which shall be one-half of one per centum.

(b) If a single establishment or work comprises several occupations listed in section 40 (a) in different classifications, the assessment shall be computed according to the pay roll of each occupation if clearly separable, otherwise an average rate of assessment shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards.

Separable occupations.

(c) The classification of hazardous occupations in section 40 (a) and the rates of premium or assessment therein fixed are advisory only, and the board is hereby given full power and authority to rearrange, revise, add to, take from, change, modify, increase, or decrease any classification or rate named in section 40 (a) as in its judgment or experience may be necessary or expedient: *Provided*, That no change in the classification or rates prescribed in section 40 (a) shall be made effective prior to the end of the first fiscal year, and thereafter any changes so made shall not become effective until thirty days after the date of the order or decision of the board making such change except that in case of new industries, or industries not enumerated in section 40 (a), the board shall have the right to make an immediate classification thereof and establish a rate therefor.

Revision of rates.

(d) It is the intent and purpose of compensation plan number three that each industry, trade, occupation, or employment coming under the provisions of said plan shall be liable and pay for all injuries happening to employees coming under the provisions of said plan, and that all funds collected by assessments as herein provided shall be paid into one common fund to be known as the industrial accident fund, which fund shall be devoted exclusively to the payment of all valid claims for injuries happening in each industry, trade, occupation, or employment coming under the provisions of compensation plan number three: *Provided*, That accounts shall be kept with each industry, trade, occupation, or employment in according [accordance] with the foregoing classification or otherwise, as the board may direct, both as to receipts and disbursements, for the purpose of providing information and statistics necessary for determining any changes in such rates or classifications.

Common fund.

Separate accounts.

(e) There shall be collected from all classes as initial payment into the industrial accident fund, on or before the fifteenth day of July, 1915, one-fourth of the premium of assessment for that fiscal year and one-twelfth thereof at the first of each month beginning with October first, 1915: *Provided*, That if such fund shall have a sufficient balance on hand at the end of the first three months, or any month thereafter, to meet the requirements of the industrial accident fund, no assessment shall be called for such month.

Initial payments.

(f) The first payment shall be collected upon the pay roll of the months of April, May, and June, 1915. At the end of each calendar year an adjustment of the account shall be made upon the basis of the actual pay roll. Any shortage shall be made good within thirty days

Collection.

thereafter. Every employer who shall enter into business at any intermediate day shall make his payments in the same manner and upon the same basis before commencing operations; the amount of such payments shall be calculated upon his estimated pay roll, and an adjustment shall be made on or before February first in the year following, in the manner above provided.

- Employers in default.** (g) Any employer who is in default in the observance of any order of the board, issued pursuant to the provisions of sections 40 (a) to 40 (f), inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.
- Equalizations.** (h) Any change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the calendar year, shall be equalized by the board within thirty days after the end of such year in proportion to its duration in accordance with the schedules provided in this act.
- Deficiencies.** (i) If at the end of any year it shall be seen that the contribution to the industrial accident fund by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class in proportion to their respective payments for the previous year.
- Segregation of funds.** (j) Upon the happening of an accident where death or the nature of the injury renders the amounts of future payments certain or reasonably certain, the board shall forthwith cause the treasurer of the board to set apart out of the industrial accident fund a sum of money, to be calculated on the basis of the maximum sum required to pay the compensation accruing on account of such injury, which will meet such required payments, not exceeding, however, the sum of four thousand dollars for any one case.
- Investment of reserves.** (k) The treasurer of the board shall invest such reserve in bonds of the United States, bonds of the State of Montana, or bonds of any county, city, or school district in the State of Montana, or any other security which may be approved by said board, and out of the same and its earnings shall be paid the monthly installments and any lump sum then or thereafter arranged for the case. Any deficiency shall be made good out of and any balance or overplus shall revert to the industrial accident fund.
- Accounts.** (l) The treasurer of the board shall keep an accurate account of all such segregations of the industrial accident fund, and upon direction of the board shall divert from the main fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.
- Defaulted payments.** (m) If any employer shall default in any payment to the industrial accident fund, the sum due may be collected by an action at law in the name of the State, and such right of action shall be cumulative.
- Injuries during default.** (n) For any injury happening to any of his workmen during default in any payment to the industrial accident fund, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay the industrial accident fund the amount of such default, together with the penalty prescribed by section 40 (g).
- Options.** (o) The person entitled to sue under the provisions of section 40 (n) shall have the option of proceeding by suit or taking under this act. If such person take under this act, the cause of action against the employer shall be assigned to the State for the benefit of the industrial accident fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.
- Assigned causes.** (p) Any cause of action assigned to the State under the preceding section may be prosecuted or compromised by the board, in its discretion.
- Claims.** (q) Where a workman is entitled to compensation under compensation plan number three, he shall file with the board his application therefor, together with the certificate of the physician who attended

him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the workman.

(r) For a proper compliance with the provisions of the preceding section the physician, after approval by the board, shall be paid out of the industrial administration fund one and one-half dollars for each case. Physician's fees.

(s) Where death results from the injury the parties entitled to compensation under compensation plan number three, or some one in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the board. Death claims.

(t) In computing the pay roll the entire compensation received by every workman employed in the hazardous occupations enumerated in this act shall be included, whether it be in the form of salary, wage, piecework, overtime, or any allowance in the way of profit-sharing premium or otherwise, and whether payable in money, board, or otherwise. Computing pay roll.

(u) Disbursements out of the industrial accident fund shall be made by the treasurer of the board as the board may order. If at any time there shall not be sufficient money in the accident fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid with interest thereon at the rate of six per centum per annum from the date of such payment to the date upon which the next assessment becomes payable, and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds it shall be credited to such employer and be applied upon succeeding assessments. Disbursements.

(v) All earnings made by the industrial accident fund by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the accident fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the State penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars, or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund. Interest earnings, etc.

PART V.

SAFETY PROVISIONS.

SECTION 50. (a) No employer shall construct, maintain, or operate, or cause to be constructed, maintained, or operated any place of employment that is not safe. Safe place.

(b) No employee shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for protection of any employee in such employment or place of employment, or fail or neglect to do anything reasonably necessary to protect the life and safety of himself and other employees. Removing safety devices.

(c) The board is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this State as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment. Power of board.

(d) The board shall have power, in addition to other powers herein granted, by general or special orders, rules, or regulation or otherwise: Place.
Safety devices and standards.

1. To declare and prescribe what safety devices, safeguards, or other means or methods of protection as are well adapted to render employees and places of employment safe.
 2. To fix such reasonable standards and to prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means and methods of protection as may be necessary for the protection of the life and safety of employees.
 3. To fix and order such reasonable standards for the construction, repair, and maintenance of places of employment as shall render them safe.
 4. To require the performance of any act necessary for the protection of life and safety of employees.
- Accident re-
ports. 5. To declare and prescribe the general form of industrial accident reports, the accidents to be reported and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the board from requiring supplemental accident reports: *Provided, however,* That where by the laws of the State of Montana the manner or method of carrying on any business, or the rules or regulations in relation thereto, or the character or kind of safety devices has been prescribed, no other or additional requirements shall be made by the board, but it shall be the duty of the board to see that the employer lives up to and obeys said laws.
- Notice of hear-
ings. (e) Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders, the board shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation, published and circulated in the State. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any general order issued by the board after a hearing has been had.
- Inspections. SEC. 51. (a) After July 1, 1915, every place of employment of a work or occupation defined by sections 4 (a), 4 (b), 4 (c), 4 (d), 4 (e), and 5 of this act to be hazardous shall be inspected at least once during each year by an inspector or examiner appointed by the board. Such inspection shall be for the purpose of determining the condition and operation of such places of employment as regards the safety of employees working therein, and the use of safeguards, safety appliances, and reasonably safe tools and appliances.
- Reports. (b) A report of such inspection shall be filed in the office of the board, and a copy thereof given the employer.
- Certificates. (c) Each place of employment inspected as provided in section 51 (a) and found in a satisfactory condition shall receive from the board, upon payment of the inspection fees hereinafter provided for, a certificate to that effect, which certificate must be prominently displayed, under glass, in one of the principal places of the establishment so inspected.
- Orders. (d) If after such inspection and report thereof to the board it shall be found that any such place of employment is not constructed, maintained, or operated as provided in this act, the board shall order the installation, use, maintenance, and operation, within such reasonable time as the board may direct, of such safety devices, safeguards, and other means and methods of protection as may be necessary to reasonably insure the safety of the workmen employed therein, subject to the provisions of section 51 (e).
- Closing place
of work. (e) If after such inspection the board or any inspector or examiner thereof shall find such place of employment in such an unsafe condition as to constitute an immediate menace to the safety of the workmen employed therein, the board, or any inspector or examiner thereof, may order any such place of employment closed, or the work therein to cease, until such safety devices, safeguards, and other means and methods or changes or removals as may be ordered by the board, or any inspector or examiner thereof, shall have been installed, repaired, changed, or removed, and such place of employment put in such condition as will reasonably insure the safety of the workmen employed therein.
- Fees. SEC. 52. (a) For each annual inspection made under the provisions of this section the employer shall pay, at the time of such inspection, a

fee of five cents for each one thousand dollars or fraction thereof of his annual pay roll for the preceding year: *Provided*, That no inspection fee under this section shall be less than five dollars.

(b) The fees for any subsequent or reinspection made during any year in which an annual inspection shall have been made shall be:

Where the annual pay roll for the preceding year shall have been not more than twenty-five thousand (\$25,000) dollars, five (\$5) dollars.

Where the annual pay roll for the preceding year shall have been more than twenty-five thousand (\$25,000) dollars but not more than one hundred thousand (\$100,000) dollars, ten (\$10) dollars.

Where the annual pay roll for the preceding year shall have been more than one hundred thousand (\$100,000) dollars but not more than five hundred thousand (\$500,000) dollars, twenty (\$20) dollars.

Where the annual pay roll for the preceding year shall have been more than five hundred thousand (\$500,000) dollars but not more than one million (\$1,000,000) dollars, forty (\$40) dollars.

Where the annual pay roll for the preceding year shall have been more than one million (\$1,000,000) dollars, fifty (\$50) dollars.

(c) All fees received by the board for inspection or for subsequent or reinspection, and all fines imposed or collected for a violation of the safety provisions of this act, shall be paid monthly to the State treasurer, who shall credit such payments to the industrial administration fund.

Funds go to treasurer.

Sec. 53. (a) Whenever the board shall find that any employment or place of employment is not safe, or that the practice or means or methods of operation or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employees in such employments and places of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of the employees in such employments and places of employment, and may in said order direct that such additions, repairs, improvements, or changes be made; and such safety devices and safeguards be furnished, provided, and used as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in such order.

Orders of board.

(b) The board may, upon application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the board for an extension of time, which the board shall grant if it finds such an extension of time necessary.

Time for compliance.

(c) Whenever the board shall learn or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee it may summarily investigate the same, with or without notice or hearings, and enter and serve such order as may be necessary relative thereto.

Investigations.

(d) Every employer, employee, and other person shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the board, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, rule, or regulation.

Compliance.

(e) Nothing contained in this act shall be construed to deprive any other public corporation, board, or department of any power or jurisdiction over or relative to any place of employment: *Provided*, That whenever the board shall by order fix a standard of safety for employment such order shall, upon the filing by the board of a copy thereof with the secretary or clerk of any such public corporation to which or within whose jurisdiction it may apply, establish a minimum requirement concerning the matters covered by such order, and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the board.

Powers of other boards, etc.

(f) Every order of the board, general or special, its rules or regulations, findings or decisions, shall be admissible in evidence in any prosecution for, or suit to prevent, the violation of any of the provisions of this act, and shall be presumed to be reasonable. This presumption is, however, a rebuttable presumption.

Presumptions as to orders.

Investigations of accidents. (g) The board may investigate the cause of all industrial accidents occurring in any employment or place of employment, or directly or indirectly arising from or connected therewith, resulting in personal injury or death; and the board shall have the power to make such orders or recommendations with respect to such accidents as may be just and reasonable: *Provided*, That neither the order nor the recommendation of the board, nor any accident report filed with the board, shall be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of such injury or death.

Increase of premium rates. (h) If by reason of poor or careless management or otherwise any place of employment be unduly dangerous, in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of this act, and such employer shall be under compensation plan number three, the board, in addition to any other penalty provided by this act, shall advance the rate upon such place of employment fifty per centum, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment, and such employer shall have obtained a certificate of the inspector or examiner provided for herein.

Violations. SEC. 54. Every employer, employee, or other person who either individually or acting as an officer, agent, or employee of a corporation or other person violates any safety provisions contained in this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof, or who directly or indirectly knowingly induces another so to do, is guilty of a misdemeanor.

Inspection of mines. SEC. 55. (a) Whenever in this act the inspection of mines is referred to, such inspection shall be made by the inspector of mines or his deputy and nothing in this act contained shall be construed as modifying or limiting in any way the duties required to be performed by the inspector of mines as may be otherwise provided by law: *Provided, however*, That the inspector of mines shall collect and account for the fees herein prescribed for inspection or subsequent or reinspection.

No rule, regulation, requirement relating to the operation of mines within the State of Montana made by said board shall be lawful or valid unless the same shall be concurred in and approved by the State mine inspector, and shall have been within the power of the said State mine inspector to make in the first instance.

Orders. (b) A copy of any order, direction, or requirement of the inspector of mines shall be filed with the board and shall thereupon become and have all the force and effect of an order of the board, subject only to review by the court as in this act provided.

Approved March 8, 1915.

NEBRASKA—REVISED STATUTES, 1913.

Compensation of workmen for injuries.

PART I.

EMPLOYERS' LIABILITY.

3642. SECTION 92. When personal injury is caused to an employee by accident arising out of and in the course of his employment, of which the actual or lawful imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer: *Provided*, The employee was himself not willfully negligent at the time of receiving such injury, and the question of whether the employee was willfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence or to law.

Suits for damages.

3643. SEC. 93. In all cases brought under Part I of this article it shall not be a defense (a) that the employee was negligent, unless and except it shall also appear that such negligence was willful, or that the employee was in a state of intoxication; (b) that the injury was caused by the negligence of a fellow employee; (c) that the employee had assumed the risks inherent in, or incidental to, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished, except as provided in the second next following section.

Defenses abrogated.

3644. SEC. 94. If an employer, subject to the provisions of this article as shown in section 97 of this chapter, elects not to come under part II hereof, he loses the right to interpose the three defenses above stated in any action brought against him for personal injury or death of an employee.

Same.

3645. SEC. 95. If an employer becomes subject to Part II of this article and the employee does not, then the defenses existing under the laws for Nebraska, other than the provisions of this article, at the time of the personal injury or death of the employee shall be available to the employer in any action brought by the employee or his dependents for personal injury or death.

Defenses allowed, when.

3646. SEC. 96. The provisions of the four next preceding sections shall apply to any claim for the death of an employee arising under sections 164 and 165 of chapter 17 and sections 127, 128, and 129 of chapter 67 of the Revised Statutes of Nebraska, 1913, and the acts or parts of acts amendatory thereof, concerning death by wrongful act.

Death by wrongful act.

3647. SEC. 97 (as amended by ch. 85, acts of 1917). (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 employer 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 workman (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.

To whom act applies.

Exemptions.

Joint elections.

Burden of proof. 3648. SEC. 98. In all actions at law brought pursuant to part I of this act the burden of proof to establish willful negligence of the injured employee shall be on the defendant.

Attorneys' fees. 3649. SEC. 99. No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of this article shall be an enforceable lien against the amounts to be paid as damages or compensation or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or, in case of settlement without trial, by the judge of the district court of the district in which such issue arose. After such approval, if notice in writing be given the defendant of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation: *Provided, however,* That where the employee's compensation is payable by the employer in periodical installments, the court shall fix, at the time of approval, the proportion of each installment to be paid on account of legal services and disbursements.

PART II.

ELECTIVE COMPENSATION.

Compensation payable, when. 3650. SEC. 100. If both employer and employee become subject to Part II of this act, both shall be bound by the schedule of compensation herein provided, which compensation shall be paid in every case of injury or death caused by accident arising out of and in the course of employment, except accidents caused by, or resulting in any degree from willful negligence, as hereinafter defined, of the employee.

Negligence not a factor. 3651. SEC. 101. When employer and employee shall by agreement, express or implied, or otherwise as hereinafter provided, accept the provisions of Part II of this act, compensation shall be made for personal injuries to or for the death of such employee by accident arising out of and in the course of his employment without regard to the negligence of the employer, according to the schedule hereinafter provided, in all cases except when the injury or death is caused by willful negligence on the part of the employee; and the burden of proof of such fact shall be upon the employer.

Remedy exclusive. 3652. SEC. 102. Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form, or amount of compensation or determination thereof than as provided in Part II of this act, and an acceptance of all the provisions of Part II of this act, and shall bind the employee himself, and for compensation for his death shall bind his legal representatives, his widow and next of kin, as well as the employer, and the legal representatives of a deceased employer, and those conducting the business of the employer during bankruptcy or insolvency.

Presumptions as to contracts. 3653. SEC. 103 (as amended by ch. 85, acts of 1917). In the occupations described in section 97 hereof, and all contracts of employment made after the taking effect of this act shall be presumed to have been with reference, and subject to the provisions of Part II hereof unless otherwise expressly stated in the contract, or unless written or printed notice has been given by either party to the other, as hereinafter provided, that he does not accept the provisions of Part II. Every such employer and every employee is presumed to accept and come under Part II hereof, unless prior to accident he shall signify his election not to accept or be bound by the provisions of Part II. This election not to accept Part II shall be by notice as follows:

**Rejection—
By employer;** (a) The employer shall post and thereafter keep continuously posted in a conspicuous place about the place or places where his workmen are employed, a written or printed notice of his election not to be bound by Part II hereof, and shall file a duplicate thereof with the compensation commissioner.

By employee. (b) The employee shall give written or printed notice to the employer of his election not to be bound by Part II and shall file a duplicate with proof of service attached thereto with the compensation commissioner.

Waiving rejection. 3654. SEC. 104 (as amended by ch. 85, acts of 1917). An employer who has given notice of his election not to accept or be bound by the

provisions of Part II hereof, may waive such election at any time, by posting about the place or places where his workmen are employed a written or printed notice setting forth a withdrawal of his previous election not to be bound by the provisions of Part II. A duplicate of such notice with proof of such posting attached thereto shall be filed with the compensation commissioner. An employee who has given written or printed notice to his employer that he elects not to be subject to the provisions of Part II hereof, may waive such election at any time prior to the happening of an accident resulting in personal injuries to said employee, by a notice in writing directed to the employer and served upon the employer or his agent. A duplicate of such notice with proof of service attached thereto shall be filed with the compensation commissioner. The waivers referred to in this section shall not become effective until noon of the fifth day after filing the required notice with the compensation commissioner.

3655. Sec. 105. The following shall constitute employers subject to the provisions of this act:

Who are em-
ployers.

(1) The State and every governmental agency created by it;

(2) Every person, firm, or corporation, including any public service corporation, who is engaged in any trade, occupation, business, or profession as described in section 97 of this chapter, and who has any person in service under any contract of hire, express or implied, oral or written, and who prior to the time of the accident to the employee for which compensation under this act may be claimed, shall not, in the manner provided in section 103 of this chapter, have elected not to become subject to the provisions of Part II of this act.

3656. Sec. 106 (as amended by ch. 85, acts of 1917). The terms "employee" and "workman" are used interchangeably and have the same meaning throughout this act. The said terms include the plural and all ages and both sexes, and shall be construed to mean:

Employees.

(1) Every person in the service of the State or of any governmental agency created by it, under any appointment or contract of hire, express or implied, oral or written, but shall not include any official of the State, or any governmental agency created by it, who shall have been elected or appointed for a regular term of office, or to complete the unexpired portion of any regular term.

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 97, under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of the State, who for the purpose of making election of remedies under this code shall have the same power of contracting and electing as adult employees. 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.

(3) It shall not be construed to include any person whose employment is casual, or not for the purpose of gain or profit by the employer, or which is not in the usual course of the trade, business, profession, or occupation of his employer. The term "casual" shall be construed to mean "occasional; coming at certain times without regularity, in distinction from stated or regular."

Casual employ-
ees.

(4) It shall not be construed to include any person to whom articles and materials are given to be made up, cleaned, washed, finished, repaired, or adapted for sale in the worker's own home or on other premises not under the control or management of the employer, unless the employee is required to perform the work at a place designated by the employer.

Outworkers.

3657. Sec. 107. Any person, firm, or corporation creating, or carrying into operation any scheme, artifice or device to enable him, them, or it to execute work without being responsible to the workmen for the provisions of this article, shall be included in the term "employer," and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for and be subject to all the provisions of this act. This section, however, shall not be so construed as to cover or mean an owner who lets a contract to a contractor in good faith, or a contractor who in good faith lets to a subcontractor a

Avoiding re-
sponsibility as
employer.

- portion of his contract, if the owner or principal contractor, as the case may be, requires the contractor or subcontractor, respectively, to procure a policy or policies of insurance from an insurance company licensed to make such insurance in this State, which policy or policies of insurance shall guarantee payment of compensation according to this act to injured workmen.
- Basis of compensation.** 3658. Sec. 108. Where compensation is claimed from, or proceedings taken against, a person, firm, or corporation under the foregoing section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.
- Subrogation of employer.** 3659. Sec. 109. Where a third person is liable to the employee or to the dependents, for the injury or death, the employer shall be subrogated to the right of the employee or to the dependents against such third person, and the recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his dependents would have been entitled to recover. Any recovery by the employer against such third person, in excess of the compensation paid by the employer, after deducting the expenses of making such recovery, shall be paid forthwith to the employee or to the dependents, and shall be treated as an advance payment by the employer, on account of any future installments of compensation.
- Waiting time.** 3660. Sec. 110 (as amended by ch. 85, acts of 1917). 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.** 3661. Sec. 111 (as amended by ch. 91, acts of 1919). 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. In cases of injury requiring dismemberment, or injuries involving major surgical [surgical] operation, the employee may designate to his employer the physician or surgeon to perform the operation. If the injured employee refuses or neglects to avail himself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer shall not be liable for an aggravation of such injury due to such refusal and neglect.
- Compensation for—** 3662. Sec. 112 (as amended by ch. 91, acts of 1919). The following schedule of compensation is hereby established for injuries resulting in disability:
- Total disability;** (1) For the first three hundred weeks of total disability, the compensation shall be sixty-six and two-thirds per centum of the wages received at the time of injury, but such compensation shall not be more than fifteen 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 centum of the wages received at the time of the injury, but the compensation shall not be more than twelve 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 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 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 centum of the difference between the wages received at the time of the injury and the earning power of the em-

ployee thereafter, but such compensation shall not be more than fifteen 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.

(3) or all disability resulting from permanent injury of the following classes, the compensation shall be exclusively as follows: Schedule.

For the loss of a thumb, sixty-six and two-thirds per centum of daily wages during sixty weeks.

or the loss of a first finger, commonly called index finger, sixty-six and two-thirds per centum of daily wages during thirty-five weeks.

For the loss of a second finger, sixty-six and two-thirds per centum of daily wages during thirty weeks.

For the loss of a third finger, sixty-six and two-thirds per centum of daily wages during twenty weeks.

For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds per centum 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 the 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.

For the loss of a great toe, sixty-six and two-thirds per centum of daily wages during thirty weeks.

For the loss of one of the toes other than the great toe, sixty-six and two-thirds per centum of daily wages during ten weeks.

The loss of the first phalange of any toe shall be considered 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 centum of daily wages during one hundred and seventy-five weeks.

For the loss of an arm, sixty-six and two-thirds per centum of daily wages during two hundred and twenty-five weeks.

For the loss of a foot, sixty-six and two-thirds per centum of daily wages during one hundred and fifty weeks.

For the loss of a leg, sixty-six and two-thirds per centum of daily wages during two hundred and fifteen weeks.

For the loss of an eye, sixty-six and two-thirds per centum of daily wages during one hundred and twenty-five weeks.

For the loss of an ear, sixty-six and two-thirds per centum of daily wages during twenty-five weeks.

For the loss of hearing in one ear, sixty-six and two-thirds per centum of daily wages during fifty weeks.

For the loss of hearing in both ears, sixty-six and two-thirds per centum of daily wages during one hundred weeks.

For the loss of the nose, sixty-six and two-thirds per centum 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 [constitute] total and permanent disability and be compensated for 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 total loss of the use of a finger,

hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye.

Other injuries. 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 [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.

Maximum and minimum payments.

Compensation under this subdivision shall not be more than fifteen 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.

It is expressly provided that nothing contained in this section or this entire amendatory act is intended to or shall operate to affect the amount or amounts recoverable for an injury of any character sustained by any person or persons prior to the time this amendatory act goes into effect.

Death benefits. 3663. Sec. 113 (as amended by ch. 91, acts of 1919). If death results from injuries and the deceased employee leaves one or more dependents wholly dependent upon his earnings for support at the time of the accident causing the injury, the compensation, subject to the provisions of the next following section, shall be sixty-six and two-thirds per centum of the wages received at the time of the injury, but the compensation shall not be more than fifteen dollars per week or less than six dollars per week: *Provided*. If at the time of injury the employee receives wages of less than six dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during dependency, not exceeding three hundred and fifty weeks from the date of the accident causing such injury. It is expressly provided that nothing contained in this section or this entire amendatory act is intended to or shall operate to affect the amount or amounts recoverable for an injury of any character sustained by any person or persons prior to the time this amendatory act goes into effect.

(2) If at the time of the accident which resulted in his death the deceased employee leaves no persons wholly dependent, but leaves persons partially dependent upon his earnings for support, compensation shall be paid on account of the benefits provided in subdivision 1 of this section for persons wholly dependent, in the proportion that the average amount regularly contributed by the deceased from his wages for a reasonable time immediately prior to the accident, to such persons who were partially dependent, bears to the total wages of the deceased during the time.

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

Nonresident aliens.

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

(5) The consul general, consul, vice consul general, or vice consul of the nation of which the employee whose injury results in death is a citizen, or the representative of such consul general, consul, vice consul general, or vice consul residing within the State of Nebraska shall be regarded as the sole legal representative of any alien dependents of the employee, residing outside of the United States and representing

the nationality of the employee. Such consular officer, or his representative, residing in the State of Nebraska, shall have in behalf of such nonresident dependents the exclusive right to adjust and settle all claims for compensation provided by this article and to receive for distribution to such nonresident alien dependent all compensation arising thereunder.

3664. Sec. 114 (as amended by ch. 85, acts of 1917). The death of an injured employee prior to the expiration of the period within which he would receive such disability payment, shall be deemed to end such disability, and all liability for the remainder of such payment which he would have received in case he had lived shall be terminated, but the employer shall thereupon be liable for the following death benefit in lieu of any further disability indemnity:

Death of employee receiving compensation.

If the injury so received by such employee was the cause of his death, and such deceased employee leaves dependents as hereinbefore specified, wholly or partially dependent upon him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of this article to such deceased employee, to make the total compensation for the injury and death equal to the full amount which such dependents would have been entitled to receive under the provisions of the next preceding section, in case the accident had resulted in immediate death; and such benefits shall be payable in the same manner and subject to the same terms and conditions in all respects, as payments made under the provisions of said next preceding section. No deduction shall be made for the amount which may have been paid for medical and hospital services and medicines or for the expenses of burial. If the employee die from some cause other than the injury, there shall be no liability for compensation to accrue after his death.

3665. Sec. 115. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

Dependents.

(a) A wife upon a husband with whom she is living at the time of his death.

(b) Husband upon a wife with whom he is living at the time of her death.

(c) Child or children under the age of sixteen years (or over said age if physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of death of such parent, there being no surviving parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

(d) Compensation shall be payable under the two next preceding sections to or on account of any child, brother, or sister, only if and while such child, brother, or sister is under the age of sixteen. No compensation shall be payable under said section to a widow, unless she was living with her deceased husband at the time of his death: *Provided*, A wife or a husband living in a state of abandonment for more than two years at the time of the injury, or subsequently, shall not be a beneficiary under this article. 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 posthumous children. If the compensation payable under said sections to any person shall for any cause cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased. If a widow or widower of a deceased employee shall remarry, then the compensation benefits shall become payable to the child or children of such widow or widower, if there be any such child or children; but if there be no such child or children of such dependent widow or widower, the rights of such widow or widower shall not be affected by such remarriage.

(e) In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided

equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

(f) No person shall be considered a dependent unless he or she be a member of the family of the deceased employee, or bears to him the relation of widow or widower, or lineal descendant, or ancestor, or brother, or sister.

(g) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employee, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or their legal guardians or trustees. No dependent of an injured employee shall be deemed, during the life of such an 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 of such employee.

Payments.

3666. SEC. 116 (as amended by ch. 91, acts of 1919). 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 centum shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability. Whenever the employer refuses payment, or when the employer neglects to pay compensation for thirty days after injury, and proceedings are had before the compensation commissioner, a reasonable attorney's fee shall be allowed the employee by the court in the event the employer appeals from the award of the commissioner and fails to obtain any reduction in the amount of such award; the appellant court shall in like manner allow the plaintiff a reasonable sum as attorney's fees for the appellant proceedings.

Wages.

3667. SEC. 117 (as amended by ch. 85, acts of 1917). 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 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.

Willful negligence.

3668. SEC. 118. If the employee is injured by reason of his intentional willful negligence, or by reason of being in a state of intoxication, neither he nor his beneficiaries shall receive any compensation under the provisions of this article.

Second injuries.

3669. SEC. 119. If an employee receives an injury which, of itself, would only cause partial disability, but which, combined with a previous disability, does in fact cause total disability, the employer shall only be liable as for the partial disability, so far as the subsequent injury is concerned.

Joint employers.

3670. SEC. 120. In case any employee for whose injury or death compensation is payable under this article, shall, at the time of the injury, be employed and paid jointly by two or more employers subject

to this article, such employers shall contribute to the payment of such compensation in proportion to their several wage liabilities to such employee. If one or more but not all of such employers should be subject to the provisions of part II of this article, then the liability of such of them as are so subject shall be to pay that proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employee: *Provided, however,* Nothing in this section shall prevent any arrangement between employers of a different distribution between themselves of the ultimate burden of compensation.

3671. Sec. 121. No savings or insurance of the injured employee, or any contribution made by him to any benefit fund or protective association independent of this article, shall be taken into consideration in determining the compensation to be paid hereunder; nor shall benefits derived from any other source than those paid or caused to be paid by the employer as herein provided be considered in fixing the compensation under this article.

Employee's insurance, etc.

3672. Sec. 122. No agreement by an employee to waive his rights to compensation under this article shall be valid.

Waivers.

3673. Sec. 122. If an injured employee is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this article, his guardian or next friend may, in his behalf, claim and exercise such right or privilege.

Incompetents.

3674. Sec. 124 (as amended by ch. 85, acts of 1917). No proceedings for compensation for an injury under this article 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 the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same, or in case of the death of the employee, or in the event of his physical or mental incapacity, within six months after death, or the removal of such physical or mental incapacity: *Provided,* That all disputed claims for compensation or benefits shall be first submitted to the compensation commissioner, as provided in section 3680. The said notice shall be in writing, and shall state in ordinary language the time, place, and cause of the injury; and 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.

Notice of injury.

The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering said notice to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served at his last known residence or place of business.

Service.

A notice given under the provisions of this section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, or cause of the injury, unless it is shown that it was the intention to mislead, and the employer, or the insurance company carrying such risk, as the case may be, was in fact misled thereby. Want of such written notice shall not be a bar to proceedings under this act, if it be shown that the employer had notice or knowledge of the injury.

3675. Sec. 125. After an employee has given notice of an injury, as provided in the next preceding section, and from time to time thereafter during the continuance of his disability, he shall, if so requested by the employer or the insurance company carrying such risk, submit himself to an examination by a physician or surgeon legally authorized to practice medicine under the laws of the State, furnished and paid for by the employer, or the insurance company carrying such risk, as the case may be. The employee shall have the right to have a physician provided and paid for by himself present at the examination. The refusal of the employee to submit to such examination shall deprive him of the right to compensation under this article during the continuance of such refusal, and the period of such refusal shall be deducted from the period during which compensation would otherwise be payable.

Medical examinations.

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- Autopsy.** 3676. SEC. 126. In all death claims where the cause of death is obscure or disputed, any interested party may require an autopsy, the cost of such autopsy to be borne by the party demanding the same.
- Settlements.** 3677. SEC. 127 (as amended by ch. 85, acts of 1917). 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.
- Disputes.** 3678. SEC. 128 (as amended by ch. 91, acts of 1919). 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, the matter may be submitted to the district court of the county which would have jurisdiction of a civil action between parties, either at or during a regular term of the district court of said county or during any period of time between the regular term time of the district court of said county, which court shall have authority to hear and determine the cause as 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, dismissed, or modified, on appeal or otherwise modified pursuant to the provisions of this act: *Provided, however*, If either party appeals from the award of the compensation commissioner notice of the appeal shall be given to the commissioner and the petition on appeal filed in the district court within seven days from the date of the award.
- Limitation.** 3679. SEC. 129 (as amended by ch. 85, acts of 1917). 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 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 time of removal of such legal disability.
- Procedura.** 3680. SEC. 130 (as amended by ch. 85, acts of 1917). 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 dis-

trict 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 the 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.

3681. SEC. 131 (as amended by ch. 85, acts of 1917). 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 centum per annum with annual rests. Upon paying such amount, the employer shall be discharged from all further liability on account 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.

Lump sums.

Whenever an injured employee or his dependents and the employer agree that the amounts of the 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 subpoenaed 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 settle-ments final.** 3682. SEC. 132 (as amended by ch. 85, acts of 1917). 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.** 3683. SEC. 133 (as amended by ch. 85, acts of 1917). 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.** 3684. SEC. 134 (as amended by ch. 85, acts of 1917). 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 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.
- Administrators.** 3685. SEC. 135. In case of death, where no executor or administrator is qualified, the said court shall, by order, direct payment to be made to such persons as would be appointed administrator of the estate of such decedent, upon like terms as to bond for the proper application of compensation payments as are required of administrators.
- Reports.** 3686. SEC. 136 (as amended by ch. 85, acts of 1917). 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.
- 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.** 3687. SEC. 137 (as amended by ch. 85, acts of 1917). 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 corpo-

ration, 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.

3688. SEC. 138 (as amended by ch. 85, acts of 1917). 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. Provisions of policies. of

Every policy for 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 insurer; 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.

3689. SEC. 139. Nothing herein shall affect any existing contract for employer's liability insurance, or affect the organization of any mutual or other insurance company, or any arrangement now existing between employers and employees providing for the payment to such employees, their families, dependents, or representatives, sick, accident, or death benefits in addition to the compensation provided for by this article; but liability for compensation under this article shall not be reduced or affected by any insurance of the injured employee, or any 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 the next preceding section the liability of any insurer who may, in whole or in part, have insured the liability for such compensation: *Provided, however,* Payment in whole or in part of such compensation by either the employer or the insurer, as the case may be, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid. Existing contracts.

PART III.

MISCELLANEOUS PROVISIONS.

3690. SECTION 140. If any employee, or his dependents in case of death, or any employer subject to the provisions of Part II of this article, files any claim with, or accepts any payment from such employer, or from any insurance company carrying such risk, on account of personal injury, or makes any agreement, or submits any question to the court under Part II of this article, such action shall constitute a Suits barred how.

- release to such employer of all claims or demands at law, if any, arising from such injury.
- Assignments, etc. 3691. SEC. 141. No payments under this article shall be assignable or subject to attachment or garnishment, or be held liable in any way for any debts, except as provided in section 99 of this chapter.
- Preferences. 3692. SEC. 142. The right to compensation and all compensation awarded any injured employee or for death claims to his dependents (without limit of amount), shall have the same preference against the assets of the employer as unpaid wages for labor, but such compensation shall not become a lien on the property of third persons by reason of such preference.
- Definitions. 3693. SEC. 143 (as amended by ch. 85, acts of 1917). Throughout this act the following words and phrases as used therein shall be considered to have the following meaning, respectively, unless the context shall clearly indicate a different meaning in the construction used:
- (a) The term "physician" shall include "surgeon," and in either case shall mean one legally authorized to practice his profession within the State of Nebraska, and in good standing in his profession at the time.
- (b) 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 and violently, with or without human fault, and producing at the time objective symptoms of an injury.
- The term "injury" and "personal injuries" shall mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom. The said terms shall in no case be construed to include occupational disease in any form, or any contagious or infectious disease contracted during the course of employment, or death due to natural causes, but occurring while the workman is at work.
- "Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred and fifty weeks after the accident.
- (c) Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of employment," it is hereby declared not to cover workmen except while engaged in, on, or about the premises where their duties are being performed, or where their service requires their presence as a part of such services at the time of the injury, and during the hours of service as such workmen.
- (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 the injury, such intoxication being without the consent or knowledge or acquiescence of the employer or the employer's agent.
- (e) Whenever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine shall be included.
- (f) The designation "State insurance commissioner" or "insurance commissioner" as used herein is intended to mean the State official who has charge of the insurance department of the State of Nebraska.
- (g) The "court" as used herein shall mean the district court which would have jurisdiction in an ordinary civil case involving a claim for the injuries or death in question, and the "judge" shall mean a judge of said court.
- (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.

ACTS OF 1917.

CHAPTER 85.—*Compensation of workmen for injuries.*

[This act was mainly amendatory of the act of 1913, but it also added the following new matter.]

Prior injuries. SECTION 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 this amendatory act.

Sec. 26. There is hereby created a compensation division in the bureau of labor for the State of Nebraska. Compensation division.

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 VIII, 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 VIII, 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, any 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 subpoenas 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. Commissioner of labor to act.

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 proceedings, upon which shall be inscribed the words, "Compensation commissioner, State of Nebraska—Official seal." Powers.

Sec. 29. The compensation commissioner shall, for the purpose contemplated by this act, have power to issue subpoenas, 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 persons 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 Assistants.

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 VIII, 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, and 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 VIII, 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 VIII, chapter 35, Revised Statutes of Nebraska for 1913, and any act or acts amendatory thereof.

(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.

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.

(g) Every claim for benefits under the provisions of Article VIII, 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.

Claims.

(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.

Costs.

Sec. 30. In case for any reason any paragraph or any provision of Article VIII, 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 VIII, chapter 35, Revised Statutes of Nebraska for 1913, or any paragraph or any provision of this act, except 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.

Provisions severable.

NEVADA.

ACTS OF 1913.

CHAPTER 111.—*Compensation of workmen for injuries.*

Effect of election by employers.

SECTION 1 (as amended by ch. 233, acts of 1917). (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.

Compulsory as to public employees.

(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.

Failure of employers to elect.

(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:

Defenses abrogated.

(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.

(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 the intoxication on the part of the injured party.

Presumptions.

(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.

(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 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.

Notice by employers.

To the Nevada industrial commission:
You are hereby notified that the undersigned accepts the provisions of the "Nevada Industrial Insurance Act."

Signed _____.

Effect on 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.

(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. Payment of premiums.

(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 this 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. Notice of rejection to be posted.

(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. No compensation under this act shall be allowed for an injury caused: Willful intent.

(a) By the employee's willful intention to injure himself or to willfully injure another; nor shall compensation be paid to an injured employee if injury is sustained while intoxicated.

SEC. 2½ (added by ch. 233, acts of 1917). 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. No deductions from wages.

SEC. 3. (a) The rights and remedies provided in this act for an employee on account of an injury shall be exclusive of all other rights and remedies of such employee, his personal or legal representatives, dependents or next of kin, at common law or otherwise on account of such injury; all employees affected by this act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions, and provisions of this act until notice in writing shall have been served upon his employer, and also on the Nevada industrial commission, with return thereon by affidavit showing the date upon which notice was served upon the employer. Remedy exclusive.

(b) In the event that such employee elects to reject the terms, conditions, and provisions of this act, the rights and remedies thereof shall not apply where an employee brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this act; and in such actions where the employee has rejected the terms of this act the employer shall have the right to plead and rely upon any and all defenses, including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow servant shall apply and be available to the employer unless otherwise provided in this act: *Provided, however,* That if an employee sustains an injury as the result of the employer's failure to furnish or fails to exercise reasonable care to keep or maintain any Suits by employees.

safety device required by statute or rule, or violate any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employees, the doctrine of assumed risk in such case growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employee shall be substantially in the following form:

EMPLOYEE'S NOTICE TO REJECT TERMS OF THIS ACT.

To (name of employer) and the Nevada industrial commission:

Employee's notice to reject.

You and each of you are hereby notified that the undersigned elects to reject the terms, conditions, and provisions of an act for the payment of compensation as provided by the industrial insurance act of the State of Nevada and acts amendatory thereto, and elects to rely upon the common law as modified by section 3 of the said act for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named. (Signed) _____

Dated this — day of _____, 19—.
State of Nevada, County of _____.

The undersigned being first duly sworn, deposes and says that the written notice was on the — day of _____, 19—, served on the within-named employer of the undersigned by delivering to (name of person served) a true, correct, and verbatim copy thereof.

Subscribed and sworn (or affirmed) to before me by the said _____ this — day of _____, 19—.

_____, Notary Public.

Term of election.

Sec. 4 (as amended by ch. 233, acts of 1917). (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 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.

Rejection by both parties.

Sec. 5. Where the employer and employee elect to reject the terms, conditions, and provisions of this act, the liability of the employer shall be the same as though the employee had not rejected the terms, conditions, and provisions thereof.

Premiums to be paid.

Sec. 6. An employer having come under this act, who thereafter elects to reject the terms, conditions, and provisions thereof, shall not be relieved from the payment of premiums to Nevada industrial commission prior to the time his notice of rejection becomes effective; and said premiums may be recovered in an action at law as hereinafter in this act provided.

Liability of third persons.

Sec. 7 (as amended by ch. 176, acts of 1919). When an employee coming under the provisions of the act receives an injury for which compensation is payable under this act and which injury was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof:

(a) The employee or beneficiary may take proceedings against that person to recover damages, but the amount of the compensation to which he is entitled under this act shall be reduced by the amount of the damages recovered.

(b) If the employee or beneficiary in such case receives compensation under this act, the Nevada industrial commission by whom the compensation was paid, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employee to recover therefor.

Who are employers.

Sec. 7½ (added by ch. 176, acts of 1919). (a) The term "employer" as used in 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, which has any person in service under any appointment or contract of hire, or apprenticeship, expressed or implied, oral or written, and the legal representative of any deceased employer.

(b) The term "employee" as used in this act shall be construed to mean: Every person in the service of an employer as defined in subdivision (a) of this section under any appointment or contract of hire or apprenticeship, expressed 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 corporation for pay, and a working member of a partnership receiving wages irrespective of profits from such partnership, but excluding any person whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer: *Provided*, That the term "casual" as used herein 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.

(c) 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 that the average monthly wages are not otherwise ascertainable, shall be deemed to be employed at the average monthly wages of workmen engaged in like work in the same locality.

(d) Workmen, commonly called "leasers," engaged individually or in association with other workmen in performing manual labor upon the mining property of another in the expectation of finding, developing, or extracting ore or mineral of value under an agreement, oral or written, to share in whole or in part the value of the ore or minerals found, developed, or extracted with the lessor, shall be deemed employees of such lessor, and for the purposes of this act shall be deemed to be employed at the average wage paid to regularly employed miners in the locality.

Sec. 8 (as amended by ch. 190, acts of 1915). (a) The administration of this act on and after April 1, 1915, is hereby imposed upon a commission to be known as the Nevada industrial commission, and said commission, to consist of three commissioners, is hereby created. The governor, attorney general, and inspector of mines shall constitute an industrial commission board for the appointment of such commissioners. Vacancies shall be filled in the same manner for unexpired terms. No more than two of the commission shall be members of the same political party at the date of any appointment. Each commissioner shall hold office for the term of four years from and after date of his appointment, and until his successor shall be appointed and shall have qualified. One commissioner shall be designated by the governor to be, and upon being so designated shall be, chairman of the commission. A decision on any question arising under the act concurred in by two of the commissioners shall be the decision of the commission.

(b) The industrial commission board may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than ten days' notice. If such commissioner shall be removed the industrial commission board shall file in the office of the secretary of state a complete statement of all charges made against such commissioner, and the findings thereon, together with a complete record of the proceedings.

(c) Each commissioner shall receive as compensation for his services the sum of ten dollars per day for all days in which he is actually engaged in the business of the commission, which in no case shall

Employees.

Industrial commission.

Board of appointment.

Removal of members.

Salaries.

exceed one hundred and fifty (\$150) dollars per month. The chairman shall also serve as executive officer of the commission, in charge of the office and affairs of the commission, and shall be entitled to additional compensation for such service, which shall be fixed by the industrial commission board and approved by the governor. The executive officer of the commission shall not be financially interested in any business interfering or inconsistent with his duties. A member of the commission, or an employee of the commission, shall not serve on any committee of any political party.

Sessions.

SEC. 9. The commission shall be in continuous session and open for the transaction of business during all the business hours of each and every day, excepting Sundays and legal holidays. All sessions shall be open to the public and shall stand and be adjourned without further notice thereof on its record. All proceedings of the commission shall be shown on its record of proceedings, which shall be a public record and shall contain a record of each case considered, and the award made with respect thereto, and all voting shall be had by the calling of each member's name by the secretary, and each vote shall be considered as cast.

Office.

SEC. 10 (as amended by ch. 190, acts of 1915). The commission shall keep and maintain its office at the capitol, in the town of Carson City, Nevada, and shall be provided by the board of capitol commissioners with suitable rooms. Except in cases of emergency, all necessary printing, including forms, blanks, envelopes, letterheads, circulars, pamphlets, bulletins, and reports required to be printed by said commission shall be done at the State printing office, and it is made the duty of the State printer to have such printing done as expeditiously as possible.

Employees.

SEC. 11. The commission may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers, and other assistants, and fix their compensation. Such employments and compensation shall be first approved by the governor, and shall be paid out of the State treasury. The members of the commission, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers, and other assistants that may be employed shall be entitled to receive from the State treasury their actual and necessary expenses while traveling in the business of the commission. Such expenses shall be itemized and sworn to by the person who incurred the expense and allowed by the commission.

Rules, forms, etc.

SEC. 12. The commission shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices and the services thereof, in cases of accidents and injury to employees, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the rights to benefits of compensation from the State insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

Employers to furnish information.

SEC. 13. Every employer shall furnish the commission, upon request, all information required by it to carry out the purposes of this act. The commission or any member thereof, or any person employed by the commission for that purpose, shall have the right to examine under oath any employer or officer, agent, or employee thereof.

Same.

SEC. 14. Every employer receiving from the commission any blank with directions to fill the same shall cause the same to be properly filled out as to answer fully and correctly all questions therein propounded, and if unable to do so shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the board within the period fixed by the commission for such return.

Power to administer oaths.

SEC. 15. Each member of the commission, the secretary, and every inspector or examiner appointed by the commission shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony.

SEC. 16. In case of disobedience of any person to comply with the order of the commission, or subpoena issued by it or one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the district judge of the county in which the person resides, on application of any member of the commission, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from such court on a refusal to testify therein.

Disobedience of orders.

SEC. 17. Each officer who serves such subpoena shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the commission or an inspector or examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid from the State treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by any two members of the commission. No witness subpoenaed at the instance of a party other than the commission or any inspector shall be entitled to compensation from the State treasury unless the commission shall certify that his testimony was material to the matter investigated.

Fees.

SEC. 18. In an investigation, the commission may cause deposition of witnesses residing within or without the State to be taken in the manner prescribed by the law for like depositions in civil actions in the courts of record.

Depositions.

SEC. 19. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcript in courts of record.

Evidence.

SEC. 20. The commission shall prepare and furnish blank forms, and provide in its rules for their distribution, so that the same may be readily available, of application for benefits or compensation from the State insurance fund, notices to employers, proofs of injury or death, of medical attendance, of employment, and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of insured employers to constantly keep on hand sufficient supply of such blanks.

Blank forms.

SEC. 21 (as amended by ch. 176, acts of 1919). (a) Every employer electing to be governed by the provisions of this act with the exception of the State, counties, municipal corporations, cities, and school districts, shall, on or before the first day of July, A. D. 1919, and thereafter, as required by the Nevada industrial commission, pay to the Nevada industrial commission for a State insurance fund premiums in such a percentage of his estimated total pay roll for the ensuing month 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.

Payment of premiums.

Every employer electing to be governed by the provisions of this act, who shall enter into business or resume operations subsequent to July 1, 1919, shall, before so commencing or resuming operations, as the case may be, notify the commission of such fact, accompanying such notification with an estimate of his monthly pay roll, and shall make payment of the premium on such pay roll for the first three months of operations, and thereafter as required 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.

Pay-roll reports. Every employer electing to be governed by the provisions of the act shall, on or before the twenty-fifth day of each month, furnish the Nevada industrial commission with a true and accurate pay roll showing the aggregate number of shifts worked during the preceding month, the total amount paid to employees for services performed during said month, and a segregation of employment in accordance with the requirements of the commission. An adjustment of accounts shall then be made upon the basis of the actual pay roll, and should the amount of the actual premium due exceed the estimated premium for the period the amount of the deficiency shall be forwarded to the commission within thirty days after receipt by the employer of demand therefor.

Duty of officers. As soon as possible after the expiration of each quarter year, beginning with September 30, 1919, it shall be the duty of the State auditor and the auditor of each county, and the clerk of each municipal corporation, city, and school district, to furnish the Nevada industrial commission with a true and accurate pay roll of said State, county, municipal corporation, city or school district, showing the aggregate number of shifts worked during the preceding quarter, the total amount paid to employees for services performed during said month, and a segregation of employment in accordance with the requirements of the commission; and it shall be the duty of each of the said auditors and clerks to make up and submit to the respective governing boards of the State and each county, municipal corporation, city, and school district, for approval a claim for the amount of premiums due the commission. Any official who fails or refuses to comply with the provision 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.

Penalties. Every employer who shall fail on demand of the commission to furnish an estimated pay roll and make payment as above provided, shall be liable to a penalty in three times the amount of the premium on such pay roll, to be collected in a civil action in the name of the Nevada industrial commission and paid into the State insurance fund.

Notice of change of rates. (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 rates shall be given before the same shall become effective; the commission shall have the power, and it shall be its 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.

Fund to be self-supporting. (c) In that the intent is that the State insurance fund and the accident benefit fund shall ultimately be neither more nor less than self-supporting, the actual loss experience of the several classes of those funds shall be ascertained as soon as practical after the first day of July, 1919, for the first five years' operation of the fund, and annually thereafter within six months after the close of each fiscal year, and should it then be shown that there exists an excess of assets over liabilities, such liabilities to include the necessary reserves and the sum of \$100,000 for the catastrophe hazard, then the commission shall either allow a credit to the account of or declare a cash dividend to each individual member of any class which is shown to have made contributions in excess of liabilities properly chargeable to such class, the amount of the credit so allowed or cash dividend declared to be proportionate to the amount of money said individual member of such class has paid or contributed to said fund.

Merit rating. SEC. 22 (as amended by ch. 176, acts of 1919). (a) Whenever an establishment or work is dangerous in comparison with other like establishments or works, the Nevada industrial commission may advance its classification of risk and premium rates in proportion to the hazard.

Such advancement of classification of risks and premium rates may be made without previous notice.

(b) The Nevada industrial commission shall have the power in its discretion to lower the premium rate of or declare a rebate to any establishment or plant which has contributed to the State insurance fund for one year or more, 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: *Provided*, That such reduction of premium rate or rebate of premium contribution shall not exceed ten per cent (10 per cent) where the accident experience of such establishment or plant for a period of twelve months is less than sixty per cent (60 per cent) of the average experience for the same period of like establishments or plants of its classification, nor fifteen per cent (15 per cent) where the accident experience of such establishment or plant for two consecutive periods of twelve months is less than sixty per cent (60 per cent) of the average experience for the same period of like establishments or plants of its classification.

SEC. 23 (as amended by ch. 176, acts of 1919). (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 be reasonably 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."

Medical, etc.,
aid.

(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.

Fund.

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.

Rules and regu-
lations.

The State insurance fund provided for in this act shall not be liable for any accident benefits provided by this section, but the fund provided for accident benefits shall be a separate and distinct fund, and shall be so kept.

Funds separate,

(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.

First aid.

(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 pro-

Employees'
contributions to
benefit funds.

viding accident benefits shall notify the Nevada industrial commission of such election and render a detailed statement of the arrangements made. Every employer who maintains a hospital of any kind for his employees, or who contracts with a physician for the hospital care of injured employees, shall, on or before the thirtieth day of January of each year, make a written report to the Nevada industrial commission for the preceding year, which report shall contain a statement showing: (1) Total amount of hospital fees collected, showing separately the amount contributed by the employees and the amount contributed by the employers; (2) an itemized account of the expenditures, investments, or other disposition of such fees; and (3) a statement showing what balance, if any, remains. Such reports shall be verified by the employer, if an individual; by a member, if a partnership; by the secretary, president, general manager, or other executive officer, if a corporation; by the physician, if contracted to a physician.

Reports by employers.

Every employer who fails to so notify said Nevada industrial commission of such election and arrangements, or who fails to render the financial report required herein, shall be liable for accident benefits as heretofore provided by subdivision (b) of this section.

Power of commission.

(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.

State fund.

SEC. 24. All premiums provided for in this act shall be paid to the State treasurer, and shall constitute the State insurance fund for the benefit of employees of employers and for the benefit of dependents of such employees, and shall be disbursed as hereinafter provided.

Compensation for—

SEC. 25 (as amended by ch. 176, acts of 1919). 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 centum 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 centum 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.

4. To the widow or widower, if there is a child or children, the compensation payable under clause one (1) or clause two (2), and in addition the additional amount of ten per centum of such wage for each such child until the age of eighteen years. In case of the subsequent death of such surviving wife (or dependent husband) any surviving child of the deceased employee shall have his compensation increased to fifteen (15) per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years: *Provided*, That the total

amount payable shall in no case exceed sixty-six and two-thirds per cent of such wage. 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 a 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 child until the age of eighteen years, fifteen per centum of the wages of the deceased: *Provided*, That the aggregate shall in no case exceed sixty-six and two-thirds per centum 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 a parent, if wholly dependent for support upon the deceased employee at the time of his death, twenty-five per centum of the average monthly wage of the deceased during dependency, with an added allowance of ten per centum if two dependent parents survive; 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 injury causing death, twenty per centum 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 centum of the average monthly wage at the time of 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 centum 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 exceed compensation for one hundred months.

Partial dependents.

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.

Nonresident aliens.

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.

Wage basis.

10. In such cases where compensation is awarded to the widow, dependent children, or persons wholly dependent, no lump-sum settlements shall be allowed.

Lump sums.

11. In case of the death of any dependent specified in the foregoing enumeration before the expiration of the time named in the award, funeral expenses not to exceed one hundred and twenty-five (\$125) dollars shall be paid.

Death while receiving benefits.

(B) TOTAL DISABILITY.

1. For temporary total disability, if there be no one residing in the United States totally dependent upon the workman at the time of the injury, compensation of sixty (60) per cent of the average monthly wage, but not more than seventy-two (\$72) dollars nor less than thirty (\$30) dollars per month, but not exceeding one hundred months, during the period of such disability, total amount not to exceed seven thousand two hundred (\$7,200) dollars; if there be persons residing in the United

Temporary total disability.

States totally dependent for support upon the workman, compensation as provided herein with an additional allowance of ten (\$10) dollars per month for such dependents during the period of such disability.

Permanent total disability.

2. In cases of total disability adjudged to be permanent, compensation of sixty (60) per cent of the average monthly wage, but not less than thirty (\$30) dollars per month nor more than sixty (\$60) dollars 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 of 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 or both arms, or one leg and one arm.
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.

Temporary partial disability.

1. For temporary partial disability, sixty (60) per cent 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 (\$40) dollars 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 twenty (\$120) dollars per month shall not be taken into account in computing compensation for temporary partial disability.

Permanent partial disability.

2. In case of any of the following specified injuries, the disability caused thereby shall be deemed a permanent partial disability, and compensation of fifty (50) per cent of the average monthly wage, subject to a minimum of thirty (\$30) dollars per month and a maximum of sixty (\$60) dollars per month, shall be paid in addition to the compensation paid for temporary total disability for the period named in the following schedule:

Schedule.

- (a) For the loss of a thumb, fifteen (15) months.
- (b) For the loss of a first finger, commonly called the index finger, nine (9) months.
- (c) For the loss of a second finger, seven (7) months.
- (d) For the loss of the third finger, five (5) months.
- (e) For the loss of the fourth finger, commonly called the little finger, four (4) months.
- (f) The loss of a 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.
- (h) For the loss of a great toe, seven (7) months.
- (i) For the loss of one of the other toes other than the great toe, two and one-half (2½) 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 major hand, fifty (50) months; the loss of a minor hand, forty (40) months.

(m) For the loss of a major arm, sixty (60) months; for the loss of a minor arm, fifty (50) months.

(n) For the loss of a foot, forty (40) months.

(o) For the loss of a leg, fifty (50) months.

(p) For the loss of an eye by enucleation, thirty (30) months.

(q) The permanent and complete loss of sight in one eye without enucleation, twenty-five (25) months.

(r) For permanent and complete loss of hearing in one ear, twenty (20) months.

(s) For permanent and complete loss of hearing in both ears, sixty (60) months.

(t) 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.

(u) For the partial loss of use of a finger, toe, arm, hand, foot, leg, or partial loss of sight or hearing, fifty (50) per cent of the average monthly wage during that proportion of the number of months in the foregoing schedule provided for the complete loss of use of such member, or complete loss of sight or hearing, which the partial loss of use thereof bears to the total loss of use of such member or total loss of sight or hearing.

(v) 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, for a period not to exceed twelve (12) months. Facial disfigurement.

(w) 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 for a disability that is partial in character but permanent in quality [fifty (50) per cent of the average monthly wage not to exceed] the sum of sixty (\$60) dollars per month for the period of one (1) month shall represent a one (1) per cent disability.

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.

(x) 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.

(y) The commission may adopt a schedule for rating permanent disabilities and reasonable and proper rules to carry out the provisions of this subsection.

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. 26 (as amended by ch. 233, acts of 1917). (a) The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee: Dependents.

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 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.

- Waiting time.** Sec. 27 (as amended by ch. 176, acts of 1919). No compensation shall be paid under this act for an injury which does not incapacitate the employee for a period of at least seven days from earning full wages, but if the incapacity extends beyond the period of seven days, compensation shall begin on the eighth day after the injury: *Provided, however,* That if such disability continues for one week beyond the period of said seven days, such compensation shall be computed from the date of the injury.
- Assignments, etc.** Sec. 28 (as amended by ch. 190, acts of 1915). Compensation payable under this act, whether determined or due, or not, shall not, prior to the issuance and delivery of the warrant therefor, be assignable; shall be exempt from attachment, garnishment, and execution, and shall not pass to any other person by operation of law: *Provided, however,* That the payments to the consul general, consul, vice consul general, or vice consul, of the nation of which any dependent of a deceased employee is a resident or subject, or a representative of such consul general, consul, vice consul general, or vice consul, of any compensation due under this act to any dependent residing outside of the United States, any power of attorney to receive or receipt for the same to the contrary notwithstanding, shall be as full a discharge of the benefits or compensation payable under this act as if payments were made directly to the beneficiary.
- Waivers.** Sec. 29. No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule, regulation, or device; and any such contract, agreement, rule, regulation, or device shall be absolutely void.
- Lump-sum payments.** Sec. 30. [Repealed.]
Sec. 31. The Nevada industrial commission, may, in its discretion, allow the conversion of the compensation herein provided for into a lump-sum payment, not to exceed the sum of \$5,000, under such rules and regulations and system of computation as may be devised for obtaining the present value of such compensation.
- Medical examinations.** Sec. 32 (as amended by ch. 190, acts of 1915). (a) 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. The request or order for such examination shall fix a time and place therefor, due regard being had 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 such examination. If the employee refuses to submit to any such examination or obstructs the same, his right to compensation shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period. Any physician who shall make or be present at any such examination may be required to testify as to the result thereof.
- Injurious practices.** (b) If any employee shall persist in unsanitary 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 commission may, in its discretion, reduce or suspend the compensation of any such injured employee.
- False statement.** (c) 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 if a claimant he shall forfeit all right to compensation under this act after conviction for such offense.
- Accidents to be reported.** Sec. 33 (as amended by ch. 233, acts of 1917). (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 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. 34. (a) Where a workman is entitled to compensation under this act he shall file with the department his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury to [the] parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accom-

Notice to employer.

Failure to give notice, etc.

Claim.

- panied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.
- Review.** (c) If change of circumstances warrant 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.
- Limitation.** (d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.
- Time, etc., for notice.** SEC. 34½ (added by ch. 233, acts of 1917). 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 section 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 law, or of his physical or mental inability, or to fraud, misrepresentation, or deceit.
- Failure to give notice.**
- Employer's records.** SEC. 35. The books, records, and pay rolls of the employer pertinent to the administration of this act shall always be open to inspection by the commission or its traveling auditor, agent, or assistant, for the purpose of ascertaining the correctness of the pay roll, the men employed, and such other information as may be necessary for the commission and its management under this act. Refusal on the part of the employer to submit said books, records, and pay rolls for such inspection to any member of the commission or any assistant presenting written authority from the commission shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the Nevada industrial commission and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.
- Misrepresentations.** SEC. 36. Any employer who shall misrepresent to the department the amount of pay roll upon which the premium under this act is based shall be liable to the Nevada industrial commission in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the Nevada industrial commission shall be enforced in a civil action in the name of the Nevada industrial commission. All sums collected under this section shall be paid into the accident fund.
- Power of commission.** SEC. 37. [Repealed.]
- SEC. 38. The Nevada industrial commission is hereby authorized and empowered to prosecute, defend, and maintain actions in the name of the commission for the enforcement of the provisions of this act,

and verification of any pleading, affidavit, or other paper required may be made by any member of the commission or by the secretary thereof. In any action or proceeding or in the prosecution of any appeal by the commission, no bond or undertaking shall ever be required to be furnished by the commission.

SEC. 39. If any workman be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance or any departmental regulation under any statute, or be at the time of the injury of less than the maximum age prescribed by law for the employment of the minor in the occupation in which he shall be engaged when injured, the employer shall be liable to the Nevada industrial commission for a penalty of not less than \$300 or more than \$2,000 to be collected in a civil action at law by the commission.

Failure to maintain safeguards.

The foregoing provision of this act shall not apply to the employer if the absence of such guard or such protection be due to the removal thereof by the injured workman himself, or with his knowledge, by any fellow-workman, unless such removal be by order or direction of the employer or superintendent or foreman of the employer. If the removal of such guard or protection be by the workman himself, or be by his consent, by any of his fellow-workmen, unless done by order or direction of the employer or superintendent or foreman of the employer, the compensation of such injured workman, as provided for by section 25 of this act, shall be reduced twenty-five per cent.

Removal of employee.

SEC. 40 (as amended by ch. 176, acts of 1919). (a) The premiums, contributions, penalties, properties, or securities paid, collected or acquired by operation of this act shall constitute a fund to be known as the "State insurance fund." All disbursements from the State insurance fund shall be paid by the State treasurer upon warrants or vouchers of the Nevada industrial commission, authorized and signed by any two members of the commission. The State treasurer shall be liable on his official bond for the faithful performance of his duty as custodian of the State insurance fund. The State of Nevada shall not be liable for the payment of any compensation or any salaries or expenses in the administration of this act, save and except from the State insurance fund, but shall be responsible for the safety and preservation of the State insurance fund.

State insurance fund.

(b) The Nevada industrial commission may, pursuant to a resolution of the commission, approved by the governor, invest any of the surplus or reserve of said fund in bonds of the United States, in the bonds of this or other States, in the bonds of any county of the State of Nevada or other States, in farm-loan bonds of the federal land banks, or in bonds of incorporated cities or school districts of the State of Nevada. The commission shall make due and diligent inquiry as to the financial standing of the State or States, county or counties, city or cities, school district or school districts, whose bonds or securities it proposes to purchase and shall also require the attorney general to give his legal opinion in writing as to the validity of any act or acts of any State or county or city or school district under which said bonds are issued.

Investment.

All such bonds or securities shall be placed in the hands of the State treasurer, who shall be the custodian thereof. He shall collect the principal and interest thereon when due, and pay the same into the State insurance fund. He shall notify the Nevada industrial commission of the amounts so paid into the State insurance fund, giving full details of the transaction. The State treasurer shall pay all vouchers drawn on the State insurance fund for the making of such investments, when signed by two members of the commission, upon delivery of such bonds or securities to him when there is attached to such vouchers a copy of the resolution of the commission authorizing the investment, approved by the governor, said copy to be certified by the secretary under seal of the commission. The commission may, upon its resolution approved by the governor, sell any of such bonds or securities.

(c) The State treasurer may, upon written authority of the Nevada industrial commission, approved by the governor, deposit twenty-five (25 per cent) per cent of said fund in a bank or banks in the State of Nevada, fifteen (15 per cent) per cent thereof to be deposited in open accounts bearing interest at not less than three (3 per cent) per cent per

annum, and ten (10 per cent) per cent thereof to be deposited in time accounts, bearing interest at not less than four (4 per cent) per cent per annum: *Provided, however,* That such bank or banks in which deposits may be made shall give to the Nevada industrial commission a good and sufficient deposit bond, guaranteeing said Nevada industrial commission against any loss of said deposits by reason of the failure, suspension or otherwise of said bank. Interest earned by such portion of the State insurance fund which may be deposited in any bank or banks, as herein provided, shall be placed to the credit of the State insurance fund.

- Oath and bond. (d) Each member of the commission, before entering upon the duties of his office, shall give a good and sufficient bond running to the State of Nevada, and shall take the oath prescribed by the constitution, in the penal sum of ten thousand dollars, conditioned that he shall faithfully discharge the duties of his office; said bonds shall be signed by a surety company duly authorized to do business in this State, or by two or more individuals as surety or sureties; shall be subject to approval by the governor, and shall then be filed with the secretary of state. If surety company bonds be furnished, the premium therefor shall be paid out of the State insurance fund as other expenses of the commission are paid.
- Seal. (e) The commission shall have a seal upon which shall be inscribed the words "Nevada Industrial Commission—State of Nevada." Its seal shall be fixed to all orders, proceedings, and copies thereof, and to such other instruments as the commission may direct. All courts shall take judicial notice of such seal, and any copy of any record or proceeding of the commission certified under such seal shall be received in all courts as evidence of the original thereof.
- Audit of ac- Sec. 40½ (added by ch. 233, acts of 1917). It shall be the duty of the counts. 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.
- Injuries outside State. Sec. 41 (as amended by ch. 190, acts of 1915). If a workman or employee within the provisions of this act, who has been hired in this State and whose usual and ordinary duties of such employment are confined to the State is sent out of the State on business or employment of his employer, and receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to receive compensation according to the provisions of this act, even though such injury was received outside of this State.
- Title. Sec. 42. This act shall be known as the "Nevada industrial insurance act."
- Scope of act. Sec. 43 (as amended by ch. 176, acts of 1919). (a) This act shall apply to all employers of labor in the State of Nevada and their employees and dependents of their employees, but excludes any employee engaged in farm or agricultural labor, stock, or poultry raising, or household domestic service, except as otherwise provided herein; and no contract of employment, insurance, relief benefit, or indemnity, or any other device shall modify, change, or waive any liability created by this act; and such contract of employment, insurance, relief benefit, or indemnity, or other device, having for its purpose the waiver or modification of the terms or liability created by this act, shall be void.
- Voluntary elec- (b) Any employer of labor in the State of Nevada, having in his tions. employment any employee excluded from the benefits of the act under subdivision (a) of this section and any such employee may, by their joint election, elect to come under the provisions of this act in the manner hereafter provided.
- (c) Such election on the part of the employer shall be made by filing with the commission a written statement that he accepts the provisions of the Nevada industrial insurance act, which, when filed, shall operate to subject him to the provisions of said act, and of all acts amendatory thereof, until such employer shall thereafter file in the office of the commission a notice in writing that he withdraws his election.

(d) Any employee in the service of any such employer shall be deemed to have accepted, and shall be subject to the provisions of the Nevada industrial insurance act and of any act amendatory thereof, if, at the time of the accident for which compensation is claimed:

(1) The employer charged with such liability is subject to the provisions of this act, whether an employee has actual notice thereof or not; and

(2) Such employee shall not have given to his employer and to the Nevada industrial commission notice in writing that he elects not to be subject to the provisions of said act.

(e) Any such employee having the right under the provisions of this act to elect not to be subject to the provisions thereof who has rejected the provisions of this act may at any time thereafter elect to waive such acceptance by giving notice in writing to his employer and to the Nevada industrial commission, which shall become effective when filed with the Nevada industrial commission.

(f) Employers becoming contributors to the State insurance fund or the accident benefit fund, pursuant to the provisions of this section, shall be placed in a separate class, the premium rates of which shall be sufficient to provide an adequate fund for the payment of the proportionate administrative expense and compensation on account of injuries and death of employees of this class. Records separate.

Sec. 44. If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workmen; or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 21 of this act for the creation of the insurance fund, or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman, shall be held invalid, the entire act shall be thereby invalidated except the provisions of section 46, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof. Construction of statute.

Sec. 45. If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the validity 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: *Provided*, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the insurance fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the insurance fund the payment provided for by section 21, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited, but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed. Limitations not to run.

Sec. 46. If this act shall be hereafter repealed, all moneys which are in the insurance fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing. Disposition of und.

Sec. 50 (added by ch. 176, acts of 1919). It is hereby expressly provided that in the event any section of this act or the act of which this act is amendatory shall be held by any court to be void or inoperative for any cause, such holding shall not affect any other section or provision contained in this act or the act of which this act is amendatory. Provisions severable.

NEW HAMPSHIRE.

ACTS OF 1911.

CHAPTER 163.—*Compensation of workmen for injuries.*

- Scope of law.** SECTION 1. This act shall apply only to workmen engaged in manual or mechanical labor in the employments described in this section which, from the nature, conditions, or means of prosecution of such work, are dangerous to the life and limb of workmen engaged therein, because in them the risks of employment and the danger of injury
- Dangerous employments.** caused by fellow servants are great and difficult to avoid. (a) The operation on steam or electric railroads of locomotives, engines, trains, or cars, or the construction, alteration, maintenance, or repair of steam-railroad tracks or roadbeds over which such locomotives, engines, trains, or cars are or are to be operated. (b) Work in any shop, mill, factory, or other place on, in connection with, or in proximity to any hoisting apparatus, or any machinery propelled or operated by steam or other mechanical power in which shop, mill, factory, or other place five or more persons are engaged in manual or mechanical labor. (c) The construction, operation, alteration, or repair of wires or lines of wires, cables, switchboards, or apparatus charged with electric currents. (d) All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite, or any other explosives, where the same are used as instrumentalities of the industry, or to any steam boiler owned or operated by the employer: *Provided*, Injury is occasioned by the explosion of any such boiler or explosive. (e) Work in or about any quarry, mine, or foundry. As to each of said employments it is deemed necessary to establish a new system of compensation for accidents to workmen.
- Employer liable for damages when.** SEC. 2. If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment is caused to any workman employed therein, in whole or in part, by failure of the employer to comply with any statute, or with any order made under authority of law, or by the negligence of the employer or any of his or its officers, agents, or employees, or by reason of any defect or insufficiency due to his, its, or their negligence in the condition of his or its plant, ways, works, machinery, cars, engines, equipment, or appliances, then such employer shall be liable to such workman for all damages occasioned to him, or, in case of his death, to his personal representatives for all damages now recoverable under the provisions of chapter one hundred and ninety-one of the Public Statutes.
- Assumption of risks.** The workman shall not be held to have assumed the risk of any injury due to any cause specified in this section; but there shall be no liability under this section for any injury to which it shall be made to appear by a preponderance of evidence that the negligence of the plaintiff contributed. The damages provided for by this section shall be recovered in an action on the case for negligence.
- Election by employer.** SEC. 3. The provisions of section two of this act shall not apply to any employer who shall have filed with the commissioner of labor his declaration in writing that he accepts the provisions of this act as contained in the succeeding sections, and shall have satisfied the commissioner of labor of his financial ability to comply with its provisions, or shall have filed with the commissioner of labor a bond, in such form and amount as the commissioner may prescribe, conditioned on the discharge by such employer of all liability incurred under this act.
- Bonds.** Such bond shall be enforced by the commissioner of labor for the benefit of all persons to whom such employer may become liable under this act in the same manner as probate bonds are enforced. The commissioner may, from time to time, order the filing of new bonds,

when, in his judgment, such bonds are necessary; and after thirty days from the communication of such order to any employer, such employer shall be subject to the provisions of section two of this act until such order has been complied with. The employer may at any time revoke his acceptance of the provisions of the succeeding sections of this act by filing with the commissioner of labor a declaration to that effect, and by posting copies of such declaration in conspicuous places about the place where his workmen are employed. Any person aggrieved by any decision of the commissioner under this section may apply by petition to any justice of the superior court for a review of such decision and said justice on notice and hearing shall make such order affirming, reversing, or modifying such decision as justice may require; and such order shall be final. Such employer shall be liable to all workmen engaged in any of the employments specified in section one, for any injury arising out of and in the course of their employment, in the manner provided in the following sections of this act: *Provided*, That the employer shall not be liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed: *And provided*, That the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the intoxication, violation of law, or serious or willful misconduct of the workman: *Provided, further*, That the employer shall at the election of the workman, or his personal representative, be liable under the provisions of section two of this act for all injury caused in whole or in part by willful failure of the employer to comply with any statute, or with any order made under authority of law.

Minor injuries,
etc.

SEC. 4. The right of action for damages caused by any such injury at common law, or under any statute in force on January one, nineteen hundred and eleven, shall not be affected by this act, but in case the injured workman, or in event of his death his executor or administrator shall avail himself of this act, either by accepting any compensation hereunder, by giving the notice hereinafter prescribed, or by beginning proceedings therefor in any manner on account of any such injury, he shall be barred from recovery in every action at common law or under any other statute on account of the same injury. In case after such injury the workman, or in the event of his death his executor or administrator, shall commence any action at common law or under any statute other than this act against the employer therefor, he shall be barred from all benefit of this act in regard thereto.

Right to sue.

Barred, how.

SEC. 5. No proceedings for compensation under this act shall be maintained unless notice of the accident as hereinafter provided has been given to the employer as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured and during such disability, and unless claim for compensation has been made within six months from the occurrence of the accident, or in case of the death of the workman, or in the event of his physical or mental incapacity, within six months after such death or the removal of such physical or mental incapacity, or in the event that weekly payments have been made under this article, within six months after such payments have ceased, but no want or defect or inaccuracy of a notice shall be a bar to the maintenance of proceedings unless the employer proves that he is prejudiced by such want, defect, or inaccuracy. Notice of the accident shall appraise the employer of the claim for compensation under this article, and shall state the name and address of the workman injured, and the date and place of the accident. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last-known residence or place of business.

Notice.

SEC. 6. (1) The amount of compensation shall be, in case death results from injury: (a) If the workman leaves any widow, children, or parents, resident of this State, at the time of his death, then wholly dependent on his earnings, a sum to compensate them for loss equal to one hundred and fifty times the average weekly earnings of such workmen when at work on full time during the preceding year during

Compensation
for death.

which he shall have been in the employ of the same employer, or if he shall have been in the employment of the same employer for less than a year then one hundred and fifty times his average weekly earnings on full time for such less period. But in no event shall such sum exceed three thousand dollars. Any weekly payments made under this act shall be deducted from the sum so fixed. (b) If such widow, children, or parents at the time of his death are in part only dependent upon his earnings, such proportion of the benefits provided for those wholly dependent as the amount of the wage contributed by the deceased to such partial dependents at the time of injury bore to the total wage of the deceased. (c) If he leaves no such dependents, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars. Whatever sum may be determined to be payable under this act in case of death of the injured workman shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such dependents, for the benefit of the persons to whom the expenses of medical attendance and burial are due.

Compensation for incapacity.

(2) Where total or partial incapacity for work at any gainful employment results to the workman from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during such incapacity, subject as herein provided, not exceeding fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or if he shall have been in the employment of the same employer for less than a year, then a weekly payment of not exceeding one-half the average weekly earnings on full time for such less period. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average earnings of the workman before the accident and the average amount he is able to earn thereafter as wages in the same employment or otherwise. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in the same employment or otherwise after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this act exceed the damage suffered, nor shall any weekly payment payable under this act in any event exceed ten dollars a week or extend over more than three hundred weeks from the date of the accident. Such payment shall continue for such period of three hundred weeks: *Provided*, Total or partial disability continue during such period. No such payment shall be due or payable for any time prior to the giving of the notice required by section five of this act.

Medical examinations.

SEC. 7. Any workman entitled to receive weekly payments under this act is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within two weeks after the injury, and thereafter at intervals not oftener than once in a week. If the workman refuses to submit to such examination, or obstructs the same, his right to weekly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Incompetent persons.

SEC. 8. In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this act, the guardian of the incompetent appointed pursuant to law may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege, and no limitation of time in this act provided for shall run so long as said incompetent workman has no guardian.

Proceedings in equity.

SEC. 9. Any question as to compensation which may arise under this act shall be determined by agreement or by an action at equity

as hereinafter provided. In case the employer fail to make compensation as herein provided, the injured workman, or his guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under this act in any court having jurisdiction of an action for recovery of damages for negligence for the same injury between the same parties. Such action shall be by petition in equity, which may be made returnable at the appropriate term of the superior court or may be filed in the office of the clerk of the superior court and presented in term time or vacation to any justice of said court, who on reasonable notice shall hear the parties and render judgment thereon. The judgment in such action if in favor of the plaintiff shall be for a lump sum equal to the amount of payments then due and prospectively due under this act. In such action by an executor or administrator the judgment may provide the proportions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the probate court in which such executor or administrator is appointed, in accordance with this act, on petition of any party interested, on such notice as such court may direct. Any employer who has declared his intention to act under the compensation features of this act shall also have the right to apply by similar proceedings to the superior court or to any justice thereof for a determination of the amount of the weekly payments to be paid the injured workman, or of a lump sum to be paid the injured workman in lieu of such weekly payments; and either such employer or workman may apply to said superior court or to any justice thereof in similar proceeding for the determination of any other question that may arise under the compensation feature of this act; and said court or justice, after reasonable notice and hearing, may make such order as to the matter in dispute and taxable costs as justice may require.

SEC. 10. Any person entitled to weekly payments under this act against any employer shall have the same preferential claim therefor against the assets of the employer as is allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under this act shall not be assignable or subject to levy, execution, attachment, or satisfaction of debts. Any right to receive compensation under this act shall be extinguished by the death of the person entitled thereto. Payments preferred.

SEC. 11. No claim of any attorney at law for any contingent interest in any recovery under this act for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery, unless the account of the same be approved in writing by a justice of the superior court, or, in case the same be tried in any court, by the justice presiding at such trial. Attorneys' claims.

SEC. 12. Every employer subject to the provisions of this act shall from time to time make to the commissioner of labor such returns as to its operation as said commissioner may require upon blanks to be furnished by said commissioner. Any employer failing to make such returns when required by said commissioner shall, until such returns are made, be subject to the provisions of section two of this act. Reports.

SEC. 13. This act shall take effect January first, nineteen hundred and twelve. Act in effect, when.

Approved April 15, 1911.

NEW JERSEY.

ACTS OF 1911.

CHAPTER 95 (as amended by chapter 174, Acts of 1913)—Employers' liability—Compensation of workmen for injuries.

SECTION I.—EMPLOYERS' LIABILITY.

- Damages for personal injury. 1. When personal injury is caused to an employee by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employee was himself not willfully negligent at the time of receiving such injury, and the question of whether the employee was willfully negligent shall be one of fact to be submitted to the jury, subject to the usual superintending powers of a court to set aside a verdict rendered contrary to the evidence.
- Questions of negligence. of
- Defenses abrogated. 2. The right to compensation as provided by Section I of this act shall not be defeated upon the ground that the injury was caused in any degree by the negligence of a fellow employee; or that the injured employee assumed the risks inherent in or incidental to or arising out of his employment or arising from the failure of the employer to provide and maintain safe premises and suitable appliances; which said grounds of defense are hereby abolished.
- Employees contractors. of 3. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract, written or verbal, with a subcontractor to do all or any part of such work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer under this act for injury caused to an employee of such contractor or subcontractor by any defect in the condition of the ways, works, machinery, or plant if the defect arose or had not been discovered and remedied through the negligence of the employer or some one intrusted by him with the duty of seeing that they were in proper condition. This paragraph shall apply only to actions arising under section one.
- Injuries causing death. caus- 4. The provisions of paragraphs one, two, and three shall apply to any claim for the death of an employee arising under an act entitled "An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act, neglect, or default," approved March third, eighteen hundred and forty-eight, and the amendments thereof and supplements thereto.
- Burden of proof. of 5. In all actions at law brought pursuant to Section I of this act, the burden of proof to establish willful negligence in the injured employee shall be upon the defendant.
- Attorneys' fees. 6. No claim for legal services or disbursements pertaining to any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, unless the same be approved in writing by the judge or justice presiding at the trial, or in case of settlement without trial, by the judge of the circuit court of the district in which such issue arose: *Provided*, That if notice in writing be given the defendant of such claim for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided.

SECTION II.—ELECTIVE COMPENSATION.

- Compensation payable, when. 7. When employer and employee shall by agreement, either express or implied, as hereinafter provided, accept the provisions of Section II of this act, compensation for personal injuries to or for the death of such

employee by accident arising out of and in the course of his employment shall be made by the employer without regard to the negligence of the employer, according to the schedule contained in paragraph eleven, in all cases except when the injury or death is intentionally self-inflicted, or when intoxication is the natural and proximate cause of injury, and the burden of proof of such fact shall be upon the employer.

8. Such agreement shall be a surrender by the parties thereto of their rights to any other method, form, or amount of compensation or determination thereof than as provided in Section II of this act, and an acceptance of all the provisions of Section II of this act, and shall bind the employee himself, and for compensation for his death shall bind his personal representatives, his widow and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency. Remedy exclusive.

9. Every contract of hiring made subsequent to the time provided for this act to take effect shall be presumed to have been made with reference to the provisions of Section II of this act, and unless there be as a part of such contract an express statement in writing, prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of Section II of this act are not intended to apply, then it shall be presumed that the parties have accepted the provisions of Section II of this act and have agreed to be bound thereby. In the employment of minors, Section II shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor. Presumptions as to contracts.

10. The contract for the operation of the provisions of Section II of this act may be terminated by either party upon sixty days' notice in writing prior to any accident. Termination of agreement.

11 (as amended by ch. 93, acts of 1919). Following is a schedule of compensation:

(a) For injury producing temporary disability sixty-six and two-thirds per centum of the wages received at the time of the injury, subject to a maximum compensation of twelve dollars per week and a minimum of six dollars per week: *Provided*, That if at the time of the injury the employee receives wages of less than six dollars per week, that he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks. Temporary disability.

(b) For disability total in character and permanent in quality, sixty-six and two-thirds per centum of the wages received at the time of injury, subject to a maximum compensation of twelve dollars per week and a minimum of 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 wages per week. This compensation shall be paid during the period of such disability, not, however, beyond four hundred weeks. Permanent total disability.

(c) For disability partial in character, but permanent in quality, the compensation shall be based upon the extent of such disability. In cases included in the following schedule the compensation shall be that named in the schedule, to wit: Partial disability.

(d) For the loss of the thumb, sixty-six and two-thirds per centum of daily wages during sixty weeks. Schedule.

(e) For the loss of the first finger, commonly called index finger, sixty-six and two-thirds per centum of daily wages during thirty-five weeks.

(f) For the loss of a second finger, sixty-six and two-thirds per centum of daily wages during thirty weeks.

(g) For the loss of a third finger, sixty-six and two-thirds per centum of daily wages during twenty weeks.

(h) For the loss of a fourth finger, commonly called little finger, sixty-six and two-thirds per centum of daily wages during fifteen weeks.

(i) 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. The loss of any portion of the thumb or any finger, between the terminal joint and the end thereof, shall be compensated for a like

proportion of the period of time prescribed for the loss of the first phalange of such member.

(j) The loss of the first phalange and any portion of the second shall be considered as the loss of the entire finger or thumb: *Providing, 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.

(k) For the loss of great toe, sixty-six and two-thirds per centum of daily wages during thirty weeks.

(l) For the loss of one of the toes other than a great toe, sixty-six and two-thirds per centum of daily wages during ten weeks.

(m) 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.

(n) The loss of the first phalange and any portion of the second shall be considered as the loss of the entire toe.

(o) For the loss of a hand, sixty-six and two-thirds per centum of daily wages during one hundred and fifty weeks.

(p) For the loss of an arm, sixty-six and two-thirds per centum of daily wages during two hundred weeks.

(q) For the loss of a foot, sixty-six and two-thirds per centum of daily wages during one hundred and twenty-five weeks.

(r) For the loss of a leg, sixty-six and two-thirds per centum of daily wages during one hundred and seventy-five weeks.

(s) For the loss of an eye, sixty-six and two-thirds per centum of daily wages during one hundred weeks.

(t) For the loss of a natural tooth, sixty-six and two-thirds per centum of daily wages for four weeks for each tooth lost.

(u) For the total loss of hearing in one ear, sixty-six and two-thirds per centum of daily wages during forty weeks. For the total loss of hearing in both ears by one accident, sixty-six and two-thirds per centum of daily wages during one hundred and sixty weeks.

(v) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof as a result of any one accident, shall constitute total and permanent disability, to be compensated according to the provisions of clause (b).

Injuries not enumerated.

(w) In all lesser or other cases involving permanent loss, or where the usefulness of a member or any physical function is permanently impaired, the compensation shall be sixty-six and two-thirds per centum of daily wages, and the duration of compensation shall bear such relation to the specific periods of time stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. Should the employer and employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, either party may appeal to the workmen's compensation bureau for a settlement of the controversy.

Hernia.

(x) Hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident. Where there is real traumatic hernia resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, compensation will be allowed. All other cases will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury; unless conclusive proof is offered that the hernia was immediately caused by such sudden effort or severe strain that, first, the descent of the hernia immediately followed the cause; second, that there was severe pain in the hernial region; third, that there was such prostration that the employee was compelled to cease work immediately; fourth, that the above facts were of such severity that the same was noticed by the claimant and communicated to the employer within twenty-four hours after the occurrence of the hernia; fifth, that there was such physical distress that the attendance of a licensed physician was required within twenty-four hours after the occurrence of the hernia. In the case of hernia, as above defined, the provisions of paragraphs thirteen, fourteen, and eleven (a) shall apply, until such time as the employee is able to resume some kind of work with the aid of a truss or other mechanical appliance. If the employee refuses to permit of an operation, the employer shall meet the requirements

above specified, pay the reasonable costs of the truss or other appliance found necessary, and also pay compensation for twenty weeks, following which his obligation shall cease and terminate, unless death results from the hernia, in which case the provisions of paragraph twelve shall apply. However, if the employee shall elect to undergo an operation, by a physician selected by the employer, the employer shall meet all the expense incident to such operation and recovery, not in excess of one hundred and fifty dollars, together with compensation as provided in paragraph eleven (a) during the periods of disability prior to and following the operation, subject to the provisions of paragraph thirteen. If the employee refuses the services of the physician selected by the employer, preferring one of his own selection, the employer shall be relieved of obligations concerning medical expense due to the operation and recovery, but shall pay compensation during the prior and resulting periods of disability. If death results from the hernia or operation, the provisions of paragraph twelve shall apply.

(y) The weekly compensation payments specified in paragraph eleven, are all subject to the same limitations as to maximum and minimum as are stated in clause (a) hereof. Maximum and minimum amounts.

(z) 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 paid to such of his or her dependents as are included in the provisions of paragraph twelve of this act, 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. Death while receiving compensation.

12 (as amended by ch. 93, acts of 1919). In case of death compensation shall be computed, but not distributed, on the following basis: Death benefits.

- (a) For one dependent, thirty-five per centum of wages.
- (b) For two dependents, forty per centum of wages.
- (c) For three dependents, forty-five per centum of wages.
- (d) For four dependents, fifty per centum of wages.
- (e) For five dependents, fifty-five per centum of wages.
- (f) For six or more dependents, sixty per centum of wages.

(g) The term "dependents" shall apply to and include any or all of the following who are dependent upon the deceased at the time of accident or death: namely, husband, wife, parents, step-parents, grandparents, children, stepchildren, grandchildren, child in esse, posthumous child, illegitimate children, brothers, sisters, half brothers, half sisters, niece, nephew. Legally adopted children shall in every particular be considered as natural children: *Provided, however,* That dependency shall be conclusively presumed as to (a) the decedent's widow and natural children under eighteen years of age who were actually a part of the decedent's household at the time of his death. Every provision of this act applying to one class shall be equally applicable to the other. Should any dependent of a deceased employee die during the period covered by such weekly payments, or should the widow of a deceased employee remarry during such period, the right of such dependent or of such widow to compensation under this section shall cease: *It is further provided,* That the foregoing schedule applies only to persons wholly dependent, and that in the case of persons only partially dependent, except in the case of the widow and children, who were actually a part of the decedent's household at the time of his death, the compensation shall be such proportion of the scheduled percentage as the amounts actually contributed to them by the deceased for their support constituted of his total wages, and the provision as to a six-dollar minimum shall not apply to such compensation. In determining the number of dependents, where the deceased employee was a minor, the number of persons dependent upon said deceased employee shall be determined in the same way as if said deceased employee were an adult, notwithstanding any rule of law as to the person entitled to a minor's wages. Dependents.

(h) Compensation shall be computed upon the foregoing basis. Distribution shall be made among dependents, if more than one, according to the order of the workmen's compensation bureau, which shall, when applied to for that purpose, determine, upon the facts being presented to it, the proportion to be paid to or on behalf of each dependent Distribution of compensation.

- according to the relative dependency. Payment on behalf of infants shall be made to the surviving parent, if any, or to the statutory or or testamentary guardian.
- Last sickness and burial.** (i) If death results from the accident, whether there be dependents or not, expenses of last sickness, not exceeding two hundred dollars, also the cost of burial, not to exceed one hundred dollars.
- Age limit.** (j) In computing compensation to those named in this paragraph, except in the case of husband, wife, parents, and step-parents, only those under eighteen, or over forty years of age, shall be included, and then only for that period in which they are under eighteen or over forty: *Provided, however,* That payments to such physically or mentally deficient persons as are, for such reason, dependent, shall be made during the full term of compensation payment.
- Maximum and minimum amounts.** (k) The compensation in case of death shall be subject to a maximum compensation of twelve dollars per week and a minimum of six dollars per week: *Provided,* That if at the time of the injury the employee receives wages of less than six dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during three hundred weeks.
- Nonresident aliens.** (l) Compensation under this schedule shall not apply to alien dependents not residents of the United States.
- Waiting time.** 13 (as amended by ch. 93, acts of 1919). No compensation other than medical aid shall accrue and be payable until the employee has been disabled ten days, whether the days of disability immediately follow the accident or whether they be consecutive or not. These days shall be termed the waiting period. The day that the employee is unable to continue at work by reason of his accident, whether it be the day of the accident or later, shall count as one whole day of the waiting period.
- Medical and hospital service.** 14 (as amended by ch. 93, acts of 1919). On the day of the accident and during the next following twenty-seven consecutive days, the employer shall furnish reasonable medical and hospital services and medicines as and when needed not to exceed fifty dollars in value, unless the employee refuses to allow them to be furnished by the employer: *Provided, however,* That in severe cases requiring unusual medical or surgical treatment or calling for artificial limb or other mechanical appliances, the employee or his representative shall be authorized to present a petition to the workmen's compensation bureau, and the commissioner, deputy commissioner, or referee thereof is hereby empowered, when warranted by the evidence produced, to order additional services, artificial limbs or other appliances not to exceed in total the sum of two hundred dollars, or to extend over a period not to exceed in total seventeen weeks. This paragraph shall apply only to nonfatal cases.
- Sequence of classes of compensation payments.** 14(a) (as amended by ch. 93, acts of 1919). Compensation for all classes of injuries shall run consecutively, and not concurrently, except as provided in paragraph fourteen, as follows: First four weeks, medical and hospital services and medicines as provided in paragraph fourteen. After the waiting period, compensation during temporary disability. Following both, either or none of the above, compensation consecutively for each permanent injury. Following any or all or none of the above, if death results from the accident, expenses of last sickness and burial. Following which compensation to dependents, if any. In no case shall the total number of weekly payments be more than four hundred.
- Notice.** 15. 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 notice thereof to the employer within fourteen days of the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety days, and if the employee, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, igno-

rance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another person, or to any other reasonable cause or excuse, then compensation may be allowed, unless, and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Unless knowledge be obtained, or notice given, within ninety days after the occurrence of the injury, no compensation shall be allowed.

16. The notice referred to may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it through the mail to the employer at the last known residence or business place thereof within the State, and shall be substantially in the following form:

To (name of employer):

You are hereby notified that a personal injury was received by (name of employee injured), who was in your employ at (place) while engaged as (nature of employment), on or about the _____ day of _____, nineteen hundred and _____ and that compensation will be claimed therefor.

(Signed) _____.

But no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. Notice served at the office of, or on the person who was the employee's immediate superior, shall be a compliance with this act.

17. After an injury, the employee, if so requested by his employer, must submit himself for examination at some reasonable time and place within the State, and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this State. If the employee requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employee to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect of the period of suspension.

18. In case of a dispute over, or failure to agree upon a claim for compensation between employer and employee, or the dependents of the employee, either party may submit the claim, both as to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the judge of the court of common pleas of such county as would have jurisdiction in a civil case, or where there is more than one judge of said court, then to either or any of said judges of such court, which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding.

19 (as amended by ch. 93, acts of 1919). In case of death compensation payments may be made directly to dependents of full age and on behalf of infants to the surviving parent, if any, or to the statutory or testamentary guardian of any such infant; or the workmen's compensation bureau, on application or when a petition has been filed, may order such payments to be made to the administrator or executor of the decedent or to such person as would be appointed administrator of the estate of the decedent, and may, if compensation is to be paid weekly, require, in the discretion of the bureau, the filing with the bureau of a bond, with satisfactory surety, to the dependents, for not more than one hundred dollars, for the proper application of the compensation payments. If a commutation of the award is ordered and it is impracticable to make distribution of the commuted sum among the persons entitled thereto, then the bureau, on making such commutation, shall require a bond with such sureties and in such amount as will, in the judgment of the bureau, fully secure the persons severally entitled to portions of such commuted sum.

Procedure.

20. Procedure in case of dispute shall be as follows:

Either party may present a petition to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. This petition shall be verified by the oath or affirmation of the petitioner. Proceedings on behalf of an infant shall be instituted and executed by a guardian, and payment, if any, shall be made to such guardian.

Notice of hearing.

Upon the presentation of such petition the same shall be filed with the clerk of the court of common pleas, and the judge shall by order fix a time and place for the hearing thereof, not less than three weeks after the date of the filing of said petition. A copy of said petition and order shall be served as summons in a civil action and may be served within six days thereafter upon the adverse party. Within seven days after the service of such notice the adverse party shall file an answer to said petition, unless the court for good cause shall grant further time, 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. Within thirty days after the final hearing the judge of the court of common pleas shall file his determination.

Decision.

At the time fixed for hearing or any adjournment thereof the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the common pleas court, and judgment shall be entered thereon in the same manner as in causes tried in the court of common pleas, and shall contain a statement of facts as determined by said judge. The employer may once every month file receipt of payment, verified by affidavit that the receipts are accurate and true, with the clerk of the court, which shall be entered in satisfaction of the judgment to the extent of such payments. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided that nothing herein contained shall be construed as limiting the jurisdiction of the supreme court to review questions of law by certiorari. Costs may be awarded by said judge in his 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 common pleas court.

Agreements not bar.

No agreement between the parties for a lesser sum than that which may be determined by the judge of the court of common pleas to be due, shall operate as a bar to the determination of a controversy upon its merits, or to the award of a larger sum, if it shall be determined by the said judge that the amount agreed upon is less than the injured employee or his dependents are properly entitled to receive.

Refusing medical, etc., aid.

20 (e) (added by ch. 93, acts of 1919). Whenever it shall appear that an employer is being prejudiced by virtue of the refusal of an injured employee to accept proffered medical and surgical treatment deemed necessary by the physician selected by the employer, or his failure or neglect to comply with the instructions of the physician in charge of the case, such employer is hereby authorized to file a petition with the workmen's compensation bureau, which is hereby empowered to order proper medical and surgical treatment at the expense of the employer, and in event of refusal or neglect by the employee to comply with this order the bureau shall make such modification in the award contained in the schedule as the evidence produced shall justify.

Payments to trustees.

21. (a) At any time after the entry of the award, 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 court, be paid by the employer to any savings bank, trust company, or life insurance company in good standing and authorized to do

business in this State and having an office in the county in which the award was entered, 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 noted upon the docket of the clerk of the court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same times 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 employee or the dependents of the deceased employee. The expense of administration of such trust shall be fixed by the court and paid by the employer.

21 (b) (as amended by ch. 93, acts of 1919). The compensation hereby provided may be commuted by said workmen's compensation bureau at its present value, when discounted at five per centum simple interest, upon application of either party, with due notice to the other, if it appears 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 greater part of his business or assets.

(c) Unless so approved, no compensation payments shall be commuted.

(d) In determining whether the commutation asked for 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, the workmen's compensation bureau or the judge of the court of common pleas will constantly bear in mind that it is the intention of this act that compensation payments are in lieu of wages, and are to be received by the injured employee or his dependents in the same manner in which wages are ordinarily paid. Therefore, commutation is a departure from the normal method of payment, and is to be allowed only when it clearly appears that some unusual circumstances warrant such a departure. Commutation shall not be allowed for the purpose of enabling the injured employee or the dependents of a deceased employee to satisfy a debt, or to make payment to physician, lawyers, or any other persons.

(e) When any proceedings have been taken under the provisions of paragraph twenty or paragraph twenty-one of this act, the workmen's compensation bureau or the judge of the court of common pleas shall, as a part of its or his determination and order, either for payment or for commutation of payment, settle and determine the amount of compensation to be paid by the injured employee or his dependents, on behalf of whom such proceedings are instituted, to his legal adviser or advisers, and it shall be unlawful for any lawyer, or other person acting in that behalf, to ask for, contract for, or receive any larger sum than the amount so fixed; and in the order determining weekly payments where no commutation is made, the bureau or the said judge shall also determine the amount to be paid per week from the compensation payment on account of the legal fee thus awarded, and it shall be unlawful for the legal adviser, or other person acting in that behalf, to ask for, contract for, or receive a larger sum per week than the allowance thus determined.

(f) An agreement or award of compensation may be modified at any time by a subsequent agreement, or reviewed upon the application of either party on the ground that the incapacity of the injured employee has subsequently increased or diminished. In such case the provisions of paragraph seventeen with reference to medical examination shall apply.

(g) Whenever lawful compensation shall have been withheld from an injured employee or dependents for a term of three months or more, simple interest on each weekly payment at five per centum per annum for the period of delay of each payment may, at the discretion of the bureau, be added to the amount due at the time of settlement.

Lump sums.

Attorneys' fees.

Review.

Interest.

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Compensation a lien. 22. The right of compensation granted by this act shall have 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 for labor. Claims or Assignments. payments due under this act shall not be assignable, and shall be exempt from all claims of creditors and from levy, execution, or attachment.

SECTION III. GENERAL PROVISIONS.

Willful negligence. 23 (as amended by ch. 93, acts of 1919). (a) For the purposes of this act, willful negligence shall consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as evidences reckless indifference to safety, or (3) intoxication, operating as the proximate cause of injury.

Definitions. (b) Wherever 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.

(c) Employer is declared to be synonymous with master, and includes natural persons, partnerships, and corporations; employee is synonymous with servant, and includes all natural persons who perform service for another for financial consideration, exclusive of casual employments, which shall be defined, if in connection with the employer's business, as employment the occasion for which arises by chance or is purely accidental; or if not in connection with any business of the employer, as employment not regular, periodic, or recurring.

(d) Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation at the elbow shall be considered equivalent to the loss of the arm. Amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot, and amputation at the knee shall be considered equivalent to the loss of the leg.

Waivers. (e) No agreement, composition, or release of damages made before the happening of any accident, except the agreement defined in section two of this act, shall be valid or shall bar a claim for damages for the injury resulting therefrom, and any such agreement, other than that defined in section two herein, is declared to be against the public policy of this State. The receipt of benefits from any association, society, or fund to which the employee shall have been a contributor shall not bar the recovery of damages by action at law or the recovery of compensation under section two thereof.

Liability of third persons. (f) Where a third person or corporation is liable to the employee or his dependents for an injury or death, the existence of a right of compensation from the employer under this statute shall not operate as a bar to the action of the employee or his dependents, nor be regarded as establishing a measure of damage therein. However, in event that the employee or his dependents shall recover from the said third person or corporation a sum equivalent to or greater than the total compensation payments for which the employer is liable under this statute, the employer shall be released thereby from the obligation of compensation. If, however, the sum so recovered from the third person or corporation is less than the total of compensation payments, the employer shall be liable only for the difference. The obligation of the employer under this statute to make compensation shall continue until the payment, if any, by such third person or corporation is made. Such employer shall file with the third person or corporation so liable, at any time prior to payment, a statement of the compensation agreement or award between himself and his employee, or the dependents of the employee, and the employer shall thereafter be entitled to receive from such third person or corporation, upon the payment of any amount in release or in judgment by the third person or corporation on account of his or its liability to the injured employee or his dependents, a sum equivalent to the amount of compensation payments which the employer has theretofore paid to the injured employee or his dependents, which payments shall be deducted by the third person or corporation from the sum paid in release or judgment to the injured employee or his dependents.

Wages. (g) Wherever in section two of this act 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. Board and lodging when furnished by the employer as part of the wages shall be included and valued at five dollars per week, unless the money value of such advantages shall have been otherwise fixed by the parties at the time of hiring. Where prior to the accident, the rate of wages is fixed by the output of the employee, the daily wage shall be calculated by dividing the number of days the workman was actually employed into the total amount the employee earned during the preceding six months, or so much thereof as shall refer to employment by the same employer. Where the rate of wages is fixed by the hour, the daily wage shall be found by multiplying the hourly rate by the customary number of working hours constituting an ordinary day in the character of the work involved. In any case the weekly wage shall be found by multiplying the daily wage by five and one-half, or if the employee worked a greater proportion of the week regularly, then by six, six and one-half, or seven, according to the customary number of working days constituting an ordinary week in the character of work involved.

(b) In case of personal injury or death all claims for compensation on account thereof shall be forever barred unless a petition is filed in duplicate with the secretary of the workmen's compensation bureau, at the statehouse, in Trenton, within one year after the date on which the accident occurred, or in case an agreement of 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 a part of the compensation has been paid by such employer, then within one year after the last payment of compensation.

Limitation.

24. In case for any reason 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 this act, except that Sections I and II are hereby declared to be inseparable, and if either section be declared void or inoperative in an essential part, so that the whole of such section must fall, the other section shall fall with it and not stand alone. Section I of this act shall not apply in cases where Section II becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension of the common law.

Construction of act.

Approved April 4, 1911.

CHAPTER 368.—*Contracts of employment—Presumption as to election.*

SECTION 1. Every contract of hiring, verbal, written, or implied from circumstances, now in operation or made or implied prior to the time limited for the act to which this act is a supplement [chapter 95, Acts of 1911] to take effect, shall, after this act takes effect, be presumed to continue subject to the provisions of section two of the act to which this act is a supplement, unless either party shall, prior to accident, in writing, notify the other party to such contract that the provisions of section two of the act to which this act is a supplement are not intended to apply.

Prior contracts.

Notice of re-jection re-quired.

Approved May 2, 1911.

ACTS OF 1912.

CHAPTER 316.—*Compensation of workmen for injuries—Decisions to be reported.*

SECTION 1. The clerk of each of the courts of common pleas in this State, whenever any order is filed by the judge of such court making a decision upon any matter arising under the provisions 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, * * * [chapter 95, Acts of 1911] establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth,

Commissioner of labor to receive decisions.

nineteen hundred and eleven, shall forthwith forward to the commissioner of labor of the State of New Jersey a copy of the said order, which need not be certified, without any charge being made therefor.

Approved April 1, 1912.

ACTS OF 1913.

CHAPTER 145.—*Compensation of workmen for injuries—Public employees.*

Who entitled to compensation.

SECTION 1. Every employee who shall be in the employ of the State, county, municipality, or any board or commission, or any other governing body, including boards of education, within this State, shall be compensated under and by virtue of section two to which this act is a supplement: *Provided, however,* That no person receiving a salary greater than twelve hundred dollars per year, nor any person holding an elective office shall be entitled to compensation: *And provided further,* That nothing herein contained shall be construed as affecting any pension fund now or hereafter provided by law.

How payments are to be made.

SEC. 2. When any payment shall be due under the provisions of this supplement or the act to which it is a supplement, the name of the injured employee, or in case of his death, the names of the persons to whom payment is to be made as his dependents, shall be carried upon the pay roll, and payment shall be made in the same manner and from the same source in which and from which the wages of the injured employee were paid. In event that any extraordinary payment larger than the weekly rate of compensation shall be due, such payment shall be made from any fund available for the maintenance or incidental expenses of the institution, department, board, or governing body under and by which the employee was employed.

Approved March 27, 1913.

ACTS OF 1915.

CHAPTER 59.—*Compensation payments on behalf of minors.*

Parents to act as guardian.

1. In case where an infant or minor under the age of twenty-one years shall be entitled to receive a sum or sums amounting in the aggregate to not more than two hundred and fifty dollars as compensation for injuries or as a distributive share by virtue of the provisions of the act to which this act is a supplement, whether heretofore or hereafter arising, 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 the surrogate of the orphans' court of the county in which such infant or minor resides, and the release or discharge of such father, mother, or natural guardian shall be a full and complete discharge of all claims or demands of such infant or minor thereunder.

Release a complete discharge.

Approved March 17, 1915.

CHAPTER 199.—*Judgments in compensation cases—Failure to pay.*

Judgment docketed.

1. Any judgment entered in the court of common pleas pursuant to the provisions of section twenty of the act to which this act is a supplement may be docketed in the supreme court and thenceforward operate as a judgment recovered in that court. Upon failure to comply with the original order for compensation the court may order that the entire amount of compensation shall become due immediately and execution may issue upon proof of such failure for the entire amount of compensation, without discount or commutation. Supplementary proceedings in aid of execution may be resorted to upon a judgment so docketed and becoming due in whole as in any other case.

Failure to comply.

Approved April 6, 1915.

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 re- quired.

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 authorized 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 association 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. Stock, etc., com- panies.

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. Failure to in- sure.

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 subsequent 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.

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.

Self-insurers.

Sec. 14 (as amended by ch. 105, Acts of 1919). 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 of the assured for compensation or damages because of personal injuries, including death at any time resulting therefrom, sustained by his employees, 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.

Limitations for-
bidden.

Sec. 15 (as amended by ch. 105, Acts of 1919). 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 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. If any insurance company or mutual association authorized to write workmen's compensation or employers' liability insurance in this State shall violate the provisions of this act, the commissioner of banking and insurance may, in his discretion, after public hearing, suspend the authority of said insurance company or mutual association to transact workmen's compensation or employers' liability insurance in this State for such period as said commissioner shall fix.

Classifications,
etc., to be filed.

ARTICLE II.

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:

Rating and in-
spection bureau.

(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 (as amended by ch. 105, acts of 1919). 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 to 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 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; and the said commissioner is further authorized to examine, either personally or through any person appointed by him, the pay-roll records and workmen's compensation or employers' liability policies, and all data relating to such records and policies of any employer subject to the provisions of this act in order to determine whether such provisions are being complied with.

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.

SEC. 6. If any part of this act be adjudged unconstitutional, it shall not invalidate the remainder of this act. Provisions severable.

Approved March 27, 1917.

CHAPTER 262.—Workmen's compensation insurance—Application of law.

SECTION 1. The provisions of * * * [ch. 178, above] 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, * * *. Existing contracts.

Approved March 31, 1917.

ACTS OF 1918.

CHAPTER 149.—Workmen's compensation bureau.

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. Workmen's compensation bureau. Members.

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. Deputies and assistants. Proviso. Present employees. Salaries.

SEC. 3. The commissioner of labor, the deputy commissioners and the referees appointed under this act, either sitting individually 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. Jurisdiction.

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. Copy of agreement filed. Procuring settlement.

Claim within one year. SEC. 5. Every claimant for compensation under the act to which this act is a supplement [ch. 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 their preparation of such petitions, when requested so to do.

Service of petition. 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.

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 and 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 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.

Service of papers. 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.

Evidence. 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.

Procedure. 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.

Statement. 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 supplement. 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.

Judgment to be filed.

Bar to other action.

Docket.

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 in such manner as to afford ready reference thereto. Such records shall be open to the inspection of the public.

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 subpoenas to compel the attendance of witness 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 subpoenas shall be authenticated by the seal of the department of labor, and either party to any such proceeding may, without charge, secure subpoenas from the commissioner of labor, a deputy commissioner or any referee. The failure of any witness, when duly subpoenaed, 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.

Power of court.

Witness fees.

Subpoenas.

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.

Administering oaths.

SEC. 15. All hearings conducted under this act shall be open to the public.

Public hearings.

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.

Filing fees.

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.

Rules for hearings.

Costs.

SEC. 18. The deposition of any witness whose attendance before said bureau can not 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.

Depositions.

SEC. 19 (as amended by ch. 92, acts of 1919). 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

Appeals.

- 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 fifteen 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.
- Hearings.** 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.
- Trial de novo.**
- Counsel.**
- Dismissal of appeal.**
- Attorney's fee.** 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.
- Validity of act.** 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.

Approved February 28, 1918.

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 extrahazardous 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 extrahazardous 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 when applies.

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 insurance, 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 Guaranty of payments. Self-insurers. Undertaking required.

- 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 endorsed 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.**
- Minors.**
- Remedy exclusive.**
- 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.
- 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 suffered by accident arising out of and in the course of 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.

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.

Defenses abrogated.

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.

Compensation reduced, when.

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.

Willful intent, etc.

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.

Termination of agreements.

Sec. 10. The extrahazardous 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, waterworks; reduction works, breweries; elevators; dredges; smelters; powder works; laundries operated by power; quarries; engineering works; logging, lumbering and saw-mill 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 materials is carried on; and each of which employments above named is hereby determined to be extrahazardous, 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.

Extrahazardous occupations.

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.

Interstate commerce.

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 transmission of

Definitions.

electric current, and water power plant, including towers and stand-pipes, 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, saw mill, 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, association 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. 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 extrahazardous 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 extrahazardous 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.

(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 temporarily 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.

(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.

Injuries.

Computation of earnings.

Contractors.

of 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 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 case 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 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 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 some one on his behalf before any officer 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:

Payment of compensation.

Notice.

Claim.

Claim.

To the District Court of _____ County, New Mexico, and _____, employer, whose postoffice address is _____ and _____, insurer, guarantor, or surety, whose postoffice 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).

Date _____ (Sign) _____.

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.

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.

Procedure.

The trial of such cause, either by jury or by court, shall be conducted in a summary manner as far as possible. In event no 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 postoffice 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 postoffice 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.

Subpenas 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 subpoenas in civil cases, and the attendance and testimony of such witnesses in answer to such subpoenas 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 subpoenas, 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.

When 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 postoffice address, or notice may be given thereto in any other manner now provided by law for notice in civil actions.

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 workman 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, where, by 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.

Review

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 persons 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.

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 compensation 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.

Claims on account of death.

SEC. 17 (as amended by ch. 44, acts of 1919). 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 fourteen days 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:

What injuries compensable.

Compensation payments.

(a) For total disability the workman shall receive fifty per centum of his earnings, not to exceed a maximum compensation of twelve dollars per week, nor be less than a minimum of six dollars per week: *Provided*, That if at the time of injury the workman receives earnings of less than six 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.

Total disability.

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:

Death.

(1) If there be no dependents, the compensation shall be limited to the funeral expenses not to exceed seventy-five 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 seventy-five 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 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 centum of earnings of deceased with

ten per centum additional for each child in excess of two, with a maximum of sixty per centum to be paid to their guardian.

2. To the widow or widower, if there be no children, forty per centum of earnings, not to exceed a maximum compensation of twelve dollars per week.

3. To the widow or widower, if there be one child, forty-five per centum of earnings.

4. To the widow or widower, if there be two children, fifty per centum of earnings.

5. To the widow or widower, if there be three children, fifty-five per centum of earnings.

6. To the widow or widower, if there be four or more children, sixty per centum 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 any extent upon the workman for support at the time of his death, twenty per centum 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 centum of earnings for one brother or sister, and five per centum additional for each additional brother or sister, with a maximum of twenty-five per centum; 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 less than twelve dollars per week, except where the earnings are less than twelve dollars per week, and in that case upon the amount of earnings.

Partial disability.

(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.

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 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 the great toe at second or distal joint | 3 weeks |
| Loss of all toes of one foot at proximal joint | 35 weeks |
| 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. Disfigurement.

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. Infection.

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. Paralysis.

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. Total disability.

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.

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 seventy-five 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. Hernia.

SEC. 18 (as amended by ch. 44, acts of 1919). No compensation shall be allowed for the first fourteen days 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 thirteen hereof. Waiting time.

During the first fourteen days 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 Medical, etc., aid.

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 fourteen days 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 fourteen days surgical, medical, and hospital services and medicines, as provided in this paragraph. After the first fourteen days compensation during temporary disability. Following both, either or none of the above, compensation consecutively for 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 three 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.

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.

Attachment, etc.

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 centum 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.

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. Medical examination.

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. Names of dependents.

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. Examinations of beneficiaries.

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. Power of courts.

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. Liability of third persons.

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. Failure to guarantee payments.

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 two and six 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. Provisions severable.

Approved March 13, 1917.

NEW YORK.
CONSTITUTION.

ARTICLE 1.—*Safety of workmen—Compensation for injuries.*

Safety laws. **SECTION 19.** Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees; or for the payment, either by employers, or by employers and employees or otherwise, either directly or through a State or other system of insurance or otherwise, of compensation for injuries to employees or for death of employees resulting from such injuries without regard to fault as a cause thereof, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for the adjustment, determination, and settlement, with or without trial by jury, of issues which may arise under such legislation; or to provide that the right of such compensation and the remedy therefor shall be exclusive of all other rights and remedies for injuries to employees or for death resulting from such injuries; or to provide that the amount of such compensation for death shall not exceed a fixed or determinable sum: *Provided*, That all moneys paid by an employer to his employees or their legal representatives, by reason of the enactment of any of the laws herein authorized, shall be held to be a proper charge in the cost of operating the business of the employer.

Compensation system.

Exclusive remedy.

Adopted November 4, 1913.

CONSOLIDATED LAWS.

CHAPTER 67 (ADDED BY CHAPTER 41, ACTS OF 1914).—*Compensation of workmen for injuries.*⁸

Article 1.

Title. **SECTION 1.** This chapter shall be known as the "Workmen's Compensation Law."

Hazardous employments. **SEC. 2** (as amended by acts of 1916, 1917, 1918). Compensation provided for in this chapter shall be payable for injuries sustained or death incurred by employees engaged in the following hazardous employments:

Group 1. The operation, including construction and repair, of railways operated by steam, electric, or other motive power, street railways, and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway, including work of express, sleeping, parlor, and dining car employees on railway trains.

Group 2. Construction, repair, and operation of railways not included in group one.

Group 3. The operation, including construction and repair, of car shops, machine shops, steam and power plants, and other works for the purposes of any such railway, or used or to be used in connection with it when operated, constructed, or repaired by the company which owns or operates the railway.

Group 4. The operation, including construction and repair, of car shops, machine shops, steam and power plants, not included in group three.

⁸ This statute was first enacted as chapter 816, acts of 1913, being approved by the governor on Dec. 16. It was reenacted with amendments as here given, the reenactment being due to doubts as to the constitutionality of the original enactment, the amendment to the constitution not being in effect until Jan. 1, 1914.

Group 5. The operation, including construction and repair, of telephone lines and wires for the purposes of the business of a telephone company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 6. The operation, including construction and repair, of telegraph lines and wires for the purposes of the business of a telegraph company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 7. Construction or repair of telegraph and telephone lines not included in groups five and six.

Group 8. The operation, within or without the State, including repair of vessels other than vessels of other States or countries used in interstate or foreign commerce, when operated or repaired by the company; marine wrecking.⁹

Group 9. Shipbuilding, including construction and repair in a shipyard or elsewhere, not included in group eight.⁹

Group 10. Longshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber, or other products or materials, or moving or handling the same on any dock, platform, or place, or in any warehouse or other place of storage.⁹

Group 11. Dredging, subaqueous or caisson construction or repair, and pile driving.

Group 12. Construction, installation, repair, or operation of electric light and electric power lines, dynamos, or appliances, and power transmission lines.

Group 13. Paving; road building, curb and sidewalk construction or repair; sewer and subway construction or repair, work under compressed air, excavation, tunneling and shaft sinking, well digging, laying and repair of underground pipes, cables, and wires not included in other groups; street cleaning, ashes, garbage, or snow removal; operation of waterworks.

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, sawmills, 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 15. Pulp and paper mills.

Group 16. Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware; upholstering; manufacture of mattresses or bed springs.

Group 17. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, moldings, window and door screens, window shades, carpet sweepers, wooden toys, wooden articles and wares or baskets; cork cutting.

Group 18. Mining; reduction of ores and smelting; preparation of metals or minerals; oil and gas wells.

Group 19. Quarries; sand, shale, clay, or gravel pits; limekilns; manufacture of brick, tile, terra cotta, asbestos, fireproofing, or paving blocks; manufacture of calcium carbide, cement, asphalt, or paving material; stone crushing or grinding.

Group 20. Manufacture of glass, glass products, glassware, porcelain, or pottery.

Group 21. Iron, steel, or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, sheet metal, boilers, furnaces, stoves, structural steel, iron, or metal; machine shops, including repairs.

Group 22. Operation and repair of stationary engines and boilers, freight and passenger elevators not included in other groups; window cleaning; heating and lighting.

Group 23. Manufacture of small castings or forgings, metal wares, instruments, utensils, and articles, hardware, nails, wire goods, screws,

⁹ Groups 8, 9, and 10 are invalid classifications in so far as they encroach upon admiralty or maritime jurisdiction (*Knickerbocker Ice Co. v. Stewart*, 40 Sup. Ct. 438).

bolts, metal beds, sanitary, water, gas, or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, photographic cameras and supplies, sheet-metal products, buttons; jewelry; gold, silver, and plated ware; articles of bone, ivory, and shell.

Group 24. Manufacture of agricultural implements, thrashing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs, or baby carriages; blacksmiths, horseshoers.

Group 25. Manufacture of explosives and dangerous chemicals, corrosive acids or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, gunpowder or ammunition; ice harvesting, ice storage, and ice distribution.

Group 26. Manufacture of paint, color, varnish, oil, japans, turpentine, printing and other ink, printers' rollers, tar, tarred, pitched, or asphalted paper.

Group 27. Distilleries, breweries; manufacture of spirituous or malt liquors, alcohol, wine, mineral water or soda water; bottling.

Group 28. Manufacture of drugs and chemicals, not specified in group twenty-five, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, noncorrosive acids or chemical preparations, fertilizers, including garbage or sewerage disposal plants; shoe blacking or polish.

Group 29. Milling; manufacture of cereals or cattle foods, warehousing; storage of all kinds and storage for hire; operation of grain elevators.

Group 30. Packing houses, meat markets, abattoirs, manufacture or preparation of meats or meat products or glue, gelatine, paste, or wax.

Group 31. Tanneries.

Group 32. Furriers; manufacture of leather goods and products, belting, saddlery, harness, trunks, valises, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires, or hose.

Group 33. Canning or preparation of fruit, vegetables, fish, or food-stuffs; pickle factories and sugar refineries; manufacture of dairy products.

Group 34. Hotels having 50 or more rooms; bakeries, including manufacture of crackers and biscuits, manufacture of confectionery, spices, or condiments.

Group 35. Manufacture of tobacco, cigars, cigarettes, or tobacco products.

Group 36. Manufacture of cordage, ropes, fiber, brooms, or brushes; manila or hemp products.

Group 37. Flax mills; manufacture of textiles or fabrics, spinning, weaving, and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy, or felt.

Group 38. Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats, caps, furs or robes, or other articles from textiles or fabrics.

Group 39. Power laundries; dyeing, cleaning, or bleaching.

Group 40. Printing, engraving, photo-engraving, stereotyping, electrotyping, lithographing, embossing; manufacture of moving-picture machines and films; manufacture of stationery, paper, cardboard boxes, bags, or wall paper; and bookbinding.

Group 41. The operation, otherwise than on tracks, on streets, highways, or elsewhere of cars, trucks, wagons, or other vehicles, and rollers and engines, propelled by steam, gas, gasoline, electric, mechanical, or other power or drawn by horses or mules; public garages, livery, boarding, or sales stables; movers of all kinds.

Group 42. Stone cutting or dressing; marble works; manufacture of artificial stone; steel building and bridge construction or repair; installation or repair of elevators, fire escapes, boilers, engines, or heavy machinery; bricklaying, tile laying, mason work, stone setting, concrete work, plastering; and manufacture of concrete blocks; structural carpentry; painting, papering, picture hanging, glazing, decorating, or renovating; sheet-metal work; roofing; construction, repair, and demolition of buildings, bridges, and other structures; salvage of buildings or contents; plumbing, sanitary lighting or heating installation or

repair; installation and covering of pipes or boilers; junk dealers, theatrical stage carpenters, property men, electricians, stage hands, fly-men, lamp operators, and moving-picture machine operators.

Group 43. Any employment enumerated in the foregoing groups and carried on by the State or a municipal corporation or other subdivision thereof, notwithstanding the definition of the term "employment" in subdivision five of section three of this chapter. Public employ-
ment not for
profit.

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.

Group 45.¹⁰ Employment as a district forest ranger, forest ranger, observer, chief railroad 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.

Group 45.¹⁰ 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. Four or more
workmen.

Any employer not carrying on one of the employments enumerated in this section, or who carrying on one of such employments has in his employ an employee not included within the term "employee" as defined by section three of this chapter, and the employees of any such employer may, by their joint election, elect to become subject to the provisions of this chapter in the manner hereinafter provided. Such election on the part of the employer shall be made by posting notices thereof about the place where the workmen are employed, in a manner to be prescribed by rules to be adopted by the commission, and by filing with the commission a written statement, in a form to be prescribed by the commission, to the effect that he accepts the provisions of this chapter and that he adopts subject to the approval of the commission one of the methods of securing compensation to his employees prescribed in section fifty of this chapter which, when so filed with and approved by the commission as to form and method of securing compensation shall operate to subject him to the provisions of this chapter and of all acts amendatory thereof for the period of one year from the date of such approval, 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 any succeeding year, file with the commission a notice in writing that he withdraws his election. Election in non-
hazardous em-
ployments.

Any employee in the service of any such employer shall be deemed to have accepted, and shall be subject to the provisions of this chapter and any act amendatory thereof, if, at the time of the accident for which liability is claimed, the employer charged with such liability has not withdrawn his election and the employee shall not at the time of entering into his contract of hire have given to his employer notice in writing that he elects not to be subject to the provisions of this chapter and filed a copy thereof with the commission, or in the event that such contract for hire was made in advance of the election of the employer, such employee shall not have given to his employer and filed with the commission within twenty days after such election notice in writing that he elects not to be subject to such provisions.

A minor employee shall be deemed *sui juris* for the purpose of making such an election.

The rights and remedies, benefits, and liabilities of an employer or employee so electing to become subject to the provisions of this chapter shall thereupon become the same as they would have been had they been engaged in one of the occupations or employments enumerated

¹⁰ As numbered; added by separate acts.

Definitions.

herein and the words employer and employee wherever they appear in this chapter shall be construed as including an employer or employee who has so elected to become subject to its provisions.

SEC. 3 (as amended by acts of 1914, 1916, 1917). As used in this chapter, 1. "Hazardous employment" means a work or occupation described in section two of this chapter.

2. "Commission" means the State industrial commission, as constituted by this chapter.

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, or corporation, employing workmen in hazardous employments, including the State and a municipal corporation or other political subdivision thereof.

4. "Employee" means a person engaged in one of the occupations enumerated in section two or who is in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment upon the premises or at the plant, or in the course of his employment away from the plant of his employer; and shall not include farm laborers or domestic servants.

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.

6. "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

7. "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.

8. "Death" when mentioned as a basis for the right to compensation means only death resulting from such injury.

9. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer.

10. "State fund" means the State insurance fund provided for in article five of this chapter.

11. "Child" shall include a posthumous child and a child legally adopted prior to the injury of the employee, and a stepchild dependent upon the deceased.

12. "Insurance carrier" shall include the State fund, stock corporations, or mutual associations with which employers have insured, and employers permitted to pay compensation directly under the provisions of subdivision three of section fifty.

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.

Article 2.

Compensation payable, when.

SECTION 10. Every employer subject to the provisions of this chapter shall pay or provide as required by this chapter compensation according to the schedules of this article for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty. Where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty, neither the injured employee nor any de-

pendent of such employee shall receive compensation under this chapter.

Sec. 11 (as amended by chapter 622, acts of 1916). The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, impersonal representatives, husband, parents, dependents, or next of kin, or any one otherwise entitled to recover damages at common law or otherwise on account of such injury or death, except that if an employer fail to secure the payment of compensation for his injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his legal representative in case death results from the injury, may, at his option, elect to claim compensation under this chapter or to maintain an action in the courts for damages on account of such injury, and in such an action it shall not be necessary to plead or prove freedom from contributory negligence, nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

Remedy exclusive.

Exception.

Sec. 12 (as amended by ch. 705, acts of 1917). 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.

Waiting time.

Sec. 13 (as amended by ch. 634, acts of 1918). 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.

Medical, etc., treatment.

Sec. 14. Except as otherwise provided in this chapter, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation or death benefits, and shall be determined as follows:

Wages computed, how.

1. If the injured employee shall have 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 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 such 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 in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed;

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee can not reasonably and fairly be applied, such annual earnings shall be 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 neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the accident;

4. The average weekly wages of an employee shall be one fifty-second part of his average annual earnings;

5. 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, the fact may be considered in arriving at his average weekly wages.

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| Compensation for— | Sec. 15 (as amended by acts of 1915, 1916, 1917). The following schedule of compensation is hereby established: |
| Permanent total disability; | 1. <i>Total permanent disability</i> .—In case of total disability adjudged to be permanent sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts. |
| Temporary disability; | 2. <i>Temporary total disability</i> .—In case of temporary total disability, sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of three thousand five hundred dollars, except as otherwise provided in this chapter. |
| Partial disability. | 3. <i>Permanent partial disability</i> .—In case of disability partial in character but permanent in quality the compensation shall be sixty-six and two-thirds per centum of the average weekly wages and shall be paid to the employee for the period named in the schedule as follows: |
| Schedule. | Thumb. For the loss of a thumb, sixty weeks. First finger. For the loss of a first finger, commonly called index finger, forty-six weeks. Second finger. For the loss of a second finger, thirty weeks. Third finger. For the loss of a third finger, twenty-five weeks. Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks. Phalange of thumb or finger. 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. 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: <i>Provided, however</i> , 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. Great toe. For the loss of a great toe, thirty-eight weeks. Other toes. For the loss of one of the toes other than the great toe, sixteen weeks. Phalange of toe. 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. Where the injury results in the loss of more than one toe compensation therefor may be awarded for the proportionate loss of the foot thereby occasioned: <i>Provided, however</i> , That in no case shall the compensation awarded for more than one toe exceed the amount provided in this schedule for the loss of the foot. Hand. For the loss of a hand, two hundred and forty-four weeks. Arm. For the loss of an arm, three hundred and twelve weeks. Foot. For the loss of a foot, two hundred and five weeks. Leg. For the loss of a leg, two hundred and eighty-eight weeks. Eye. For the loss of an eye, one hundred and twenty-eight weeks. Loss of use. Permanent loss of the use of a 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. |

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.

Amputations. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a 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 thirteen of this chapter.

In case of an injury resulting in serious facial or head disfigurement the commission 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 three thousand five hundred dollars.

Other cases.—In all other cases in this class of disability the compensation shall be sixty-six and two-thirds per centum 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 commission on its own motion or upon application of any party in interest.

4. *Temporary partial disability.*—In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section, an injured employee shall receive sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment, or otherwise during the continuance of such partial disability, but not to exceed, when combined with his decreased earnings, the amount of wages he was receiving prior to the injury, and not to exceed in total the sum of three thousand five hundred dollars, except as otherwise provided in this chapter.

5. *Limitation.*—The compensation payment under subdivisions one, two, and four, and under subdivision three, except in case of the loss of a hand, arm, foot, leg, or eye, shall not exceed fifteen dollars per week nor be less than five dollars per week; the compensation payment under subdivision three in case of the loss of a hand, arm, foot, leg, or eye shall not exceed twenty dollars per week nor be less than five dollars a week: *Provided, however,* That if the employee's wages at the time of injury are less than five dollars per week he shall receive his full weekly wages. Minimum and maximum payments.

6. *Previous disability.*—The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from compensation for a later injury nor preclude compensation for death resulting therefrom; but in determining compensation for the later injury or death his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury: *Provided, however,* That an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability. What wages determine.

7. *Permanent total disability after permanent partial disability.*—If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye incurs permanent total disability through the loss of another member or organ, he shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks, special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purpose in the following manner: The insurance carrier shall pay to the State treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum Second injuries causing total disability. Special fund.

of one hundred dollars. The State treasurer shall be the custodian of this special fund and the commission shall direct the distribution thereof.

Death.

Sec. 16 (as amended by ch. 622, acts of 1916). If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Reasonable funeral expenses, not exceeding one hundred dollars.

2. If there be a surviving wife (or dependent husband) and no child of the deceased under the age of eighteen years, to such wife (or dependent husband) thirty per centum of the average wages of the deceased during widowhood (or dependent widowerhood) with two years' compensation in one sum upon remarriage; and if there be surviving child or children of the deceased under the age of eighteen years, the additional amount of ten per centum of such wages for each such child until the age of eighteen years; in case of the subsequent death of such surviving wife (or dependent husband) any surviving child of the deceased employee, at the time under eighteen years of age, shall have his compensation increased to fifteen per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years: *Provided*, That the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. The commission may, in its discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement by the commission the appointment of a guardian for such purposes shall not be necessary.

3. 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 centum of the wages of the deceased: *Provided*, That the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

4. If there be no surviving wife (or dependent husband) or child under the age of eighteen years, or if the amount payable to surviving wife (or dependent husband) and to children under the age of eighteen years shall be less in the aggregate than sixty-six and two-thirds per centum of the average wages of the deceased, then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, fifteen per centum of such wages for the support of each such person until the age of eighteen years; and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the accident, twenty-five per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum of such wages and the amount payable as hereinbefore provided to surviving wife (or dependent husband), or for the support of surviving child or children.

Any excess of wages over one hundred dollars a month shall not be taken into account in computing compensation under this section. All questions of dependency shall be determined as of the time of the accident.

Aliens.

Sec. 17 (as amended by chapter 622, acts of 1916). Compensation under this chapter to aliens not residents (or about to become non-residents) of the United States or Canada, shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or, if there be no surviving wife or child or children, to surviving father or mother, or grandfather or grandmother, whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the accident, and except that the commission may, at its option, or, upon the application of the insurance carrier, shall commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the commission.

Notice of injury or death.

Sec. 18 (as amended by chapter 634, acts of 1918). 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 acci-

dent 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 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.

SEC. 19. An employee injured claiming or entitled to compensation under this chapter shall, if requested by the commission, submit himself for medical examination at a time, and from time to time, at a place reasonably convenient for the employee, and as may be provided by the rules of the commission. If the employee or the insurance carrier request he shall be entitled to have a physician or physicians of his own selection to be paid by him present to participate in such examination. If an employee refuse to submit himself to examination, his right to prosecute any proceeding under this chapter shall be suspended, and no compensation shall be payable for the period of such refusal.

Medical examinations.

SEC. 20 (as amended by chapter 629, acts of 1919). At any time after the expiration of the first fourteen days of disability on the part of an injured employee, or at any time after his death, a claim for compensation may be presented to the employer or to the commission. The commission shall have full power and authority to determine all questions in relation to the payment of claims presented to it for compensation under the provisions of this chapter. The commission shall make or cause to be made such investigations as it deems necessary, and upon application of either party, shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the commission. Immediately after such filing the commission shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the commission shall be final as to all questions of fact, and, except as provided in section twenty-three, as to all questions of law. When the employer and employee, or in case of death, his principal dependent, enter into an agreement for the payment of compensation therefor pursuant to this chapter, a joint report of such claim containing such agreement shall be made to the commission within 10 days after the agreement is made and upon a form prepared by it and signed by the employer and employee, or in case of death his principal dependent.

Direct settlements.

Power of commission.

Report of agreement.

The commission shall, in every case in which an agreement has been entered into for the payment of compensation or death benefits, notify the beneficiary or beneficiaries and the employer and insurance carrier

Hearing.

to be present at a hearing for the purpose of determining whether or not the terms of agreement are strictly in accordance with the facts and the provisions of the law; and if they are found to be so, then the commission shall approve the agreement which approval shall constitute an award. Such hearing shall be held immediately after the employer or insurance carrier has notified the commission that it has made its last regular payment under the terms of the agreement and in no event later than sixty days after the joint report of agreement is filed with the commission. The employer shall upon the making of its last regular payment under the terms of the agreement give notice in writing to the commission upon a form prescribed by the commission which notice shall contain the name of the injured employee or his principal dependent, the date of accident, the date to which compensation has been paid and the whole amount of compensation paid. Such notice may be given for the employer by the insurance carrier, but the insurance carrier shall not be released from any liability hereunder for failure of the employer to give such notice. In case the employer or insurance carrier fails so to notify the commission of the cessation of payment within sixty days after the date to which compensation has been paid, the commission shall assess against such employer and his insurance carrier the sum of one hundred dollars, one-half of which shall be paid into the special fund created under favor of numbered paragraph seven of section fifteen herein and one-half of which shall be paid into the State treasury and be applicable to the expenses of the commission. However, the commission may make an award in the manner provided in this section in any case, and if the terms of the award vary from the joint report, the employer shall comply with the award.

Payments.

Sec. 20a (added by ch. 168, acts of 1915, amended by ch. 629, acts of 1919). Any employer or his insurance carrier shall upon the making of the agreement provided in section twenty pay to any injured employee or to the principal dependent of a deceased employee the compensation provided for in the agreement which shall not be less in the aggregate than the amount legally due at that time, in return for which he shall receive a receipt on a form prescribed by the commission and signed by the person receiving the money, which receipt shall specifically state in what capacity the signer acted when so receiving such money and which receipt shall be forwarded to the commission within forty-eight hours after the date of its issuance. The employer or his insurance carrier shall then continue to make payments of compensation according to the terms of the agreement and at regular intervals of not more than two weeks until the final payment is made when notice shall be given to the commission as is provided in section twenty, and in event of the failure to continue to make such payments without notifying the commission as aforesaid, there shall be imposed an additional penalty equal to 10 per centum of the unpaid compensation which shall accrue to the benefit of the injured workman or his dependents and shall be paid to them. In the event that the award is modified upon the hearing provided in section twenty, payment shall be adjusted to conform to the award, decision, or order made upon hearing. An employer or his insurance carrier may at his option advance to any injured employee or to the principal dependent of a deceased employee any sum of money, in return for which he shall receive a receipt on a form supplied by the commission and signed by the person receiving the money, which receipt shall specifically state in what capacity the signer acted while so receiving such money; such receipt shall be forwarded to the commission within forty-eight hours after date of its issuance. Should any agreement or award be made the sum so stated on the face of the receipt shall be credited to the payment under the award or agreement and shall be repaid as hereinbefore provided. Any money so advanced shall be at the employer's risk. Any employer who has made an advance payment under this section shall be entitled to be reimbursed by his insurance carrier out of an unpaid installment or installments of compensation due. No case in which an advance payment is made shall be barred by the failure of the employee to file a claim, and the commission may at any time order a hearing on any

Credits.

such case in the same manner as though a claim for compensation had been filed.

SEC. 21. In any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed in the absence of substantial evidence to the contrary—

Presumptions.

1. That the claim comes within the provisions of this chapter;
2. That sufficient notice thereof was given;
3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another;
4. That the injury did not result solely from the intoxication of the injured employee while on duty.

SEC. 22. Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions, the 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 chapter, and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys already paid.

Modification of awards.

SEC. 23 (as amended by ch. 705, acts of 1917). 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.

Appeals.

SEC. 24 (as amended by ch. 705, acts of 1917). If the commission or the court before which any proceedings for compensation or concerning an award of compensation have been brought, under this chapter, determines that such proceedings have not been so brought upon reasonable ground, it shall assess the whole cost of the proceedings upon the party who has so brought them. Claims for legal services in connection with any claim arising under this chapter, and claims for services or treatment rendered or supplies furnished pursuant to section thirteen of this chapter, shall not be enforceable unless approved by the commission. If so approved, such claim or claims shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the commission.

Costs.

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.

Interest.

SEC. 25 (as amended by ch. 629, acts of 1919). Compensation under the provisions of this chapter shall be payable periodically in accord-

Time of payments.

ance with the method of payment of the wages of the employee at the time of his injury or death, and shall be so provided for in any award; but the commission may determine that any payments may be made monthly or at any other period, as it may deem advisable.

If the employer has made advance payments of compensation as provided elsewhere in this chapter, he shall be entitled to be reimbursed out of an unpaid installment or installments of compensation due: *Provided*, His claim for reimbursement is filed before compensation is paid.

An injured employee, or in case of death his dependents or personal representatives, shall give receipts for payment of compensation to the employer paying the same and such employer shall forward receipts therefor promptly to the commission.

If the employer or his insurance carrier shall fail to make payments of compensation according to the terms of the award, there shall be imposed a penalty equal to twenty per centum of the unpaid compensation which shall accrue to the benefit of the injured workman or his dependents and shall be paid to him or them. When the final payment is made or due the employer or his insurance carrier shall within sixteen days send to the commission a notice on a form prescribed by the commission that such final payment is due or has been made fulfilling completely the terms of the award, which notice shall contain the name of the injured employee or his principal dependent, the date of accident, the date to which compensation has been paid and the whole amount of compensation paid, and in case the employer or his insurance carrier fail so to notify the commission of the cessation of payments within sixteen days after the date to which compensation is due or has been paid, the commission shall assess against such employer or his insurance carrier the sum of one hundred dollars, one-half of which shall be paid into the special fund created under favor of numbered paragraph seven of section fifteen herein, and one-half of which shall be paid into the State treasury and be applicable to the expenses of the commission. Whenever the commission may deem it advisable it may request any employer or insurance carrier to make a deposit with the treasurer of the commission to secure the prompt and convenient payment of such compensation, and the commission shall have power to make payments therefrom upon any awards.

Lump sums.

The commission, whenever it shall so deem advisable, may compute such periodical payments to one or more lump-sum payments to the injured employee, or in case of death his dependents: *Provided*, The same shall be in the interest of justice. Such commutation shall be made according to the method prescribed in section 27 of this chapter.

Delinquent payments.

SEC 26 (as amended by ch. 167, acts of 1915, and ch. 622, acts of 1916). If payment of compensation, or an installment thereof, due under the terms of an award, be not made by the employer within ten days after the same is due, the insurance carrier shall be liable therefor, and if not paid within ten days after demand by the injured employee, or in case of death his dependents or by the commission, the amount of such payment shall constitute a liquidated claim for damages against the employer, self-insurer, or insurance corporation, which with an added penalty of fifty per centum may be recovered in an action to be instituted by the commission in the name of the people of the State. An employer who negligently or intentionally defaults in payment of compensation in the first instance under this chapter shall be liable to a penalty of not more than ten per centum of the amount of such compensation, notwithstanding the fact that the insurance corporation or State fund subsequently pays the compensation as provided in this section. If such default be made in the payment of an installment of compensation and the whole amount of such compensation be not due, the commission may, if the present value of such compensation be computable, declare the whole amount thereof due, and recover the amount thereof with the added penalties, as provided by this section. Any such action may be compromised by the commission or may be prosecuted to final judgment as, in the discretion of the commission, may best serve the interest of the persons entitled to receive the compensation or the benefits. Compensation recovered under this section

shall be disbursed by the commission to the persons entitled thereto in accordance with the award. A penalty recovered pursuant to this section shall be paid into the State treasury and be applicable to the expenses of the commission.

In case of default by the employer in the payment of any compensation due under an award for the period of thirty days after payment is due and payable, any party in interest may file with the county clerk for the county in which the injury occurred, a certified copy of a decision of the State industrial commission awarding compensation, or ending, diminishing, or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor, and thereupon judgment must be entered in the supreme court by the clerk of such county in conformity therewith immediately upon the filing of such decision. Such decree or judgment shall be entered in the same manner and 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 the supreme court, except that there shall be no appeal therefrom. The court upon the filing with it of a certified copy of a decision of the State industrial commission ending, diminishing, or increasing compensation previously awarded shall revoke or modify its prior decree or judgment so that it will conform to said decision. Neither the commission nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument executed in pursuance of this section.

Procedure.

SEC. 27 (as amended by ch. 705, acts of 1917). 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 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 permanent 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.

Deposits.

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.

SEC. 28 (as amended by ch. 634, acts of 1918). 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 com-

Limitation.

- mission on the hearing of a claim for compensation filed by the injured employee, or his or her dependents.
- Subrogation of employer to employee's rights.** Sec. 29 (as amended by ch. 705, acts of 1917). 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 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.
- Independent benefits.** Sec. 30 (as amended by ch. 316, acts of 1914). No benefits, savings, or insurance of the injured employee, independent of the provisions of this chapter, shall be considered in determining the compensation or benefits to be paid under this chapter, except that in case of the death of an employee of the State, a municipal corporation, or any other political subdivision of the State any benefit payable under a pension system which is not sustained in whole or in part by the contributions of the employee may be applied toward the payment of the death benefit provided by this chapter.
- Contributions by employees.** Sec. 31. No agreement by an employee to pay any portion of the premium paid by his employer to the State insurance fund or to contribute to a benefit fund or department maintained by such employer or to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing 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 chapter shall be guilty of a misdemeanor.
- Waivers.** Sec. 32. No agreement by an employee to waive his right to compensation under this chapter shall be valid.
- Assignments, etc., of claims.** Sec. 33 (as amended by ch. 498, acts of 1919). Claims for compensation or benefits due under this chapter shall not be assigned, released, or commuted except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees or their dependents. In case of the death of an injured employee to whom there was due at the time of his or her death any compensation under the provisions of this chapter, not exceeding the sum of two hundred and fifty dollars, the amount of such compensation shall be payable to the surviving wife or husband, if there be one, or,
- Unpaid balances.**

if none, to the surviving child or children of the deceased under the age of eighteen years, and if there be no surviving wife or children, then to the dependents of such deceased employee or to any of them as the commission may direct.

Sec. 34. The right of compensation granted by this chapter and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer as is now or hereafter may be allowed by law for a claim for unpaid wages for labor.

Preferences.

Sec. 35 (added by ch. 458, acts of 1919). The board of supervisors of each county of the State may provide for the payment of compensation under this chapter to town, village, city, and county employees by taxation, which shall be known as the "taxation system" of paying such compensation. Whenever compensation shall be awarded under this chapter to a town, village, city, or county employee, in a county which has adopted such taxation system, the county treasurer of such county forthwith shall pay such award out of any money of such county applicable thereto. If he have no such money in his possession or under his control, he shall immediately borrow upon the credit of the county by temporary loan sufficient money to pay and he shall pay such award. The money so borrowed shall be a county charge and shall be included by the board of supervisors in the next succeeding tax levy, in addition to all other sums authorized to be raised thereby, and such money shall be levied by such board on the taxable property in such county and, when raised, shall be paid into the county treasury and used to reimburse the county for any money advanced or to pay money borrowed to pay awards under this chapter.

Employees of municipalities.

Article 3.

SECTION 50 (as amended by acts of 1914, 1916, 1917, 1919). An employer shall secure compensation to his employees in one of the following ways:

Guaranty of payments.

1. By insuring and keeping insured the payment of such compensation in the State 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 this State. If insurance be so effected in such a corporation or mutual association the employer shall forthwith file with the commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual association and such information regarding the policies as the commission may require.

3. By furnishing satisfactory proof to the commission of his financial ability to pay such compensation for himself, in which case the commission may, in its discretion, require the deposit with the commission of securities of the kind prescribed in section thirteen of the insurance law, in an amount to be determined by the commission, to secure his liability to pay the compensation provided in this chapter. 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. The commission shall have the authority to revoke its consent furnished under this section at any time for good cause shown.

4. If a county, by adopting the taxation system provided in this chapter. [Sec. 35.]

If an employer fail to comply with this section, he shall be liable to a penalty during which such failure continues [sic] of an amount equal to the pro rata premium which would have been payable for insurance in the State fund for such period of noncompliance to be recovered in an action brought by the commission.

Failure to guarantee payments.

The commission may, in its discretion, for good cause shown, remit any such penalty, provided the employer in default secure compensation as provided in this section.

Sec. 51. Every employer who has complied with section fifty of this chapter shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed

Notice to be posted.

notices in form prescribed by the commission, stating the fact that he has complied with all the rules and regulations of the commission and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter.

SEC. 52 (as amended by chap 622, acts of 1916). Failure to secure the payment of compensation shall constitute a misdemeanor and have the effect of enabling the injured employee, or in case of death his dependents or legal representatives, to maintain an action for damages in the courts, as prescribed by section eleven of this chapter.

SEC. 53. An employer securing the payment of compensation by contributing premiums to the State fund shall thereby become relieved from all liability for personal injuries or death sustained by his employees, and the persons entitled to compensation under this chapter shall have recourse therefor only to the State fund and not to the employer. An employer shall not otherwise be relieved from the liability for compensation prescribed by this chapter except by the payment thereof by himself or his insurance carrier.

SEC. 54 (as amended by chap. 622, acts of 1916). 1. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association authorized to transact workmen's compensation insurance in this State shall contain a provision setting forth the right of the commission to enforce in the name of the people of the State of New York for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, 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.

2. Every such policy 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 chapter, 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 under the provisions of this chapter.

3. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer 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.

4. 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 shall also cover liability for the payment of the compensation provided for by this chapter.

5. No contract of insurance issued by an insurance carrier against liability arising under this chapter shall be cancelled within the time limited in such contract for its expiration until at least ten days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the commission 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: *Provided, however,* The right to cancellation of a policy of insurance in the State fund shall be exercised only for nonpayment of premiums.

6. Any insurance carrier may issue policies, including with employees, employers who perform labor incidental to their occupations, such policies insuring to such employers the same compensations provided for their employees, and at the same rates: *Provided, however,*

Employer's failure to secure payments.

Payments to State fund a release.

Insurers directly liable.

Community of knowledge.

Insolvency of employers.

Agreements to limit indemnity.

Cancellation of contracts of insurance.

Working employers.

That the estimation of their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their pay rolls upon which their premium is computed. The employer so insured shall have the same rights and remedies given an employee by this chapter.

Article 4.

SECTION 62 (as amended by ch. 674, acts of 1915). The commission may make the necessary expenditure to obtain statistical and other information to establish classifications of employments with respect to hazards and risks. The expenses of the commission, including the premiums to be paid by the State treasurer for the bond to be furnished by him, shall be paid out of the State treasury upon vouchers signed by at least two commissioners.

Expenses.

SEC. 63. The commission shall keep and maintain its principal office in the city of Albany, in rooms in the capitol assigned by the trustees of public buildings. The office shall be supplied with necessary office furniture, supplies, books, maps, stationery, telephone connections, and other necessary appliances at the expense of the State, payable in the same manner as other expenses of the commission.

Office.

SEC. 64. The commission shall be in continuous session and open for the transaction of business during all business hours of every day excepting Sundays and legal holidays. All sessions shall be open to the public and may be adjourned, upon entry thereof in its records, without further notice. Whenever convenience of parties will be promoted or delay and expense prevented, the commission may hold sessions in cities other than the city of Albany. A party may appear before such commission and be heard in person or by attorney. Every vote and official act of the commission shall be entered of record, and the records shall contain a record of each case considered, and the award, decision, or order made with respect thereto, and all voting shall be by the calling of each commissioner's name by the secretary, and each vote shall be recorded as cast. A majority of the commission shall constitute a quorum. A vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the full commission so long as a majority remains.

Sessions.

SEC. 65. Any investigation, inquiry, or hearing which the commission is authorized to hold or undertake may be held or taken by or before any commissioner or deputy commissioner, and the award, decision, or order of a commissioner or deputy commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the award, decision, or order of the commission. Each commissioner and deputy shall, for the purposes of this chapter, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. The commission may authorize any deputy to conduct any such investigation, inquiry, or hearing, in which case he shall have the power of a commissioner in respect thereof.

Powers of commissioners.

SEC. 66. The secretary of the commission shall:

Secretary.

1. Maintain a full and true record of all proceedings of the commission, of all documents or papers ordered filed by the commission, of decisions or orders made by a commissioner or deputy commissioner, and of all decisions or orders made by the commission or approved and confirmed by it and ordered filed, and he shall be responsible to the commission for the safe custody and preservation of all such documents at its office;

2. Have power to administer oaths in all parts of the State, so far as the exercise of such power is properly incident to the performance of his duty or that of the commission;

3. Designate, from time to time, with the approval of the commission, one of the clerks appointed by the commission to exercise the powers and duties of the secretary during his absence;

4. Under the direction of the commission, have general charge of its office, superintend its clerical business, and perform such other duties as the commission may prescribe.

- Rules.** SEC. 67. The commission shall adopt reasonable rules, not inconsistent with this chapter, regulating and providing for—
1. The kind and character of notices, and the service thereof, in case of accident and injury to employees;
 2. The nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to compensation;
 3. The forms of application for those claiming to be entitled to compensation;
 4. The method of making investigations, physical examinations, and inspections;
 5. The time within which adjudications and awards shall be made;
 6. The conduct of hearings, investigations, and inquiries;
 7. The giving of undertakings by all subordinates who are empowered to receive and disburse moneys, to be approved by the attorney general as to form and by the comptroller as to sufficiency;
 8. Carrying into effect the provisions of this chapter;
 9. The collection, maintenance, and disbursement of the State insurance fund.
- Procedure** SEC. 68. The commission or a commissioner or deputy commissioner in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties.
- Subpoenas.** SEC. 69. A subpoena shall be signed and issued by a commissioner, a deputy commissioner, or by the secretary of the commission and may be served by any person of full age in the same manner as a subpoena issued out of a court of record. If a person fail, without reasonable cause, to attend in obedience to a subpoena, or to be sworn or examined or answer a question or produce a book or paper, or to subscribe and swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor.
- Contempt.** SEC. 70. If a person in attendance before the commission or a commissioner or deputy commissioner refuses, without reasonable cause, to be examined or to answer a legal and pertinent question or to produce a book or paper, when ordered so to do by the commission or a commissioner or deputy commissioner, the commission may apply to a justice of the supreme court upon proof by affidavit of the facts for an order returnable in not less than two nor more than five days directing such person to show cause before the justice who made the order, or any other justice of the supreme court, why he should not be committed to jail. Upon the return of such order the justice shall examine under oath such person and give him an opportunity to be heard; and if the justice determine that he has refused without reasonable cause or legal excuse to be examined or to answer a legal and pertinent question, or to produce a book or paper which he was ordered to bring, he may forthwith, by warrant, 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.
- Fees, etc., of witnesses.** SEC. 71. Each witness who appears in obedience to a subpoena before the commission or a commissioner or deputy commissioner, or person employed by the commission to obtain the required information, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the supreme court, which shall be audited and paid from the State treasury in the same manner as other expenses of the commission. A witness subpoenaed at the instance of a party other than the commission, a commissioner, deputy commissioner, or person acting under the authority of the commission, shall be entitled to fees or compensation from the State treasury, if the commission certify that his testimony was material to the matter investigated, but not otherwise.
- Depositions.** SEC. 72. The commission may cause depositions 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 supreme court.
- Transcripts of minutes.** SEC. 73. A transcribed copy of the testimony, evidence, and procedure or of a specific part thereof, or of the testimony of a particular witness or of a specific part thereof, on any investigation, by a stenographer

appointed by the commission, being certified by such stenographer to be a true and correct transcript thereof and to have been carefully compared by him with his original notes, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts so certified, and a copy of such transcript shall be furnished on demand to any party upon payment of the fee provided for a transcript of similar minutes in the supreme court.

Sec. 74. The power 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 relating thereto, as in its opinion may be just.

Jurisdiction to be continuing.

Sec. 75. Annually on or before the first day of February, the commission shall make a report to the legislature, which shall include a statement of the number of awards made by it and the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the expenses of the commission, the condition of the State insurance fund, together with any other matter which the commission deems proper to report to the legislature, including any recommendations it may desire to make.

Reports.

Sec. 76. The commission shall prepare and cause to be distributed so that the same may be readily available blank forms of application for compensation, notice to employers, proofs of injury or death, of medical or other attendance or treatment, of employment and wage earnings, and for such other purposes as may be required. Insured employers shall constantly keep on hand a sufficient supply of such blanks.

Blanks.

Sec. 77 (added by ch. 622, acts of 1916). As soon as practicable after July first, nineteen hundred and seventeen, and annually thereafter, the commission shall ascertain the total amount of its expenses incurred during the preceding fiscal year, in connection with the administration of the workmen's compensation law, and shall thereupon assess upon and collect from each insurance carrier, including the State insurance fund, the proportion of such expense that the total compensation or payments made by such carrier in such year bore to the total compensation or payments made by all insurance carriers. The amounts so secured shall be transferred to the State treasury to reimburse it for this portion of the expense of administering this chapter.

Expenses of commission.

Article 5.

SECTION 90. There is hereby created a fund to be known as "The State Insurance Fund," for the purpose of insuring employers against liability under this chapter and of assuring to the persons entitled thereto the compensation provided by this chapter. Such fund shall consist of all premiums 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 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 expenses in the manner provided in this chapter.

State Insurance Fund.

Sec. 91. 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 commission and signed by any two members thereof. The State treasurer shall give a separate and additional bond in an amount to be fixed by the governor and with sureties approved by the State comptroller conditioned for the faithful performance of his duty as custodian of the State fund. The State treasurer may deposit any portion of the State 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.

Custodian.

Sec. 92 (as amended by ch. 622, acts of 1916). Ten per centum of the premiums collected from employers insured in the fund shall be set aside by the commission for the creation of a surplus until such

Surplus and reserve.

surplus shall amount to the sum of one hundred thousand dollars, and thereafter five per centum of such premiums until such time as in the judgment of the commission such surplus shall be sufficiently large to cover the catastrophe hazard. The commission shall also set up and maintain reserves adequate to meet anticipated losses and carry all claims and policies to maturity, which reserves shall be computed in accordance with such rules as shall be approved by the superintendent of insurance.

Investments.

SEC. 93 (as amended by ch. 622, acts of 1916). Any of the surplus or reserve funds belonging to the State insurance fund may, pursuant to a resolution of the commission approved by the superintendent of insurance, be invested in or loaned on the pledge of any of the securities in which deposits of insurance corporations are required to be invested pursuant to section thirteen of the insurance law, or in the public stocks or bonds of any one of the United States, or in bonds and mortgages on improved unincumbered real property in this State worth fifty per centum more than the amount loaned thereon. 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 vouchers drawn on the State insurance fund for the making of such investments when signed by two members of the commission, upon delivery of such securities or evidences of indebtedness to him, when there is attached to such vouchers a certified copy of the resolution of the commission authorizing the investment. The commission may, upon like resolution approved by the superintendent of insurance, sell any of such securities.

Expense of administration.

SEC. 94 (as amended by ch. 622, acts of 1916). The entire expenses 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 and seventeen, and annually thereafter in such month, the commission shall ascertain the just amount incurred by the commission during the preceding fiscal year, in the administration of the State insurance fund, and shall refund such amount to the State treasury. If there be employees of the commission other than the commissioners themselves and the secretary whose time is devoted partly to the general work of the commission and partly to the work of the State insurance fund, and in case there is other expense which is incurred jointly on behalf of the general work of the commission and the State insurance fund, an equitable apportionment of the expense shall be made for such purpose and the part thereof which is applicable to the State insurance fund shall be chargeable thereto.

Risks and premiums.

SEC. 95. Employments coming under the provisions of this chapter shall be divided for the purposes of the State fund into the groups set forth in section two of this chapter. Separate accounts shall be kept of the amounts collected and expended in respect to each such group for convenience in determining equitable rates; but for the purpose of paying compensation the State fund shall be deemed one and indivisible. The commission shall have power to rearrange any of the groups set forth in section two by withdrawing any employment embraced in it and transferring it wholly or in part to any other group, and from such employments to set up new groups at its discretion. The commission shall determine the hazards of the different classes composing each group 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 reasonable surplus and reserve; and for such purpose may adopt a system of schedule rating in such manner as to take account of the peculiar hazard of each individual risk.

Associations for accident prevention.

SEC. 96. The employers in any of the groups described in section two or established by the commission may, with the approval of the commission, form themselves into an association for accident prevention, and may make rules for that purpose. If the commission is of the opinion that an association so formed sufficiently represents the em-

ployers in such group it may approve such rules, and when so approved by the industrial board of the labor department they shall be binding on all employers in such group. If such an approved association appoint an inspector or expert for the purpose of accident prevention, the commission may at its discretion provide in whole or in part for the payment of the remuneration and expenses of such inspector or expert, such payment to be charged in the accounting to such group. Every such approved association may make recommendations to the commission concerning the fixing of premiums for classes of hazards and for individual risks within such group.

Sec. 97 (as amended by ch. 622, acts of 1916, and chapter 705, acts of 1917). The following requirements shall be observed in classifying employments and fixing and adjusting premium rates: Rules as to classifications, etc.

1. The commission shall keep an accurate account of the money paid in premiums by each of the several classes of employments or industries, and the disbursements on account of injuries and deaths of employees thereof, including the setting up of reserves adequate to meet anticipated losses and to carry the claims to maturity, and also, an account of the money received from each individual employer and the amount disbursed from the State insurance fund on account of injuries and death of the employees of such employer, including the reserves so set up;

2. January first, nineteen hundred and fifteen, and every fifth year thereafter, 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 groups of employment or industries and of each hazard class therein, which, in the judgment of the commission, shall have developed an average loss ratio, in accordance with the experience of the commission in the administration of the law as shown by the accounts kept as provided herein;

3. If any such accounting show an aggregate balance (deemed by the commission to be safely and properly divisible) remaining to the credit of any class of employment or industry, after the amount required shall have been credited to the surplus and reserve funds and after the payment of all awards for injury or death lawfully chargeable against the same, the commission may in its discretion credit to each individual member of such group, 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, and whose premium or premiums exceed the amount of the disbursements from the fund on account of injuries or death of his employees during such period, on the installment or installments of premiums next due from him, such proportion of such balance as the amount of his prior paid premiums sustains to the whole amount of such premiums paid by the group to which he belongs since the last readjustment of rates. In the event that any member of the group who has heretofore or shall hereafter withdraw would have become entitled to such dividend if he had remained in the fund the commission is empowered to pay the amount of the dividend to such employer.

4. If 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 payment as a basis, an adjustment of the amount of such premium shall be made at the end of such six months, 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 six months, such employer shall immediately, upon being advised of the true amount of such premium due, forthwith pay to the treasurer of the State 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 six months' period.
- Premiums payable, when.** Sec. 98. Except as otherwise provided in this chapter, all premiums shall be paid by every employer into the State insurance fund on or before July first, nineteen hundred and fourteen, and semiannually thereafter, or at such other time or times as may be prescribed by the commission. The commission shall mail a receipt for the same to the employer and place the same to the credit of the State insurance fund in the custody of the State treasurer.
- Collection of premiums.** Sec. 99. 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 people of the State of New York, and it shall be the duty of the commission on the first Monday of each month after July first, nineteen hundred and fourteen, to certify to the attorney general of the State the names and residences, or places of business, of all employers known to the commission to be in default for such payment or payments for a longer period than five days and the amount due from 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 such employer's compliance with the provisions of this chapter 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.
- Withdrawal of employers from fund.** Sec. 100. Any employer may, upon complying with subdivision two or three of section fifty of this chapter, withdraw from the fund by turning in his insurance contract for cancellation: *Provided*, He is not in arrears for premiums due the fund and has given to the commission written notice of his intention to withdraw within thirty days before the expiration of the period for which he has elected to insure in the fund: *Provided*, That in case any employer so withdraws, his liability to assessments shall, notwithstanding such withdrawal, continue for one year after the date of such withdrawal as against all liabilities for such compensation accruing prior to such withdrawal.
- Pay rolls.** Sec. 101. 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 commission, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as the commission shall require to verify the number of employees and the amount of the pay roll.
- Falsification of pay rolls.** Sec. 102. An employer who shall willfully misrepresent the amount of the pay roll upon which the premiums chargeable by the State insurance fund is 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 in the name of the State insurance fund, and any amount so collected shall become a part of such fund.
- Misrepresentations.** Sec. 103. 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. 104. The commission shall have the right to inspect the plants and establishments of employers insured in the State insurance fund; and the inspectors designated by the commission shall have free access to such premises during regular working hours.
- Information confidential.** Sec. 105. Information acquired by the commission or its officers or employees from employers or employees pursuant to this chapter shall not be opened to public inspection, and any officer or employee of the commission who, without authority of the commission or pursuant to its rules or as otherwise required by law, shall disclose the same shall be guilty of a misdemeanor.
- Reports.** Sec. 106 (added by chapter 622, acts of 1916). The commission shall make reports to the superintendent of insurance concerning the State

insurance fund at the same times and in the same manner as is required from mutual employers' liability and workmen's compensation corporations by section one hundred and ninety-two of the insurance law, and the superintendent of insurance may examine into the condition of such State insurance fund at any time, either personally or by any duly authorized examiner appointed by him, for the purpose of determining the condition of the investments and the adequacy of the reserves of such fund.

Examinations.

Article 6.

SECTION 110. All penalties imposed by this chapter shall be applicable to the expenses of the commission. When collected by the commission such penalties shall be paid into the State treasury and be thereafter appropriated by the legislature for the purposes prescribed by this section.

Penalties go to expense funds.

Sec. 111. Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing by the employer to the commission upon blanks to be procured from the commission for that purpose. Such report shall state 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, the time, nature, and cause of the injury and such other information as may be required by the commission. An employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars.

Accidents to be reported.

Sec. 112. Every employer shall furnish the commission, upon request, any information required by it to carry out the provisions of this chapter. The commission, a commissioner, deputy commissioner, or any person deputized by the commission for that purpose, may examine under oath any employer, officer, agent, or employee. An employer or an employee receiving from the commission a blank with directions to file the same shall cause the same to be properly filled out so as to answer fully and correctly all questions therein, or if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the commission within the period fixed by the commission therefor.

Employers to furnish information.

Sec. 113. All books, records, and pay rolls of the employers showing or reflecting in any way upon the amount of wage expenditures of such employers shall always be open for inspection by the commission or any of its authorized auditors, accountants, or inspectors for the purpose of ascertaining the correctness of the wage expenditure and number of men employed and such other information as may be necessary for the uses and purposes of the commission in the administration of this chapter.

Inspection of employers' records.

Sec. 114. The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also in interstate or 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, except that such employer and his employees working only in this State may, subject to the approval and in the manner provided by the commission and so far as not forbidden by any act of Congress, accept and become bound by the provisions of this chapter in like manner and with the same effect in all respects as provided herein for other employers and their employees.

Interstate commerce.

Sec 115. If for the purpose of obtaining any benefits or payment under the provisions of this chapter, either for himself or any other person, any person willfully makes a false statement or representation, he shall be guilty of a misdemeanor.

False statements.

Sec. 116. No limitation of time provided in this chapter 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.

Limitations as to incompetents.

- Commissioner of labor. SEC. 117. The commissioner of labor shall render to the commission any proper aid and assistance by the department of labor as in his judgment does not interfere with the proper conduct of such department.
- Invalidity of part of law. SEC. 118. If any section or provision of this chapter be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.
- Pending causes. SEC. 119. This act shall not affect any action pending or cause of action existing or which accrued prior to July first, nineteen hundred and fourteen.

Article 7.

- Act takes effect, when. SECTION 131. This chapter shall take effect immediately: *Provided*, That the application of this chapter as between employers and employees and the payment of compensation for injuries to employees or their dependents, in case of death, shall take effect July first, nineteen hundred and fourteen, but payments into the State insurance fund may be made prior to July first, nineteen hundred and fourteen.
- Approved March 16, 1914.

ACTS OF 1914.

CHAPTER 16.—*Workmen's compensation insurance—Premium rates.*

- Rates to be approved. SECTION 1. Article one of chapter * * * twenty-eight of the Consolidated Laws is hereby amended by adding at the end thereof a new section, to be section sixty-seven, to read as follows:
- Section 67. Every insurance corporation or association, except the State insurance fund as administered by the State workmen's compensation commission, authorized to transact business in this State, which insures employers against liability for compensation under the workmen's compensation law, shall file with the superintendent of insurance its classification of risks and premiums relating thereto, and any subsequent proposed classification of risks and premiums, together with basis rates and schedules, if a system of schedule rating be in use, none of which shall take effect until the superintendent of insurance shall have approved the same as adequate for the risks to which they respectively apply. The superintendent of insurance may withdraw his approval of any premium rate or schedule made by any insurance corporation or association if, in his judgment, such premium rate or schedule is inadequate to provide the necessary reserves.
- Became a law March 4, 1914.

ACTS OF 1915.

CHAPTER 674.—*Workmen's compensation commission—Transfer of powers, etc.*

- Compensation commission abolished. SECTION 4. The State workmen's compensation commission, created as provided in section sixty of the workmen's compensation law [chapter 816, acts of 1913], is hereby abolished, and the terms of office of the members of such commission then in office shall cease on the appointment and qualification of the members of the industrial commission. All the powers, duties, obligations, and liabilities conferred or imposed by law upon the workmen's compensation commission by the workmen's compensation law or any other statute are hereby conferred and imposed upon the State industrial commission, and such commission may exercise and perform such powers and duties and shall be subject to such obligations and liabilities in the same manner, to the same extent, and with the same force and effect as would have been the case had the workmen's compensation commission been continued in office. For the purpose of exercising such powers, performing such duties, being subjected to such obligations and liabilities, the State industrial commission shall be deemed to be a continuation of such workmen's compensation commission. The offices of secretary to the workmen's compensation commission and of the deputies appointed by the workmen's compensation commission are hereby
- Functions continuing.

abolished, and the powers and duties of such officers then in office shall cease upon the appointment and qualification of the members of the industrial commission.

Sec. 5. All other officers, assistants, inspectors, and employees of the department of labor or the workmen's compensation commission in office when this act takes effect shall continue in office until removed by the industrial commission or until their offices are abolished as provided by law. Employees hold over.

Sec. 6. The rules, regulations, and orders of the commissioner of labor, the industrial board, or the workmen's compensation commission in force when this act takes effect enacted or promulgated pursuant to law are continued in full force and shall be operative until modified, superseded, or repealed by the industrial commission. This act shall not affect pending cases or proceedings, civil or criminal, brought by or against the commissioner of labor or the workmen's compensation commission. All proceedings, hearings, investigations, and other matters pending before the commissioner of labor, the industrial board, or the workmen's compensation commission shall be continued and brought to final determination before the industrial commission in the same manner as though the commissioner of labor, the industrial board, and the workmen's compensation commission had been continued in office. Any award or determination made by the workmen's compensation commission prior to the taking effect of this act shall have the same force and effect as though the workmen's compensation commission had been continued in office. Rules continue.

Sec. 7. Whenever the term "department of labor," "commissioner of labor," "industrial board," or "workmen's compensation commission" occurs in any law or in any rule or regulation made in pursuance of law, or whenever in any law reference is made to such department, commissioner, board, commission, or officer, such term or reference shall be deemed to mean the industrial commission as established by this act. Use of terms.

Became a law May 22, 1915.

ACTS OF 1916.

CHAPTER 478.—*Workmen's compensation insurance—Contracts for public works.*

SECTION 1. Article five of chapter twenty-four of the Consolidated Laws is hereby amended by adding at the end thereof a new section, to be section ninety, to read as follows:

Section 90. Each contract to which a municipality, or any public department or official thereof, is a party and which is of such a character that the employees engaged thereon are required to be insured by the provisions of chapter forty-one of the laws of nineteen hundred and fourteen, known as the workmen's compensation law, and acts amendatory thereto, shall contain a stipulation that the same shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of said law. Contracts with municipalities.

SEC. 2. Article two of chapter fifty-six of the Consolidated Laws is hereby amended by adding at the end thereof a new section, to be section fifty-one, to read as follows:

SECTION 51. Each contract to which the State, any public department or official thereof, or a commission appointed pursuant to law is a party and which is of such a character that the employees engaged thereon are required to be insured by the provisions of chapter forty-one of the laws of nineteen hundred and fourteen, known as the workmen's compensation law, and acts amendatory thereto, shall contain a stipulation that the same shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of said law. Contracts with the State.

Became a law May 9, 1916.

NORTH DAKOTA.

ACTS OF 1919.

CHAPTER 162.—*Compensation of workmen for injuries—State insurance fund.*

Remedy exclu-
sive.

SECTION 1. The State of North Dakota, exercising herein its police and sovereign powers hereby declares that the prosperity of the State depends in a large measure upon the well-being of its wage workers, and, therefore, for workmen injured in hazardous employments, and their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as 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.

Definitions.

SEC. 2. Whenever used in this act—

“Employment” includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein, and all private employments.

“Hazardous employment” means any employment in which one or more employees are regularly employed in the same business, or in or about the same establishment, except agriculture and domestic service and any common carrier by steam railroad.

“Employee” means every person engaged in a hazardous employment 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, but excluding any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer.

“Employer” means the State and all political subdivisions thereof, all public and quasi-public corporations therein, and every person, partnership, association, and private corporation, including any public service corporation, and the legal representative of any deceased employer, or the receiver or trustee of a person, partnership, association, or corporation carrying on a hazardous employment.

“Injury” means only an injury arising in the course of employment, including an injury caused by the wilful act of a third person directed against an employee because of his employment, but shall not include injuries caused by the employee’s wilful intention to injure himself or to injure another. If the employer claims an exemption or forfeiture under this section the burden of proof shall be upon him.

“Partial disability” includes disfigurement resulting from an injury such as to diminish ability to obtain employment.

“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.

“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 terms 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 of employment 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 a larger regular wages, only such larger wages shall be taken into consideration in computing his average weekly wages.

"Child" includes stepchildren, adopted children, posthumous children, and acknowledged illegitimate children, but does not include married children unless dependent. "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. All of the above terms and the term "grandchild" include only persons who at the time of the death of the deceased employee are under eighteen years of age or over that age and incapable of self-support. "Parent" includes step-parents and parents by adoption. "Widow" includes only the decedent's wife living with or dependent for support upon him at the time of his injury. "Widower" includes only the decedent's husband dependent for support upon her at the time of her injury. "Adopted" and "adoption" include only legal adoption prior to the time of the injury.

Any term shall include the singular and plural, and both sexes where the context so requires.

SEC. 3. On and after July 1, 1919, it shall be the duty of the workmen's compensation bureau hereinafter created to disburse compensation from the North Dakota workmen's compensation fund to any employee subject to this act for injury arising in the course of employment in accordance with the following provisions:

A. Immediately after an injury sustained by an employee and during the resulting period of disability the North Dakota workmen's compensation fund shall furnish to such employee such medical, surgical and hospital service and supplies as the nature of the injury may require.

B. During the first seven days of disability the employee shall not be entitled to compensation except as provided in the preceding paragraph, provided that if the period of disability exceeds seven days compensation shall be paid from the date of injury.

C. If the injury cause total disability the North Dakota workmen's compensation fund shall pay to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds per cent of his weekly wages.

D. If the injury cause temporary partial disability the North Dakota workmen's compensation fund shall pay to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds per cent of his loss in earning capacity.

E. If the injury cause permanent partial disability the percentage which such disability bears to total disability, taking into consideration the employee's age and occupation, shall be determined and the North Dakota workmen's compensation fund shall pay to the disabled employee a weekly compensation equal to sixty-six and two-thirds per cent of his weekly wages for the following periods:

| | Weeks. |
|---|--------|
| For a one per cent disability | 5.2 |
| For a ten per cent disability | 52 |
| For a twenty per cent disability | 104 |
| For a thirty per cent disability | 156 |
| For a forty per cent disability | 208 |
| For a fifty per cent disability | 260 |
| For a sixty per cent disability | 312 |
| For a seventy per cent disability | 364 |
| For an eighty per cent disability | 416 |
| For a ninety per cent disability | 468 |

The bureau shall immediately fix and file its schedule of specific benefits to be allowed for specific injuries, but such schedule shall not be changed more than once in each year. The bureau shall not decrease, but may, however, in any case, for cause shown, increase such specific benefits.

F. The weekly compensation for total disability shall not be more than \$20 nor less than \$6, unless the employee's weekly wages are less than \$6, in which case his weekly compensation shall be the full amount of his weekly wages. The weekly compensation for partial disability shall not be more than \$20. In the case of persons who at the time of

Benefits to be paid.

Medical, etc., aid.

Waiting time.

Total disability.

Temporary partial disability.

Permanent partial disability.

Maximum and minimum payments.

the injury were minors or employed in a learner's capacity and who were not physically or mentally defective, the bureau shall, on any review after the time when the weekly wage-earning capacity of such person would probably but for the injury have increased, award compensation based on such probable weekly wage-earning capacity.

Death.

G. If death results from the injury within six years the North Dakota workmen's compensation fund shall pay to the following persons for the following periods a weekly compensation equal to the following percentages of the deceased employee's weekly wages, subject to the modification that no compensation shall be paid where death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death more than one year after the injury:

(a) To the widow, if there is no child, thirty-five per cent. This compensation shall be paid until her death or marriage. In case of marriage, there shall be paid to her a lump sum equal to 156 weeks' compensation.

(b) To the widow, if there is no child, thirty-five per cent if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or marriage.

(c) To the widow or widower, if there is a child, the compensation payable under the clause (a) or clause (b) and in addition thereto ten per cent for each child, not to exceed a total of sixty-six and two thirds per cent for such widow or widower and children. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support.

(d) To the children, if there is no widow or widower, twenty-five per cent for one child and ten per cent additional for each additional child not to exceed a total of sixty-six and two-thirds per cent, divided among such children share and share alike. The compensation of each child shall be paid until he dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian.

(e) To the parents, if one is 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 is or both are partly dependent, a proportionate amount in the discretion of the bureau. The above percentages shall be paid if there is no widow, widower, or child. If there is 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 sixty-six and two-thirds per cent.

(f) To the brothers, sisters, grandparents, and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his death, twenty per cent to such dependent; if more than one are wholly dependent, thirty per cent 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. The above percentages shall be paid if there is no widow, widower, child or dependent parent. If there is a widow, widower, child, or dependent parent, there shall be paid so much of the above percentages as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of sixty-six and two-thirds per cent.

(g) The compensation of each beneficiary under clause (e) may continue until such dependent parent dies, marries, or ceases to be dependent, and the compensation of each beneficiary under clause (f) shall be paid for a period of eight years from the time of the death, unless before that time, he, if a grandparent, dies, marries, or ceases to be dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister, or grandchild under legal age shall be paid to his or her guardian.

(h) Upon the cessation of compensation under this section to or on account of any person, the compensation or [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. Adjustments.

(i) 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 bureau may, in its discretion, modify the apportionment to meet the requirements of the case.

(j) If any person entitled to compensation under this section whose compensation by the terms of this section ceases upon his marriage, accepts any payments of compensation after his marriage, he shall be guilty of a misdemeanor.

(k) In computing compensation in case of death the weekly wages of the deceased shall be considered to have been not more than \$30 nor less than \$18, but the total weekly compensation shall not exceed the weekly wages of the deceased. Basic wages.

H. In case of death or of permanent total or permanent partial disability, and if the bureau determines that it is for the best interest of the beneficiary, the liability for compensation to such beneficiary may be discharged by the payment of a lump sum equal to the present value of all future payments of compensation computed at four per cent discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality; but in case of compensation to the widow or widower of the deceased employee, such lump sum shall not exceed 416 weeks' compensation. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. Lump sums.

I. If death results from the injury within six years the North Dakota workmen's compensation fund shall pay to the personal representative of the deceased employee burial expense not to exceed \$100.

Sec. 4 (as amended by ch. 73, acts of special session, 1919). A workmen's compensation bureau is hereby created in the department of agriculture and labor, consisting of the commissioner of agriculture and labor and the commissioner of insurance and three (3) workmen's compensation commissioners, to be appointed by the governor, and who shall devote their entire time to the duties of the bureau. The governor shall appoint, and may remove for cause, three workmen's compensation commissioners, one for the term of three years, expiring on the second Monday of January, 1923, one for the term of four years expiring on the second Monday in January, 1924, and one for the term of five years, expiring on the second Monday of January, 1925; and at the expiration of each of said terms the commissioner then appointed shall be appointed for a period of five years; and it is hereby provided that the present commissioners acting on said bureau under appointment, one for the short term of three years, shall hold office until the second Monday of January, 1923, and that the commissioner appointed for the long term of five years shall hold office until the second Monday of January, 1925. That one of the appointees on said bureau shall be a representative of the employers, and one of the appointees of said bureau shall be a representative of labor, and that one of the appointees on said bureau shall be a representative of the public. Bureau created.

The commissioner of agriculture and labor shall be ex officio head of the bureau and the commissioner of insurance shall be ex officio member of the bureau. The other members of the bureau shall receive a salary of \$2,500 a year. Head.

The bureau shall be provided with offices in the capitol, or in some other suitable building in the city of Bismarck, in which its records shall be kept, and it shall also be provided with necessary office furniture, stationery, and other supplies. The bureau shall have a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words, "Workmen's Compensation Bureau— Offices.

- North Dakota—Seal." It shall employ such assistants and clerical help as it may deem necessary, and fix the compensation of all persons so employed: *Provided*, That all such clerical assistants shall be subject to existing laws regulating the selection, grading, and compensation of department clerks. The members of the bureau and its assistants shall be entitled to receive from the fund their actual and necessary expenses while traveling on the business of the bureau, but such expenses shall be sworn to by the persons who incurred the same, and shall be approved by the chairman of the bureau before payment is made.
- Assistants.**
- Expenses.** The bureau may make necessary expenditures to obtain statistical and other information required for the enforcement of this act. The salaries and compensation of the members of the bureau, of the secretary and all actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers, and other assistants, and all other expenses of the bureau herein authorized, including the premium to be paid by the State treasurer for the bond to be furnished by him, shall be audited and paid out of the workmen's compensation fund and the appropriation herein made in the manner prescribed for similar expenditures in other departments or branches of the State service: *Provided, however*, The same shall not exceed in any one year the sum of fifty thousand dollars.
- Rules.** The bureau may make rules not inconsistent with this act for carrying out the provisions of this act. Process and procedure under this act shall be summary and simple as reasonably may be. The bureau 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 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. The bureau or any member thereof, shall have the power to subpoena witnesses, administer oaths, and to examine such of the books and records of the parties to a proceeding as relate to the questions in dispute, and shall file a report of the same in their office. The bureau 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 this act.
- Powers.** The bureau is hereby vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment subject to this act as may be necessary adequately to enforce and administer all laws and regulations requiring such employment and place of employment to be safe, and shall issue safety regulations whenever necessary.
- Rehabilitation.** It is hereby declared to be the intent of this act to restore to industry those injured in the course of employment. The bureau shall accordingly assist industrial cripples to obtain appropriate training, education, and employment, and may cooperate with the Federal Board of Vocational Education for this purpose.
- Duty of employer.** Sec. 5. Every employer shall furnish the bureau upon request all the information required by it to carry out the purposes of this act. In the month of July of each year every employer of the State, carrying on a hazardous employment, as defined in section two, shall prepare and mail to the bureau at its main office in the city of Bismarck, a statement containing the following information, viz: The number of employees employed during the preceding year from July 1 to June 30, inclusive; the number of such employees employed at each kind of employment; and the aggregate amount of wages paid to such employees, which information shall be furnished on blanks to be prepared by the bureau; and it shall be the duty of the bureau to furnish such blanks to employers free of charge upon request therefor. Every employer receiving from the bureau any blank, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give to the bureau in writing good and sufficient reasons for such failure. The bureau may require that the information herein required to be furnished be verified under oath and returned to the bureau within the period fixed by it or by law. The bureau or any member thereof, or any person
- Information under oath.**

employed by the bureau for that purpose, shall have the right to examine, under oath, any employer, officer, agent, or employee thereof for the purpose of ascertaining any information which such employer is required by this act to furnish to the bureau. Any employer who shall fail or refuse to furnish to the bureau the annual statement herein required, or who shall fail or refuse to furnish such other information as may be required by the bureau under authority of this section, shall be liable to a penalty of five hundred dollars (\$500), to be collected in civil action brought against said employer in the name of the State; all such penalties, when collected, shall be paid into the North Dakota workmen's compensation fund and become a part thereof.

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 bureau 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 bureau 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 bureau or traveling auditor, inspector, or assistant presenting written authority from the bureau, shall subject such employer to a penalty of one hundred dollars (\$100) for each such offense, to be collected by civil action in the name of the State and paid into the workmen's compensation fund to become a part thereof.

Any employer who misrepresents to the bureau 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 between the premium paid and the amount the employer should 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 workmen's compensation fund.

The information contained in the employers' reports to the bureau shall be for the exclusive use and information of said bureau in the discharge of its official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the bureau is a party to such action or proceeding; but the information contained in said report may be tabulated and published by the department, in statistical form, for the use and information of the State departments and the public. Any person in the employ of the bureau who shall divulge any information secured by him in respect to the transactions, property or business of any company, firm, corporation, person, association, copartnership, or public utility to any person other than the members of the bureau, while acting as an employee of the bureau shall be guilty of a misdemeanor and upon conviction thereof shall thereafter be disqualified from holding any appointment with the bureau.

Sec. 6. Every employer subject to this act shall contribute to the North Dakota workmen's compensation fund in proportion to the annual expenditure of money by such employer for the service of persons subject to the act, the amount of such payments and the method of making the same to be determined as hereinafter provided.

An employer securing the payment of compensation by contributing premiums to the workmen's compensation fund shall thereby be relieved from all liability for personal injuries or death sustained by his employees and the persons entitled to compensation under this act shall have recourse therefor only to the North Dakota workmen's compensation fund and not to the employer.

Sec. 7. The workmen's compensation bureau shall classify employments with respect to their degree of hazard and shall determine the risks of the different classifications and shall fix the rates of premium for each of said classifications sufficiently high to provide for the payment of the expenditures of the bureau, the payment of compensation according to the schedules established by this act and for the maintenance of adequate reserves and surplus by the North Dakota workmen's compensation fund to the end that such fund may be kept at all times in an entirely solvent condition.

Access to books,
etc.

Misrepresenta-
tion.

Information
confidential.

Payments to
fund.

Classifications.

- Rates.** It shall be the duty of the workmen's compensation bureau, in the exercise of the powers and discretion conferred upon it, ultimately to fix and maintain, for each class of occupation, the lowest possible rates of premium consistent with the payment of the expenditures of the bureau, the maintenance of a solvent compensation 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 North Dakota workmen's compensation fund for the benefit of injured and the dependents of deceased employees, and, in order that said object may be accomplished, the bureau shall observe the following requirements in classifying occupations and fixing the rates of premium for the risks of the same:
- Accounts.** It shall keep an accurate account of the money paid in premiums by each of the several classes 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 workmen's compensation fund on account of injuries and death of the employees of such employer.
- Surplus.** Ten per cent of the money that is paid into the workmen's compensation fund shall be set aside for the creation of a surplus until such surplus shall amount to the sum of fifty thousand dollars (\$50,000) after which time the sum of five per cent of all the money paid into the workmen's compensation fund shall be credited to such surplus fund, until such time as, in the judgment of the bureau, such surplus shall be sufficiently large to guarantee the workmen's compensation fund from year to year.
- Annual payments.** Every employer subject to this act, shall pay annually into the workmen's compensation fund the amount of premium determined and fixed by the workmen's compensation bureau 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 classification, rules and rates made and published by the bureau; and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the bureau, which receipt or certificate, attested by the seal of the bureau shall be prima facie evidence of the payment of such premium. The bureau may by regulation provide that premiums for the several employments, as grouped according to hazard, fall due on different dates so as to distribute the business of the workmen's compensation fund as evenly as possible throughout the year.
- Adjustments.** In the event the amount of premiums collected from any employer at the beginning of any premium period is ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payments 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 said period.
- Second injuries.** In case a subsequent injury occurs to an employee who has sustained another injury not in the same employment, the employer shall not be penalized in his premium rate for any disability in excess of the degree of incapacity which would have resulted from the later injury if the earlier disability or injury had not existed.
- Defaults.** SEC. 8. If an employer shall default in any payment required to be made by him to the workmen's compensation fund, the amount so due shall be collected by civil action in the name of the people of the State as plaintiff, and it shall be the duty of the workmen's compensation bureau to certify to the attorney general of the State from time to time the names and places of business of all employers known to the bureau to be in default for such payments for a longer period than two weeks, 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 workmen's compensation fund, and such employer's compliance with the provisions of this act requiring payments to be made to the workmen's compensation fund shall date from the time of

the payment of said money so collected as aforesaid to the State treasurer for credit to the workmen's compensation fund.

All judgments obtained in any action prosecuted by the bureau or by the State under the authority of this act shall be a prior lien over all other judgments and liens except those now in existence.

SEC. 9. Employers who comply with the provisions of sections six and seven shall not be liable to respond in damages at common law or by statute for injury or death of any employee, wherever occurring, during the period covered by such premiums so paid into the North Dakota workmen's compensation fund: *Provided*, That this section shall not apply to minors employed in violation of the law, in which case both remedies shall be applicable.

Employees discharged.

SEC. 10. The workmen's compensation bureau shall disburse the workmen's compensation fund to such employees of employers as have paid into the said fund the premiums applicable to the classes to which they belong who have been injured in the course of their employment, wheresoever such injuries have occurred, or to their dependents in case death has ensued, and such payment or payments to such injured employees, or to their dependents in case death has ensued, shall be in lieu of any and all rights of action whatsoever against the employer of such injured deceased employees.

Payment of benefits.

SEC. 11. Employers subject to this act who shall fail to comply with the provisions of sections six and seven hereof shall not be entitled to the benefits of this act during the period of such noncompliance, but shall be liable to their employees for damages suffered by reason of injuries sustained in the course of employment, 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 the following common-law defenses:

Employers liable, when.

The defense of the fellow-servant rule, the defense of the assumption of risk, or the defense of contributory negligence.

And such employers shall also be subject to the provisions of section eight.

Any employee whose employer has failed to comply with the provisions of sections six and seven hereof who has been injured in the course of his employment, wheresoever such injury has occurred, or his dependents in case death has ensued, may, in lieu of proceedings against his employers by civil action in the court, file his application with workmen's compensation bureau for compensation in accordance with the terms of this act, and the bureau shall hear and determine such application for compensation in like manner as in other claims before the bureau; and the amount of the compensation which said bureau 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 bureau; 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 and fixed by the bureau, 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.

Option of employees.

SEC. 12. Any employer carrying on any employment not classed as "hazardous" who complies with this act, and who shall pay into the North Dakota workmen's compensation fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute for injuries or death of any employee, wherever occurring, during the period covered by such premiums, providing the injured employee has remained in his service with notice that his employer has paid into the workmen's compensation fund the premiums provided by this act; the continuation in the service of such employer with such notice shall be deemed a waiver by the employee of his right of action as aforesaid. Each such employer paying the premiums provided by this act into the workmen's compensation fund shall post in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he had made such payment.

Voluntary contributions.

Custody of funds. SEC. 13. The State treasurer shall be the custodian of the workmen's compensation fund, and all disbursements therefrom shall be paid by him upon vouchers authorized by the workmen's compensation bureau.

The State treasurer is hereby authorized to deposit any portion of the workmen's compensation 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; and all interest earned by any such portion of the workmen's compensation fund as may be deposited by the State treasurer in pursuance of authority herein given, shall be collected by him and placed to the credit of such fund.

The State treasurer shall give a separate and additional bond in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the workmen's compensation fund.

Reinsurance. SEC. 14. The bureau may reinsure any risk or any part thereof and may enter into agreements of reinsurance.

Claims. SEC. 15. No compensation under this act shall be allowed to any person, except as provided in section eighteen, unless he or some one on his behalf shall, within the time specified in this section, make a written claim therefor. Such claim shall be made by delivering it at the office of the workmen's compensation bureau or to any person whom the bureau may by regulation designate, or by depositing it in the mail properly stamped and addressed to the bureau or to any person whom the bureau may by regulation designate.

Every claim shall be made on forms to be furnished by the bureau and shall contain all the information required by the bureau. Each claim shall be sworn to by the person entitled to compensation or by the person acting on his behalf, and, except in case of death, shall be accompanied by a certificate of the employee's physician stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown the bureau may waive the provisions of this section.

Limitation. All original claims for compensation for disability or death shall be made within sixty days after injury or death. For any reasonable cause shown the bureau may allow original claims for compensation for disability or death to be made at any time within one year.

Medical examinations. SEC. 16. After the injury the employee shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a duly qualified physician designated or approved by the workmen's compensation bureau. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations after the first the employee shall, in the discretion of the bureau, be paid his reasonable traveling and other expenses and loss of wages incurred in order to submit to such examination. If the employee refuses to submit himself for or in any way obstructs any examination, his right to claim compensation under this act shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him.

In case of any disagreement between the physician making an examination on the part of the bureau and the employee's physician the bureau shall appoint an impartial physician duly qualified, who shall make an examination.

Disputes. SEC. 17. The bureau shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon

Appeal to courts. shall be final: *Provided, however,* In case the final action of such bureau denies the right of the claimant to participate at all in the workmen's compensation 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 bureau, may, by filing his appeal in the district court for the county wherein the injury was inflicted, be entitled to a trial in the ordinary way. In such a proceeding the State's attorney of the county without additional compensation shall

represent the workmen's compensation bureau and shall be notified by the clerk forthwith of the filing of such appeal.

Within thirty (30) days after filing his appeal the appellant shall file a petition in the ordinary form against such bureau as defendant, and further pleadings shall be had in said cause, according to the rules of civil procedure, and the court shall determine the right of the claimant, and if it determines the right in his favor shall fix his compensation within the limits prescribed in this act; and any final judgment so obtained shall be paid by the workmen's compensation bureau out of the workmen's compensation fund in the same manner as awards are paid by such bureau.

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.

SEC. 18. If the original claim for compensation has been made within the time specified in section fifteen the bureau may, at any time, on its own motion or on application, review the award, and, in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, award compensation.

SEC. 19. Every employer of the State shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one week after the occurrence of an accident resulting in injury, report thereof shall be made in writing to the workmen's compensation bureau upon blanks to be procured from the bureau 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 bureau. 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 (\$500) for each offense.

SEC. 20. When an injury or death for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the North Dakota workmen's compensation fund a legal liability to pay damages in respect thereto, the injured employee, or his dependents, may, at his or their 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, the North Dakota workmen's compensation fund shall be subrogated to the rights of the injured employee or his dependents to recover against that person: *Provided*, If the workmen's compensation fund 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 or his dependents, less the expenses and costs of action.

SEC. 21. No agreement by an employee to waive his rights to compensation under this act shall be valid. No agreement by any employee to pay any portion of the premium paid by his employer into the North Dakota workmen's compensation fund 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 (\$100) for each offense.

SEC. 22. Any assignment of a claim for compensation under this act shall be void and all compensation and claims therefor shall be exempt from all claims of creditors.

SEC. 23. Whoever makes, in any affidavit required or in any claim for compensation, any statement, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than two thousand dollars (\$2,000) or by imprisonment for not more than one year, or by both such fine and imprisonment.

Costs.

Review.

Reports of accidents.

Liability of third person.

Waivers.

Assignments, etc.

False claims, etc.

Prosecutions. SEC. 24. Upon the request of the bureau the attorney general, or under his direction, the State's 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 workmen's compensation 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 bureau or the members thereof in their official capacity.

Annual reports. SEC. 25. Annually, on or before the 1st day of December, the workmen's compensation bureau, 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 workmen's compensation fund, and the condition of its respective funds, together with any other matters which the bureau deems proper to call to the attention of the governor, including any recommendation it may have to make, and it shall be the duty of the bureau from time to time to publish and distribute among employers and employees such general information as to the business transacted by the bureau as in its judgment may be useful.

Provisions severable. SEC. 26. 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. 27. There is hereby appropriated out of any funds in the State treasury not otherwise appropriated the sum of \$50,000, or as much thereof as may be necessary, to put into effect the provisions of this act. The workmen's compensation bureau shall reimburse the general fund of the State, out of the workmen's compensation fund, for all money appropriated, expended, or disbursed on behalf of said bureau.

Act in effect. SEC. 28. Whereas, an emergency exists, in order that the bureau hereby created may be in a position to receive contributions to the insurance fund and to make disbursements therefrom July 1, 1919, therefore an emergency is hereby declared to exist, and this act shall take effect and be in force immediately after its passage and approval.

Approved March 5, 1919.

OHIO.

CONSTITUTION.

ARTICLE II.—*Legislative—Compensation of workmen for injuries.*

SECTION 35. For the purpose of providing compensation to workmen and their dependents for death, injuries, or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a State fund to be created by compulsory contribution thereto by employers, and administered by the State, determining the terms and conditions upon which payment shall be made therefrom, and taking away any or all rights of action or defenses from employees and employers; but no right of action shall be taken away from any employee when the injury, disease, or death arise from failure of the employer to comply with any lawful requirement for the protection of the lives, health, and safety of employees. Laws may be passed establishing a board which may be empowered to classify all occupations according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer, and distribute such fund, and to determine all rights of claimants thereto.

Compulsory insurance system.

Right of action.

Board of classification, etc.

Adopted, 1912.

Industrial commission—Administration of workmen's insurance law.

SEC. 871-1 (as amended by act, p. 95, acts of 1919). The industrial commission of Ohio, heretofore created, shall be composed of three members to be appointed by the governor, with the advice and consent of the senate. Such appointment shall be made to take effect upon the expiration of the present term of each member, and each of such appointments hereafter made shall be for the term of six years. Not more than one of the appointees to such commission shall be a person who, on account of his previous vocation, 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 employees; not more than two of the members of said commission shall belong to the same political party.

Appointment.

SEC. 871-2. The governor, at any time, shall remove any member of the industrial commission of Ohio for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

Removal.

SEC. 871-3. No commissioner shall hold any position 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.

Inconsistent employments.

SEC. 871-4 (as amended by act, p. 26, acts of 1915). Each of said commissioners shall receive an annual salary of \$4,000, payable in the same manner as the salaries of other State officers are paid. Before entering upon the duties of his office, each commissioner shall take and subscribe the constitutional oath of office and shall swear or affirm that he holds no position under any committee of a political party, which oath or affirmation shall be filed in the office of the governor. Each member of the commission shall give a bond in the sum of \$10,000, which bond shall be approved by the governor and filed with the treasurer of State. All employees or deputies of the commission receiving or disbursing funds of the State shall give bond to the State in amounts and with surety to be approved by the commission.

Salary.

Bonds.

SEC. 871-6. The commission shall keep and maintain its office in the city of Columbus, Ohio. * * * The commission may hold sessions in any place within the State of Ohio.

Offices.

- Seal.** SEC. 871-8. 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 Ohio," and such other design as the commission may prescribe; and the courts in this State shall take judicial notice of the seal of the said commission, and in all cases copies of orders, proceedings, or records in the office of the industrial commission of Ohio, certified by the secretary of the said commission under its seal, shall be equal to the original as evidence.
- Sessions.** SEC. 871-9 (as amended by an act, p. 157, acts of 1917). 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.**
- Additional duties.** SEC. 871-12 (as amended by act, p. 656, acts of 1913). The industrial commission shall supersede and perform all of the duties of the State liability board of awards, * * * and said commission on and after the first day of September, 1913, as successor of the said liability board of awards, shall be vested with and assume and exercise all powers and duties cast by law upon said liability board of awards, and on the first day of September, 1913, the term of office of the members constituting the said State liability board of awards of Ohio shall cease and terminate, together with all rights, privileges, and emoluments connected therewith.

Workmen's insurance—State liability board.

(Page 524, acts of 1911; amended, pages 72 and 396, acts of 1913.)

- Board created.** SEC. 1465-37. There is hereby created a State liability board of awards. [This body has been superseded by the industrial commission of Ohio. See section 871-1 et seq., above.]
- Quorum.** SEC. 1465-41. A majority of the board shall constitute a quorum for the transaction of business and a vacancy shall not impair the right of the remaining members to exercise all the powers of the full board so long as a majority remains. Any investigations, inquiry, or hearing which the board is authorized to hold, or undertake, may be held or undertaken by or before any one member of the board. All investigations, inquiries, hearings, and decisions of the board, and every order made by a member thereof, when approved and confirmed by a majority of the members, and so shown on its record of proceedings, shall be deemed to be the order of the board.
- Employees.** SEC. 1465-43. The board may employ a secretary, actuaries, accountants, 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 board, 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 actual and necessary expenses while traveling on the business of the board, and the members of the board 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 board.
- Expenses.**

Sec. 1465-44. The board shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the services thereof, in cases of accident and injury to employees, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to benefits of compensation from the State insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits of compensation therefrom, the method of making investigations, physical examinations, and inspections, and prescribe the time within which adjudications and awards shall be made. Rules.

Sec. 1465-45 (as amended by act, p. 313, acts of 1919). Every employer shall furnish the industrial commission of Ohio upon request, all information required by it to carry out the purpose of this act. In the month of January of each year every employer of the State employing five or more employees regularly in the same business, or in or about the same establishment, shall prepare and mail to the commission at its main office in the city of Columbus, Ohio, a statement containing the following information, viz: The number of employees employed during the preceding year from January 1st to December 31st, inclusive; the number of such employees employed at each kind of employment, and the aggregate amount of wages paid to such employees, which information shall be furnished on a blank or blanks to be prepared by the commission; and it shall be the duty of the commission to furnish such blanks to employers free of charge upon request therefor. Every employer receiving from the commission any blank, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give to the commission in writing good and sufficient reasons for such failure. The commission may require that the information herein required to be furnished be verified under oath and returned to the commission within the period fixed by it or by law. The commission or any member thereof, or any person employed by the commission for that purpose, shall have the right to examine, under oath, any employer, or the officer, agent or employee thereof for the purpose of ascertaining any information which such employer is required by this act to furnish to the commission. Duty of employers.

Any employer who shall fail or refuse to furnish to the commission the annual statement herein required, or who shall fail or refuse to furnish such other information as may be required by the commission under authority of this section, shall be liable to a penalty of five hundred dollars, to be collected in a civil action brought against said employer in the name of the State; all such penalties, when collected, shall be paid into the State insurance fund and become a part thereof.

Sec. 1465-46. The information contained in the annual report provided for in the preceding section, and such other information as may be furnished to the board by employers in pursuance of the provisions of said section, shall be for the exclusive use and information of said board in the discharge of its official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the board is a party to such action or proceeding; but the information contained in said report may be tabulated and published by the department, in statistical form, for the use and information of other State departments and the public. Any person in the employ of the board who shall divulge any information secured by him in respect to the transactions, property, or business of any company, firm, corporation, person, association, copartnership, or public utility to any person other than the members of the board, while acting as an employee of the board, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and shall thereafter be disqualified from holding any appointment or employment with the board. Information confidential.

Sec. 1465-47. (as amended by act, p. 313, acts of 1919). Each member of the industrial commission of Ohio, its secretary, director of claims, all inspectors, examiners, and claims referees appointed by the commission shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, take depositions, Powers of members.

- issue subpoenas, compel the attendance of witnesses, and the production of books, accounts, papers, records, documents, and testimony.
- Contempt.** SEC. 1465-48 (as amended by act, p. 313, acts of 1919). In case of disobedience of any person to comply with the order of the industrial commission of Ohio or subpoena issued by the commission, its secretary, director of claims, or any of its inspectors, examiners, or claims referees, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the probate judge of the county in which the person resides, on application of any member of the commission, its secretary, director of claims, any inspector, examiner, or claims referee appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify therein.
- Fees.** SEC. 1465-49 (as amended by act, p. 313, acts of 1919). Each officer who serves such subpoena shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the industrial commission of Ohio, its secretary, director of claims, inspector, examiner or claims referee, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of common pleas, which shall be audited and paid from the State treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers, approved by any two members of the commission. No witness subpoenaed at the instance of a party other than the commission, its secretary, director of claims, inspector, examiner, or claims referee shall be entitled to compensation from the State treasury unless the commission shall certify that his testimony was material to the matter investigated.
- Depositions.** SEC. 1465-50 (as amended by act, p. 157, acts of 1917). 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.
- Transcripts.** SEC. 1465-51. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the board, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the board with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcript in courts of common pleas.
- Forms.** SEC. 1465-52. The board shall prepare and furnish blank forms, and provide in its rules for their distribution so that the same may be readily available, of application for benefits or compensation from the State insurance fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable; and it shall be the duty of insured employers to constantly keep on hand a sufficient supply of such blanks.
- Occupations to be classified.** SEC. 1465-53 (as amended by act, p. 313, acts of 1919). The industrial commission of Ohio shall classify occupations or industries with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total pay roll in each of said classes of occupation or industry sufficiently large to provide an adequate fund for the compensation provided for in this act, and to maintain a State insurance fund from year to year.
- Premium rates.** SEC. 1465-54 (as amended by act, p. 313, acts of 1919). 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:

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. Accounts.

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, whenever necessary in the judgment of the industrial commission to guarantee a solvent State insurance fund, a sum not exceeding five per cent of all the money paid into the State insurance fund shall be credited to such surplus fund. Surplus fund.

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. Revisions.

4. The industrial commission of Ohio shall have the power to apply that form of rating system which, in its judgment, is best calculated to merit or individually rate the risk most equitably, predicated upon the basis of its individual industrial accident experience, and to encourage and stimulate accident prevention; shall develop fixed and equitable rules controlling the same, which rules, however, shall conserve to each risk the basic principles of workmen's compensation insurance. Merit rating.

SEC. 1465-55 (as amended by act, p. 313, acts of 1919). The industrial commission of Ohio shall adopt rules and regulations with respect to the collection, maintenance and disbursements of the State insurance fund; one of which rules shall provide that in the event there is developed as of any given rate revision date a surplus of earned premium over all losses which, in the judgment of the commission, is larger than is necessary adequately to safeguard the solvency of the fund, the commission may return such excess surplus to the subscriber to the fund in either the form of cash refunders or credit premiums; another 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 six months' 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 refunder 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 should such actual premium, when ascertained as aforesaid exceed in amount the premium so paid by such employer at the beginning of such six months' period, such employer shall immediately upon being advised of the true amount of such premium due, forthwith pay to the treasurer of State 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. Rules as to fund.

Custodian. SEC. 1465-56 (as amended by act, p. 157, acts of 1917). 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.

Deposit of funds. SEC. 1465-57. The treasurer of State is hereby authorized to deposit any portion of the State insurance 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; and all interest earned by such portion of the State insurance fund as may be deposited by the State treasurer in pursuance of authority herein given shall be collected by him and placed to the credit of such fund.

Investment. SEC. 1465-58. The State liability board of awards shall have the power to invest any of the surplus or reserve belonging to the State insurance fund in bonds of the United States, the State of Ohio, or of any county, city, village, or school district of the State of Ohio, at current market prices for such bonds: *Provided*, That such purchase be authorized by a resolution adopted by the board and approved by the governor; 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 State liability board of awards, prior to advertising the same for sale, all such issues as may not have been taken by the trustees of the sinking fund of the taxing district so issuing such bonds; and said board 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 treasurer of State, 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 treasurer of State shall honor and pay all vouchers drawn on the State insurance fund for the payment of such bonds when signed by any two members of the board, upon delivery of said bonds to him when there is attached to such voucher a certified copy of such resolution of the board authorizing the purchase of such bonds; and the board may sell any of said bonds upon like resolution, and the proceeds thereof shall be paid by the purchaser to the treasurer of State upon delivery to him of said bonds by the treasurer.

Same. SEC. 1465-58a (added by act, p. 277, acts of 1919). All bonds of any taxing district of Ohio purchased by the industrial commission shall be printed or lithographed upon paper of the size and the interest coupons shall be attached thereto in the manner required by the industrial commission. The principal and interest of such bonds shall be payable at the office of the treasurer of the State of Ohio. Such bonds shall be of the denomination required by the industrial commission in its resolution to purchase, and the proper officers of each taxing district issuing such bonds are hereby authorized and required without additional procedure or legislation on their part to comply with the provisions of this act: *Provided, however*, That the industrial commission shall not be authorized to change the date of maturity of any bond nor shall it require a bond of any issue to be of larger denomination than the aggregate amount of such issue falling due at any date.

Bond. SEC. 1465-59. The treasurer of State shall give a separate and additional bond in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the State insurance fund.

Employers. SEC. 1465-60 (as amended by act, p. 313, acts of 1919). The following shall constitute employers subject to the provisions of this act:

1. The State and each county, city, township, incorporated village, and school district therein.
2. Every person, firm, and private corporation, including any public service corporation, that has in service five or more workmen or oper-

atives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written.

SEC. 1465-61 (as amended by act, page 313, acts of 1919). The terms "employee," "workmen," and "operative," as used in this act shall be construed to mean: Employees.

1. Every person in the service of the State, or of any county, city, township, incorporated village, or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the State or of any county, city, township, incorporated village, or school district therein: *Provided*, That nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws.

2. Every person in the service of any person, firm, or private corporation, including any public service corporation employing five 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, including aliens and minors, but not including any person whose employment is but casual and not in the usual course of trade, business, profession, or occupation of his employer.

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 a 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. Contractors:
employees.

SEC. 1465-62. Every employer mentioned in subdivision one of section thirteen [1465-60] hereof shall contribute to the State insurance fund in proportion to the annual expenditure of money by such employer for the service of persons described in subdivision one of section fourteen [1465-61] hereof, the amount of such payments and the method of making the same to be determined as hereinafter provided. Contributions
to fund.

SEC. 1465-63 (as amended by act, p. 555, acts of 1919). The amount of money to be contributed by the State itself, and by each county, city, incorporated village, or other taxing district of the State shall be, unless otherwise provided by law, a sum equal to one per centum of the amount of money expended by the State and for each county, city, incorporated village, or other taxing district, respectively, during the next preceding fiscal year for the service of persons described in subdivision one of section fourteen [1465-61] hereof, and the amount to be so contributed by any school district shall be equal to one-tenth of one per centum of the amount similarly expended by such district during such preceding fiscal year for the service of the persons described as above. Payments by
municipalities.

SEC. 1465-64 (as amended by act, p. 3, acts of 1914, second special session). In the month of January in the year 1914 the auditor of State shall draw his warrant on the treasurer of State, 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 centum of the amount of money expended by the State during the last preceding fiscal year, for the service of persons described in subdivision one of section fourteen [1465-61] hereof, 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 provided by law; and it shall be the duty of the industrial commission of Ohio to communicate to the general assembly on the first day of each regular session thereof an estimate of the aggregate amount of money necessary to be contributed by the State during the two years next ensuing as its proper portion of the State insurance fund. Payment by
State.

- County lists. SEC. 1465-65 (as amended by act, p. 3, acts of 1914, second special session). In the month of December of each year the auditor of State shall prepare a list for each county of the State, showing the amount of money expended by each township, city, village, school district, or other taxing district therein for the service of persons described in subdivision one of section fourteen [1465-61] hereof during the fiscal year last preceding the time of preparing such lists; and shall file a copy of each such list with the auditor of the county for which such list was made, and copies of all such lists with the treasurer of State. Such lists shall also show the amount of money due from the county itself, and from each city, township, village, school district, and other taxing district thereof, as its proper contribution to the State insurance fund, and the aggregate sum due from the county and such taxing districts located therein.
- County contributions omitted, when. *Provided, however,* That should the industrial commission of Ohio on or before the 1st day of December in any year certify to the auditor of State that sufficient money is in the State insurance fund to the credit of any county or counties to provide for the payment of compensation to the injured and to the dependents of killed employees of such county or counties and the several taxing districts therein for the ensuing year, the auditor of State shall not prepare and file with the county auditors and the treasurer of State said list or lists for such county or counties specified in such certificate; and it shall be the duty of the industrial commission of Ohio to make and file such certificate with the auditor of State whenever in its judgment there is sufficient money in the State insurance fund to the credit of any county or counties to provide for the probable disbursements required to be made to the injured and to the dependents of killed employees of such county or counties and the several taxing districts therein for the ensuing year.
- Payments by counties. SEC. 1465-66. In January of each year following the filing with him of the lists mentioned in the last preceding section hereof, beginning with January, 1914, the auditor of each county shall issue his warrant in favor of the treasurer of State of Ohio on the county treasurer of his county for the aggregate amount due from such county and from the taxing districts therein, to the State insurance fund, and the county treasurer shall pay the amount called for by such warrant from the county treasury, and the county auditor shall charge the amount so paid to the county itself and the several taxing districts therein as shown by such lists and the treasurer of State shall immediately, upon receiving such money, convert the same into the State insurance fund.
- Annual statements. SEC. 1465-67. In February of each year the treasurer of State shall certify to the State liability board of awards the amount of money that has been paid to him for credit to the State insurance fund as provided in the foregoing sections, and the amount paid by the State itself and by each county, city, incorporated village, or school district therein, and at the same time shall certify to the board the names of such as may have made default in the payments hereinbefore provided and the respective amounts for which they are in default. When any default is made in the payment of the sums hereinbefore required to be contributed to the State insurance fund, or when any official fails, neglects, or refuses to perform any act or acts required to be performed by him with reference to the making of such payments, it shall be the duty of the State liability board of awards forthwith to institute the proper proceedings in court to compel such payment or payments to be made. The State liability board of awards shall keep a separate account of the money paid into the State insurance fund by the State and its political subdivisions as hereinbefore provided, and the disbursements made therefrom on account of injuries to public employees.
- Payments from funds. SEC. 1465-68. Every employee mentioned in subdivision one of section fourteen [1465-61] hereof, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on or after January 1st, 1914, 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 the case of other injured or killed employees, and shall be entitled to receive such medical, nurse, and hospital services and medicines, and such amount of funeral expenses as are payable in the case of other injured or killed employees.
- Act in effect, when.

Every employee mentioned in subdivision two of section fourteen [1465-61] hereof, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on and after January 1, 1914, shall be entitled to receive, either directly from his employer as provided in section twenty-two [1465-69] hereof, or from the State insurance fund, such compensation for loss sustained on account of such injury or death, and such medical, nurse, and hospital services and medicines, and such amount of funeral expenses in case of death as is provided by sections thirty-two [1465-79] to forty [1465-87] inclusive of the act.

Sec. 1465-69 (as amended by act, p. 313, acts of 1919). Except as hereinafter provided, every employer mentioned in subdivision 2 of section 1465-60, General Code, shall, in the month of January, 1914, and semiannually 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.

Employers' contributions.

Provided, however, That as to all employers who were subscribers to the State insurance fund prior to January 1st, 1914, or who may first become subscribers to said fund in any other months than 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 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 the dependents of skilled employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in sections 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 whose employers contribute to said fund, except when an employee of such employer, who has suffered the loss of a hand, arm, foot, leg, or eye, prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of said members as the result of an injury sustained in the course and arising out of his employment, the compensation to be paid by such employer shall be limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the industrial commission of Ohio, out of the surplus created by section 1465-54 of the General Code. Should municipal or other bonds be accepted by said commission as security for said payments,

Existing subscribers.

Self-insurers.

Security.

Deposit of securities.

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 2 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 dependents of killed employees.

Review.

Exemption from suits.

Sec. 1465-70. Employers who comply with the provisions of the last preceding section shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injury or death of any employee, wherever occurring, during the period covered by such premium so paid into the State insurance funds, or during the interval of time in which such employer is permitted to pay such compensation direct to his injured or the dependents of his killed employees as herein provided.

Employers of less than 5 workmen.

Sec. 1465-71. Any employer who employs less than five workmen or operatives regularly in the same business, or in and about the same establishment, who shall pay into the State insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employees, wherever occurring, during the period covered by such premiums, provided the injured employee has remained in his service with notice that his employer has paid into the State insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice shall be deemed a waiver by the employee of his right of action as aforesaid.

Each such employer paying the premiums provided by this act into the State insurance fund, or electing directly to pay compensation to his injured, or the dependents of his killed employees as provided in section twenty-two [1465-69] hereof, shall post in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he has made such payment, or that he has complied with the provisions of said section twenty-two hereof and all of the rules and regulations of the State liability board of awards made in pursuance thereof, and has been authorized by said board directly to compensate such said employees or dependents; and the same, when so posted, shall constitute sufficient notice to his employees of the fact that he has made such payment, or that he has complied with such elective provision of section twenty-two [1465-69]; and of any subsequent payments he may make after such notices have been posted.

Disbursements to employees.

Sec. 1465-72. The State liability board of awards shall disburse the State insurance fund to such employees of employers as have paid into said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, wheresoever such injuries have occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued. All employers electing directly to compensate their injured employees, in compliance with this act, shall pay to such injured employees, or to the dependents of employees, who have been killed in the course of their employment, unless such injury or death of such employee has been purposely self-inflicted, the compensation, and shall furnish such medical, surgical, nurse, and hospital care and attention or fu-

neral expenses as would have been paid and furnished by virtue of this act under a similar state of facts by the State liability board of awards out of the State insurance fund in case said employer had paid the premium provided by this act into said fund: *Provided, however,* That if any rule or regulation of such employer so directly compensating his employees shall provide for or authorize the payment of greater compensation or more complete or extended medical care, nursing, surgical, and hospital attention or funeral expenses to such injured employees, or to the dependents of such employees as may be killed, such employer shall be required to pay to such employees, or to the dependents of such as are killed, the amount of compensation, and furnish such medical care, nursing, surgical, and hospital attention or funeral expenses provided by said rules and regulations.

And such payment or payments to such injured employees, or to their dependents in case death has ensued, shall be in lieu of any and all rights of action whatsoever against the employer of such injured or killed employees.

Sec. 1465-72a (added by act, p. 313, acts of 1919). In all cases of injury or death, claims for compensation shall be forever barred, unless, within two years after the injury or death, application shall have been made to the industrial commission of Ohio or to the employer in the event such employer has elected to pay compensation direct.

Limitation.

Sec. 1465-73. Employers mentioned in subdivision two of section thirteen [1465-60] hereof, who shall fail to comply with the provisions of section twenty-two [1465-69] hereof, shall not be entitled to the benefits of this act during the period of such noncompliance, but shall be liable to their employees for damages suffered by reason of personal injuries sustained 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 the following common-law defenses:

Employers liable in damages.

The defense of the fellow-servant rule, the defense of the assumption of risk, or the defense of contributory negligence.

Defenses abrogated.

And such employers shall also be subject to the provisions of the two sections next succeeding.

Sec. 1465-74. Any employee whose employer has failed to comply with the provisions of section twenty-two [1465-69] hereof, who has been injured 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 State liability board of awards for compensation in accordance with the terms of this act, and the board shall hear and determine such application for compensation in like manner as in other claims before the board; and the amount of the compensation which said board 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 board; 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 and fixed by the board, which with an added penalty of fifty per centum, may be recovered in an action in the name of the State for the benefit of the person or persons entitled to the same. And any employee whose employer has elected to pay compensation to his injured, or to the dependents of his killed employees, in accordance with the provisions of section twenty-two [1465-69] hereof, may, in the event of the failure of his employer to so pay such compensation or furnish such medical, surgical, nursing, and hospital services and attention or funeral expenses, file his application with the State liability board of awards for the purpose of having the amount of such compensation and

Claim for compensation.

Determination by board.

such medical, surgical, nursing, and hospital services and attention or funeral expenses determined; and thereupon like proceedings shall be had before the board and with like effect as hereinbefore provided.

Procedure.

And the State liability board of awards shall adopt and publish rules and regulations governing the procedure before the board 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 board, or such suit, action, or proceeding may be prosecuted to final judgment as in the discretion of the board may best subserve the interests of the persons entitled to receive such compensation.

Defaults in payments.

SEC. 1465-75. If any 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 as plaintiff; and it shall be the duty of the State liability board of awards on the first Monday in February, 1914, 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 board 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 such 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 treasurer of State for credit to the State insurance fund.

Willful injuries.

SEC. 1465-76 (as amended by acts of 1914, page 193). But where a personal injury is suffered by an employee, or where death results to an employee from personal injury while in the employ of an employer in the course of employment, and such employer has paid into the State insurance fund the premium provided for in this act, or is authorized directly to compensate such employee or dependents by virtue of compliance with section twenty-two [1465-69] of this act, and in case such injury has arisen from the willful act of such employer, or any of such employer's officers or agents, or from the failure of such employer or any of such employer's officers or agents to comply with any lawful requirements for the protection of the lives and safety of employees, then in such event nothing in this act contained shall affect the civil liability of such employer, but such injured employee, or his legal representative in case death results from the injury, may, at his option, either claim compensation under this act or institute proceedings in the courts for his damage on account of such injury; and such employer shall not be liable for any injury to any employee or his legal representative in case death results, except as provided in this section; and in all actions authorized by this section the defendant shall be entitled to plead the defense of contributory negligence and the defense of the fellow-servant rule; and, in all cases determined in court as authorized by this section when a judgment is awarded the plaintiff, the court shall determine, fix, and award the amount of fee or fees to be paid plaintiff's attorney or attorneys, any contract to the contrary notwithstanding.

Choice of procedure.

Defenses.

Every employee, or his legal representative in case death results, who makes application for an award, or accepts compensation from an employer who elects, under section twenty-two [1465-69] of this act, directly to pay such compensation, waives his right to exercise his option to institute proceedings in any court, except as provided in section forty-three [1465-90] hereof. Every employee, or his legal representative in case death results, who exercises his option to institute proceedings in court as provided in this section, waives his right to any award, or direct payment of compensation from his employer under section twenty-two [1465-69] hereof, as provided in this act.

The term "willful act," as employed in this section shall be construed to mean an act done knowingly and purposely with the direct object of injuring another.

SEC. 1465-77. All judgments obtained in any action prosecuted by the board or by the State under the authority of this act shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law on judgments rendered for claims for taxes. Judgments preferred.

SEC. 1465-78. No compensation shall be allowed for the first week after the injury is received, except the disbursement hereinafter authorized for medical, nurse, and hospital services and medicines, and for funeral expenses. First week.

SEC. 1465-79 (as amended by act, page 313, acts of 1919). In case of temporary disability, the employee shall receive sixty-six and two-thirds per cent of his average weekly wages so long as such disability is total, not to exceed a maximum of fifteen dollars per week, and not less than a minimum of five dollars per week, unless the employee's wages shall be less than five dollars per week, in which event he shall receive compensation equal to his full wages; but in no case to continue for more than six years from the date of the injury, nor to exceed three thousand seven hundred and fifty dollars. Temporary total disability.

SEC. 1465-80 (as amended by act, p. 313, acts of 1919). In case of injury resulting in partial disability, the employee shall receive sixty-six and two-thirds per cent of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of twelve dollars per week, nor a greater sum in the aggregate than thirty-seven hundred and fifty dollars; 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. Partial disability.

In cases included in the following schedule the disability in each case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be specified herein, and shall be in addition to the compensation allowed the claimant for the period of temporary total disability resulting from such injury, to wit:

For the loss of a thumb, 66 $\frac{2}{3}$ per cent of the average weekly wages during 60 weeks. Schedule.

For the loss of a first finger, commonly called index finger, 66 $\frac{2}{3}$ per cent of the average weekly wages during 35 weeks.

For the loss of a second finger, 66 $\frac{2}{3}$ per cent of the average weekly wages during 30 weeks.

For the loss of a third finger, 66 $\frac{2}{3}$ per cent of the average weekly wages during 20 weeks.

For the loss of a fourth finger, commonly known as the little finger, 66 $\frac{2}{3}$ per cent of the average weekly wages during 15 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 and distal phalanges of any finger shall be considered to be equal to the loss of the whole finger: *Provided, however,* That in no case will 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 the metacarpal bone (bones of palm) for the corresponding thumb, finger, or fingers as above, add 10 weeks to the number of weeks as above.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes any of the fingers, thumbs, or parts of either more than useless, the same number of weeks apply to such members, or parts thereof as given above.

For the loss of a hand, 66 $\frac{2}{3}$ per cent of the average weekly wages during 150 weeks.

For the loss of an arm, 66 $\frac{2}{3}$ per cent of the average weekly wages during 200 weeks.

For the loss of a great toe, 66 $\frac{2}{3}$ per cent of the average weekly wages during 30 weeks.

For the loss of one of the toes other than the great toe, 66 $\frac{2}{3}$ per cent of the average weekly wages during 10 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 no loss.

For the loss of a foot, 66 $\frac{2}{3}$ per cent of the average weekly wages during 125 weeks.

For the loss of a leg, 66 $\frac{2}{3}$ per cent of the average weekly wages during 175 weeks.

For the loss of an eye, 66 $\frac{2}{3}$ per cent of the average weekly wages during 100 weeks.

For the permanent partial loss of sight of an eye, 66 $\frac{2}{3}$ per cent of the average weekly wages for such portion of 100 weeks as the commission may, in each case, determine, based upon the percentage of vision actually lost as a result of the casualty, but in no case shall an award of compensation be made for less than a 25 per cent loss of vision.

The amounts specified in this clause are all subject to the limitations as to the maximum weekly amount payable as hereinbefore specified in this section.

Permanent to-
tal disability.

Sec. 1465-81. In cases of permanent total disability, the award shall be 66 $\frac{2}{3}$ per cent of the average weekly wages, and shall continue until the death of such person so totally disabled, but not to exceed a maximum of \$12 per week and not less than a minimum of \$5 per week, unless the employee's average weekly wages are less than \$5 per week at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wages.

The loss of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof, shall prima facie constitute total and permanent disability, to be compensated according to the provisions of this section.

Death.

Sec. 1465-82 (as amended by act, p. 313, acts of 1919). In case the injury causes death within the period of two years, the benefits shall be in the amounts and to the persons following:

1. If there be no dependents, the disbursements from the State insurance fund shall be limited to the expenses provided for in section forty-two hereof [1465-89].

2. If there are wholly dependent persons at the time of the death, the payment shall be 66 $\frac{2}{3}$ per cent of the average weekly wages, not to exceed fifteen dollars per week in any case and to continue for the remainder of the period between the date of death and 8 years after the date of the injury, and not to amount to more than a maximum of five thousand dollars, nor less than a minimum of two thousand dollars.

3. If there are partly dependent persons at the time of the death, the payment shall be 66 $\frac{2}{3}$ per cent of the average weekly wages, not to exceed fifteen dollars per week in any case and to continue for all or such portion of the period of 8 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 five thousand dollars.

4. In cases in which compensation on account of the injury has been continuous to the time of the death of the injured person, and the death is the result of such original injury, compensation shall be paid for such death as though same had occurred within the two years hereinbefore provided, deducting from the final award therefor the total amount theretofore paid on account of total or partial disability on account of such injury.

Dependents.

5. 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 child or children under the age of sixteen years (or over said age 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," as used in this act, shall include a posthumous child, and a child legally adopted prior to the injury.

SEC. 1465-83 (as amended by act, p. 313, acts of 1919). 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 industrial commission of Ohio, 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 dependent or person 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.

Payment of death benefits.

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.

In all cases of death from causes other than the injury for which award had theretofore been made on account of temporary, or permanent partial, or total disability, in which there remains an unpaid balance, representing payments accrued and due decedent at the time of his death, the commission may at its discretion, after satisfactory proof has been made warranting such action, award or pay any unpaid balance of such award to such of the dependents of the decedent, or for services rendered on account of the last illness or death of such decedent, as the commission shall determine in accordance with the circumstances in each such case.

Death while receiving compensation.

SEC. 1465-84. 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.

Basis of computing benefits.

SEC. 1465-85. 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.

Young employees.

SEC. 1465-86. The powers and jurisdiction of the board 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.

Jurisdiction continuing.

SEC. 1465-87 (as amended by act, p. 157, acts of 1917). 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.

Lump sums.

SEC. 1465-88. Compensation before payment shall be exempt from all claims or creditors and from any attachment or execution, and shall be paid only to such employees or their dependents.

Payments exempt.

SEC. 1465-89 (as amended by act, p. 528, acts of 1917). 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, 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.

Medical, etc., expenses.

SEC. 1465-90 (as amended by act, p. 313, acts of 1919). The commission shall have full power and authority to hear and determine all ques-

Decisions final.

- Appeals. tions within its jurisdiction, 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 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 or in the common pleas court of the county wherein the contract of employment was made, in case where the injury occurs outside of the State of Ohio, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it.
- Procedure. In such a proceeding, the prosecuting attorney of the county, unless he represents the appellant, shall represent the industrial commission of Ohio, without additional compensation, and he shall be notified by the clerk forthwith of the filing of such appeal, but if said prosecuting attorney represents the appellant, the industrial commission of Ohio shall be notified by said clerk forthwith of the filing of said 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, or to the common pleas court of the county wherein the contract of employment was made, in cases where the injury occurs outside the State of Ohio, 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 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, or to the common pleas court of the county wherein the contract of employment was made, in cases where the injury occurs
- Claims against employers.
- Appeals.

outside of the State of Ohio, 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.

SEC. 1465-91. Such commission 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 its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

Procedure.

SEC. 1465-92. No provision of this act relating to the amount of compensation shall be considered by or called to the attention of the jury on the trial of any action to recover damages as herein provided.

Fixing damages.

SEC. 1465-93 (as amended by act, p. 313, acts of 1919). A minor 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, 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.

Minors.

SEC. 1465-94 (as amended by act, p. 313, acts of 1919). No agreement by an employee to waive his rights to compensation under this act shall be valid except that an employee who is blind may waive the compensation that may become due him for injury or disability in cases where such injury or disability may be directly caused by or due to his blindness. The industrial commission of Ohio may adopt and enforce rules governing the employment of such persons and the inspection of their places of employment.

Waivers.

No agreement by an employee to pay any portion of the premium paid by his employer into the State insurance fund 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.

Employees paying premiums.

SEC. 1465-95 (as amended by act, p. 313, acts of 1919). Any employee claiming the right to receive compensation under this act may be required by the industrial commission of Ohio 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.

Medical examinations.

Such employee or claimant so required by the commission to submit himself or herself for such medical examination, at a point outside of the place of permanent or temporary residence of such claimant, as herein provided for, shall be entitled to have paid to him by the commission the necessary and actual expenses on account of such attendance for such medical examination after approval of such expense statement by the commission or its duly appointed representative for that purpose. 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.

SEC. 1465-96. 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

Employers' pay rolls, etc.

- 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 board shall subject such employer to a penalty of one hundred dollars (\$100) 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.
- Misrepresentations.** Sec. 1465-97. 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 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.
- Railway, etc., employees.** Sec. 1465-98. 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 industrial commission of Ohio, 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 board, 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. Payments of premium shall be on the basis of the pay roll of the workmen who accept as aforesaid.
- Accidents to be reported.** Sec. 1465-99. Every employer of the State shall keep a record of all injuries, fatal or otherwise, received by his employees 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 State liability board of awards upon blanks to be procured from the board 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 board. 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 (\$500) for such offense.
- Enforcement.** Sec. 1465-100. Upon the request of the board, the attorney general, or under his direction, the prosecuting 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 board or the members thereof in their official capacity.
- What agreements void.** Sec. 1465-101 (as amended by act, p. 6, acts of 1917). 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.

SEC. 1465-102. The board may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section six hereof. The salaries and compensation of the members of the board, of the secretary, and all actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers, and other assistants, and all other expenses of the board herein authorized, including the premium to be paid by the State treasurer for the bond to be furnished by him, shall be paid out of the State treasury upon vouchers signed by two of the members of such board and presented to the auditor of State, who shall issue his warrant therefor as in other cases.

Expenditures by board.

SEC. 1465-103 (as amended by act, p. 508, acts of 1915). As a part of its annual report, such board, under oaths of at least two of its members, shall make a report for the preceding fiscal year, of the number of awards made by it, a general statement of the causes of accidents leading to the injuries for which awards were made and a detailed statement of the condition of its respective funds. From time to time the board shall collate such general information as to the business transacted by the department as in its judgment may be for distribution to employers and employees.

Reports of accidents.

General information.

SEC. 1465-104. The board 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, and the fact that such classifications, rates, rules, regulations and rules of procedure are printed ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this act.

Rules, rates, etc., to be printed.

SEC. 1465-105. No injunction shall issue suspending or restraining any order, classification, or rate adopted by the board, or any action of the auditor of State, treasurer of State, 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 effect any right or defense in any action brought by the board or the State in pursuance of authority contained in this act.

Injunctions.

SEC. 1465-106. 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.

Questions of constitutionality.

SEC. 1465-107. It shall be unlawful for the State liability board of awards, or any other body constituted by the statutes of the State of Ohio, or any court of said State, in awarding compensation to the dependents of employees, or others killed in Ohio, to make any discrimination against the widows, children, or other dependents, who shall reside in a foreign country; and it shall be the duty of the State liability board of awards, or any other board or court, in determining the amount of compensation to be paid to the dependents of killed employees, to pay to the alien dependents residing in foreign countries the same benefits as to those dependents residing in the State of Ohio.

Nonresident alien beneficiaries.

SEC. 1465-108. When the dependents of killed employees reside in a foreign country, the consul general, consul, vice consul, or consular agent, duly accredited to the consular district within which such killed employee lived at the time of his decease by the country wherein such dependents of the killed employee reside, shall furnish the necessary information regarding such dependents of killed employees so that the State liability board of awards may transmit to such dependents the funds provided for in the compensation act of the State of Ohio, or any amendments thereto.

Consular officers to act.

Approved June 15, 1911.

OKLAHOMA.

ACTS OF 1915.

CHAPTER 246.—*Compensation of workmen for injuries.*

ARTICLE ONE.

- Title.** SECTION 1. This act shall be known as the "Workmen's compensation law."
- Scope.** SEC. 2 (as amended by ch. 14, acts of 1919). Compensation provided for in this act shall be payable for injuries sustained by employees engaged in the following hazardous employments, to wit: Factories, cotton gins, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, gasoline plants, oil refineries and allied plants and works, waterworks, reduction works, elevators, dredges, smelters, powder works, glass factories, laundries operated by power, creameries operated by power, quarries, construction and engineering works, construction and operation of pipe lines, tanneries, paper mills, transfer and storage, construction of public roads, wholesale mercantile establishments, employees employed exclusively as salesmen or clerical workers excepted; operation and repair of elevators in office buildings; logging, lumbering, street and interurban railroads not engaged in interstate commerce, buildings being constructed, repaired or demolished, farm buildings and farm improvements excepted; telegraph, telephone, electric light or power plants or lines; steam heating or power plants and railroads not engaged in interstate commerce.
- Definitions.** SEC. 3 (as amended by ch. 14, acts of 1919). 1. "Hazardous employment" shall mean manual or mechanical work or labor connected with or incident to one of the industries, plants, factories, lines, occupations or trades, mentioned in section 2 of this act, but shall not include anyone engaged in agriculture, horticulture, or dairy or stock raising, or in operating any steam railroad engaged in interstate commerce.
2. "Commission" means the State industrial commission, as constituted by this act.
3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, or corporation employing workmen in hazardous employment, and shall include the State, county, city, or any municipality when engaged in any hazardous work within the meaning of this act in which workmen are employed for wages: *Provided, however,* That so long as by State law, city charter, or municipal ordinance, provision equal to or better than that given under the terms of this act, is made for such employees injured in the course of employment such employees shall not be entitled to the benefits of this act.
4. "Employee" means any person engaged in manual or mechanical work, in the employment of any person, firm, or corporation carrying on a business covered by the terms of this act.
5. "Employment" includes employment only in a trade, business, or occupation carried on by the employer for pecuniary gain.
6. "Compensation" means the money allowance payable to an employee as provided for in this act.
7. "Injury or personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.
8. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the acci-

dent, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer.

9. "Insurance carrier" shall include stock corporations, reciprocal or interinsurance association[s] or mutual associations with which employers have insured, and employers permitted to pay compensation, directly under the provisions or [of] subdivision (d) of section 1 of article 3 of this act.

10. "Factory" means any undertaking in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair, cleaning, or assorting, and shall include the premises, yard, and plant of the concern, but shall not include any such plants or machinery used on farms.

11. "Workshop" means any premises, yard, plant, room, or place wherein power-driven machinery is employed and manual or mechanical labor is exercised by way of trade for gain or otherwise or incidental to the process of making, altering, repairing, printing, or ornamenting, cleaning, finishing, or adapting for sale or otherwise any article or part of article, machine, or thing over which premises, room, or place the employer of the person working therein has the right of access or control.

12. "Mine" means any mine where coal, ore, mineral, gypsum, or rock is dug or mined under the ground.

13. "Quarry" means an opening or cut from which coal is mined, or clay, ore, mineral gypsum, gravel, sand, or rock is cut or taken for manufacturing, building, or construction purposes.

14. "Construction work or engineering work" means improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, electric, steam, or water plants, telegraph and telephone plants and lines, electric lines or power lines, and includes any other work for the construction, altering or repairing for which machinery driven by mechanical power is used.

15. "Where several classes or kinds of work is performed the commission shall classify such employment, and the provision of this act shall apply only to such employees as are engaged in manual or mechanical labor of a hazardous nature."

ARTICLE TWO.

SECTION 1 (as amended by ch. 14, acts of 1919). Every employer subject to the provisions of this act shall pay, or provide as required by this act compensation according to the schedules of this article for the disability of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, except where the injury is occasioned by the willful intention of the injured employee to bring about injury to himself or of another, or where the injury results directly from the willful failure of the injured employee to use a guard or protection against accident furnished for his use pursuant to any statute or by order of the State labor commissioner or results directly from the intoxication of the injured employee while on duty: *Provided*, That the provisions of this act shall not apply to any employer unless he shall employ more than two workmen: *And provided further*, That a principal contractor, intermediate, or subcontractor, shall be liable for compensation to any employee injured while in the employ of any of his intermediate or subcontractors and engaged upon the subject matter of his contract, to the same extent as his immediate employer. Any principal, intermediate, or subcontractor who shall pay compensation under the foregoing provision may recover the amount paid from the subordinate subcontractor through whom he may have been rendered liable under this section.

Compensation payable, when.

Sec. 2 (as amended by ch. 14, acts of 1919). The liability prescribed in the last preceding section shall be exclusive, except that if an employer has failed to secure the payment of compensation for his injured employee, as provided in this act, then an injured employee, or his legal representatives if death results from the injury, may maintain an

Remedy exclusive. Exception.

- Defenses abro- action in the courts for damages on account of such injury, and in such
gated. an action the defendant may not plead or prove as defense that the
injury was caused by the negligence of a fellow servant, or that the
employee assumed the risk of his employment, or that the injury was
due to the contributory negligence of the employee: *Provided*, That
this section shall not be construed to relieve the employer from any
other penalty provided for in this act for failure to secure the payment
of compensation provided for in this act.
- Waiting time. Sec. 3 (as amended by ch. 14, acts of 1919). No compensation shall
be allowed for the first seven days of disability, except the benefits
provided for in section 4 of this article: *Provided*, That should disability
continue for twenty-one (21) or more days, compensation shall be com-
puted from the date of injury.
- Medical, etc., Sec. 4 (as amended by ch. 14, acts of 1919). The employer shall
aid. promptly provide for an injured employee such medical, surgical or
other attendance or treatment, nurse and hospital service, medicine,
crutches and apparatus as may be necessary, during sixty days after
the injury or for such time in excess thereof as in the judgment of the
commission may be required. If the employer fails to provide the
same, the 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. All fees and other charges for such treatment and
services shall be subject to regulation by the commission as provided
in section 14 of this article, and shall be limited to such charges as pre-
vail in the same community for similar treatment of an injured person
of a like standard of living, and such charges shall not exceed the sum
of one hundred (\$100) dollars, unless approved by the commission;
the commission shall have authority to order a change of physicians
when in its judgment such change is desirable or necessary: *Provided*,
The employer shall not be liable to make any of the payments pro-
vided for in this section, in case of a contest of liability where the com-
mission shall decide that the injury does not come within the terms of
this act.
- Computation of Sec. 5. Except as otherwise provided in this act, the average weekly
wages. wages of the injured employee at the time of the injury shall be taken
as the basis upon which to compute compensation and shall be deter-
mined as follows:
1. If the injured employee shall have 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 immedi-
ately preceding his injury, his average annual earnings 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 employ-
ment during substantially the whole of such 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 in a similar
employment in the same or a neighboring place shall have earned in
such employment during the days when so employed.
 3. If either of the foregoing methods of arriving at the annual average
earnings of an injured employee can not reasonably and fairly be applied
such annual earnings shall be 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 neighboring locality, shall reasonably represent the an-
nual earning capacity of the injured employee in the employment in
which he was working at the time of the accident.
 4. The average weekly wages of an employee shall be one fifty-second
part of his average annual earnings.
 5. If it be established that the injured employee was a minor when
injured, and that under normal conditions his wages would be ex-
pected to increase the fact may be considered in arriving at his average
weekly wages.

SEC. 6 (as amended by ch. 14, acts of 1919). The following schedule of compensation is hereby established:

1. In case of total disability adjudged to be permanent, 50 per centum of the average weekly wages shall be paid to the employees during the continuance of such total disability not exceeding five hundred weeks. Loss of both hands, or both feet, or both legs, or both eyes, or any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts. Permanent total disability.

2. In case of temporary total disability, fifty per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of three hundred weeks, except as otherwise provided in this act. Temporary total disability.

3. In case of disability partial in character but permanent in quality the compensation shall be fifty per centum of the average weekly wages, and shall be paid to the employee for the period named in the schedule as follows: Permanent partial disability.

Thumb: For the loss of a thumb, sixty weeks. Schedule.

First finger: For the loss of a first finger, commonly called the index finger, thirty-five weeks.

Second finger: For the loss of a second finger, thirty weeks.

Third finger: For the loss of a third finger, twenty weeks.

Fourth finger: For the loss of a fourth finger, commonly called the little finger, fifteen weeks.

Phalange of thumb or finger: The loss of the first phalange of the thumb or finger shall be considered 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.

Great toe: For the loss of a great toe, thirty weeks.

Other toes: For the loss of one of the toes other than the great toe, ten weeks.

Phalange of toe: The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand: For the loss of a hand, two hundred weeks.

Arm: For the loss of an arm, two hundred fifty weeks.

Foot: For the loss of a foot, one hundred fifty weeks.

Eye: For the loss of an eye, one hundred weeks.

Leg: For the loss of a leg, one hundred seventy-five weeks.

Loss of use: Permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg, or eye, shall be considered as the equivalent of the loss of such thumb, finger, toe, hand, arm, foot, leg, or eye.

Amputations: Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a 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 a leg. The compensation for the foregoing specific injuries shall be in lieu of all other compensations, except the benefits provided in section 4 of article 2 of this act. In case of an injury resulting in the loss of hearing or in serious and permanent disfigurement of the head, face or hand, compensation shall be payable in an amount to be determined by the commission, but not in excess of three thousand dollars: *Provided,* That compensation for the loss of hearing or permanent disfigurement shall not be in addition to the other compensation provided for in this section, but shall be taken into consideration in fixing the compensation otherwise provided. Disfigurement.

Other cases: In all other cases in this class of disability the compensation shall be fifty per centum 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; not to exceed three hundred weeks, but subject to reconsideration. Cases not enumerated.

- eration of the degree of such impairment by the commission on its own motion or upon the application of any party in interest.
- Temporary partial disability.** 4. In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section an injured employee shall receive fifty per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise, if less than before the injury during continuance of such partial disability, but not in excess of three hundred weeks, except as otherwise provided in this act.
- Maximum and minimum amounts.** 5. The compensation payments under the provisions of this act shall not exceed the sum of eighteen (\$18) dollars per week or be less than eight (\$8) dollars per week: *Provided, however,* That if the employee's wages at the time of the injury are less than eight (\$8) dollars per week he shall receive his full weekly wages: *Provided, further,* That the compensation received as provided under subdivision 4 of this section shall not, when added to the wages received by such employee after such injury amount to a greater sum than his average weekly wages received prior to said injury.
- Second injuries.** 6. The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from the compensation for a later injury, but in determining compensation for the later injury his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury.
- Nonresident aliens.** SEC. 7. Compensation under this act to aliens not residents (or about to become nonresidents) of the United States shall be the same in amount as provided for residents, except that the commission may, at its option, or upon the application of the insurance carrier, shall commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the computed amount of such future installments of compensation as determined by the commission.
- Notice.** SEC. 8. Notice of an injury, for which compensation is payable under this act shall be given to the commission and to the employer within thirty days after injury. 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 in his 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 at his or its last-known place of residence: *Provided,* That if the employer be a partnership, then such notice may be 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 such notice, 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 insurance carrier or employer, as the case may be, has not been prejudiced thereby, shall be a bar to any claim under this act.
- Medical examinations.** SEC. 9. An employee injured, claiming or entitled to compensation under this act, shall, if requested by the commission, submit himself for medical examination at a time, and from time to time, at [a] place reasonably convenient for the employee and as may be provided by the rules of the commission. If the employee or the insurance carrier request, he shall be entitled to have a physician or physicians of his own selection to be paid by him present to participate in such examination. If an employee refuses to submit himself to examination, his right to prosecute any proceeding under this act shall be suspended, and no compensation shall be payable for the period of such refusal.
- Claim.** SEC. 10 (as amended by ch. 14, acts of 1919). At any time after the expiration of the first seven days of disability on the part of the injured employee, a claim for compensation may be presented to the commission. If the employer and the injured employee shall reach an agreement as to the facts with relation to an injury, for which compensation

is claimed under this act, a memorandum of such an agreement, in form as prescribed by the commission, and signed by both employer and employee, may be immediately filed by the employer with the commission, and if approved by the commission, shall, in the absence of fraud, be deemed binding upon the parties thereto. Such agreement shall be approved by the commission only when the terms conform to the provisions of this act.

Agreement.

The commission shall have full power and authority to determine all questions in relation to payment of claims for compensation under the provisions of this act. The commission shall make, or cause to be made, such investigation as it deems necessary, and upon application of either party shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny any award, determining such claim for compensation, and file the same in the office of the commission together with the statement of its conclusion of fact and rulings of law. The commission may, before making an award, require the claimant to appear before an arbitration committee appointed by it and consisting of one representative of employees, one representative of employers, and either a member of the commission or a person especially deputized by the commission to act as chairman, before which the evidence in regard to the claim shall be adduced and by which it shall be considered and reported upon. Immediately after such filing the commission shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the commission shall be final as to all questions of fact, and except as provided in section 13 of this article as to all questions of law.

Power of commission.

SEC. 11. In any proceeding, for the enforcement of a claim for compensation under this act it shall be presumed, in the absence of substantial evidence to the contrary:

Presumptions.

1. That the claim comes within the provisions of this act.
2. That sufficient notice thereof was given.
3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury of himself or of another.
4. That the injury did not result solely from the intoxication of the injured employee while on duty.
5. That the injury did not result directly from the willful failure of the injured employee to use a guard or protection against accident furnished for his use pursuant to any statute or by order of the labor commissioner [commission].

SEC. 12. Upon its motion or upon the application of any party in interest, on the ground of a change in conditions, the 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 state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall effect [affect] such award as regards any money already paid.

Review.

SEC. 13. The award or decision of the commission shall be final and conclusive upon all questions within its jurisdiction between the parties, unless within thirty days after a copy of such award or decision has been sent by said commission to the parties affected, an action is commenced in the supreme court of the State to review such award or decision. Said supreme court shall have original jurisdiction of such action, and is authorized to prescribe rules for the commencement and trial of the same. Such action shall be commenced by filing with the clerk of the supreme court a certified copy of the award or decision of the commission attached to the petition by the complainant, wherein the complainant or petitioner shall make his assignments or specifications as to wherein said award or decision is erroneous and illegal. Said proceeding shall be heard in a summary manner and have precedence over all other civil cases in such court, except preferred corporation commission appeals. The commission shall be deemed a party to such proceeding, and the attorney general, without extra compensation, shall represent the commission therein. Such action shall be subject to the law and

Action by court.

practice applicable to other civil actions cognizable in said court. Upon the final determination of said action, in which the award or decision of the commission is sought to be reviewed, the commission shall make an order or decision in accordance with the judgment of said court. The commission shall not be liable for any costs apart from said proceeding, but otherwise the costs shall be taxed as in other cases.

Costs. **SEC. 14.** If the commission or the court before which any proceedings for compensation, or concerning an award of compensation, have been brought under this act determine that such proceedings have not been so brought on reasonable ground, it shall assess the whole cost of the proceedings on the party who has so brought them. Claims for legal services in connection with any claim arising under this act, and claims for services or treatment rendered or supplies furnished pursuant to section 4 of article 2 of this act, shall not be enforceable unless approved by the commission. If so approved such claim or claims shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the commission.

Payments. **SEC. 15.** Compensation under the provisions of this act shall be payable periodically; in accordance with the method of payment of the wages of the employee at the time of his injury, and shall be so provided for in any award, but the commission may determine that all payment or payments may be made monthly or at other periods, as it may deem advisable. The commission, whenever it shall so deem advisable, may commute such periodical payments to one or more lump-sum payments, provided the same shall be in the interest of justice. All payments as required by the award shall be made to the injured employee in the manner and form prescribed by the commission. And employers and insurance companies shall for such purposes be permitted, or when necessary to protect the interests of the beneficiary may be required, to make deposits with the commission to secure the prompt and convenient payment of such compensation.

Lump sums. **SEC. 16.** If the payment of compensation, or an installment thereof, due under the terms of an award, except in case of appeal from an award, be not made within ten days after the same is due, by the employer, or insurance corporation liable therefor, the amount of such payment shall constitute a liquidated claim for damages against such employer or insurance corporation, which, with an added penalty of 50 per centum may be recovered in an action to be instituted by the commission in the name of the people of the State. If such default be made in the payment of an installment of compensation and the whole amount of such compensation be not due, the commission may, if the present value of such compensation be computable, declare the whole amount thereof due, and recover the amount thereof with the added penalty of 50 per centum, as provided in this section. Any such action may be compromised by the commission, or may be prosecuted to final judgments, as in the discretion of the commission, may best serve the interests of the persons entitled to receive the compensation for the benefits. Compensation recovered under this section shall be disbursed by the commission to the persons entitled thereto in accordance with the award. A penalty recovered pursuant to this section shall be paid into the State treasury and be applicable to the expenses of the commission.

Default of payments. **SEC. 17.** The right to claim compensation under this act shall be forever barred unless within one year after the injury a claim for compensation thereunder shall be filed with the commissioner.

Limitation. **SEC. 18.** If a workman entitled to compensation under this act be injured by the negligence or wrong of another not in the same employ, such injured workmen 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 elects to take compensation under this act, the cause of action against such other shall be assigned to the insurance carrier liable for the payment of such compensation, and if he elects to proceed against such other person or insurance carrier [sic], as the case may be, shall contribute the deficiency, if any, between the amount of the recovery against such

Liability of third persons.

other person actually collected and the compensation provided or estimated by this act for such case. The compromise of any such cause of action by the workman at any amount less than the compensation provided for by this act shall be made only with the written approval of the commission, and otherwise with the written approval of the person or insurance carrier liable to pay the same.

Sec. 19. No benefits, savings, or insurance of the injured employee independent of the provisions of this act shall be considered in determining the compensation or benefits to be paid under this act. Savings, etc., of employee.

Sec. 20. No agreement by any employee to pay any portion of the premiums paid by his employer to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing 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. Burden on employer.

Sec. 21. No agreement by an employee to waive his right to compensation under this act shall be valid. Waivers.

Sec. 22. Claims for compensation or benefits due under this act shall not be assigned, released, or commuted except as provided by this act, and shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees. Assignments, etc.

Sec. 23. The right of compensation granted by this act shall have the same preference or lien, without limit of amount, against the assets of the employer, as is now or hereafter may be allowed by law for a claim for unpaid wages for labor. Preferences.

ARTICLE THREE.

SECTION 1 (as amended by chap. 14, acts of 1919). An employer shall secure compensation to his employees in one of the following ways: Security of payments.

(a) By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association or by exchanging contracts of indemnity or interinsurance under reasonable regulations prescribed by the commission providing for and securing the payment of the compensation provided in this act, or other concerns authorized to transact the business of workmen's compensation insurance in this State. If insurance be so effected in such corporation or mutual association or reciprocal or interinsurance association, the employer shall forthwith file with the commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual association or reciprocal or interinsurance association together with a copy of the contract or policy of insurance. Insurance.

(b) By obtaining and keeping in force guaranty insurance with any company authorized to do such guaranty business in this State: *Provided*, That any person, firm, association, or corporation engaged in the business of writing insurance as required of an employer by this act who refuses to limit the policy to be written when requested by the assured, to employees engaged in hazardous employment, shall be guilty of a violation of the insurance laws of this State, and the State insurance board shall punish such violation as provided in section 20, chapter 174, session laws of Oklahoma, 1915; or Guaranty insurance.

(c) Subject to the approval of the commission, any employer may enter into or continue an agreement with his or their workmen to provide a scheme of compensation, benefits or insurance in lieu of the compensation and insurance provided by this act; but such scheme shall in no instance provide less than the benefits here secured nor vary the period of compensation provided for disabilities or the provisions of this act with respect to periodic payments or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased: *Provided, further*, That the approval of the State industrial commission shall be granted, if the scheme provides for contributions by workmen, only when it confers benefits in addition to those required by this act commensurate with such contributions. Approved schemes.

Self-insurance. (d) By furnishing satisfactory proof to the commission of his financial ability to pay such compensation for himself, in which case the commission may, in its discretion, require the deposit with the commission of securities or indemnity bond in an amount and of a kind to be determined by the commission to secure his liability to pay the compensation provided for in this act.

If any employer fails to comply with this section he shall be liable to a penalty for every day which such failure continues of one dollar for every employee to be recovered in action brought by the commission.

The commission may, in its discretion, for good cause shown, remit any such penalty: *Provided*, The employer in default secure compensation as provided in this section.

Notice to be posted. Sec. 2. Every employer who has complied with section 1 of article 3 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 commission, stating the fact that he has complied with all the rules and regulations of the commission, and that he has secured the payment of compensation to his employees [and their dependents] in accordance with the provisions of this act.

Failure to give security. Sec. 3. Failure on part of any employer to secure the payment of compensation provided in this act shall have the effect of enabling the commission to proceed on behalf of an injured employee of such employer against the employer as provided in section 2 of article 2 of this act, and as provided in section 1 of article 3 of this act.

Provisions of policies. Sec. 4. (a) Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association or other concern authorized to transact workmen's compensation insurance in this State, shall contain a provision setting forth the right of the commission to enforce in the name of the people of the State of Oklahoma for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application 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 said 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.

(b) Every such policy 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, decisions, or awards rendered against the employer for the payment of compensation under the provision of this act.

(c) Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries sustained by an employee during the life of such policy.

(d) Every such policy shall contain a provision that, as 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 shall also cover liability for the payment of the compensation provided for by this act.

(e) No contract of insurance issued by a stock company, mutual association, or other concern against the liability rising 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 be filed in the office of the commission 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.

ARTICLE FOUR.

SECTION 1 (as amended by ch. 14, acts of 1919). A State industrial commission is hereby created, consisting of three commissioners, to be appointed by the governor, by and with the advice and consent of the senate. The term of office of the members of the commission shall be six years, except that the term of office of the members thereof now serving shall expire on January 1, 1921, 1923, and 1925, respectively, as set out and provided in the commission issued by the governor to such members. Successors of said office shall be appointed in like manner for a term of six years. Vacancies shall be filled in like manner by the appointment for the unexpired term.

Industrial commission.

Each member of the commission shall, before entering upon the duties of his office, execute an official undertaking in the sum of ten thousand (\$10,000) dollars, to be approved by the governor and filed in the office of secretary of state. The governor may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving him a copy of charges and opportunity of being publicly heard, in person or by counsel, upon not less than ten days' notice. If such commissioner be removed the governor shall file in the office of the secretary of state a complete statement of all charges made against him and a complete record of his proceedings and his findings thereon. Each commissioner shall devote his entire time to the duty 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, or serve on or under any committee of a political party. The commission shall have an official seal, which shall be judicially noticed. The salary of each of the commissioners shall be three thousand (\$3,000) dollars per annum, payable monthly as salaries of other State officers are paid, and shall be paid out of the State treasury, and in addition to the said sum, each commissioner shall be allowed all traveling expenses incurred by him when away from the seat of government in the discharge of his official duties.

Bond.

Immediately upon the passage of this act the State industrial commission shall select one of its members as chairman who shall serve as chairman of said board, until the first Monday in January, 1921, or until his successor is elected, as provided herein. When a vacancy exists in the chairmanship of said board it shall be the duty of said board to elect one of its members as chairman. A chairman of the State industrial commission shall be regularly elected on the first Monday in January, 1921, and each two years thereafter.

Chairman.

SEC. 2. The commission may employ a secretary, an actuary, and such inspectors and other assistants as it may deem necessary and fix their compensation, both the number and compensation of such employees to be subject to the written approval of the governor; such compensation shall be paid on vouchers signed by at least two of the commissioners and paid out of the appropriation provided therefor. The members of the commission and all assistants shall be entitled to receive their actual necessary expenses while traveling on the business of the commission. Such expenses shall be itemized and sworn to by the person who incurred the expenses and allowed by the commission.

Employees.

Expenses.

SEC. 3. The commission shall keep and maintain its principal office in the city of Oklahoma City, in rooms in the capitol assigned by the board of affairs. The office shall be supplied with the necessary office furniture, supplies, books, maps, stationery, telephone connections and other necessary appliances at the expense of the State, payable in the same manner as other expenses of the commission.

Office.

SEC. 4. The commission shall be in continuous session and open for transaction of business during all business hours of every day excepting Sunday and legal holidays. All sessions shall be open to the public, and may be adjourned upon entry thereof in its records, without further notice. Whenever convenience of parties will be promoted or delay and expense prevented the commission may hold session anywhere in

Sessions.

the State. Every vote and official act of the commission shall be entered on record, and the record shall contain a record of each case considered and the award, decision, or order made with respect thereto, and all voting shall be by the calling of each commissioner's name by the secretary, and each vote shall be recorded as cast. A majority of the commission shall constitute a quorum. A vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the full commission so long as the majority remains.

Acts official.

SEC. 5. Any investigation, inquiry or hearing with [which] the commission is authorized to hold or undertake, may be held or taken at any place in the State by or before any commissioner, and the award, decision, or order of a commissioner, when approved and confirmed by the commission, and ordered filed in its office shall be deemed to be the award, decision, or order of the commission. Each commissioner shall, for the purpose of this act, have power to administer oaths, certify to official facts, take depositions, issue subpoenas, compel the attendance of witnesses, and the production of books, accounts, papers, records, documents, and testimony. The commission may authorize any inspector to conduct any such investigation, inquiry, or hearing, in which case he shall have the power of a commissioner in respect thereof.

Powers.

SEC. 6. The secretary of the commission shall—

Secretary.

First. Maintain a full and true record of all proceedings of the commission, of all documents or papers ordered filed by the commission, of decisions or orders made by a commissioner, and of all decisions or orders made by the commission or approved and confirmed by it, and ordered filed, and he shall be responsible to the commission for the safe custody and preservation of all such documents at its office.

Second. Have power to administer oaths in all parts of the State, so far as the exercise of such power is properly incident to the performance of his duty or that of the commission.

Third. Designate from time to time, with the approval of the commission, one of the clerks appointed by the commission to exercise the powers and duties of the secretary during his absence.

Fourth. Under the direction of the commission have general charge of its office, superintend its clerical business, and perform such other duties as the commission may prescribe.

Rules.

SEC. 7. The commission shall adopt reasonable rules, not inconsistent with this act, regulating and providing for—

First. The kind and character of notices and the service thereof in case of accident and injury to employees.

Second. The nature and extent of the proofs and evidence, and the method of taking and furnishing the same to establish the right to compensation.

Third. The forms of application of those claiming to be entitled to compensation.

Fourth. The method of making investigations, physical examinations, and inspections.

Fifth. The time within which adjudication and awards shall be made.

Sixth. The conduct of hearing investigations and inquiries.

Seventh. The giving of undertakings by all subordinates who are empowered to receive and disburse moneys, to be approved by the attorney general as to forms and by the governor as to sufficiency.

Eighth. Carrying into effect the provisions of this act.

Records.

SEC. 8. The commission or [a] commissioner or inspector in making an investigation of [or] inquiry or conducting a hearing shall be required to preserve a complete record of all oral or documentary evidence considered; to any part of such evidence any party affected thereby may object, which objection shall be considered and passed on by the commission and preserved in the record.

Subpoena.

SEC. 9. A subpoena shall be signed and issued by a commissioner, an inspector, or by the secretary of the commission, and may be served by any person of full age and in the same manner as a subpoena issued out of a court of record. If a person fail, without reasonable cause, to attend in obedience to a subpoena, or to be sworn or examined or answer a question, or produce a book or paper, or to subscribe and

swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor.

SEC. 10. In case of disobedience of any person to comply with the order of the commission, or subpoena issued by it, or one of its members, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the county judge of the county in which the person resides, or of the county in which such hearing is being conducted, on application of any member of the board, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of requirements of subpoena issued from such court on a refusal to testify therein.

Contempt

SEC. 11. Each witness who appears in obedience to a subpoena before the commission, or a commissioner, inspector, or a person employed by the commission to obtain the required information, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid out of funds appropriated therefor in the same manner as other expenses of the commission. A witness subpoenaed at the instance of a party other than the commission, a commissioner, inspector, or person acting under the authority of the commission, shall be entitled to fees for compensation from the funds appropriated therefor if the commission certify that his testimony was material to the matter investigated, but not otherwise.

Fees.

SEC. 12. The commission may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for depositions in civil actions in courts of record.

Depositions.

SEC. 13. A transcribed copy of the testimony, evidence, and procedure or of a specific part thereof or of the testimony of a particular witness or of a specific part thereof on any investigation, by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript thereof and to have been carefully compared by him as [with] the original notes, may be received in evidence by the commission with the same effect as if said stenographer were present and testified to the facts so certified, and a copy of such transcript shall be furnished on demand to any party upon payment of the fee provided for a transcript of similar minutes in courts of record.

Transcript.

SEC. 14. The power 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 relating thereto as in its opinion may be just, including the right to require physical examination as provided for in section 9 of article 2 of this act, and subject to the same penalties for refusal.

Reviews.

SEC. 15. Annually on or before the first day of January the commission shall make a report to the governor, to be by him transmitted to the legislature, which shall include a statement of the number of awards made by it and the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the expenses of the commission, together with any other matter which the commission deems proper to report to the governor, including any recommendations it may desire to make.

Annual reports

SEC. 16. The commission shall prepare and cause to be distributed, so that the same may be readily available blank forms of application for compensation, notice to employers, proofs of injury, of medical or other attendance or treatment, of employment and wage earnings, and for such other purposes as may be required. Insured employers shall constantly keep on hand a sufficient supply of such blanks.

Blanks.

ARTICLE FIVE.

SECTION 1. All penalties imposed by this act shall be applicable to the expenses of the commission. When collected by the commission such penalties shall be paid into the State treasury and be thereafter appropriated by the legislature for the purposes prescribed by this section.

Use of penalties.

- Reports of acci- Sec. 2. Every employer shall keep a record of all injuries, fatal or
dents. otherwise, received by his employees in the course of their employ-
ment. Within ten days or a reasonable time thereafter, after the
occurrence of an accident resulting in personal injury a report thereof
shall be made in writing by the employer to the commission upon
blanks to be procured from the commission for that purpose. Such
reports shall state 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, the time, nature, and cause
of the injury, and such other information as may be required by the
commission. Any employer who refuses or neglects to make a report
as required by this section shall be guilty of a misdemeanor, punishable
by a fine of not more than five hundred dollars (\$500).
- Information to be furnished. Sec. 3. Every employer shall furnish the commission upon request
any information required by it to carry out the provisions of this act.
The commission, a commissioner, or any inspector, may examine under
oath any employer, officer, agent, or employee. An employer or
employee receiving from the commission a blank with directions to
file the same shall cause the same to be properly filled out so as to
answer fully and correctly all questions therein, or if unable to do so,
shall give a good and sufficient reason for such failure. Answers to
such questions shall be certified under oath and returned to the com-
mission within the period fixed by the commission therefor.
- Access to books, etc. Sec. 4. All books, records, and pay rolls of the employers showing
or reflecting in any way upon the amount of wage expenditures of such
employers shall always be open for inspection by the commission or
any other authorized auditors, accountants, or inspector for the purpose
of ascertaining the correctness of the wage expenditure and number of
men employed and such other information as may be necessary for the
purposes and uses of the commission in the administration of this act.
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 commission or any commissioner, when ordered to do
so by the commission or its secretary, upon the ground that the testi-
mony or pay roll or other competent evidence required of 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 commission or a com-
missioner or its inspector or examiner, testified to or produced docu-
mentary evidence of: *Provided, however,* That no person so testifying
shall be exempt from prosecution or punishment for any perjury com-
mitted by him in his testimony.
- False state- Sec. 5. [Repealed.]
ments. Sec. 6. If for the purpose of obtaining any benefit or payment under
the provisions of this act, either for himself or any other person, any
person willfully makes a false statement or representation, he shall be
guilty of a misdemeanor.
- Incompetence. Sec. 7. 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.
- Duty of com- Sec. 8. The commissioner of labor shall render to the commission any
missioner of la- proper aid and assistance by the department of labor as in his judgment
bor. does not interfere with the proper conduct of such department.
- Provisions sev- Sec. 9. If any section or provision of this act be decided by the
erable. 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 causes. Sec. 10 (as amended by ch. 14, acts of 1919). This act shall not
affect any action pending or cause of action existing or which has or
may hereafter accrue to the dependents or other legal representatives
of an injured employee in case death results from the injury after
he has been awarded compensation under the provisions of this act:
Provided, That for any injury for which compensation is not provided
under the provisions of this act the injured party shall have the
right of action in the courts for his damage on account of such injury.
- Death cases.

ARTICLE SIX.

SECTION 1. It is not intended that any of the provisions of this act shall apply in cases of accidents resulting in death and no right of action for recovery of damages for injuries resulting in death is intended to be denied or affected. Injuries caus-
ing death.

SEC. 2 (as amended by ch. 14, acts of 1919). The right of action to recover damages for personal injuries not resulting in death arising and occurring in hazardous employments as herein defined, except the right of action reserved to an injured employee or his dependents or other legal representatives in section 2 of article 2 and section 10 of article 5 of this act, is hereby abrogated, and all jurisdiction of the courts of this State over such causes, except as to the cause reserved to such injured employees or their dependents or other legal representatives in section 2 of article 2 and section 10 of article 5 of this act is hereby abolished. Suits abolished.

ACTS OF 1917.

CHAPTER 178.—*Industrial commission—Employees' salaries.*

SECTION 1. The salary of the secretary of the State industrial commission is hereby fixed at eighteen hundred dollars per annum. Secretary.

SEC. 2. The State industrial commission is hereby authorized to appoint: Employee.

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.

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. Same.

Approved this 23d day of March, 1917.

OREGON.

ACTS OF 1913.

CHAPTER 112 (as amended by chapter 288, acts of 1917).—*Compensation of workmen for injuries—State insurance fund.*

- 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. 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.
- Oath.** Before entering upon 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 surities 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.

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.

Quorum.

Sec. 6. 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.

Employees.

The total expenses 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.

Expenses.

Sec. 7. 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) 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, subpoenas 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.

Powers.

It shall be the duty of the circuit court of the State of Oregon for any county or the judge of said court, on application of the industrial accident commission or any of its commissioners or assistants, to compel obedience to subpoenas issued and served pursuant to the provisions of this section and to punish disobedience of any such subpoena or any refusal to testify at any session 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 subpoena issued from said court is punished.

Duty of courts.

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.

Sec. 8. 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 subpoenas 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.

Rules and regulations.

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.

Reports.

Sec. 10. All persons, firms, and corporations engaged as employers in any of the hazardous occupations hereafter specified shall be subject to the provisions of this act: *Provided, however,* That any such person,

Application of law.

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 non-hazardous 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 sub- Sec. 11. All workmen in the employ of persons, firms, or corpora-
ject. tions 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 sixteen 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 sixteen 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.

Proviso.
Benefits pay- Sec. 12. Every workman subject to this act while employed by an
able, when. 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 workmen 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 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.

Liability of
third party.
Hazardous oc- Sec. 13. The hazardous occupations to which this act is applicable
cupations. 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, smelters, 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, motorboats operated for commercial or industrial purposes.
- (j) Gravel, sand, and coal bunkers.
- (k) Flour, feed, and chopmills.
- (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 driers, fruit driers, stock and hay barns, are non-hazardous occupations and are subject to the provisions of this act only through compliance with section 31 hereof.

Agriculture.

Sec. 14 (as amended by ch. 288, acts of 1919). In the sense of this act words employed mean as here stated, to wit:

Definitions.

“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.

“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 either on the surface or 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 building, 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 waterpower plants, telegraph and telephone plants and lines, electric light or power lines, and includes any other works of construction, alteration or repair, and work 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 any 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, wood cutting, operation of tractors, fruit driers, 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.

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 thereof, 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 acci-

Individual employers.

dent 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, 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 30 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.

Members of corporations. 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 prevailing salary or wage, but not otherwise, shall be deemed to be a workman.

Dependent. "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, brother, sister, half sister, half brother, niece, nephew, who at the time of the accident are dependent 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 an injured workman, 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, an illegitimate child legitimized prior to the injury, and a stepson or stepdaughter.

"Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer; and the term "pay roll," as used in section 19 of this act, shall be taken to mean a record of wages paid workmen for their services; and shall also include the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer.

Election not to contribute. SEC. 15. 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 abrogated.

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 hereby 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 as above described.

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.

Notices to be posted.

Sec. 16. 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 including 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 described.

Status continuing.

Sec. 17. 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 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.

Recall of election.

Sec. 18. 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.

Employees' option.

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 workmen by posting notices of his election to contribute as provided in section 15 hereof, his workmen 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 his 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 period 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 remains in the service of the same employer, continue subject to this act to and including the next succeeding thirtieth day of June and thereafter until and including the thirtieth day of June of each succeeding year, unless before June first in same year he shall have given written notice to his employer of his election not to be longer subject to this act, whereupon from and including the 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 relations 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 become subject to this act, shall be guilty of a misdemeanor. The circuit court of the State of Oregon and justice court of the State shall have concurrent jurisdiction of this offense.

Premium rates.

Sec. 19 (as amended by ch. 288, acts of 1919). 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 fifteenth 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:

| | |
|---|------|
| Subaqueous work, fire escapes, house moving, house wrecking, steeples, metal smokestacks, metal chimneys, iron or steel frame structures or parts of structures..... | .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, water works or systems, road work 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 work or metal ceilings in buildings, carpenter work not otherwise specified, ship or boat rigging, ship or millwrighting, 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 or composition walks..... | .020 |
| (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
 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
 Stamping tin or metal..... 050
 Sawmills, shingle mills, lath mills..... 035
 Furniture, staves, veneer, box, packing cases, sash, door or blinds, keg, pail, barrel, basket, tub, woodenware or wooden 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
 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

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. Contributions by employees.

If only a part of an employer's workmen are [is] 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 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. Two or more classes of employments.

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 whenever for a further period of twelve months the total amount so paid out and set aside shall not exceed fifty 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 Experience rating.

during the preceding twelve months shall exceed fifty per cent of his contributions to such fund during such period of twelve months: *And provided further*, That no employer shall be entitled to any such reduction if the commission shall find that during the preceding twelve months he has willfully failed to install or maintain any safety appliance, device, or safeguard required by statute.

- Second injuries.** If an employee who has previously incurred permanent partial disability incurs a subsequent permanent partial disability such that the compensation payable for the disability resulting from the combined injuries is greater than the compensation which, except for the pre-existing disability, would have been payable for the latter injury, the employee shall receive compensation on the basis of the combined injuries, but the charge against the rating of his employer shall be for the latter injury only.
- Distribution of surplus.** On July 1, 1920, and annually thereafter, the commission shall determine the total liability existing against the industrial accident fund, and if it finds the industrial accident fund amounts to a sum sufficient to cover all liability, together with a surplus of fifty per cent thereon, aside from the reserves in the segregated accident fund, and in moneys in the emergency and catastrophe funds, the commission shall place to the credit of each employer contributing to the fund during the preceding twelve months, on account of contributions required by this act to be paid during that time, such proportion of the surplus paid into the accident fund during that period as his contribution is to the total contributions of all employers paid into the accident fund for the preceding twelve months.
- Catastrophe fund.** There is also hereby created a fund to be known as the "catastrophe fund." The State treasurer shall transfer fifty thousand dollars (\$50,000) from the industrial accident fund to the catastrophe fund, and there shall also be transferred to such fund monthly one (1) per cent of the total monthly contributions received from employers and workmen until such time as in the judgment of the commission such fund shall be sufficiently large to cover the catastrophe hazard. Such fund shall be invested by the State treasurer in the same manner as the investment of moneys in the segregated accident fund, and the interest earnings of investments from the catastrophe fund shall be credited to the industrial accident fund. Expenditures from the catastrophe fund shall be made in the event of occurrence of accidents causing great liability, but the commission shall also have authority to authorize the payment of other compensation benefits from such fund in the event of the depletion of the industrial accident fund. In the latter event, the catastrophe fund shall again be fully restored by setting aside a portion of contributions to the industrial accident fund in the manner provided in this paragraph.
- Revision of rates.** In that the intent is that the contributions from employers shall fairly represent the degree of hazard of each occupation or industry, the commission shall have authority on July first, nineteen hundred and twenty, and biennially thereafter, to readjust, increase, or decrease the rates of contribution contained in section 19. Any such readjustment, increase, or decrease shall be based on the hazard of each occupation or industry as compared to the hazards or other occupations or industries subject to this act, and due regard shall be had for the experience of each occupation or industry as related to the experience of all occupations and industries defined in section 19 hereof.
- Industrial accident fund.** SEC. 20 (as amended by ch. 55, acts of 1919). 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. There is also appropriated annually, after June 30, 1921, 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.

SEC. 21 (as amended by ch. 288, acts of 1919). 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 results in death, shall receive compensation according to the following schedule: Compensation to be paid.

(a) Where death results from the injury the expense of burial shall be paid in all cases not to exceed one hundred dollars (\$100) in any case; and Death.

(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 eight dollars (\$8) per month for each child or dependent stepchild 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 \$15 shall be made to each child until such child shall 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 sixteen 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 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, 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 \$15 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. Payments for incompetent dependents, orphaned or abandoned children or children left to the care of some person other than the surviving parent or step-parent may, in the discretion of the commission, be made to the person or persons caring for such incompetent dependents or children.

(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 Permanent total disability.

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 dollar (\$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 eight dollars (\$8) 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).

Death during disability.

(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 eight dollars (\$8) a 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 total 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.

Temporary 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.

Permanent partial disability.

(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:

In case of the loss by the separation of one arm at or above the elbow joint, or the permanent or 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 or 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, thirty-six (36) months.

The permanent and complete loss of the sight of one eye, forty (40) months.

The loss by separation of a thumb, twenty-four (24) months.

The loss by separation of a first finger, sixteen (16) months, the second finger, nine (9) months, a third finger, eight (8) months, a fourth finger, six (6) months.

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 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, any other toe, four (4) months.

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. Other cases of injury.

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 in addition to the number of monthly payments which he shall have received on account of such temporary total disability or temporary partial disability. Adjustments.

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. Death during compensation period.

(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 computations 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 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 the State. The segregated accident fund and its earnings shall be charged with the payment of Segregated accident fund.

the installments on account of which such segregation 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. The commission shall biennially recompute the liability of the segregated fund and notify the State treasurer of the proper amount to be transferred from the accident fund to the segregated accident, or from the segregated fund to the accident fund.

Injury during compensation period. (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.

Reviews. (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 and is living apart from said injured workman at the time of the injury shall not be a beneficiary under this act.

Lump sums. (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 or injured workman in a lump sum an amount not exceeding one-half of the present value of the monthly installments payable to such beneficiary or injured workman and computed as aforesaid, and thereupon all subsequent monthly installments shall be proportionately reduced.

Willful intent. 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 for 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 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 herein, but in the event of a lump-sum payment becoming due under this act to such minor workman, the 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 aid. Sec. 23 (as amended by ch. 288, acts of 1919). The commission shall have authority to provide, under uniform rules and regulations, fire staid to workmen who are entitled to benefits hereunder, together with transportation, medical and surgical attendance and hospital accommodations for injured workmen 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: *Provided, further,* That the commission shall not in any one case approve the expenditure of more than one hundred dollars (\$100) for hospital accommodations, one hundred dollars (\$100) for surgical and medical service, and fifty dollars (\$50) for transportation, medicines, X-ray plates or prints and other services or supplies, without the approval of the commission for the furnishing of additional services having been secured prior to the time of furnishing of such additional services, supplies, and transportation.

In the case of an injury resulting in the loss by any workman of a leg or arm, that can be replaced to advantage with an artificial leg or arm, the commission shall supply the injured person with one of the best quality, but said artificial leg or arm shall be and remain the property of the State of Oregon and shall be so stamped and identified that it can not be sold by the possessor. The injured workman shall have the right to select such artificial leg or arm, subject to the approval of the commission. Artificial limbs.

One purpose of this act is to restore the injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied workman, and final settlement shall not be made in any case until the commission is satisfied that such restoration is probably as complete as it can be made. Except as limited by this act, the commission is authorized to expend money from the accident fund to accomplish this purpose in each case and the amount so spent shall not be charged against the compensation allowed by this act to the injured workman, but an itemized statement thereof shall be rendered to him each month, when requested, and a duplicate to his employer. Rehabilitation.

SEC. 24. When any payment of contribution required by this act to be made by an employer on his own account or on account of workmen 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. Defaults.

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. Benefits preferred.

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 Liens.

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 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.

Suits.

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.

Employers 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.

Violating safety laws.

Sec. 25. It shall be the duty of the industrial accident commission to investigate all cases where they have reason to believe that employers in this State 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.

Assignments, etc.

Sec. 26. 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.

Alien beneficiaries.

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 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.

Claims.

Sec. 27 (as amended by ch. 288, acts of 1919). (a) Where a workman is entitled to compensation under this act, he shall file with the com-

mission 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 warrants 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.

(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.

(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.

SEC. 28. 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.

SEC. 29. 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.

Any employer within this 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 ten days after engaging in such hazardous occupation, file a notice stating the kind of hazardous occupation in which he is engaged or is 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.

SEC. 30. The books, records, and pay rolls of any employer pertinent to the administration of this act shall always be open to inspection by

Review.

Limitation.

Jurisdiction continuing.

False representation.

Medical examinations.

Refusal of treatment.

Report of accidents.

Duty of employers.

Access to books, etc.

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 wilfully 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. 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 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 ch. 397, acts of 1919). The commission shall have full power and authority to hear and determine all questions within its jurisdiction, but any beneficiary not satisfied with the decision or findings of said commission, may, within thirty days after notice of the final action of such commission, appeal to the circuit court of the State of Oregon for the county in which such claimant resides. It

Appeals.

shall be sufficient to give the circuit court jurisdiction that a notice be filed with the clerk of said court to the effect that an appeal is taken to the circuit court from the decision of the commission, the same to be signed by the party appealing or his attorney, and a copy thereof to be served by registered mail on the commission. Within ten days after the receipt of such notice the commission shall file with the clerk of said court the record of proceedings before the commission, including a transcript of the evidence and all correspondence relating to the said matter, and the case thereafter shall be tried as other cases in said court: *Provided*, That either party thereto may demand a jury trial upon any question of fact, in which case it shall be tried at a regular term in said court and shall have precedence over all other civil cases.

Upon such appeal the court shall determine whether the commission has justly considered all the facts concerning the injury, whether it has exceeded the powers of this act, whether it has misconstrued the laws and facts applicable in the case decided, and whether it has made proper award to the injured workman, and if it shall determine that the said commission has acted within its powers and has correctly construed the law and facts the decision of the commission shall be confirmed; otherwise it shall be reversed or modified: *Provided, however*, That in case of any trial of fact by a jury the court shall be bound by the decision of the jury as to the question of fact submitted to it. In case of a modification or reversal the circuit court shall refer the same back to the commission with an order directing it to fix the compensation in accordance with the findings made by the court: *Provided*, That any such award shall be in accordance with the schedule of compensation set forth in this act. The costs of such proceedings, including the prevailing fee of \$10, shall be taxed against the unsuccessful party. Appeals shall lie on the judgment of the circuit court, as in other civil cases.

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, of 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.

Sec. 33 (as amended by ch. 288, acts of 1919). Disbursements of moneys out of the segregated accident fund and catastrophe fund, and all disbursements on account of administrative expenses from the industrial accident fund shall be made only upon warrants drawn by the secretary of state upon duly approved vouchers therefor transmitted to him by the commission. In order that the intent and purpose of this act may be fulfilled with expedition and the compensation benefits herein provided may be immediately available for disbursement to injured workmen, the secretary of state is hereby authorized and directed, upon requisition of the commission, to draw a warrant for forty thousand dollars (\$40,000) on the industrial accident fund for the purpose of establishing an emergency fund, which said fund shall be disbursed by the commission in the payment of compensation benefits in all cases for which reserves are not required to be set aside in the segregated accident fund. The secretary of state is authorized and directed to issue further warrant or warrants from time to time in favor of the commission on the industrial accident fund in payment of compensation benefits, in such amount or amounts as the commission may certify when accompanied by statements of the various settlements as affected by the commission. 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 authorized 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.

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.

Legal adviser.

Warrants for disbursements.

PENNSYLVANIA.

CONSTITUTION.

ARTICLE 3: SECTION 21 (as amended 1915).—*Legislature authorized to pass compensation laws.*

Scope of powers. The general assembly may enact laws requiring the payment by employers, or employers and employees jointly, of reasonable compensation for injuries to employees arising in the course of their employment, and for occupational diseases of employees, whether or not such injuries or diseases result in death, and regardless of fault of employer or employee, and fixing the basis of ascertainment of such compensation and the maximum and minimum limits thereof, and providing special or general remedies for the collection thereof; but in no other cases shall the general assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property, and in case of death from such injuries, the right of action shall survive, and the general assembly shall prescribe for whose benefit such actions shall be prosecuted. No act shall prescribe any limitations of time within which suits may be brought against corporations for injuries to persons or property, or for other causes, different from those fixed by general laws regulating actions against natural persons, and such acts now existing are avoided.

ACTS OF 1915.

ACT. No. 338.—*Compensation of workmen for injuries.*

ARTICLE I.—*Interpretation and definition.*

Title and scope of act. SECTION 1. This act shall be called and cited as the workmen's compensation act of 1915, and shall apply to all accidents occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and shall not apply to any accident occurring outside of the Commonwealth.

Numbers and genders. SEC. 102. Wherever 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.

"Employer." SEC. 103. The term "employer" as used in this act is declared to be synonymous with master, and to include natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the Commonwealth, and all governmental agencies created by it.

"Employee." SEC. 104. The term "employee" as used in this act is declared to be synonymous with servant, and includes all natural persons who perform services for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer, and exclusive of 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.

"Contractor" SEC. 105. The term "contractor" as used in article two, section two hundred and three, and article three, section three hundred and two (b), shall not include a contractor engaged in an independent business, other than that of supplying laborers or assistants, in which he serves persons other than the employer in whose service the accident occurs, but shall include a subcontractor to whom a principal contractor has sublet any part of the work which such principal contractor has undertaken.

Public authorities. SEC. 106. The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority.

SEC. 107. The term "bureau" when used in this act shall mean the bureau of workmen's compensation of the department of labor and industry.

"Bureau."

The term "board" when used in this act shall mean the workmen's compensation board of the bureau.

"Board."

ARTICLE II.—*Damages by action at law.*

SECTION 201.—In any action brought to recover damages for personal injury to an employee in the course of his employment, or for death resulting from such injury, it shall not be a defense—

Defenses abrogated.

(a) That the injury was caused in whole or in part by the negligence of a fellow employee; or

(b) That the employee had assumed the risk of the injury; or

(c) That the injury was caused in any degree by the negligence of such employee, unless it be established that the injury was caused by such employee's intoxication or by his reckless indifference to danger. The burden of proving such intoxication or reckless indifference to danger shall be upon the defendant, and the question shall be one of fact to be determined by the jury.

SEC. 202. The employer shall be liable for the negligence of all employees, while acting within the scope of their employment, including engineers, chauffeurs, miners, mine foreman, fire bosses, mine superintendents, plumbers, officers of vessels, and all other employees licensed by the State or other governmental authority, if the employer be allowed by law the right of free selection of such employees from the class of persons thus licensed; and such employees shall be the agents and representatives of their employers, and their employers shall be responsible for the acts and neglects of such employees, as in the case of other agents and employees of their employers; and, notwithstanding the employment of such employees, the property in and about which they are employed, and the use and operation thereof, shall at all times be under the supervision, management and control of their employers.

Acts of employees.

SEC. 203. An employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employee or contractor, for the performance upon such premises of a part of the employer's regular business intrusted to such employee or contractor, shall be liable to such laborer or assistant in the same manner and to the same extent as to his own employee.

Contractors' employees.

SEC. 204. No agreement, composition, or release of damages made before the happening of any accident, except the agreement defined in article three of this act, shall be valid or shall bar a claim for damages for the injury resulting therefrom; and any such agreement, other than that defined in article three herein, is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof; and any release executed in consideration of such benefits shall be void.

Waivers.

Receipt of benefits.

ARTICLE III.—*Elective compensation.*

SECTION 301. When employer and employee shall by agreement, either express or implied, as hereinafter provided, accept the provisions of article three of this act, compensation for personal injury to, or for the death of, such employee, by an accident, in the course of his employment, shall be made in all cases by the employer, without regard to negligence, according to the schedule contained in sections three hundred and six and three hundred and seven of this article: *Provided*, That no compensation shall be made when the injury or death be intentionally self-inflicted, but the burden of proof of such fact shall be upon the employer

Act applies when.

Intentional acts

The terms "injury" and "personal injury" as used in this act shall be construed to mean only violence to the physical structure of the body, and such disease or infection as naturally results therefrom; and wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from such violence and its resultant effects, and occurring within three hundred weeks after the

"Injury."

"Accident."

accident. The term "injury by an accident in the course of his employment," as used in this article, shall not include 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; but shall include all other injuries sustained while the employee is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employee, who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employee's presence thereon being required by the nature of his employment.

Presumptions as to contracts of hiring.

SEC. 302. (a) In every contract of hiring made after December thirty-first, one thousand nine hundred and fifteen, and in every contract of hiring renewed or extended by mutual consent, expressed or implied, after said date, it shall be conclusively presumed that the parties have accepted the provisions of article three of this act, and have agreed to be bound thereby, unless there be, at the time of the making, renewal, or extension of such contract, an express statement in writing from either party to the other, that the provisions of article three of this act are not intended to apply, and unless a true copy of such written statement, accompanied by proof of service thereof upon the other party, setting forth under oath or affirmation the time, place, and manner of such service be filed with the bureau within ten days after such service and before any accident has occurred. Every contract of hiring, oral, written, or implied from circumstances, now in operation, or made or implied on or before December thirty-first, one thousand nine hundred and fifteen, shall be conclusively presumed to continue subject to the provisions of article three hereof, unless either party shall, on or before said date, in writing, have notified the other party to such contract that the provisions of article three hereof are not intended to apply, and unless there shall be filed with the bureau a true copy of such notice, together with proof of service, within the time and in the manner hereinabove prescribed:

Proviso.

Provided, however, That the provisions of this section shall not be so construed as to impair the obligation of any contract now in force. In the employment of minors, article three shall be presumed to apply, unless the said written notice be given by or to the parent or guardian of the minor. It shall not be lawful for any officer or agent of this Commonwealth, or for any county, city, borough, or township therein, or for any officer or agent thereof, or for any other governmental authority created by the laws of this Commonwealth, to give such notice of rejection of the provisions of this article to any employee of the State or of such governmental agency.

Public employments.

Presumptions as to contractors', etc., employees.

(b) After December thirty-first, one thousand nine hundred and fifteen, an employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employee or contractor for the performance upon such premises of a part of the employer's regular business intrusted to that employee or contractor, shall be conclusively presumed to have agreed to pay such laborer or assistant compensation in accordance with the provisions of article three, unless the employer shall post in a conspicuous place, upon the premises where the laborer's or assistant's work is done, a notice of his intention not to pay such compensation, and unless there be filed with the bureau, within ten days thereafter and before any accident has occurred, a true copy of such notice, together with proof of the posting of the same, setting forth upon oath or affirmation the time, place, and manner of such posting; and after December thirty-first, one thousand nine hundred and fifteen, any such laborer or assistant who shall enter upon premises occupied by or under the control of such employer for the purpose of doing such work, shall be conclusively presumed to have agreed to accept the compensation provided in article three, in lieu of his right of action under article two, unless he shall have given notice in writing to the employer, at the time of entering upon such employer's premises for the purpose of

doing his work, of his intention not to accept such compensation, and unless within ten days thereafter and before any accident has occurred there shall have been filed with the bureau a true copy of such notice, accompanied by proof of service thereof upon such employer, setting forth under oath or affirmation, the time, place, and manner of such service; and in such cases, where article three binds such employer and such laborer or assistant, it shall not be in effect between the intermediate employer or contractor and such laborer or assistant unless otherwise expressly agreed.

Sec. 303. Such agreement shall constitute an acceptance of all the provisions of article three of this act, and shall operate as a surrender by the parties thereto of their rights to any form or amount of compensation or damages for any injury or death occurring in the course of the employment, or to any method of determination thereof, other than as provided in article three of this act. Such agreement shall bind the employer and his personal representatives, and the employee, his or her wife or husband, widow or widower, next of kin, and other dependents.

Remedy exclusive.

Sec. 304. Any agreement between employer and employee for the operation or nonoperation of the provisions of article three of this act may be terminated prior to any accident, by either party, upon sixty days' notice to the other in writing, if a copy of such notice, with proof of service, be filed in the bureau, as provided in section three hundred and two of this article.

Termination, agreements.

Sec. 305. Every employer liable under this act to pay compensation shall insure the payment of compensation in the State workmen's insurance fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the bureau from such insurance. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the bureau, showing his financial ability to pay such compensation, whereupon the bureau, if satisfied of the applicant's financial ability, shall, by written order, make such exemption. The bureau may from time to time require further statements of the financial ability of such employer, and if at any time such employer appear no longer able to pay compensation, shall revoke its order granting exemption; in which case the employer shall immediately subscribe to the State fund, or insure his liability in a mutual association or company, as aforesaid.

Insurance.

Exemption.

If an employer shall fail to comply with the provisions of this section, the bureau shall, by registered mail, or in such other manner as the rules and regulations of the bureau shall provide, serve upon such employer a notice to forthwith comply with such provisions; and if such employer does not within thirty days thereafter insure his liability as aforesaid or satisfy the bureau of his financial ability to pay compensation as aforesaid, or does not terminate his acceptance of article three of this act in the manner provided in section three hundred and four of the said article, such employer shall be liable for compensation under article three of this act to any employee injured thereafter, or to his personal representative, or for damages under article two of this act, at the option of such employee or his personal representatives: *Provided*, That such option be exercised by the employee and written notice given to the employer within thirty days after the accident: *And provided further*, That until the expiration of the said thirty days from the giving of the notice by the bureau the employer shall be liable only for compensation under article three of this act, and that if he shall terminate his acceptance under section three hundred and four of article three of this act he shall be liable only for compensation under article three of this act until such termination of acceptance shall become effective.

Failure to insure.

SEC. 306 (as amended by act No. 277, acts of 1919). The following schedule of compensation is hereby established for injuries resulting in total disability:

Compensation—

(a) For the first five hundred weeks after the tenth day of total disability, sixty per centum of the wages of the injured employee, as defined in section three hundred and nine; but the compensation shall

Total disability;

not be more than twelve dollars per week nor less than six dollars per week, and shall not exceed in aggregate the sum of five thousand dollars: *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. Nothing in this clause shall require the payment of compensation after disability shall cease. Should partial disability be followed by total disability, the period of five hundred weeks mentioned in this clause of this section shall be reduced by the number of weeks during which compensation was paid for such partial disability.

Partial disability;

(b) For disability partial in character (except the particular cases mentioned in clause (c)), sixty per centum of the difference between the wages of the injured employee, as defined in section three hundred and nine, 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 tenth day of such partial disability. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this clause shall be reduced by the number of weeks during which compensation was paid for such total disability.

Permanent injuries.

(c) For all disability resulting from permanent injuries of the following classes, the compensation shall be exclusively as follows:

For the loss of a hand, sixty per centum of wages during one hundred and seventy-five weeks.

For the loss of an arm, sixty per centum of wages during two hundred and fifteen weeks.

For the loss of a foot, sixty per centum of wages during one hundred and fifty weeks.

For the loss of a leg, sixty per centum of wages during two hundred and fifteen weeks.

For the loss of an eye, sixty per centum of wages during one hundred and twenty-five weeks.

For the loss of any two or more of such members, not constituting total disability, sixty per centum of wages during the aggregate of the periods specified for each.

Unless the board shall otherwise determine, the loss of both hands or both arms, or both feet, or both legs, or both eyes, shall constitute total disability, to be compensated according to the provisions of clause (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 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.

This 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.

(d) No compensation shall be allowed for the first ten days after disability begins, except as hereinafter provided in clause (e) of this section.

Medical and hospital services, etc.

(e) During the first thirty days after disability begins, the employer shall furnish reasonable surgical and medical services, medicines, and supplies, as and when needed unless the employee refuses to allow them to be furnished by the employer. The cost of such services, medicines, and supplies shall not exceed one hundred dollars. If the employer shall, upon application made to him, refuse to furnish such services, medicines, and supplies, the employee may procure the same, and shall receive from the employer the reasonable cost thereof within the above limitations. In addition to the above services, medicines, and supplies, hospital treatment, services, and supplies shall be furnished by the employer for the said period of thirty days. The cost for such

hospital treatment, service, and supplies shall not in any case exceed the prevailing charge in the hospital for like services to other individuals. If the employee shall refuse reasonable surgical, medical, and hospital services, medicines and supplies, tendered to him by his employer, he shall forfeit all right to compensation for any injury or any increase in his incapacity shown to have resulted from such refusal.

(f) Should the employee die as a result of the injury, the period during which compensation shall be payable to his dependents, under section three hundred and seven of this article, 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 and hospital services and medicines, nor for the expenses of the last sickness and burial. Should the employee die from some other cause than the injury, the liability for compensation shall cease.

Death following disability.

Sec. 307 (as amended by act No. 277, acts of 1919). In case of death, compensation shall be computed on the following basis, and distributed to the following persons:

Compensation for death.

1. To the child or children, if there be no widow nor widower entitled to compensation, thirty per centum of wages of deceased, with ten per centum additional for each child in excess of two, with a maximum of sixty per centum, to be paid to their guardian.

2. To the widow or widower, if there be no children, forty per centum of wages.

3. To the widow or widower, if there be one child, fifty per centum of wages.

4. To the widow or widower, if there be two or more children, sixty per centum of wages.

5. If there be neither widow, widower, nor children entitled to compensation, then to the father or mother, if dependent to any extent upon the employee for support at the time of the accident, twenty per centum of wages: *Provided, however,* That in the case of a minor child who has been contributing to his parents, the dependency of said parents shall be presumed: *And provided further,* That if the father or mother was totally dependent upon the deceased employee at the time of the accident, the compensation payable to such father or mother shall be forty per centum of wages.

6. If there be neither widow, widower, children, nor dependent parent entitled to compensation, 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 centum of wages for one brother or sister, and five per centum additional for each additional brother or sister, with a maximum of twenty-five per centum; such compensation to be paid to their guardian.

7. Whether or not there be dependents as aforesaid the reasonable expenses of the last sickness and burial, not exceeding one hundred dollars (without deduction of any amounts theretofore paid for compensation or for medical expenses), payable to the dependents, or, if there be no dependents then to the personal representatives of the deceased.

Burial expenses.

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. 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 actually dependent upon him for support. 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. The terms "child" and "children" shall include stepchildren and adopted children, and children to whom he stood in loco parentis, if members of decedent's household at the time of his death, and shall include posthumous 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 widower, to compensation under this section shall cease: *Provided, however,* That upon the remarriage of any widow, other than a nonresident alien widow, the employer

Terms and conditions of payments.

shall pay to such widow the then value of the compensation payable to her, during one-third of the period during which compensation then remains payable but not exceeding one hundred weeks, calculated in accordance with the provisions of section three hundred and sixteen of this article. If the compensation payable under this section to any person shall for any cause cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased.

The wages upon which death compensation shall be based shall not in any case be taken to exceed twenty dollars per week nor be less than ten dollars per week.

This compensation shall be paid during three hundred weeks, and in the case of children entitled to compensation under this section the compensation of each child shall continue after said period of three hundred weeks until such child reaches the age of sixteen at the rate of fifteen per centum of wages, if there be but one child, with ten per centum additional for each additional child, with a maximum of fifty per centum.

The board may, if the best interest of a child or children shall so require, at any time order and direct the compensation payable to a widow or widower on account of any child or children to be paid to the guardian of such child or children, or, if there be no guardian, to such other person as the board as hereinafter provided may direct. If there be no guardian or committee of any minor, dependent, or insane employee or dependent on whose account compensation is payable, the amount payable on account of such minor, dependent, or insane employee or dependent may be paid to any surviving parent, or to such other person as the board may order and direct, and the board may require any person, other than a guardian or committee, to whom it has directed compensation for a minor, dependent, or insane employee or dependent to be paid, to render, as and when it shall so order, accounts of the receipts and disbursements of such person, and to file with it a satisfactory bond in a sum sufficient to secure the proper application of the moneys received by such person.

Installments.

SEC. 308. Except as hereinafter provided all compensation payable under this article shall be payable in periodical installments, as the wages of the employee were payable before the accident.

Computing wages.

SEC. 309 (as amended by act No. 277, acts of 1919). 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 amounts deducted by the employer under the contract of hiring for labor furnished or paid for by the employer, and necessary for the performance of such contract by the employee; but shall include board and lodging received from the employer. Whenever the employee receives board and lodging as a part of his wages, the board shall be rated at fifty cents per day, and board together with lodging shall be rated at one dollar per day, for the purpose of computing wages. In seasonal occupations 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 five and one-half times his average earnings at such rate for a working day, and using as a basis of calculation his earnings during so much of the preceding six months as he worked for the same employer: *Provided, however,* That if the employee regularly and habitually worked more than five and one-half days per week, the weekly wage shall be found by multiplying his average earnings for working day by six, six and one-

half, or seven, according to the customary number of working days constituting an ordinary week in his occupation or trade. Where the employee is working under concurrent contracts with two or more employers, his wages from all employers shall be considered as if earned from the employer liable for compensation.

In cases where the employee has been in the employ of the employer less than one full week, and by reason of the shortness of time during which the employee has been in the employment of the employer or the nature or terms of the employment it is impracticable to ascertain the average weekly wages as hereinbefore provided, the average weekly amount which during the six months previous to the injury has been earned by other persons employed by the same employer under similar contracts of hiring, or, if there are no persons so employed, by other persons employed by other employers under similar contracts of hiring under similar conditions, shall be taken as the basis for the ascertainment of the weekly wages of such employee.

Sec. 310. Compensation under this article to alien dependent widows and children, not residents of the United States, shall be two-thirds of the amount provided in each case for residents; and the employer may at any time commute all future installments of compensation payable to alien dependents, not residents of the United States, by paying to such alien dependents the then value thereof, calculated in accordance with the provisions of section three hundred and sixteen of this article. Alien widowers, parents, brothers, and sisters, not residents of the United States, shall not be entitled to any compensation.

Nonresident alien beneficiaries.

Nonresident alien dependents may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases the consular officers shall have the right to receive for distribution to such nonresident alien dependents 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.

Sec. 311. Unless the employer shall have actual knowledge of the occurrence of the injury or unless the employee or some one in his behalf or some of the dependents of some one in their behalf shall give notice thereof to the employer within fourteen days after the accident no compensation shall be due until such notice be given or knowledge obtained; but 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, or to any other reasonable cause or excuse, then compensation shall be allowed, unless the employer shall show that he did not know and by reasonable diligence could not have learned of the accident and that he was prejudiced by the delay, in which case he shall be relieved to the extent of such prejudice.

Notice of accident.

Sec. 312. The notice referred to in section three hundred and eleven hereof shall be substantially in the following form:
To (name of employer).

Form.

You are hereby notified that an injury of the following character _____ was suffered by (name of employee injured), who was in your employment at (place), while engaged as (kind of employment) on or about the _____ day of _____, anno Domini _____, and that compensation will be claimed therefor.

Date _____ (Signed) _____

But no variation from this form shall be material if the notice be sufficient to inform the employer that a certain employee, by name, received an injury, the character of which is described in ordinary language, in the course of his employment on or about a time specified and at or near a place specified.

Sec. 313. The notices referred to in section three hundred and two and section three hundred and eleven hereof may be served personally upon the employer, or upon the manager or superintendent in charge of the works or business in which the accident occurred, or by sending them through the registered mail to the employer at his or its last-known residence or place of business, or, if the employer be a corporation, either foreign or domestic, then upon the president, vice presi-

Service.

dent, secretary, or treasurer thereof. Knowledge of the occurrence of the injury on the part of any of said agents shall be the knowledge of the employer.

Medical examinations. Sec. 314. At any time after an injury the employee, if so requested by his employer, must submit himself for examination, at some reasonable time and place, to a physician or physicians legally authorized to practice under the laws of such place, who shall be selected and paid by the employer. If the employee shall refuse, upon the request of the employer, to submit to the examination by the physician or physicians selected by the employer, the board may, upon petition of the employer, order the employee to submit to an examination at a time and place set by it and by the physician or physicians selected and paid by the employer or by a physician or physicians designated by it and paid by the employer; and if the employee shall, without reasonable cause or excuse, disobey or disregard such order he shall be deprived of his right to compensation under this article. The board may at any time after such first examination, upon petition of the employer, order the employee to submit himself to such further examinations as it shall deem reasonable and necessary, at such times and places and by such physicians as it may designate, and in such case the employer shall pay the fees and expenses of the examining physician or physicians and the reasonable traveling expenses and loss of wages incurred by the employee in order to submit himself to such examination. The refusal or neglect, without reasonable cause or excuse, of the employee to submit to such examination ordered by the board, either before or after an agreement or award, shall deprive him of the right to compensation under this article during the continuance of such refusal or neglect, and the period of such neglect or refusal shall be deducted from the period during which compensation would otherwise be payable.

The employee shall be entitled to have a physician or physicians of his own selection, to be paid by him, participate in any examination requested by his employer or ordered by the board.

Claim in one year. Sec. 315. In cases 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 payable under this article; or unless within one year after the accident one of the parties shall have filed a petition as provided in article four hereof. 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 under this article; or unless within one year after the death one of the parties shall have filed a petition as provided in article four hereof. Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of one year from the time of the making of the last payment.

Lump-sum payments. Sec. 316. The compensation contemplated by this article may at any time be commuted by the board at its then value when discounted at five per centum interest, with annual rests, disregarding 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, and 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 the greater part of his business or assets. Except as provided in section three hundred and ten hereof, and in this section, no commutation of compensation shall be made.

Deposits to cover payments. Sec. 317. At any time after the approval of an agreement or after the entry of the award, 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), with the approval of the bureau, be paid by the employer to any savings bank, trust company, or life insurance company, in good standing and authorized to do business in this State, 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 noted upon the prothonotary's docket shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same periods 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 employee or the dependents of the deceased employee. Should, however, there remain any unexpended balance of any fund after the payment of all sums due under this act, such balance shall be repaid to the employer who made the original payment, or to his legal representatives.

SEC. 318. The right of compensation granted by this article of this act shall have the same preference (without limit of amount) against the assets of an employer, liable for such compensation, as is now or may hereafter be allowed by law for a claim for unpaid wages for labor: *Provided, however,* That no claim for compensation shall have priority over any judgment, mortgage, or conveyance of land recorded prior to the filing of the petition, award, or agreement as to compensation in the office of the prothonotary of the county in which the land is situated. Claims for payments due under this article of this act shall not be assignable, and (except as provided in section five hundred and one of article five hereof) shall be exempt from all claims of creditors, and from levy, execution, or attachment, which exemption may not be waived.

SEC. 319. Where a third person is liable to the employee or the dependents for the injury or death, the employer shall be subrogated to the right of the employee or the dependents against such third person, but only to the extent of the compensation payable under this article by the employer. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employee or to the dependents, and shall be treated as an advance payment by the employer on account of any future installments of compensation.

ARTICLE IV (as amended by act No. 277, acts of 1919.)—*Procedure.*

SECTION 401. The term "referee" when used in this article shall mean workmen's compensation referee.

The term "fund" when used in this article shall mean the State workmen's insurance fund of this Commonwealth.

The term "employer" when used in this article shall mean the employer as defined in article one of this act, or his duly authorized agent, or his insurer, if such insurer has assumed the employer's liability, or the fund, if the employer be insured therein.

SEC. 402. All proceedings before the board or any referee and all appeals to the board shall be instituted by petition addressed to the board. All petitions shall be in writing and in the form prescribed by the board.

SEC. 403. All petitions, all copies of agreements for compensation, and all other papers requiring action by the board shall be mailed or delivered to the bureau at its principal office.

SEC. 404. The bureau shall, immediately upon their receipt properly file and docket all petitions, agreements for compensation, findings of fact by the board or any referee, awards or disallowances of compensation, or modifications thereof, and all other reports or papers filed with it under the provisions of this act or the rules and regulations of the board.

SEC. 405. Immediately upon receiving from the board or any referee any approval or disapproval of any agreement for or any award or disallowance of compensation, or any modification thereof, or any other decision, the bureau shall serve a copy thereof on all parties in interest.

SEC. 406. All notices and copies to which any party shall be entitled under the provisions of this article shall be served by mail or in such other manner as the board shall direct. For the purposes of this article any notice or copy shall be deemed served on the date when mailed, properly stamped and addressed, and shall be presumed to have reached the party to be served; but any party may show by competent evidence that any notice or copy was not received, or that there was an unusual or unreasonable delay in its transmission

Preference.

Subrogation.

Definitions.

Petitions.

Forwarding.

Filing.

Service of decisions.

How service effected.

through the mails. In any such case proper allowance shall be made for the party's failure within the prescribed time to assert any right given him by this act.

The bureau, the secretary, and every referee shall keep a careful record of the date of mailing every notice and copy required by this act to be served on the parties in interest.

Agreements.

Sec. 407. On or after the tenth day after any accident shall have occurred, the employer and employe or his dependents may agree upon the compensation payable to the employe or his dependents under this act; but any agreement made prior to the tenth day after the accident shall have occurred, or permitting a commutation of payments contrary to the provisions of this act, or varying the amount to be paid or the period during which compensation shall be payable as provided in this act, shall be wholly null and void.

All agreements made in accordance with the provisions of this section shall be in writing, and signed by all parties in interest.

All agreements for compensation and all supplemental agreements for the modification, suspension, reinstatement, or termination thereof, and all receipts executed by any injured employee of whatever age, or by any dependent to whom compensation is payable under section three hundred and seven, and who has attained the age of sixteen years, shall be valid and binding, unless modified or set aside as hereinafter provided.

Supplemental agreements.

Sec. 408. All agreements for compensation may be modified, suspended, reinstated, or terminated at any time by a supplemental agreement approved by the board, if the incapacity of an injured employe has increased, decreased, recurred, or temporarily or finally terminated, or if the status of any dependent has changed.

Submission to board.

Sec. 409. Whenever an agreement or supplemental agreement shall be executed between an employer and an employe or his dependents as provided by this act, such agreement or a duplicate thereof, signed by all parties in interest, shall be mailed or delivered to the board. It shall be the duty of the board to examine the agreement, and to determine whether it conforms to the provisions of section four hundred and seven, and, within thirty days after the copy of the agreement has been mailed or delivered to it, to notify the parties thereto of its validity or invalidity under the aforesaid section: *Provided, however,* That any payment made in accordance with any agreement prior to the receipt of notice of invalidity shall discharge pro tanto the liability, under article three of this act, of the employer making such payments.

Claim.

Sec. 410. If, after any accident, the employer and the employe or his dependent, concerned in any accident, shall fail to agree upon the facts thereof and the compensation due under this act, the employe or his dependents may present a claim for compensation to the board.

Dispute as to amount.

Sec. 411. Whenever the employer and the employe or his dependent shall on or after the tenth day after any accident, agree on facts on which a claim for compensation depends, but shall fail to agree on the compensation payable thereunder, they may petition the board to determine the compensation payable. Such petition shall contain the agreed facts, and shall be signed by all parties in interest. The board shall fix a time and place for hearing the petition, and shall notify all parties in interest. As soon as may be after such hearing, the board shall award or disallow compensation in accordance with the provisions of this act.

Hearing.

Petition for commutation.

Sec. 412. If any party shall desire the commutation of future installments of compensation, he shall present a petition therefor to the board.

Review of agreements, etc.

Sec. 413. The board, or a referee designated by the board, may, at any time, review and modify or set aside an original or supplemental agreement, upon petition filed with the board or in the course of the proceedings under any petition pending before such board or referee, if it be proved that such agreement was procured by the fraud, coercion, or other improper conduct of a party, or was founded upon a mistake of law or of fact.

The board, or referee designated by the board, may, at any time, modify, reinstate, suspend, or terminate an original or supplemental agreement or an award, upon petition filed by either party with such board, and upon proof that the disability of an injured employe has

increased, decreased, recurred, or has temporarily or finally ceased, or that the status of any dependent has changed. Such modification, reinstatement, suspension, or termination shall be made as of the date upon which it is shown that the disability of the injured employee has increased, decreased, recurred, or has temporarily or finally ceased, or upon which it is shown that the status of any dependent has changed.

The board or referee to whom any such petition has been assigned may subpoena witnesses, hear evidence, make findings of fact, and award or disallow compensation, in the same manner and with the same effect and subject to the same right of appeal, as if such petition were an original claim-petition.

The filing of a petition to terminate or modify a compensation agreement or award as provided in this section shall operate as a supersedeas, and shall suspend the payment of compensation fixed in the agreement or by the award, in whole or to such extent as the facts alleged in the petition would, if proved, require.

Sec. 414. Whenever a claim-petition or other petition is presented to the board, the board shall, by general rules or special order, either direct it to be heard by the board or assign it to a referee for hearing: *Provided, however,* That petitions presented under section four hundred and eleven and four hundred and twelve shall be heard by the board. Hearing.

The secretary shall serve upon each adverse party a copy of the petition, together with a notice that such petition will be heard by the board or the referee to whom it has been assigned (giving his name and address) as the case may be, and, if the petition shall have been assigned to a referee, shall mail the original petition to such referee, together with copies of the notices served upon adverse parties. Notice.

Sec. 415. At any time before an award or disallowance of compensation or order has been made by a referee to whom a petition has been assigned, the board may order such petition heard before it or may reassign it to any other referee. Unless the board shall otherwise order, the testimony taken before the original referee shall be considered as though taken before the board or substituted referee. Hearing by board.

Sec. 416. Within ten days after a copy of any petition has been served upon any adverse party, he may file with the secretary if the petition has been directed to be heard by the board, or with the referee if the petition has been assigned to a referee, an answer in the form prescribed by the board. Answer.

Every fact alleged in a petition not specifically denied by an answer so filed by an adverse party shall be deemed to be admitted by him. But the failure of any adverse party or of all of them to deny a fact so alleged shall not preclude the board or referee before whom the petition is heard from requiring, of its or his own motion, proof of such fact.

Sec. 417. As soon as may be after the twelfth day after notice that a petition has been directed to be heard by the board has been served upon the adverse parties thereto, the board shall fix a time and place for hearing the petition. If a petition be assigned to a referee, he shall, twelve days after notice that such petition has been assigned to him has been served upon the adverse parties, fix a time, not less than five nor more than fourteen days thereafter, and a place for hearing the petition. The secretary, if the petition has been directed to be heard by the board, or the referee to whom the petition has been assigned, shall serve upon all parties in interest a notice of the time and place of hearing, and shall serve upon the petitioner a copy of any answer of any adverse party. Procedure on hearing.

Sec. 418. The board if a petition is directed to be heard by it, or the referee to whom a petition is assigned for hearing, may subpoena witnesses, order the production of books and other writings, and hear evidence and shall make, in writing and as soon as may be after the conclusion of the hearing, such findings of fact, conclusions of law, and award or disallowance of compensation or other order, as the petition and answers and the evidence produced before it or him and the provisions of this act shall, in its or his judgment, require. The findings of fact made by the board in any petition heard by it or upon a hearing de novo shall be final, except as hereinafter provided, and the findings of fact made by a referee to whom a petition has been assigned or any question of fact has been referred under Findings.

- the provisions of section four hundred and nineteen shall be final, unless the board shall, under the provisions of section four hundred and twenty-five of this article, grant a hearing de novo or rehearing.
- Referee.** SEC. 419. The board may refer any question of fact arising under any petition, including a petition for commutation heard by it, to a referee to hear evidence and report to the board the testimony taken before him or such testimony and findings of fact thereon as the board may order. The board may refer any question of fact arising out of any petition assigned to a referee, to any other referee to hear evidence, and report the testimony so taken thereon to the original referee.
- Investigation of facts.** SEC. 420. The board or a referee, if it or he deem it necessary, may, of its or his own motion, either before, during, or after any hearing, make an investigation of the facts set forth in the petition or answer. The board, or referee with the consent of the board, may appoint one or more impartial physicians or surgeons to examine the injuries of the plaintiff and report thereon, or he may employ the services of such other experts as shall appear necessary to ascertain the facts. The report of any physician, surgeon, or expert appointed by the board or by a referee shall be filed with the board or referee, as the case may be, and shall be a part of the record and open to inspection as such.
- Fees.** The board shall fix the compensation of such physicians, surgeons, and experts, which, when so fixed, shall be paid out of the sums appropriated to the department of labor and industry for the maintenance of the department, and shall be taxed as part of the costs of the proceedings to be repaid to such department by either party or both, as the board may direct. If any sum so taxed shall not be paid by the party directed to repay, the same may be collected as costs are now collectible.
- Hearings public.** SEC. 421. All hearings before the board or before a referee shall be public.
- Evidence.** SEC. 422. Neither the board nor any referee shall be bound by the technical rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based only upon competent evidence.
- Depositions.** If any party or witness resides outside of the Commonwealth, or through illness or other cause is unable to testify before the board or a referee, his or her testimony or deposition may be taken, within or without this Commonwealth, in such manner and in such form as the board may, by special order or general rule, prescribe. The records kept by a hospital of the medical or surgical treatment given to an employee in such hospital shall be admissible as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters.
- Appeals.** SEC. 423. Any party in interest may, within ten days after notice of a referee's award or disallowance of compensation shall have been served on him, take an appeal to the board on the ground: (1) That the award or disallowance of compensation is not in conformity with the terms of this act, or that the referee committed any other error of law; (2) that the findings of fact and award or disallowance of compensation was unwarranted by the evidence, or was procured by fraud, coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.
- In any such appeal the board may disregard the findings of fact of the referee, and may examine the testimony taken before such referee, and if it deem proper may hear other evidence, and may substitute for the findings of the referee such findings of fact as the evidence taken before the referee and the board, as hereinbefore provided, may, in the judgment of the board, require, and may make such disallowance or award of compensation or other order as the facts so found by it may require.
- Questions of law.** SEC. 424. Whenever an appeal shall be based upon an alleged error of law, it shall be the duty of the board to grant a hearing thereon.

The board shall fix a time and place for such hearing, and shall serve notice thereof on all parties in interest.

As soon as may be after any such hearing, the board shall either sustain or reverse the referee's award or disallowance of compensation, or make such modification thereof as it shall deem proper.

SEC. 425. Whenever an appeal shall be taken on the ground that the referee's award or disallowance of compensation was unwarranted by the evidence, or because of fraud, coercion, or other improper conduct by any party in interest, the board may, in its discretion, grant a hearing de novo before the board or assign the petition for rehearing to any referee designated by it or sustain the referee's award or disallowance of compensation. If the board shall grant a hearing de novo, it shall fix a time and place for same, and shall notify all parties in interest.

Frauds, etc.

As soon as may be after any hearing de novo by the board, it shall in writing state its findings of fact, and award or disallow compensation in accordance with the provisions of this act.

SEC. 426. The board, upon petition of any party and upon cause shown, at any time before the court of common pleas of any county of this Commonwealth to whom an appeal has been taken under the provisions of section four hundred and twenty-seven of this article shall have taken final action thereon, may grant a rehearing of any petition upon which the board has made an award or disallowance of compensation or other order or ruling, or has sustained or reversed any action of a referee. If the board shall grant a rehearing of any petition from the board's action on which an appeal has been taken to and is pending in, the court of common pleas of any county of this Commonwealth under the provisions of section four hundred and twenty-seven of this article, the board shall file in such court a certified copy of its order granting such rehearing, and it shall thereupon be the duty of such court to cause the record of the case to be remitted to the board.

Rehearings.

SEC. 427. Any party may appeal from any action of the board on matters of law to the court of common pleas of the county in which the accident occurred or of the county in which the adverse party resides or has a permanent place of business, or, by agreement of the parties, to the court of common pleas of any other county of this Commonwealth. Such appeal must be brought within ten days after notice of the action of the board has been served upon such party, unless any court of common pleas to which an appeal lies shall, upon cause shown, extend the time herein provided for taking the appeal. The party taking the appeal shall, at the time of taking the appeal, serve upon the adverse party a written notice thereof, setting forth the date of the appeal and the court in which the same is filed, and shall file with his notice of appeal such exceptions to the action of the board as he may desire to take, and shall specify the findings of fact, if any, of the board, or of the referee sustained by the board, which he alleges to be unsupported by competent evidence.

Appeals to court.

Upon filing of the notice of an appeal, the prothonotary of the court of common pleas to which the appeal has been taken shall issue a writ of certiorari, directed to the workmen's compensation board, commanding it, within ten days after service thereof, to certify to such court its entire record in the matter in which the appeal has been taken. The writ so issued shall be mailed by the prothonotary to the bureau at Harrisburg, together with a copy of the exceptions. The board shall, within ten days after such service, certify to such court its entire record in the matter in which the appeal has been taken, including the notes of testimony.

Any court before whom an appeal is pending from any action of the board may remit the record to the board for more specific findings of fact, if the findings of the board or referee are not, in its opinion, sufficient to enable it to decide the question of law raised by the appeal.

If the court of common pleas of any county of this Commonwealth shall affirm an award or order of the board or of a referee sustained by the board, fixing the compensation payable under this act, the court shall enter judgment for the total amount stated by the award or order

to be payable, whether then due and accrued or payable in future installments. If such court shall sustain the appellant's exceptions to a finding or findings of fact and reverse the action of the board founded thereon, the court shall remit the record to the board for further hearing and determination, in which the procedure shall be the same as that hereinbefore provided in this article in the case of a petition presented to the board, except that the board may order that any part of the testimony taken in the original proceedings shall be considered as though taken in such further hearing.

The prothonotary of any court of common pleas to which an appeal has been taken from the board shall send to the board a certificate of the judgment of the court as soon as rendered, with a copy of any opinion which may be filed in the case. At the end of the period hereinafter allowed for an appeal from the judgment of the court, the record of the board shall be remitted to it by the prothonotary unless an appeal shall have been taken. If such appeal shall be taken, the record shall be remitted to the board by the prothonotary on its return from the appellate court.

Any party may appeal to the supreme or superior court from the judgment of the court of common pleas within thirty days after entry of said judgment. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the supreme or superior court, and the record so certified shall contain all that was before the court of common pleas. Any appeal from the action of the board to a court of common pleas, and from it to the supreme or superior court shall take precedence over all other civil actions.

Enforcement of awards, etc.

SEC. 428. At any time after the approval of a compensation agreement or after an award or order has been made by the board or referee, the employee or dependents entitled to compensation thereunder may file a certified copy of the agreement and the order of the board approving the same or of the award or order with the prothonotary of the court of common pleas of any county, and the prothonotary shall enter the total amount of compensation stated in the agreement, award or order to be payable to the employee or his dependents, whether then due and accrued or payable in future installments, as a judgment against the employer or other party liable under such agreement or award. Such judgment shall be a lien against property of the employer or other party liable under such agreement or award, and execution may issue thereon forthwith.

Wherever, after an accident, any employee or his dependents shall have entered into a compensation agreement with his employer, or shall file a claim petition with the board, he may file a certified copy thereof with prothonotary of the court of common pleas of any county. The prothonotary shall enter the amount stipulated in any such agreement or claimed in any such petition as judgment against the employer. If the agreement be approved by the board, or compensation awarded as claimed in the petition, the amount of compensation stipulated in the agreement or claimed in the petition shall be a lien, as of the date when the agreement or petition was filed with the prothonotary. Pending the approval of the agreement or the award of compensation, no other lien which may be attached to the employer's property during such time shall gain priority over the lien of such agreement or award; but no execution shall issue on any compensation judgment before the approval of the agreement or the award of compensation on the said petition.

Striking judgment.

off If the agreement be disapproved, or, after hearing, compensation shall be disallowed, the employer may file, with the prothonotary of any county in which the petition or agreement is on record as a judgment, a certified copy of the disapproval of the agreement or disallowance of compensation, and it shall be the duty of such prothonotary to strike off the judgment.

If the amount of compensation claimed be disallowed, but another amount awarded, the compensation judgment shall be a lien to the extent of the award, as of the date of filing the petitions with the prothonotary, with the same effect as to other liens and the same disability to issue execution thereon as if the compensation claimed had been

allowed. In such cases the prothonotary shall make such modification of the record as shall be appropriate.

If the compensation payable under any agreement or award upon which judgment has been entered under the provisions of this section shall be modified, suspended, reinstated, or terminated by a supplemental agreement executed under the provisions of section four hundred and eight, or by an award or order made under the provisions of section four hundred and thirteen, any party to such judgment, at any time after such agreement has been approved by the board or after the expiration of the time allowed for an appeal from the award or order, may file with the prothonotary of the court of common pleas of any county in which such judgment is on record a certified copy of such supplemental agreement, award, or order and it shall thereupon be the duty of the prothonotary to modify, suspend, reinstate, or satisfy such judgment in accordance with the terms of such supplemental agreement, award, or order.

Modification.

Execution may issue by first filing with the prothonotary an affidavit that there has been a default in payments of compensation due on any judgment for compensation, entered prior to the approval of the compensation agreement, or an award on petition, as soon as such agreement shall have been approved or such award made as evidenced by the approval of the board of the award or by a certified copy thereof.

Execution.

Execution shall in all cases be for the amount of compensation and interest thereon due and payable up to the date of the issuance of said execution, with costs, and further execution may issue from time to time as further compensation shall become due and payable until full amount of the judgment with costs shall have actually been paid.

Sec. 429. If any party against whom a compensation agreement, award, or other order fixing the compensation payable under this act has been filed of record in any county of this Commonwealth in accordance with the provisions of section four hundred and twenty-eight of this article, or against whom judgment has been entered by the court of common pleas of any county on any award or order of the board or a referee, shall, at any time, present to the board receipts or copies thereof, certified by any referee, showing the payment of compensation as required by the agreement or award in full to the date of presentation to the referee, the board shall issue a certificate to such party, in the form prescribed, stating the extent to which the judgment on the agreement or award has been reduced. Upon the presentation of such certificate to the prothonotary of the court of common pleas of any county in which such agreement or award has been filed of record as a judgment, or in which judgment on an award has been entered by the court of common pleas, it shall be the prothonotary's duty to mark such judgment satisfied to the extent of the payments so certified, and, upon the presentation to such prothonotary of a certificate issued by the board under the provisions of section three hundred and seventeen of this act, it shall be the duty of the prothonotary to mark such judgment fully satisfied.

Payments to be credited.

Sec. 430. The lien of any judgment entered upon any award shall not be divested by any appeal. If, however, the party appealing from the award shall file with the board a bond, in such amount and in such form as the rules and regulations of the board shall direct, the appeal shall, pending its decision, excuse the payment of so much of the compensation as is contested therein; but if the final decision on appeal shall sustain the award, it shall be the duty of the employer by whom such award is payable to make payments of compensation as from the date of the original award. If on appeal the award is sustained as to a part, it shall be the duty of the employer by whom such part is payable to make payments as from the date of the original award. In case the award is annulled on appeal, it shall be the duty of the prothonotary of any county in which such award has been entered as a judgment to mark it satisfied.

Lien not divested by appeal.

Sec. 431. The cost of the prothonotary for entering the amount of compensation as provided in this act, or making a modification of the record, or marking the judgment satisfied, shall be allowed, taxed, and collected as upon a confession of judgment on a judgment note.

Costs.

Monthly re-ports. SEC. 432. It shall be the duty of the prothonotary of each court of common pleas, and of the supreme and superior court of the Commonwealth, to make a monthly report to the board of the disposition of all appeals taken to such court under the provisions of this article.

Proof of documents. SEC. 433. A document on file in the bureau or with the board or any referee, or part of the record of any proceedings taken under Articles III and IV of this act, shall be proved by a copy thereof, certified by the chairman of the board and attested by the secretary under the seal of the board.

Final receipt. SEC. 434. A final receipt, given by an employee or dependent entitled to compensation under a compensation agreement or award, reciting that the disability or dependency has terminated, shall be prima facie evidence of the termination of the employer's liability to pay compensation under such agreement or award: *Provided, however,* That the board, or a referee designated by the board, may, at any time, set aside a final receipt, upon petition filed with the board, if it be proved that such receipt was procured by fraud, coercion, or other improper conduct of a party or is founded upon mistake of law or of fact.

ARTICLE V.—*General provisions.*

Fees for legal service. SECTION 501. No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of article two of this act shall be an enforceable lien against the amount to be paid as damages, or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or, in case of settlement without trial, by a judge of the common pleas court of the county in which the accident occurred.

No claim or agreement for legal services or disbursements in support of any claim for compensation, or in preparing any agreement for compensation, under article three of this act shall be an enforceable lien against the amount to be paid as compensation, or be valid or binding in any other respect, unless the same be approved by the board. Any such claim or agreement shall be filed with the bureau, which shall, as soon as may be, notify the person by whom the same was filed of the board's approval or disapproval thereof, as the case may be.

After the approval as herein required, if the employer be notified in writing of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation: *Provided, however,* That where the employees' compensation is payable by the employer in periodical installments the board shall fix, at the time of approval, the proportion of each installment to be paid on account of legal services and disbursements.

Statute severable. SEC. 502. If any provision of this act shall be held by any court to be unconstitutional, such judgment shall not affect any other section or provision of this act, except that articles two and three are hereby declared to be inseparable and as one legislative thought; and if either article be declared by such court void or inoperative in an essential part, so that the whole of such article must fall, the other article shall fall with it and not stand alone.

Prior causes. SEC. 503. Nothing in this act shall affect or impair any right of action which shall have accrued before this act shall take effect.

Repealer. SEC. 504. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Act in effect. SEC. 505. This act shall not apply in the case of an accident occurring prior to the first day of January next succeeding its passage and approval.
Approved June 2, 1915.

Act No. 340.—*Workmen's compensation insurance board—State fund.*

Use of terms. SECTION 1. The State workmen's insurance board is hereinafter called the board; the State workmen's insurance fund is hereinafter called the fund; and the bureau of workmen's compensation of the department of labor and industry is hereinafter called the bureau.

Board created. SEC. 2. The State workmen's insurance board is hereby created, consisting of the commissioner of labor and industry, the insurance commissioner, and the State treasurer.

Sec. 3. Certain sums to be paid by employers, as hereinafter provided, are hereby constituted a fund, to be known as the State workmen's insurance fund, for the purpose of insuring such employers against liability under article three of the workmen's compensation act of 1915, and of assuring the payment of the compensation therein provided. Such fund shall be administered by the board, without liability on the part of the State, except as hereinafter provided, beyond the amount thereof, and shall be applied to the payment of such compensation.

State fund.

Sec. 4. The State treasurer shall be the custodian of the fund, and all disbursements therefrom shall be paid by him, upon vouchers authorized by the board and signed by any two members thereof, except as hereinafter provided in sections twenty-two and twenty-three. He may deposit any portion thereof not needed for immediate use as other State funds are lawfully deposited, and the interest thereon shall be collected by him and placed to the credit of the fund.

Custodian.

Sec. 5. On or before the first day of October in each year the said board shall prepare and publish a schedule of premiums or rates of insurance for employers who shall have accepted article three of the workmen's compensation act of 1915, which schedule shall be printed and distributed free of charge to such employers as shall make application therefor; and any such employer may, at his option, as hereinafter provided, pay to the fund the amount of the premium appropriated to his business or domestic affairs, and upon payment thereof shall thereafter be considered a subscriber to the fund, and shall be insured as hereinafter provided for the calendar year for which such premium is paid; and such insurance shall cover all payments becoming due in any year because of accidents occurring during the year for which said premium is paid.

Schedule of premiums.

Sec. 6. The said board shall determine the amount of premiums which the subscribers to the fund shall pay, and shall fix the premiums for insurance in accordance with the nature of their business and of the various employments of their employees, and the probable risk of injury to their employees therein; and they shall fix the premiums at such an amount as shall be adequate to enable them to pay all sums which may become due and payable to the employees of such subscribers under the provisions of article three of the workmen's compensation act of 1915; and to create and maintain the surplus provided in section nine of this act, and to provide an adequate reserve sufficient to carry all policies and claims to maturity. In fixing the premiums payable by any subscriber the board may take into account the condition of the plant, workroom, shop, farm, mine, quarry, operation, and all other property or premises of such subscriber in respect to the safety of those employed therein, as shown by the report of any inspector appointed by the board or by the department of labor and industry; and they may from time to time change the amount of premiums payable by any of the subscribers, as circumstances may require and the condition of the plant, workroom, shop, farm, mine, quarry, operation, or other property or premises of such subscribers in respect to the safety of their employees may justify; and they may increase the premiums of any subscriber neglecting to provide safety devices required by law or disobeying the rules or regulations made by the board in accordance with the provisions of section 15 of this act. The insurance of any subscriber shall not be effective until he shall have paid in full the premiums so fixed and determined.

Rates.

Sec. 7. The board shall file with the workmen's compensation bureau of the department of labor and industry a notice setting forth the names and places of business of those employers who from time to time shall become subscribers to the said fund.

List of subscribers.

Sec. 8 (as amended by act No. 395, acts of 1917). 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.

Expenses.

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.

- Surplus fund.** SEC. 9. The board shall set aside five per cent of all premiums collected for the creation of a surplus until such surplus shall amount to one hundred thousand dollars; and thereafter they may set apart such percentage, not exceeding five per centum, as in their discretion they may determine to be necessary to maintain such surplus sufficiently large to cover the catastrophe hazard of all the subscribers to the fund, and to guarantee the solvency of the fund.
- Classes.** SEC. 10. The said board shall divide the subscribers into groups, in accordance with the nature of the business of such subscribers and the probable risk of injury therein, and they shall fix all premiums for each group in accordance with the experience thereof. Where the employees in any business are engaged in various employments in which the risk of injury is substantially different, the board may subdivide the employments into classes and shall fix the premium for each in accordance with the probable risk of injury therein.
- Use of premiums.** SEC. 11 (as amended by act No. 395, acts of 1917). 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 undetermined 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.
- Investments.** SEC. 12. The said board may invest any of the surplus or reserve belonging to the fund in such securities and investments as are authorized for investment by savings banks. All such securities or evidence 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 fund. The State treasurer shall pay all vouchers drawn on the fund for the making of such investments, when signed by two members of the board, upon delivery of such securities or evidences of indebtedness to him, when there is attached to such vouchers a certified copy of the resolution of the board authorizing the investment. The said board may, upon like resolution, sell any of such securities.
- Contracts for medical services.** SEC. 13. The said board shall have the power to make all contracts necessary for supplying medical, hospital, and surgical services, as provided in section three hundred and six, subsection (e), article three, of the workmen's compensation act of 1915.
- Reinsurance.** SEC. 14. The said board shall have the power to reinsure any risk which they may deem necessary.
- Inspections.** SEC. 15. The said board shall be entitled to inspect the plant, work-room, shop, farm, mine, quarry, operation, and all other property or premises of any subscriber, and shall be entitled to examine from time to time the books, records, and pay rolls of any subscriber or intending subscriber for the purpose of determining the amount of the premium payable to such subscriber or intending subscriber; and they shall have the power to appoint such inspectors and auditors as may be necessary to carry out the powers given in this section; or they may, with the consent of the department of labor and industry and commissioner of insurance, cause such inspection and examination to be made by the inspectors of the said department of labor and industry and the auditors of the State insurance department, and such inspectors and auditors

shall have free access to all such premises, books, records, and pay rolls during the regular working and office hours.

The board shall make reasonable rules and regulations for the prevention of injuries upon the premises of the subscribers, and they may refuse to insure, or may terminate the insurance of, any subscriber who refuses to permit such examinations or disregards such rules or regulations, and may forfeit one-half of the unearned premiums previously paid by him.

Rules for safety.

Sec. 16. Any employer who shall have accepted the provisions of article three of the workmen's compensation act of 1915, and who shall desire to become a subscriber to the said fund, for the purpose of insuring therein his liability to those of his employees, or any class thereof, who have accepted the said provisions, shall make a written application for such insurance to the said board, in which application the applicant shall state, under oath or affirmation: (a) The nature of the business or domestic affairs in which insurance is desired; (b) the average number of employees expected to be employed in such business during the year for which insurance is sought, and the average number of employees, if any, engaged in such business during the previous calendar year; (c) The approximate money wages expected to be paid during the year for which insurance is sought, and the money wages paid to such employees during the preceding year; (d) the place where such business is to be transacted; (e) the place where the employer's pay roll and books of accounts are kept, and where the employees are customarily paid, and such other facts and information as the board shall require; and, when the employments are subdivided into classes, as provided in section ten of this act, the applicant shall further state, (f) the number of employees of each class expected to be employed or previously employed, as aforesaid; (g) the approximate money wages expected to be paid or previously paid, as aforesaid, to employees of each class for which insurance is sought. Thereupon the board shall make such investigations as they may deem necessary, and within thirty days after such application shall issue a certificate showing the classification or group in which such applicant is entitled to be placed, and the amount of premium payable by such applicant for the calendar year or the remainder of the calendar year for which insurance is sought. No insurance shall be issued for a longer period than a single calendar year.

Applications for insurance.

Sec. 17. All premiums shall be payable to the State treasurer, who shall issue an appropriate receipt therefor; and such receipt, together with the certificate of the board specified in section sixteen hereof, shall be the evidence that the applicant has become a subscriber to the fund and is insured therein.

Payment of premiums.

Sec. 18. Each subscriber to said fund shall, within one month after his subscription has terminated, furnish a written statement under oath or affirmation to the said board setting forth the maximum average and minimum number of employees insured in the fund that such subscriber had employed during the preceding year and the actual amount of the money pay roll of such employees for such year; and setting forth, when the board has subdivided the employments in any group into classes, as provided in section ten of this act, the number and actual amounts of the money pay roll of such employees of each of such classes; and thereupon within thirty days the said board shall state the account of such subscriber for such calendar year, based on the facts thus proven, and shall render a copy of such statement to the subscriber; and if the amount of the premium theretofore paid by such subscriber shall exceed the amount due according to such stated account then the excess shall be forthwith refunded to the subscriber by payment out of the fund in the manner hereinafter provided; and if the amount shown by said statement exceed the amount of the premium theretofore paid by such subscriber the excess shall be forthwith due and payable by the subscriber into the fund, and until paid shall be a lien, as State taxes are a lien, upon the real and personal property of the subscriber; and, if unpaid, shall be collectible as State taxes are now collectible, with interest at the rate of twelve per centum per annum, commencing thirty days after service of the copy of said account, which service shall be by registered mail.

Statements by subscribers.

False statements. Sec. 19. Any person who shall falsely make oath or affirmation to any certificate, application, or statement herein required shall be guilty of a misdemeanor; and any subscriber who shall, after notice from the said board, neglect or refuse to file the statement mentioned in section eighteen hereof, within ten days after such notice, shall be liable to pay to the fund a penalty of ten dollars for each day that such neglect or refusal shall continue, to be recovered at the suit of the fund.

Liability discharged, how. Sec. 20. Any subscriber to the fund who shall, within seven days after knowledge or notice of an accident to an employee in the course of his employment, as required by section three hundred and eleven of article three of the workmen's compensation act of 1915, have filed with the board a true statement of such knowledge, or a true copy of said notice, shall be discharged from all liability for the payment of compensation for the personal injury or death of such employee by such accident; and all such compensation due therefor, under article three of the workmen's compensation act of 1915, shall be paid out of the fund: *Provided, however,* That the report of such accident required by the act entitled "An act requiring employers to make reports to the department of labor and industry of accidents to employees and prescribing a penalty for noncompliance therewith," approved the nineteenth day of July, one thousand nine hundred and thirteen, shall be sufficient compliance with this section, if such report be made within said period of seven days and shall state that the employer making the same is a subscriber to the fund: *Provided,* That nothing in this section shall discharge any employer from the duty of supplying the medical and surgical services, medicine, and supplies required by section three hundred and six of the workmen's compensation act of 1915: *And provided further,* That any subscriber who has supplied such services, medicines, and supplies shall be reimbursed therefor from the fund.

Duty as to medical, etc., services.

Defenses by fund.

Sec. 21. In every case where a claim is made against the fund, the fund shall be entitled to every defense against such claim that would have been open to the employer, and shall be subrogated to every right of the employer arising out of such accident against the employee, the dependents, and against third persons. The fund may, in the name of the State workmen's insurance fund, sue in any county of this Commonwealth, or be sued, in the court of common pleas of Dauphin County to enforce any right given against or to any subscribed or other person under this act or the workmen's compensation act of 1915; and the proceedings provided in article four of the workmen's compensation act of 1915 may be instituted by or against the fund, in the said name, to enforce, before the board of workmen's compensation or any referee thereof, the rights given to or against the said fund by the workmen's compensation act of 1915.

Investigation of accidents.

Sec. 22. Upon receipt of a notice or statement of knowledge of an accident to an employee of a subscriber occurring in the course of his employment the said board shall, if it deem necessary, cause an investigation to be made by an inspector appointed by it or an inspector of the department of labor and industry.

Execution of agreements.

Sec. 23. The board is hereby empowered to execute the agreements provided in the workmen's compensation act of 1915 and to appoint such agents and make such rules as they may deem necessary for this purpose. When any such agreement has been approved by the bureau the same shall be properly filed and docketed, and the board shall from time to time, until such agreement shall be modified or terminated, as provided in the workmen's compensation act of 1915, issue such warrant or warrants as may be necessary to pay the sums therein agreed upon. Such warrant or warrants shall be signed by a member of the said board or an agent appointed by the said board for this purpose and shall be mailed to the person or persons entitled thereto under such agreement. When any award is made by the board of workmen's compensation or by a referee designated by the bureau in any proceedings brought by an employee of a subscriber or the dependents of such employee against the said fund such award shall be filed and docketed; and the State workmen's insurance board shall from time to time, until such award is modified, reversed, or terminated, issue such warrant or warrants as may be necessary to pay the sums therein lawfully awarded against the said fund. Such warrant or warrants shall be signed by a member of the State workmen's insurance board or by an agent appointed

by the board for that purpose and shall be mailed to the person or persons entitled thereto under such award.

SEC. 24. All payments to employees, dependents of deceased employees, physicians, attorneys, investigators, and others entitled to be paid out of the fund shall be made by the State treasurer on a warrant of the board as aforesaid. But where periodical installments are required to be paid, under article three of said workmen's compensation act of 1915, a single warrant shall be sufficient to authorize such periodical payments, but upon the modification of any agreement or award, in accordance with the provisions of article four, section four hundred and twenty-six of the workmen's compensation act of 1915, or upon review by the court, the board shall issue a further warrant in accordance with such subsequent agreement or such modification, and such warrant when issued shall supersede and cancel the previous warrant.

Payments.

SEC. 25. Information acquired by the fund, its officers and employees, from employers, employees, or insurance corporations or associations shall not be open to public inspection.

Information confidential.

SEC. 26 (as amended by act No. 395, acts of 1917). The board may, with the approval of the governor, appoint a manager, at a salary not to exceed seven thousand five hundred dollars; an assistant manager, at a salary not to exceed six thousand dollars; an actuary, at a salary not to exceed four thousand five hundred dollars; and may, with the approval of the governor, appoint at salaries fixed by the board, with the approval of the governor, such underwriters, bookkeepers, comptrollers, auditors, inspectors, examiners, medical advisers, agents, assistants, and clerks as may be necessary for the proper administration of the fund and the performance of the duties imposed upon the board by the provisions of this act. The commissioner of labor and industry shall include in his annual report a full and complete statement of the administration of the said fund.

Officers.

SEC. 27. The attorney general shall ex officio be the general counsel of the board. He shall appoint, at an annual salary or salaries to be fixed by him, not to exceed in the aggregate the sum of ten thousand dollars, an attorney or attorneys who shall act as counsel for the board.

Attorneys.

SEC. 28. The sum of three hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated for the expenses of the organization and administration of the said fund.

Appropriation.

SEC. 29. This act shall take effect on July first, one thousand nine hundred and fifteen.

Act in effect.

Approved June 2, 1915.

ACT No. 341.—*Workmen's compensation insurance—Provisions of policies.*

SECTION 1. No policy of insurance against liability arising under article three of the workmen's compensation act of 1915 shall be made unless the same shall contain the agreement of the insurer that, in the event of the failure of the insured promptly to pay any installment of compensation insured against, the insurer will forthwith make such payments to the injured employee or the dependents of the deceased employee, and that the obligations shall not be affected by any default of the insured, after the accident, in the payment of premiums, or in the giving of any notices required by such policy or otherwise. Such agreement shall be construed to be a direct promise to such injured employee and to such dependents, enforceable by action brought in the name of such injured employee or in the name of such dependents.

Direct payments.

SEC. 2. No suit shall be maintained for the collection of premiums upon any such policy of insurance unless said covenant is contained in said policy.

Suits for premiums.

SEC. 3 (as amended by act No. 306, acts of 1919). No policy of insurance against liability arising under the workmen's compensation act of one thousand nine hundred and fifteen or acts amendatory thereof shall contain any limitation of the liability of the insurer to an amount less than that payable by the insured on account of the risk insured against under the said 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. No such policy shall be issued except upon a form approved by the insurance commissioner as complying with all the terms

Limitation of liability.

and provisions of this act. No action shall be maintained for the collection of premiums on any policy violating this act. But a policy may be issued to a self-insurer, qualified under section 305 of article 3 of the workmen's compensation act of one thousand nine hundred and fifteen providing for the payment to such self-insurer of fixed amounts in excess of any stated loss falling upon such self-insurer under the terms of the workmen's compensation act and by reason of any single accident.

Ratings, etc., to be filed SEC. 4 (as amended by act No. 455, acts of 1919). The State workmen's insurance fund, and every insurance association and corporation which insures employers against liability for compensation under the workmen's compensation act of one thousand nine hundred and fifteen, shall file with the commissioner of insurance its classification of risks and premiums, together with basis rate and schedule or merit ratings, if a system of schedule or merit rating be in use; none of which shall take effect until the commissioner of insurance shall have approved the same as adequate for the risks to which they respectively apply. The commissioner of insurance may withdraw his approval of any premium rate or schedule made by the State workmen's insurance fund, or any insurance corporation or association, if, in his judgment, such premium rate or schedule is inadequate to provide the necessary reserves. Such premium rates or system of schedule or merit rating shall take no account of any physical impairment of employees or the extent to which employees have persons dependent upon them for support.

Rates to be approved. On and after July first, one thousand nine hundred and nineteen, neither the State workmen's insurance fund nor any insurance association or corporation shall issue, renew, or carry any insurance against liability under the workmen's compensation act of one thousand nine hundred and fifteen, at premium rates which are less than those approved by the commissioner of insurance for such carrier as adequate for the risks to which they respectively apply: *Provided, however,* That if the commissioner of insurance shall have previously approved a system of schedule or merit rating, filed with him by the State workmen's insurance fund or any insurance association or corporation, the same may be applied to risks subject thereto only by a rating bureau approved by the commissioner of insurance as adequately equipped for the uniform and impartial application thereof; but any reduction or increase from the basis rate filed with and approved by the commissioner of insurance, on account of the application of such system of schedule or merit rating, shall be clearly set forth in the insurance contracts or the indorsements attached thereto. An attested copy of every policy of insurance against liability under the workmen's compensation act, and an attested copy of every indorsement upon any such policy, shall be filed with the rating bureau aforesaid.

The statistical and actuarial data compiled by the State workmen's insurance fund shall at all times be available to the State insurance commissioner for his use in judging the adequacy or inadequacy of rates and schedules filed, and it shall be the duty of the manager of the State workmen's insurance fund to render all possible assistance to the State insurance department in carrying out the provisions of this act.

Statement of losses. The commissioner of insurance may require every insurance association or corporation, which insures employers or employees under the workmen's compensation act of one thousand nine hundred and fifteen, to file with its annual statement a sworn report of its loss experience, in such detail and form as may be prescribed by the commissioner of insurance.

Revocation of licenses. The commissioner of insurance shall have the power to suspend or revoke the license of any insurance association or corporation which violates any of the provisions of this act.

Approved the 22d day of July, A. D., 1919.

ACT NO. 343.—*Workmen's compensation—Exemptions.*

Domestic and farm labor. SECTION 1. Nothing contained in any article or any section of an act entitled the workmen's compensation act of 1915 shall apply to or in any way affect any person who, at the time of injury, is engaged in domestic service or agriculture.

Approved June 3, 1915.

ACTS OF 1917.

No. 359.—*Contractors for public works—Acceptance of provisions of compensation 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, the provisions of the workmen'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 workmen's compensation of the department of labor and industry.

Application of law.

Provisions for compensation.

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 workmen'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.

Duty of officers, etc.

SEC. 3. Any contract executed in violation of the provisions of this act shall be null and void.

Contracts void.

Approved July 18, 1917.

ACTS OF 1919.

ACT No. 310.—*Transfer of action to the workmen's compensation board.*

SECTION 1. Whenever heretofore in case of any accident suit has been wrongfully brought in the court of common pleas in any of the counties of this Commonwealth, and proceedings should have been commenced before the workmen's compensation board, it shall be lawful and upon request of either of the parties to the suit the prothonotary of said court shall certify the same, including all the proceedings had before said court, to the said workmen's compensation board; the said board to proceed and hear the case in the same manner as if it had been originally commenced before the workmen's compensation board.

Suits wrongfully brought

SEC. 2. That no case heretofore brought before any court shall be certified as set forth in section one of this act unless the said proceeding had been commenced in the said court within one year from the date of the accident which caused the injury or death for which the action was brought.

Limitation.

Approved July 8, 1919.

ACT No. 441.—*Bureau of workmen's compensation—Board.*

SECTION 1. The bureau of workmen's compensation of the department of labor and industry is hereafter called bureau.

Designations.

The workmen's compensation board is hereinafter called the board. The commissioner of labor and industry is hereinafter called the commissioner.

The workmen's compensation referee is hereinafter called the referee. SEC. 2. The bureau of workmen's compensation of the department of labor and industry is hereby created.

Bureau created.

SEC. 3. A board is hereby created, to be known as the workmen's compensation board.

Board.

The board shall consist of three members, who shall be appointed by the governor, by and with the advice and consent of the senate, for

- terms of three, four, and five years, respectively, from the first day of June, one thousand nine hundred and nineteen, and shall serve until their respective successors shall be duly appointed and qualified. Their successors shall each be appointed for a term of five years. The commissioner shall be an *ex officio* member of the board, but shall not vote on orders, decisions, or awards.
- Vacancies.** SEC. 4. Whenever a vacancy on the board shall occur by death, resignation, removal, or otherwise, the governor shall appoint a member of the board to fill such vacancy.
- Offices.** SEC. 5. The board of public grounds and buildings shall furnish suitable accommodations for the use of the bureau and board, and shall also provide suitable places in the various districts in which the board and referees may perform the duties imposed on them.
- Chairman.** SEC. 6. The governor shall designate one of the members of the board as chairman of the board to serve as such during his term of appointment. It shall be the duty of the chairman to preside at the meetings of the board. Two members shall be a quorum, and no action of the board shall be valid unless it shall have the concurrence of at least two members. A vacancy on the board shall not impair the right of a quorum to exercise all the right and perform all the duties of the board. The commissioner shall appoint a clerk and a stenographer to the chairman, and a stenographer for each other member of the board.
- Quorum.** SEC. 7. The attorney general shall *ex officio* be the general counsel of the bureau. The commissioner shall appoint, with the approval of the attorney general, an attorney or attorneys, learned in the law, as legal advisors for the bureau and to represent impecunious claimants and to perform such other legal duties as the board may direct.
- Counsel.** SEC. 8. It shall be the duty of the board, immediately upon its organization, to divide the Commonwealth into districts. Each district shall, as near as may be practicable, be of compact and of contiguous territory.
- Districts.** SEC. 9. As soon as such districts shall have been created, the commissioner, with the approval of the governor, shall appoint as many referees as shall be necessary to fulfill the purposes of this act, not to exceed fourteen in number. The board may assign any referee or referees to any district. The commissioner, with the approval of the governor, shall appoint one clerk for each referee. The commissioner shall also appoint a supervisory referee, who shall be a consultant for the several referees on matters which do not come before the board. The supervisory referee shall, from time to time, visit the several referees and investigate matters pending before them. He shall see that the public business coming before them is promptly dispatched according to law. The supervisory referee shall report to the board the result of his investigations, and make such recommendations for the good of the service as to him may seem proper. The supervisory referee shall have the powers of a referee as defined in this act, and the board may assign him at any time to perform any of the duties of a referee. The supervisory referee shall perform such other duties as the board may prescribe.
- Referees.** SEC. 10. The commissioner shall, with the approval of the governor, appoint not more than three physicians, whose duty it shall be to make such medical examinations as may be necessary, and to perform such other duties in connection with the work of the bureau as the board shall direct.
- Physicians.** SEC. 11. The board shall appoint a secretary and an assistant secretary to serve at its pleasure, who shall perform such duties as shall be imposed upon them by the board. The assistant secretary shall perform the duties of the secretary during his absence, and shall possess, for the time designated, all the powers of the secretary, and perform such other duties as the board or secretary may direct.
- Secretaries.** SEC. 12. The commissioner, with the approval of the governor, shall appoint an actuary, a director of the bureau of workmen's compensation, an assistant director of the bureau of workmen's compensation, a chief adjuster, a chief clerk of the division of exemptions and insurance, a chief clerk of the division of accident reports, a chief clerk of the division of agreements and receipts, an appeal clerk, and a sergeant at arms, and such other chief clerks and other officers as may, from time to time, in the opinion of the commissioner, become necessary.
- Officers and employees.**

Sec. 13. The commissioner, with the approval of the governor, shall appoint such claim adjusters, stenographers, and other employees, as may be necessary to conduct the business of the bureau, whose duties and salaries shall be fixed by the board, with the approval of the commissioner. The board may also secure the services of expert stenographers for reporting cases before the board, whenever it deems it necessary. Adjusters, etc.

Sec. 14. The salary of each member of the board shall be seven thousand dollars per annum, except that of the chairman, which shall be seven thousand five hundred dollars per annum. Salaries.

The salary of each referee shall be \$5,000 per annum.

The salary of the supervisory referee shall be \$6,000 per annum.

The salaries of the attorneys shall not in the aggregate exceed the sum of \$12,000 per annum.

The salary of each physician shall be \$3,000 per annum.

The salary of the secretary shall be \$5,000 per annum.

The salary of the assistant secretary shall be \$3,000 per annum.

The salary of the actuary shall be five thousand dollars per annum.

The salary of the director of the bureau of workmen's compensation shall be \$4,500 per annum.

The salary of the assistant director of the bureau of workmen's compensation shall be \$4,000 per annum.

The salary of the chief adjuster shall be \$3,000 per annum.

The salary of the chief clerk of the exemption and insurance division shall be \$3,000 per annum.

The salary of the chief clerk of the division of accident reports shall be \$2,500 per annum.

The salary of the chief clerk of the division of agreements and receipts shall be \$2,500 per annum.

The salary of the appeal clerk shall be \$2,000 per annum.

The salary of the sergeant at arms shall be \$1,800 per annum.

The salary of the clerk to the chairman shall be \$2,000 per annum.

The salary of the clerk for each referee shall be \$1,800 per annum.

The salary of the stenographer for each member of the board shall be \$1,800 per annum.

Sec. 15. Each member of the board, referee, secretary, assistant secretary, counsel, sergeant at arms, and other officers and employees shall be paid, in addition to their respective salaries, the railroad fare, board, lodging, and other traveling expenses, necessarily and actually incurred by each of them in the performance of the duties required by law or performed by the direction of the board. The office of each referee shall be the place from which the railroad fare shall be reckoned. Expenses.

Sec. 16. It shall be the duty of the board to make all proper and necessary rules and regulations for the legal and judicial procedure of the bureau, and to promptly hear and determine all petitions and appeals, and to perform such other duties as shall be required. Duties.

Sec. 17. The commissioner may authorize the bureau to publish and distribute such blank forms, bulletins, and bound volumes of the board and court decisions, as in the opinion of the board will be useful in the administration of any workmen's compensation law now in force or which may hereafter be enacted. Publications.

Sec. 18. It shall be the duty of each referee to hear such claims for compensation as shall be assigned to him by the board, and to perform such duties as shall be required of him by the board or be imposed by law. Duty of referees.

Sec. 19. The board and every referee shall have the power to conduct any investigation which may be deemed necessary to ascertain the facts of any claim or any other matter properly before such board or referee. Such investigations may be made by the board or referee personally, or by any officer or employee of the bureau, or by any inspector of the department of labor and industry, or by any person or persons authorized by law. Every inspector of the said department of labor and industry is hereby empowered and directed to conduct any investigation authorized by this act, at the request of the board or any referee, with the consent of the commissioner. Investigations.

Sec. 20. Each member of the board and referee shall have the power to issue subpoenas, administer oaths, and summon witnesses, of his own motion or at the request of either party interested in any matter before the board or such referee, and to require the attendance Power as to oaths.

of witnesses and the production of books, documents, and papers pertinent to any hearing, and to examine them and such public records as he may require in relation to any matter which he has power to investigate.

- Subpoenas. Sec. 21. All subpoenas issued by a member of the board or a referee shall be signed by him or by the secretary or assistant secretary, and may be served by any adult in any part of the Commonwealth.
- Contempt. Sec. 22. Any witness who refuses to obey a subpoena of a member of the board or referee, or who refuses to be sworn to testify, or who fails to produce any papers, books, or documents touching any matter under investigation, or who is guilty of any contempt after summons to appear, may be punished as for contempt of court; and for this purpose an application may be made to any court of common pleas within whose territorial jurisdiction the offense was committed, and for which purpose such court is hereby given jurisdiction.
- No fees for oaths, etc. Sec. 23. The secretary, assistant secretary, referee, director, or assistant director of workmen's compensation, and clerks to the referees are hereby directed to administer, without charge, any oaths required by any workmen's compensation act now in force or which may hereafter be enacted, and to take, without charge, affidavits of any party to any paper, document, or petition, which is by such act required to be attested.
- Documents. The bureau, upon request of any party to a compensation agreement or to any proceedings taken before the board or a referee, shall, without charge, issue to such party or parties a certified copy of any compensation agreement approved by the board, or any award or disallowance of compensation, or of any action taken by the board upon such agreement or award or disallowance of compensation, or of the receipts of payments of compensation filed with the bureau; and the bureau may, without charge, issue a certified copy of any other paper contained in the record of such proceedings to any party or parties thereto, if the board shall so direct.
- Copies. The board may issue to any other person, upon the order of the board, a certified copy of any compensation agreement, or of the record of any proceedings taken before the board or referee, or of any document contained in such record, upon payment of such fee as the board may determine to be adequate to provide for the expenses of making such copy. All certified copies of any document on file with the bureau or part of the record of any proceedings taken before the board or referee shall be certified by the chairman of the board and attested by the secretary.
- Witness fees. Sec. 24. Each witness required to attend before the board or any referee shall receive for each day's attendance the sum of one dollar and fifty cents, and, in addition thereto, three cents for each mile circular traveled by such witness by the usual route from his home to the place where his presence is required. Any physician when called as a witness and required to attend before the board or any referee shall receive for each day's attendance the sum of five dollars, and, in addition thereto, the same mileage as provided for in case of other witnesses.
- Physicians' fees. The witness fees and expenses and costs of any hearing may be imposed by the board upon either party, or may be divided between the parties in such proportion as the board may direct.
- Costs. Sec. 25. Upon requisition of the commissioner and order of the superintendent of public printing and binding, the State printer shall print and bind the opinions, bulletins, rules, and rulings of the board.
- Printing. Sec. 26. The bureau, board, referees, and officers created by the act shall dispose of any business or proceedings pending in or before any bureau, board, referee, and officers created by any act hereby repealed, and for such purpose shall exercise the powers and perform the duties of such bureau, board, referees, and officers. All orders, exemptions, rules, and regulations made by any board or referee created by an act hereby repealed shall continue in full force and effect until revoked or changed by the board created by this act.
- Pending matters. Sec. 27. [Repeal of act No. 339, acts of 1915, and amendments thereto.]
- Act in effect. Sec. 28. This act shall take effect the first day of June, one thousand nine hundred and nineteen.

Approved July 21, 1919.

PHILIPPINE ISLANDS.

ACTS OF U. S. PHILIPPINE COMMISSION—1907.

ACT No. 1698.—*Compensation for injuries of employees of the Insular Government, etc.*

* * * * *
SECTION 25 (as amended by act No. 2120).

* * * * *

(d) When an officer or employee in the civil service, insular or provincial, or of the city of Manila, permanent or temporary, is wounded or injured in the performance of duty, the governor general or proper head of department may direct that absence during the period of disability caused by such wound or injury shall be on full pay for a period not exceeding six months: *Provided*, That if the officer or employee is entitled to the vacation leave provided in section twenty-four of this act, absence for this reason shall be charged first against such vacation leave: *And provided further*, That the governor general or proper head of department may, in his discretion, authorize payment of medical attendance, necessary transportation, subsistence and hospital fees for all insular officers, employees, and laborers, and the municipal board of the city of Manila may also in its discretion, authorize the payment of such expenses for all officers, employees, and laborers of the city of Manila, whether permanently or temporarily appointed, and whatever their rate of compensation [,] pay, or wages. who have been wounded or injured in the performance of their duty: *And provided further*, That the governor general or proper head of department or the municipal board of the city of Manila, as the case may be, may authorize payment of reasonable burial expenses and of three months' salary or wages to the widow or dependent child or children of any officer, employee, or laborer who is killed or dies from wounds or injuries received while in line of duty: *And provided further*, That payments made under this paragraph shall not be made from the appropriation for general purposes when the bureau or office concerned has an available appropriation for contingent expenses or public works, as the case may be, from which such payments can be made, nor shall the provisions of this section be construed to cover sickness as distinguished from physical wounds: *Provided, however*, That when such sickness is the direct and immediate result of the performance of some act in the line of duty, the governor general or proper head of department may in his discretion authorize the payment of necessary hospital fees.

Period of payment during disability.

Fatal injuries.

PORTO RICO.

ACTS OF 1918.

Act No. 10.—*Compensation of workmen for injuries—Insurance fund.*

SHORT TITLE.

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| Title. | SECTION 1. This act shall be known as the workmen's accident compensation act. |
| Scope. | SEC. 2 (as amended by act No. 62, acts of 1919). The provisions of this act shall apply to laborers injured, disabled or killed by accidents due to their employment and occurring in the course thereof. Farm laborers not employed to work with machinery operated by steam, gas, electricity, animal, or other mechanical power or instruments or tools, the use of which can not cause serious corporal injury, domestic servants and employees engaged in clerical work in offices and commercial establishments where machinery is not used, are excepted: <i>Provided, however,</i> That farm laborers employed in agricultural work where animal power or instruments or tools the use of which may cause serious corporal injury are used, shall be entitled to the benefits of this act. |
| Exemption. | 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 fifteen hundred (1,500) dollars annually: <i>Provided,</i> That pursuant to the provisions of this act, compensation shall be paid to laborers injured, disabled, or killed by accidents due to their employment and occurring in the course thereof on any public works that may be performed by administration. |
| Public employ-ees. | |
| Payments. | The workmen's relief commission is hereby authorized and directed to pay such compensation pursuant to the terms of this act, by 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. |
| Advances. | The commissioner of the interior is hereby authorized to make advances on account of their compensation to workmen injured on public works, in the same manner as other contributors to the workmen's relief trust fund, which advances shall be reimbursed to said official, if justified, out of the said fund, upon settlement of the compensation to workmen injured on public works. |
| Compensation. | SEC. 3 (as amended by act No. 62, acts of 1919). Any laborer who may be injured within the provisions of this act shall be entitled to— |
| Medical aid, etc. | 1. Medical attendance and such medicines and sustenance as may be prescribed, including hospital service when necessary. |
| Temporary disability. | 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: <i>Provided,</i> That in no case shall there be paid more than seven (\$7) nor less than three (3) dollars a week. |
| Permanent disability. | 3. If the laborer is partially disabled for permanent work he shall receive a compensation of not to exceed twenty-five hundred (2,500) dollars. Compensation shall be graded in proportion to the rate of wages that the laborer earned and the importance of the injury sustained. 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 thou- |

sand (\$4,000) dollars as maximum. The compensation shall be graded in proportion to the rate of wages that the laborer earned.

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 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.

5. If the laborer loses his or her life as a result of the injuries sustained, death occurring within one year from the time of the accident, as a consequence of such accident, the parents, the widower or widow, the legitimate children and grandchildren, and in the proper case the illegitimate children, whether natural or not, of the deceased laborer, all of whom were dependent exclusively on his or her earnings for their support, shall receive a compensation of three thousand (3,000) to four thousand (4,000) dollars as a maximum, which shall be graded according to the earning capacity of the deceased laborer, to the number of persons entitled to compensation, and to their conditions and necessities; which compensation shall be distributed in equal parts among the persons entitled thereto. In default of the persons hereinabove mentioned, the foster father or mother or the nearest relative who were also exclusively dependent on the earnings of the decedent, shall receive a compensation of from two thousand (2,000) to four thousand (\$4,000) dollars as maximum; and if there be several near relatives entitled to compensation, the same shall be distributed among them in equal parts.

Death.

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; and the commission may in such cases as it may deem advisable, grant a pension on account of the compensation allowed and for a time certain, to the heirs of the deceased laborer: *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.

Care extended.

Minors, etc.

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:

Injuries not covered.

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.

Sec. 5 (as amended by act No. 62, acts of 1919). 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: *Provided*, That where injured workmen are residents of municipalities in whose hospitals they are lodged and cared for, such municipalities may not collect from the commission for the time that the injured workman stayed in the hospital, more than one-half of the minimum rate fixed by the said municipalities.

Medical examinations.

The commission is hereby authorized to enter into contracts with insular, municipal and private physicians and with hospitals and practicanes when deemed advisable by it.

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 by the commission to visit the injured workman at all reasonable circumstances during his disability.

Refusing treatment.

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 (as amended by act No. 62, acts of 1919). A commission to be known as "The Workmen's Relief Commission" is hereby created, which shall consist of five members, to wit: The commissioner of agriculture and labor who shall be chairman of the commission; the treasurer of Porto Rico and three other commissioners to be appointed by the governor, with the approval of the senate, 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 subsequent election there shall be elected the three members 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 election.

Such commissioners as may not be employees of the insular government shall receive a per diem of eight (\$8) dollars each for attending each regular or special meeting of the commission, payable out of the workmen's relief trust fund.

Rules.

The said commission shall elect a secretary from among its members, prior to the first day of June. 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 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 a misdemeanor punishable by fine of not to exceed fifty (\$50) dollars for each violation.

Report of accidents.

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 extent 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 subpoena 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.

Sec. 8 (as amended by act No. 62, acts of 1919). 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 workmen'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.

Claims.

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.

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.

Awards.

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 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.

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 of the person or persons entitled to compensation, within the terms hereinabove fixed.

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 in 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.

Classification of occupations.

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:

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.

Subgroups.

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.

Extra hazardous 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 establishments 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.

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 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.

Sec. 13 (as amended by act No. 62, acts of 1919). 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, further, it shall be the duty of such employer to file with the workmen's relief commission, within the first ten days after the end of each month, a report as to wages paid to all workmen coming under this act for the months preceding the date of the report.

Annual adjust-
ments.

Statements by
employers.

The failure to file such statement and such monthly reports 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 and for such reports 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 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 and the monthly reports 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 connection with the carrying out of this act, shall be charged to the workmen's relief trust fund.

Investment of surplus.

SEC. 16. The workmen's relief commission may invest any of the surplus or reserve funds belonging to the workmen's 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.

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 entrusted 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.

Information confidential.

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 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.

Assignment of insurance.

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 his heirs, in accordance with this act, and in the case specified in section 20, and the workman's relief commission in the cases specified in section 21, institute an action to recover damages from an employer, it shall not be a defense in favor of the employer—

Employers not complying with act.

(a) That the employee was guilty of contributory negligence;

(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.

Suits.

Defenses abrogated.

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 workmen comprised in this act, or their heirs in accordance with the same, have the right to institute an action for damages against the employer.

Willful, etc., acts.

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, etc.

SEC. 24. All fines collected for violations of any of the provisions of this act shall be deposited in the workmen's relief trust fund.

Fines.

Attorneys' fees. 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.

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 cent) 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 cent) 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.

Contractors. SEC. 26. In reporting their annual pay rolls all employers shall include all workmen who are working either on piecework or under any independent contractor or subcontractor employed or contracted by such employer, and all premiums shall be based 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. That 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 hereinafter 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 contribute. to SEC. 28 (as amended by act No. 61, acts of 1919). All employers employing workmen under the terms of this act, shall be bound to contribute to the workmen's relief trust fund in the form and manner provided herein: *Provided*, That, on petition of the aggrieved party, the district court of competent jurisdiction may review upon certiorari any decision of the workmen's compensation commission that shall have been rendered in violation of the provisions of this act, where such a remedy is brought within the term of fifteen days from and after the service of notice of the decision complained of: *And provided, further*, That the legality of any tax fixed by the said commission may also be revised in the same manner and form upon certiorari brought within the term hereinabove mentioned.

Reduction of rates. of 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.

Approved February 25, 1918.

RHODE ISLAND.

ACTS OF 1912.

CHAPTER 831.—*Compensation of workmen for injuries.*

ARTICLE I.

ABROGATION OF REMEDIES AND DEFENSES.

SECTION 1. In an action to recover damages for personal injury sustained by accident by an employee arising out of and in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense: (a) That the employee was negligent; (b) That the injury was caused by the negligence of a fellow employee; (c) That the employee has assumed the risk of the injury. Defenses abrogated.

SEC. 2. The provisions of this act shall not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries, sustained by employees engaged in domestic service or agriculture. Exemptions.

SEC. 3. The provisions of this act shall not apply to employers who employ five or less workmen or operatives regularly in the same business, but such employers may, by complying with the provisions of section 5 of this article become subject to the provisions of this act. Small employers.

SEC. 4 (as amended by ch. 1534, acts of 1917). 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 employees 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. Effect of election by employers.

SEC. 5. Such election on the part of the employer shall be made by filing with the commissioner of industrial statistics a written statement to the effect that he accepts the provisions of this act, and by giving reasonable notice of such election to his workmen, by posting and keeping continuously posted copies of such statement in conspicuous places about the place where his workmen are employed, the filing of which statement and the giving of which notice shall operate to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, 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 any succeeding year, file with said commissioner a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this act and shall give reasonable notice to his workmen as above provided. Blank forms of election and withdrawal as herein provided, shall be furnished by said commissioner. Election made, how.

SEC. 6. An employee of an employer who shall have elected to become subject to the provisions of this act as provided in section 5 of this article shall be held to have waived his right of action at common law to recover damages for personal injuries, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within ten days thereafter filed a copy thereof with the commissioner of industrial statistics or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commissioner within ten days after notice by the employer, as above provided, of such election; and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year, each, unless such employee shall at least sixty days prior to the expiration of such first or any succeeding year, file with the said commissioner a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A Election by employees.

- Minors.** 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 employee except as expressly provided in this act; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employees are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law to recover damages for personal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.
- Waiver of common-law rights.** shall be held to have waived his right of action at common law to recover damages for personal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.
- Remedies exclusive.** SEC. 7. The right to compensation for an injury, and the remedy therefor granted by this act, shall be in lieu of all rights and remedies as to such injury now existing, either at common law or otherwise; and such rights and remedies shall not accrue to employees entitled to compensation under this act while it is in effect.

ARTICLE II.

PAYMENTS.

- Payments due, when.** SECTION 1. If an employee who has not given notice of his claim of common law rights of action or who has given such notice and has waived the same, as provided in section 6 of Article I, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation, as hereinafter provided, by the employer who shall have elected to become subject to the provisions of this act.
- Willful injuries or intoxication.** SEC. 2. No compensation shall be allowed for the injury or death of an employee where it is proved that his injury or death was occasioned by his willful [willful] intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty.
- Attorney's fees.** SEC. 3. Contingent fees of attorneys for services under this act shall be subject to the approval of the superior court.
- Waiting time.** SEC. 4 (as amended by ch. 1534, acts of 1917). No compensation except as provided by section 12 of this article shall be paid under this act for any injury which does not incapacitate the employee for a period of at least two weeks from earning full wages, but, if such incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury:
Provided, That if such incapacity extends beyond the period of four weeks, compensation shall begin from the date of the injury.
- Medical, etc., aid.** SEC. 5 (as amended by ch. 1534, acts of 1917). 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 employer liable for such service.
- Compensation in case of death.** SEC. 6. If death results from the injury, the employer shall pay the dependents of the employee wholly dependent upon his earnings for support at the time of his injury a weekly payment equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury: *Provided, however,* That, if the,

dependent of the employee to whom the compensation shall be payable upon his death is the widow of such employee, upon her death the compensation thereafter payable under this act shall be paid to the child or children of the deceased employee, including adopted and stepchildren, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, dependent upon the widow at the time of her death. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents for a period of three hundred weeks from the date of the injury a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of 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: *Provided, however,* That, if the deceased leaves no dependents at the time of the injury, the employer shall not be liable to pay compensation under this act except as specifically provided in section 9 of this article.

Sec. 7 (as amended by ch. 1534, acts of 1917). The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

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.

(b) A husband upon a wife with whom he lives or upon whom he is dependent at the time of her death.

(c) A child or children, including adopted and stepchildren, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living or upon whom he or they are dependent at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation hereunder shall be divided equally among them.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact as the fact may have been at the time of the injury. In such other cases, if there is more than one person wholly dependent, the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency.

Sec. 8. No person shall be considered a dependent unless he is a member of the employee's family or next of kin, wholly or partly dependent upon the wages, earnings, or salary of the employee for support at the time of the injury.

Persons not dependent.

Sec. 9. If the employee dies as a result of the injury leaving no dependents at the time of the injury, the employer shall pay, in addition to any compensation provided for in this act, the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

Persons without dependents.

Sec. 10 (as amended by ch. 1795, acts of 1919). While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to one-half his average weekly wages, earnings, or salary, but not more than fourteen dollars nor less than seven dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury, nor the amount more than \$5,000. In the following cases it shall, for the purposes of this section, be conclusively presumed that the injury resulted in perma-

Total disability.

nent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, and injury to the spine, resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull, resulting in incurable imbecility or insanity.

Partial disability.

SEC. 11. While the incapacity 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 wages, earnings, or salary, before the injury and the average weekly wages, earnings, or salary 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 injury.

Specific injuries.

SEC. 12. In case of the following specified injuries the amounts named in this section shall be paid in addition to all other compensation provided for in this act:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the entire and irrecoverable loss of the sight of both eyes, one-half of the average weekly wages, earnings, or salary, of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks.

(b) For the loss by severance of either hand at or above the wrist, or either foot at or above the ankle, or the entire and irrecoverable loss of the sight of either eye, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of fifty weeks.

(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, or toes, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks.

Computing wages.

SEC. 13 (as amended by ch. 1268, acts of 1915). The "average weekly wages, earnings, or salary" of an injured employee shall be ascertained as follows:

(a) "Average weekly wages, earnings, or salary" shall mean the total earnings of the injured employee received from the employer in whose service he is injured during the period of the twenty-six calendar weeks immediately preceding the date of the injury, divided by the number of calendar weeks during which, or any portion of which, said workman was employed by, and actually worked for, the said employer; but if the injured employee has lost one or more calendar weeks during such period then the total earnings for the remainder of such twenty-six weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. In computing the time so lost, absence for seven consecutive calendar days, although not in the same calendar week, shall be considered as absence for a calendar week. Where the employment commenced other than at the beginning of a calendar week, or was terminated by the said injury other than at the end of a calendar week, such calendar week and the wages earned during such week, shall be excluded in making the above computations.

(b) Where the employment previous to the injury is less than a net period of two calendar weeks, and where the foregoing method of arriving at the average weekly wages, earnings, or salary can not reasonably and fairly be applied, such average weekly wages, earnings, or salary shall be taken at such sum as, having regard to the previous wages, earnings, or salary 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 establishment or in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

(c) Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings, or salary.

(d) The fact that an employee has suffered a previous injury, or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his average weekly wages shall be such sum as will reasonably represent his weekly 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 provisions of this section: *Provided*, That in computing the average weekly wages earned subsequent to the first injury the time worked and wages earned prior to said injury shall be excluded.

Second injuries.

SEC. 14 (as amended by ch. 937, acts of 1913). No savings or insurance of the injured employee, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the employer be considered in fixing the compensation under this act. Any employer who shall refuse or delay payment under this act on account of the receipt by any injured employee of such savings, insurance, or benefits, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment not exceeding one year, or both.

Insurance, etc., not to be considered.

SEC. 15. The compensation payable under this act in case of the death of the injured employee shall be paid to his legal representatives; or, if he has no legal representative, to his dependents entitled thereto; or, if he leaves no such dependents, to the person to whom the expenses for the burial and last sickness are due. If the payment is made to the legal representative of the deceased employee, it shall be paid by him to the dependents or other persons entitled thereto under this act. All payments of compensation under this act shall cease upon the death of the employee from a cause other than or not induced by the injury for which he is receiving compensation.

Payments to be made to whom.

SEC. 16. In case an injured employee is mentally incompetent, or, where death results from the injury, in case any of his dependents entitled to compensation hereunder are mentally incompetent or minors at the time when any right, privilege, or election accrues to him or them under this act, his conservator, guardian, or next friend may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time in this act provided shall run so long as such incompetent or minor has no conservator or guardian.

Incompetent beneficiaries.

SEC. 17. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the employer within thirty days after the happening thereof; and unless the claim for compensation with respect to such injury shall have been made within one year after the occurrence of the same, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

Notice.

Claim.

SEC. 18. Such notice shall be in writing and shall state in ordinary language the nature, time, place, and cause of the injury, and the name and address of the person injured and 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 dependent, or by a person in behalf of either.

Form of notice

SEC. 19. Such notice shall be served upon the employer, or upon one employer, if there are more employers than one, if the employer is a corporation, upon any officer or agent upon whom process may be served, by delivering the same to the person on whom it is to be served, or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or, in the case of a corporation, to the corporation itself, at his or its last known residence or place of business; and such mailing of the notice shall constitute completed service.

Service.

- Questions of in-** SEC. 20. A notice given under the provisions of this act shall not be
validity. held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place or cause of the injury, or the name and address of the person injured, unless it is shown that it was the intention to mislead and the employer was in fact misled thereby. Want of notice shall not be a bar to the proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury, or that failure to give such notice was due to accident, mistake, or unforeseen cause.
- Medical exami-** SEC. 21 (as amended by ch. 1795, acts of 1919). The employee shall, after an injury, at reasonable times during the continuance of his disability, if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the State, furnished and paid for by the employer. The employee shall have the right to have a physician, provided and
Examiners. paid for by himself, present at such examination. Any justice of the superior court may, at any time after an injury, on the petition of the employer or employee, appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner as fixed by the justice appointing him shall be paid by the employer.
- Such medical examiner being first duly sworn to the faithful performance of his duties before the justice appointing him or clerk of the court shall thereupon, and as often as necessary, examine such injured employee in order to determine the nature, extent, and probable duration of the injury. Such medical examiner shall file a report of every examination made of such employee in the office of the clerk of the superior court having jurisdiction of the matter as provided in section 16 of Article III of this act, and such report shall be produced in evidence in any hearing or proceeding to determine the amount of compensation due such employee under the provisions of this act. If such employee refuses to submit himself for any examination provided for in this act, or in any way obstructs any such examination, his rights to compensation shall be suspended and his compensation during such period of suspension may be forfeited.
- Waivers.** SEC. 22. No agreement by an employee, except as provided in Article IV, to waive his rights to compensation under this act shall be valid.
- Assignments.** SEC. 23. No claims for compensation under this act, or under any alternative scheme permitted by Article IV of this act, shall be assignable, or subject to attachment, or liable in any way for any debts.
- Claims preferred.** SEC. 24. The claim for compensation under this act, or under any alternative scheme permitted by Article IV of this act, and any decree on any such claim, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted to the same amount as the wages of labor are now preferred by the laws of this State; but nothing herein shall be construed as impairing any lien which the employee may have acquired.
- Lump-sum payments.** SEC. 25. In case payments have continued for not less than six months either party may, upon due notice to the other party, petition the superior court for an order commuting the future payments to a lump sum. Such petition shall be considered by the superior court and may be summarily granted where it is shown to the satisfaction of the court that the payment of a lump sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of weekly payments will, as compared with lump-sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered the superior court shall fix the lump sum to be paid 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 centum per annum with annual rests. Upon paying such amount the employer shall be discharged from all further liability on account 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.

SEC. 26 (added by ch. 1534, acts of 1917). 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.

Advanced payments.

ARTICLE III.

PROCEDURE.

SECTION 1. If the employer and the employee reach an agreement in regard to compensation under this act, a memorandum of such agreement signed by the parties shall be filed in the office of the clerk of the superior court having jurisdiction of the matter as provided in section 16 of this article. The clerk shall forthwith docket the same in a book kept for that purpose, and shall thereupon present said agreement to a justice of the superior court, and when approved by the justice the agreement shall be enforceable by said superior court by any suitable process, including executions against goods, chattels, and real estate, and including proceedings for contempt for willful failure or neglect to obey the provisions of said agreement. No appeal shall lie from the agreement thus approved unless upon allegation that such agreement had been procured by fraud or coercion. Such agreement shall be approved by the justice only when its terms conform to the provisions of this act.

Agreements between employers and employees.

Enforcement.

When death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, such agreement may relate only to the amount of compensation.

SEC. 2. If the employer and employee fail to reach an agreement in regard to compensation under this act, either employer or employee, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest may file in the office of the clerk of the superior court having jurisdiction of the matter as provided in section 16 of this article, a petition in the nature of a petition in equity setting forth the names and residences of the parties, the facts relating to employment at the time of injury, the cause, extent and character of the injury, the amount of wages, earnings or salary received at the time of the injury, and the knowledge of the employer or notice of the occurrence of the injury, and such other facts as may be necessary and proper for the information of the court, and shall state the matter in dispute and the claims of the petitioner with reference thereto.

Reference to court.

SEC. 3. Within four days after the filing of the petition, a copy thereof, attested by the petitioner or his attorney, shall be served upon the respondent in the same manner as a writ of summons in a civil action.

Notice to respondent.

SEC. 4. Within ten days after the filing of the petition, the respondent shall file an answer to said petition, together with a copy thereof for the use of the petitioner, which shall state the claims of the respondent with reference to the matter in dispute as disclosed by the petition. No pleadings other than petition and answer shall be required to bring the cause to a hearing for final determination. The superior court may grant further time for filing the answer and allow amendments of said petition and answer at any stage of the proceedings. If the respondent does not file an answer, the cause shall proceed without formal default or decree pro confesso. If the respondent be an infant or person under disability, the superior court shall appoint a guardian ad litem for such infant or person under disability. Such guardian ad litem may be appointed on any court day after service of the copy referred to in section 3 of this article, upon motion of any party after notice given as required for motions made in the superior court, and opportunity to said infant or person under disability to be heard in regard to the choice of such guardian ad litem. The guardian ad litem so appointed shall file the answer required by this section.

Answer.

Infants, etc.

SEC. 5. The petition shall be in order for assignment for hearing on the motion day which occurs next after fifteen days from the filing of

Hearing.

the petition. Upon the days upon which said petition shall be in order for hearing it shall take precedence of other cases upon the calendar, except cases for tenements let or held at will or by sufferance.

Decision.

SEC. 6. The justice to whom said petition shall be referred by the court shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. His decision shall be filed in writing with the clerk, and a decree shall be entered thereon. Such decree shall be enforceable by said superior court by any suitable process, including executions against goods, chattels and real estate, and including proceedings for contempt for wilful [willful] failure or neglect to obey the provisions of said decree. Such decree shall contain findings of fact, which, in the absence of fraud, shall be conclusive. The superior court may award as costs the actual expenditures, or such part thereof as to the court shall seem meet, but not including counsel fees, and shall include such costs in its decree. The superior court may refuse to award costs, and no costs shall be awarded against an infant or person under disability or against guardian ad litem.

Appeals.

SEC. 7. Any person aggrieved by the final decree of the superior court under this act may appeal to the supreme court upon any question of law or equity decided adversely to the appellant by said final decree or by any proceeding or ruling prior thereto appearing of record, the appellant having first had his objections noted to any adverse rulings made during the progress of the trial at the time such rulings were made, if made in open court and not otherwise of record.

The appellant shall take the following steps:

(a) Within ten days after entry of said final decree he shall file a claim of appeal and, if a transcript of the testimony and rulings or any part thereof be desired, a written request therefor.

(b) Within such time as the justice of the superior court who heard the petition, or, in case of his inability to act from any cause within such time as any other justice thereof shall fix, whether by original fixing of the time, or by extension thereof, or by a new fixing after any expiration thereof, the appellant shall file reasons of appeal stating specifically all the questions of law or equity decided adversely to him which he desires to include in his reasons of appeal, together with a transcript of as much of the testimony and rulings as may be required. The supreme court may allow amendments of said reasons of appeal. Upon the filing of said reasons of appeal and transcript, the clerk of the superior court shall present the transcript to the justice who heard the cause for allowance. The justice after hearing and examination, shall restore the transcript to the files of the clerk with a certificate of his action thereon made within twenty days after filing the transcript, unless the twentieth day shall fall in vacation, in which event the certificate may be filed at any time before the first Monday in the following month of October.

If the transcript be not allowed by the justice who heard the cause within the time prescribed, or objection to his allowance be made by any party, the correctness of the transcript may be determined by the supreme court by petition filed within thirty days after filing the transcript, unless the thirtieth day shall fall in vacation, in which event the correctness of the transcript may be determined by petition, filed on or before the tenth day after the first Monday in the following month of October. In all other respects than in time of filing the same course shall be followed as provided in section 21 of chapter 298 of the General Laws for establishing the truth of exceptions.

Certification of cause.

SEC. 8. Upon the restoration of the transcript to the files, or, if there be no transcript, then upon the filing of the reasons of appeal, the clerk of the superior court shall certify the cause and all papers to the supreme court.

Effect of appeal.

SEC. 9. The claim of an appeal shall suspend the operation of the decree appealed from, but, in case of default in taking the procedure required, such suspension shall cease, and the superior court upon motion of any party shall proceed as if no claim of appeal had been made, unless it be made to appear to the superior court that the default no longer exists.

Sec. 10. Any court day in the supreme court shall be a motion day for the purpose of hearing a motion to assign the appeal for hearing. Motion day.

Sec. 11. The supreme court after hearing any appeal shall determine the same, and affirm, reverse or modify the decree appealed from, and may itself take, or cause to be taken by the superior court, such further proceedings as shall seem just. If a new decree shall be necessary, it shall be framed by the supreme court for entry by the superior court. Thereupon the cause shall be remanded to the superior court for such further proceedings as shall be required. Power of supreme court.

Sec. 12. No process for the execution of a final decree of the superior court from which an appeal may be taken shall issue until the expiration of ten days after the entry thereof, unless all parties against whom such decree is made waive an appeal by a writing filed with the clerk or by causing an entry thereof to be made on the docket. Execution.

Sec. 13. If, in the course of the proceedings in any cause, any question of law shall arise which in the opinion of the superior court is of such doubt and importance, and so affects the merits of the controversy, that it ought to be determined by the supreme court before further proceedings, the superior court may certify such question to the supreme court for that purpose, and stay all further proceedings except such as are necessary to preserve the rights of the parties. Questions may be certified.

Sec. 14. At any time before the expiration of two years from the date of the approval of an agreement, or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings, or decree may be from time to time reviewed by the superior court upon the application of either party, after due notice to the other party, upon the ground that the incapacity of the injured employee has subsequently ended, increased, or diminished. Upon such review the court may increase, diminish, or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but shall order no change of the status existing prior to the application for review. The finding of the court upon such review shall be served on the parties and filed with the clerk of the court having jurisdiction, in like time and manner and subject to like disposition as in the case of original decrees: *Provided*, That an agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the superior court in the same manner as original agreements in regard to compensation are required to be approved by the provisions of section 1 Article III of this act. Review of agreements, etc.

Sec. 15. The superior court shall prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient, and inexpensive disposition of all proceedings under this act; and in making such orders said court shall not be bound by the provisions of the general laws relating to practice. In the absence of such orders, special orders shall be made in each case. Forms as to procedure.

Sec. 16. Proceedings shall be brought either in the county where the accident occurred or in the county where the employer or employee lives or has a usual place of business. The court where any proceeding is brought shall have power to grant a change of venue. Place of action.

Sec. 17. No proceedings under this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representative or by any person entitled to compensation by reason of said death, under the provisions of this act. Death no cause for abatement.

Sec. 18. An employee's claim for compensation under this act shall be barred unless an agreement or a petition, as provided in this article, shall be filed within two years after the occurrence of the injury, or, in case of the death of the employee, or, in the event of his physical or mental incapacity, within two years after the death of the employee or the removal of such physical or mental incapacity. Limitation.

Sec. 19. If an employee receiving a weekly payment under this act shall cease to reside in the State, or, if his residence at the time of the accident is in an adjoining State, the superior court, upon the application of either party, may, in its discretion, having regard to the welfare Payments to nonresidents

- of the employee and the convenience of the employer, order such payment to be made monthly or quarterly instead of weekly.
- Settlement of disagreements. SEC. 20. All questions arising under this act, if not settled by agreement of the parties interested therein, shall, except as otherwise herein provided, be determined by the superior court.
- Injuries caused by third persons. SEC. 21. 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 employer to pay damages in respect thereof, the employee may take proceedings both 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 receive both damages and compensation; and if the employee has been paid compensation under this act, the person by whom the compensation was paid shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and, to the extent of such indemnity, shall be subrogated to the rights of the employee to recover damages therefor.
- Record of proceedings. SEC. 22 (added by ch. 936, acts of 1913). The proceedings in all cases under this act shall be deemed matters of record; but the same shall not be required to be recorded at large, but shall be filed and numbered in the office of the clerk of the superior court, and a docket only, or short memorandum thereof, shall be kept by said clerk, in books provided for that purpose.

ARTICLE IV.

ALTERNATIVE SCHEMES PERMITTED.

- Insurance, etc., schemes may be substituted. SECTION 1. Any employer may enter into an agreement with his employees in any employment to which this act applies to provide a scheme of compensation, benefit, or insurance, in lieu of the compensation provided for in this act, subject to the approval of the superior court. Such approval shall be granted only on condition that the scheme proposed provides as great benefits as those provided by this act; and if the scheme provides for contributions by employees, it shall confer additional benefits at least equivalent to these contributions. If such a scheme meets with the approval of said court, the clerk shall issue a certificate enabling the employer to contract with any or all of his employees in employments to which this act applies to substitute such scheme for the provisions of this act for a period of not more than five years.
- What the schemes must provide. SEC. 2. No scheme which provides for contributing by employees shall be so certified which does not contain suitable provisions for the equitable distribution of any money or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already incurred, if and when such certificate is revoked or the scheme otherwise terminated.
- Revocation of certificates. SEC. 3. If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or any other valid and substantial reason therefor exists, the superior court, on reasonable notice to the interested parties, shall revoke the certificate and the scheme shall thereby be terminated.

ARTICLE V (added by ch. 1268, acts of 1915).

INSURANCE AGAINST LIABILITY TO PAY COMPENSATION.

- Securing payments. SECTION 1. Every employer who has elected to become subject to the provisions of this act as provided in section 5 of Article I thereof shall secure in one of the following ways the compensation for which he is or may become liable under said act:
- Insurance. 1. By insuring and keeping insured against liability to pay such compensation in any stock or mutual company or association authorized to take such risks in this State.
- Proof of financial ability. 2. By furnishing a sworn statement or other proof, from time to time, reasonably satisfactory to the commissioner of industrial statistics, of his financial ability to pay directly to injured employees or their dependents such compensation: *Provided*, That such statement or proof shall be approved by said commissioner, who shall give written notice thereof to the employer: *And provided further*, That demand for such statement or proof shall not be made upon the employer by the said commissioner oftener than once in any calendar year: *And provided*

further. That any party aggrieved by any unreasonable requirement or demand of said commissioner may appeal to the superior court, and the provisions of section 8 shall not apply while said appeal is pending.

3. By furnishing security, indemnity, or a bond, reasonably satisfactory to said commissioner, guaranteeing the payment of such compensation. Such bond shall run to the said commissioner for the benefit of the employees and their dependents, and, with such indemnity or security, shall be deposited with him. Furnishing indemnity, etc.

4. By a combination of the last two of the foregoing methods. Combination of methods.

SEC. 2. Every policy hereafter written insuring the payment of compensation under this act shall contain provisions to the effect that as between the employee and the insurer notice to and knowledge of the occurrence of injury on the part of the employer shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer 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 findings, judgments, orders, and decrees rendered against the employer for the payment of compensation under this act. Provisions of policies.

SEC. 3. Every such policy shall cover the entire liability of the employer under this act and shall contain an agreement by the insurer to the effect that the insurer shall be directly and primarily liable to the employee, and, in the event of his death, to his dependents, to pay to him or them the compensation, if any, for which the employer is liable. Direct payments.

SEC. 4. Every such policy shall also provide that the employee, or, in the event of his death, his dependents, shall have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurer because of any accident to such employee, 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 insurer 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 or his dependents; and no such policy shall contain any provisions relieving the insurer from payment because of the employer's inability to pay on account of insolvency, bankruptcy, or otherwise during the period that the policy is in force or the compensation remains owing. Employees' lien.

SEC. 5. Any employee entitled to compensation from his employer under this act shall, irrespective of any insurance contract, have the right to recover such compensation directly from the employer in the manner provided in this act, and in addition thereto the right to enforce in his own name, in the manner provided in this act, either by making the insurer a party to the original petition or by filing a separate petition, the liability of any insurer who may have insured the employer against liability for such compensation: *Provided, however,* That payment in whole or in part of such compensation by either the employer or insurer 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 insurer, payment by either directly to any employee shall be subject to the conditions of the insurance contract between them. Recovery and enforcement.

SEC. 6. When any employer is insured against liability for compensation and the insurer shall have paid any compensation for which the employer was liable, or shall have assumed the liability of the employer therefor, the insurer shall be subrogated to all the rights and duties of the employer and may enforce such rights in his own name. Insurer's rights.

SEC. 7. Every contract hereafter made for the insurance of the compensation provided for in this act, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and all provisions of such policies inconsistent with this act shall be void. Presumption as to insurance contracts.

SEC. 8. If any employer shall fail to comply with the provisions of this article within ten days after said article shall take effect, or in case he shall elect to become subject to the provisions of this act after this article takes effect, then within ten days after such election he shall be liable for compensation to any injured employee or his dependents, according to the provisions of this act, or for damages in the same manner as if the employer had not elected to become subject to the provisions of said act, at the option of such employee or his dependents: *Provided,* That such option is exercised and notice thereof in writing given to the employer within thirty days after the accident to such Employer's failure to comply.

employee, otherwise the employer shall be liable only for the compensation payable under this act by employers who have elected to become subject to the provisions of said act.

Liability insurance. SEC. 9. Every policy hereafter written insuring against liability for personal injuries, other than payment of compensation under this act, 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 injured 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 action against said insurer: *Provided, however,* That payment in whole or in part of such liability 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.

All policies made for the insurance against liability described in this section shall be deemed to be made subject to the provisions thereof, and all provisions of such policies inconsistent herewith shall be void.

ARTICLE VI (added by ch. 1268, acts of 1915).

REPORT OF ACCIDENTS.

Accidents to be reported. SECTION 1. Every employer who shall be or become subject to the provisions of this act shall report in writing to the commissioner of industrial statistics all personal injuries sustained by accident by employees arising out of and in the course of their employment, if such injuries prove fatal or incapacitate the employee from earning full wages for a period of at least two weeks. If such injuries are immediately fatal, such report shall be made within 48 hours after they occur, and if they prove fatal later, then within 48 hours after death shall occur and come to the knowledge of the employer; if such injuries are not fatal, such report shall be made within one week after the expiration of such period of two weeks; at the termination of the period of incapacity, regardless of its duration, a supplementary report in writing shall be made. All reports required by the provisions of this section shall be made upon blanks supplied by said commissioner. If the employer and employee reach an agreement in regard to compensation under this act, with the memorandum of such agreement filed in the office of the clerk of the superior court in accordance with section 1 of Article III of this act, a duplicate of such memorandum shall be filed, and upon the approval of said agreement by the court said duplicate, duly attested by the clerk, shall be forthwith sent by the clerk to said commissioner.

Supplementary report. SEC. 2. Any such employer who refuses or neglects to make the reports required by the provisions of the last preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not more than \$50 for each offense.

Agreement between employer and employee. SEC. 3. No report of injuries to employees other than those required by this act shall be required by any other department or officer of the State from employers to whom the provisions of this act apply, and copies of all such reports received by the commissioner of industrial statistics in accordance with the requirements of this act shall be transmitted by him immediately to the factory inspector.

Penalty. SEC. 4. No report required by this act shall be admitted in evidence or referred to at the trial of any action or in any judicial proceedings whatsoever, except in prosecutions for the violation of this act.

No other reports required. SEC. 5. No such report, or part or copy thereof, shall be open to the public, nor shall any of the contents thereof be disclosed in any manner or be permitted to become known by any officer or employee of the State or other person having access thereto, but the same shall be used for State investigation and statistics only, and such statistics shall in no way disclose the identity of the employer making the report. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$100 for each offense, and if the offender be an

Reports as evidence.

Reports confidential.

officer or employee of the State, he shall be dismissed from the office and be incapable thereafter of holding an office under the State for a period of one year.

SEC. 6. In so far as is not inconsistent with other provisions of this act, the commissioner of industrial statistics shall have general supervision of the operation of said act, and from time to time he may furnish employers and employees with such information relative to said act as may assist them in an understanding of their rights and obligations thereunder. The annual salary of the commissioner of industrial statistics is hereby fixed at \$5,000; and the State auditor is hereby authorized to draw his order or orders on the general treasurer from time to time for the payment of said sum, or so much thereof as may be necessary, and the sum of \$5,000 is hereby annually appropriated for said purpose.

Supervision of compensation act.

Salary.

The sum of \$1,500, or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, in addition to moneys heretofore appropriated, for the purpose of carrying this act into effect.

Expenses.

SEC. 7. The provisions of this article shall not apply to any public utility which is now required by law to make reports of accidents to the public utility commission.

Exemptions.

ARTICLE VII (added by ch. 1534, acts of 1917).

STATE AND MUNICIPAL EMPLOYEES.

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.

Towns to vote

Cities.

Vote to be filed

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.

Notices.

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 physi-

Physicians.

cian 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.

Expenses.

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.

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 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.

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.

Legal proceedings.

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.

Insurance.

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.

"City council."

Approved April 19, 1917.

ARTICLE VIII (renumbered by ch. 1534, acts of 1917).

MISCELLANEOUS PROVISIONS.

SECTION 1 (as amended by ch. 1534, acts of 1917). In this act, unless the context otherwise requires—

Definitions.

(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.

(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.

SEC. 2. Nothing in this act shall affect the liability of the employer to a fine or penalty under any other statute.

Other statutes.

SEC. 3. The provisions of this act shall not apply to injuries sustained, or accidents which occur, prior to the taking effect thereof.

Prior accidents.

SEC. 4. If any section of this act shall be declared unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the validity of any other portion thereof which can be given reasonable effect without the part so declared unconstitutional or invalid.

Sections to be construed separately.

SEC. 5. In all cases where an employer and employee shall have elected to become subject to the provisions of this act the provisions of section 14 of chapter 283 of the General Laws [giving a right to sue for damages for death by wrongful act] shall not apply while this act is in effect.

Action for death not allowed.

SEC. 7. This act may be cited as "Workmen's compensation act."

Title.

SEC. 8. This act shall take effect on the 1st day of October, 1912.

Act in effect.

Approved April 29, 1912.

SOUTH DAKOTA.

COMPILED LAWS OF 1919.

COMPENSATION OF WORKMEN FOR INJURIES.

- Title.** SECTION 9436. This article shall be known as the South Dakota workmen's compensation law.
- Presumption.** SEC. 9437. Every employer and employee, except as stated in this article, shall be presumed to have accepted its provisions 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 article, express or implied, in operation on the first day of July, 1917, or made or implied, prior thereto, shall be presumed to continue.
- Waiver of rejection.** SEC. 9438. Any employer, or any employee who has exempted himself, as hereinafter provided, from the operation of this article, may at any time waive such exemption and thereby accept the provisions of this article by giving notice as herein provided. Such notice of exemption or acceptance shall be given thirty days prior to any accident resulting in injury or death: *Provided*, That if any such injury occurs less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient. The notice shall be in writing, in a form substantially as 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 a civil action may be served under the laws of the State; and a copy of such notice shall be filed with the industrial commissioner.
- Insurance.** SEC. 9439. Every employer coming within the compensation provisions of this article 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 hereinafter specified.
- Remedy exclusive.** SEC. 9440. The rights and remedies herein granted to an employee subject to this article, 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 duty.** SEC. 9441. Nothing in this article shall be construed to relieve any employer or employee from any penalty imposed for failure or neglect to perform any statutory duty in connection with such employment.
- Willful, etc., acts.** SEC. 9442. No compensation shall be allowed for any injury or death due to the employee's willful misconduct, including intentional self-inflicted injury, intoxication, and willful failure or refusal to use a safety appliance or perform a duty required by statute: *Provided*, That the burden of proof under this section shall be on the defendant employer.
- Employments excluded.** SEC. 9443 (as amended by ch. 364, acts of 1919). This article shall not apply to an employee whose employment is both casual and not in the usual course of trade, business, profession, or occupation of the employer; to farm laborers; to domestic servants nor to employers of any such persons, unless such employees and their employers voluntarily elect, in the manner hereinafter specified, to be bound by this article.
- Defenses abrogated.** SEC. 9444. No employer who elects not to operate under this article shall, in any action at law by an employee electing to operate under this article, to recover damages for personal injury or death by accident, be permitted to defend any such action upon any of the following grounds:

1. That the employee was negligent;
2. That the injury was caused by the negligence of a fellow employee; or,
3. That the employee had assumed the risk of the injury.

SEC. 9445. In any action to recover damages for personal injury or death, brought by any employee who elects not to operate under this article, against any employer accepting the compensation provisions of this article, 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 in absence of this article. Available when.

SEC. 9446. 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 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 article, 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 against whom legal liability for damages exists, the indemnity paid or payable to the injured employee. Liability of third persons.

SEC. 9447. 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 provisions of this section 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 article 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 such 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. Contractors.

SEC. 9448. No contract or agreement, express 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 article except as herein provided. Waivers.

SEC. 9449. All rights of compensation granted by this article shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed for any unpaid wages for labor. Preference of claims.

SEC. 9450. No claim for compensation under this article shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors. Assignments, etc.

SEC. 9451. The provisions of this article, except sections 9438, 9444, and 9445, shall apply to the State and any municipal corporation within the State, or any political division thereof, and to the employees thereof. Public employees.

SEC. 9452. This article, except sections 9478 and 9479, 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. Interstate commerce.

SEC. 9453. Every employer and employee under this article, except as provided in the preceding section, shall be bound by the provisions of the article, whether injury by accident or death resulting from such injury, occurs within this State or in some other State or in a foreign country. Accident without State.

- Prior accidents. SEC. 9454. The provisions of this article shall not apply to injuries, deaths, or accidents which occurred prior to the first day of July, 1917.
- Notice of injury. SEC. 9455. 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 a physician's fee nor to any compensation which may have accrued, under the terms of this article, 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 person 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 other 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. 9456. The notice provided in the preceding 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 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. 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. Such notice shall be given personally to the employer or any of his agents, upon whom a summons in a civil action may be served under the laws of this State, or may be sent by registered letter addressed to the employer at his last known residence or place of business.
- Service. SEC. 9457. The right to compensation under this article 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.
- Limitation. SEC. 9458 (as amended by ch. 363, acts of 1919). The amount of compensation which shall be paid for an injury to the employee resulting in death shall be:
- Compensation for death.
1. 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 medical, surgical, or hospital fees or services shall be deducted in ascertaining the amount payable on death.
 2. If no amount is payable under paragraph 1 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.
 3. If no amount is payable under paragraphs 1 or 2 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 1 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 bear to his earnings during such two years.
 4. If no amount is payable under paragraphs 1, 2, or 3 of this section, a sum not to exceed one hundred and fifty dollars for burial expenses.
 5. 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 9460.

6. 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 decedent: *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 compensation 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.

7. 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, the right of such dependent to compensation under this section ceases. In case of remarriage of a widow who has dependent children, the unpaid balance of compensation which would otherwise become due to her shall be paid to such children.

Sec. 9459 (as amended by ch. 363, acts of 1919). The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be: Compensation for injury.

1. The employer shall provide necessary first aid, medical, surgical, and hospital services; also medical and surgical supplies and apparatus during disability and treatment and hospital services for a period not longer than twelve weeks, not to exceed, however, the amount of \$150. The employee may elect to secure his own physician, surgeon, or hospital services at his own expense. Medical, etc., aid.

2. No compensation shall be paid under this act for an injury which does not incapacitate the employee for a period of at least 10 days from earning full wages, except as otherwise hereinafter provided; but if incapacity extends beyond the tenth day, compensation shall begin the eleventh 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 injury; such compensation to be equal to 55 per cent of his earnings, but not to exceed \$12 nor less than \$6.50 per week, except when amount earned is less than \$6.50 per week, in which case the amount shall be the average weekly wage earned: *And provided further*, That in case such injured employee is treated or examined by any physician employed or recommended by the employer, it shall be the duty of such physician on the eleventh day after such injury, or as soon thereafter as possible, to certify to the employer the number of days prior thereto during which the injured employee has by reason of such injury been incapacitated from earning full wages, if in the judgment of such physician such employee has been so incapacitated, and such employee shall be entitled to compensation therefor. Such physician shall be entitled to a fee of fifty cents (50 cents) for such certificate, to be paid by the employer, and which certificate shall, if so requested by the employee, be submitted by the employer for inspection: *And provided further*, That liability for payment of the compensation, if any to which the injured employee may be entitled for all or any of the first 10 days after the injury under the conditions hereinbefore specified in this subdivision may by mutual agreement between the employer and the insuring company be expressly excepted from the policy of insurance required in section 9432 of said revised code, in which event such compensation if any shall be paid by the employer to the injured employee and without recourse upon the insuring company. Waiting time.

3. 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 article, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph 1 of the preceding section. Rate.

4. 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 article, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph 1 of the preceding section. Physician's certificate.

5. 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 article, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph 1 of the preceding section. Direct payments.

6. 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 article, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph 1 of the preceding section. Disfigurements.

ing section if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in paragraph 1 of the preceding section: *Provided*, That no compensation shall be payable under this paragraph where compensation is payable under paragraph 4, 5, or 6 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 4, 5, or 6 of this section, compensation for such disfigurement may be had under this paragraph.

Partial disability.

4. 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 5 of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs 2 and 8 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 article: *Provided*, Notice of such claim is filed with the industrial commissioner within eighteen months after he returns to such employment, and the commissioner shall immediately send to the employer by registered mail a copy of such notice.

Schedule.

5. 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 subdivisions (1) and (2) of said section 9459 compensation for a further period, subject to the limitations as to time and amounts fixed in subdivisions (2) and (8) of said section 9459, for the specific loss herein mentioned as follows; but shall not receive any compensation under any other provision of this act.

(a) For the loss of a thumb, or the permanent and complete loss of its use 55 per centum of the average weekly wage during fifty weeks.

(b) For the loss of a first finger, commonly called the index finger, or the permanent and complete loss of its use, 55 per centum of the average weekly wage during thirty-five weeks.

(c) For the loss of a second finger, or the permanent and complete loss of its use, 55 per centum of the average weekly wage during thirty weeks.

(d) For the loss of a third finger or the permanent and complete loss of its use, 55 per centum of the average weekly wage during twenty weeks.

(e) For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, 55 per centum of the average weekly wage during fifteen weeks.

(f) 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 of the amounts above specified.

(g) 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.

(h) For the loss of a great toe, 55 per centum of the average weekly wage during thirty weeks.

(i) For the loss of one or more of the toes other than the great toe, 55 per centum of the average weekly wage during ten weeks; and for the additional loss of one or more toes other than the great toe, 55 per centum of the average weekly wage during an additional ten weeks.

(j) 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, or the permanent and complete loss of its use, 55 per centum of the average weekly wage during one hundred and fifty weeks.

(m) For the loss of an arm, or the permanent and complete loss of its use, 55 per centum of the average weekly wage during two hundred weeks.

(n) For the loss of a foot, or the permanent and complete loss of its use, 55 per centum of the average weekly wage during one hundred and twenty-five weeks.

(o) For the loss of a leg, or the permanent and complete loss of its use, 55 per centum of the average weekly wage during one hundred and sixty weeks.

(p) For the loss of the sight of an eye, 55 per cent of the average weekly wage during one hundred weeks.

(q) The loss of both hands or both arms, or both feet, or both legs, or both eyes, or any two thereof, 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, to be compensated according to the compensation fixed by subdivision 6 of this section: *Provided*, That these specific cases of total and permanent disability shall not be construed as excluding other cases of total or permanent disability. Permanent total disability.

6. In case of complete disability which renders the employee wholly and permanently incapable of work compensation equal to 55 per cent of his earnings, but not less than \$6.50 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 subdivision 1 of section 9458 of said Revised Code.

7. 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 the preceding section, 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 6 of the preceding section; but in no case shall the amount payable under this paragraph be less than five hundred dollars. Death during benefit period.

8. In no event shall the compensation to be paid exceed 55 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. Maximum.

9. All compensation provided for in paragraphs 2, 3, 4, 5 and 6 of this section shall be paid in installments at the same intervals at which the wages or earnings of the employer were paid at the time of the injury, or, if this shall not be feasible, then the installments shall be paid weekly. Time of payments.

Sec. 9460. Any employer, 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 neces- Lump sums.

sary, 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 article 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 9458 or paragraph 5 of the preceding section; or for the injuries defined in the last paragraph of paragraph 5 of section 9459 as constituting total and permanent disability, by filing his written rejection thereof with the 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 computation.

SEC. 9461. The basis for computing the compensation provided for in sections 9458 and 9459 shall be as follows:

1. 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.

2. 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.

3. 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.

4. 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 three hundred times the average daily earnings in such computation.

5. 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 three hundred as a basis for computing the annual earnings: *Provided*, That the minimum number of days which shall be so used for the basis of the year's work shall be not less than two hundred.

6. 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 earnings of adults of the same class in the same or, if that is impracticable, then of neighboring employments.

7. 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.

8. 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 article, 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.

9. 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.

Remedy exclusive.

SEC. 9462. The compensation herein provided, together with the provisions of this article, 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 article.

Sec. 9463. 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 article: *Provided*, That such examination shall be made in the presence of a duly qualified medical practitioner or surgeon employed 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 such 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 article 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 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.

Medical examinations.

Sec. 9464. The office of industrial commissioner shall continue as heretofore created; the commissioner of immigration shall be ex officio industrial commissioner, and such industrial commissioner shall have authority and be charged with the duty of carrying out and enforcing the provisions of this article. He shall also assist employers of labor to secure needed laborers, 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.

Industrial commissioner.

Sec. 9465 (as amended by ch. 364, acts of 1919). The actual necessary expenses of the industrial commissioner shall be paid by the State, and he shall be provided with adequate and necessary office rooms, furniture, equipment, and other supplies necessary to the discharge of his duties. The commissioner, by and with the consent of the governor, may appoint a deputy, and employ such other assistants and clerical help as may be required, and fix the compensation for each: *Provided*, That the salary of the deputy shall not exceed eighteen hundred dollars per annum. Such deputy shall possess and exercise all the powers conferred by this article upon the industrial commissioner, and, except as to appointment and salary, the phrase "industrial commissioner" wherever it occurs in this article shall be construed to include such deputy. 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." 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.

Expenses.

Assistants.

Seal.

Oath.

Sec. 9466. The commissioner may make rules and regulations, not inconsistent with the laws of this State, for carrying out the provisions of this article. He shall have power to subpoena 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 the circuit court. The circuit court shall have authority to enforce by proper proceedings the provisions of this section relating

Rules, etc.

to the attendance and testimony of witnesses and the examination of books and records. The commissioner shall annually, at the time and in the manner provided in sections 6922 and 7067, make a report to the governor.

Agreements. Sec. 9467. If the employer and employee reach an agreement in regard to the compensation under this law, a memorandum thereof shall be filed with the 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 article.

Board of arbitration. Sec. 9468. If the employer and injured employee, or his representatives or dependents, fail to reach an agreement in regard to compensation under this article, 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 of arbitrators. Sec. 9469. 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) _____.

Appointment of arbitrators. Sec. 9470 (as amended by ch. 364, acts of 1919). 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 a representative on such board within seven days after such notification, or after vacancy has occurred, the commissioner shall fill the vacancy and notify the parties to that effect, unless good cause be shown for delay in making such appointment.

Hearing. Sec. 9471. The board of arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings 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 rulings, its findings of fact, its conclusions 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 article.

Impartial physician. Sec. 9472. 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 dollars, to be paid by the industrial commissioner, together with traveling expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. No physician so examining any injured employee shall be prohibited from testifying before the industrial commissioner or any other person, commission, or court, as to the result of his examination or the condition of the injured employee.

Costs. Sec. 9473. The arbitrators, other than the commissioner, shall each receive five dollars as a fee for his services, but the industrial commissioner may allow additional reasonable 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. 9474. 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 board of arbitration 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.

SEC. 9475. Any party in interest may present a certified copy of an order or decision of the commissioner or a decision of board of arbitration 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 the 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 an action duly heard and determined by the court, except that there shall be no appeal therefrom upon questions of fact, nor 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 article, the court shall revoke or modify the decree to conform to such decision.

Enforcement.

SEC. 9476. Any payment to be made under this article 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 amounts provided for in this article, if the commissioner finds the condition of the employee warrants such action. Any notice given by the commissioner or court provided for in this article 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.

Review of awards.

SEC. 9477 (as amended by ch. 364, acts of 1919). Fees of attorneys and physicians for services under this article shall be subject to the approval of the industrial commissioner, unless otherwise provided in this article: *Provided further*, That on written application of any claimant under the provisions of this article it shall be the duty of the State's attorney of the county in which the accident occurred to appear for such claimant in any and all hearings before the board of arbitration, or on appeal to the courts, as a part of his official duty, and without cost to the claimant. But this shall not in any way abridge the right of a claimant to employ any such counsel as he may desire.

Attorneys, etc., fees.

SEC. 9478. Every employer coming under the provisions of this article shall 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. Such 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 any report required by this section shall be punished by a fine of not more than twenty-five dollars for each offense.

Reports of injuries.

SEC. 9479. All books, records, and pay rolls of employers coming under this article, 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 the commissioner, 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 commissioner in the administration of this article. But information obtained within the contemplation of this article shall be used for no other purpose than for the information of the

Access to books, etc.

- commissioner or insurance company 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 for each offense, to be collected by a civil action in the name of the State and paid into the State treasury.
- Business of commissioner.** SEC. 9480. It shall be unlawful for the commissioner or the deputy commissioner to be interested in any business enterprise coming under or affected by this article during his term of office, and any violation of this section shall be sufficient grounds for his removal from office.
- Removal from office.** SEC. 9481. Such commissioner may at any time be removed from office by the governor 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 request, be furnished by the governor with a written statement of the cause of his removal from office.
- Insurance.** SEC. 9482. Every employer subject to the provisions of this article shall insure his liability thereunder in some corporation, association, or organization approved by the commissioner of insurance of this State and, upon demand of the commissioner of insurance or the industrial commissioner, produce evidence of his compliance with this section. Any employer who refuses or neglects to comply with this section shall be liable, under sections 9436 to 9454, inclusive, in case of injury to any workman in his employ.
- Mode.** SEC. 9483. For the purpose of complying with the preceding section groups of employers in this State may exchange contracts of insurance among themselves or with employers of other States, through any medium specified and located in their agreements with each other, and a certificate of authority issued by the insurance department of any State, together with a financial statement showing such association to be in a solvent condition, shall be evidence of compliance with the preceding section.
- Substitute schemes.** SEC. 9484. Subject to the approval of the 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 or insurance in lieu of the compensation and insurance provided by this article: *Provided*, That any agreement or plan of compensation or insurance existing on the first day of July, 1917, between any employer and employee, shall upon the approval thereof by the industrial commissioner continue in force and be binding upon such employer and such employee, until such employer or such employee 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 9438. 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 law.
- Approval.** SEC. 9485. Whenever such plan is approved by the 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 article during a period of time fixed by such commission.
- Termination.** SEC. 9486. Such plan may be terminated by the 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 article.
- Rates of commission.** SEC. 9487. No insurer of any obligation under this article shall by himself or through another, either directly or indirectly, charge, accept, or pay as a commission or compensation for placing or renewing any insurance under this article more than fifteen per cent of the premium charged.
- Self-insurance.** SEC. 9488. Whenever an employer coming under this article furnishes proof to the commissioner of insurance, and the industrial commissioner, of such employer's solvency and financial ability to pay the

compensation required by this article and to make such payments to the parties when entitled thereto, or when such employer deposits with the commissioner of insurance such security satisfactory to such commissioner and the industrial commissioner, as will secure the payment of such compensation, such employer shall be relieved of the provisions of section 9482: *Provided*, That it shall be considered satisfactory proof of the employer's solvency and financial ability to pay the compensation required by this article, 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 9483 and shall submit a financial statement showing such association to be in a solvent condition.

SEC. 9489 (as amended by ch. 364, acts of 1919). Any employer or employee may appeal to the circuit court of the county in which the principal business of such employer is transacted from any adverse decision of the commissioner of insurance or industrial commissioner arising under this article, such appeal to be taken and prosecuted as provided in section 9180: *Provided*, That at the option of the employee such an appeal may be taken, or the place of trial be changed, to the county where the injury occurred. Upon the trial of such appeal in the circuit court, the court may remand the matter to such officer or department for such action as it may in its order require, or may enter judgment for or against any party to said appeal, which judgment shall have the same force and effect as other judgment of said court.

Appeals.

SEC. 9490. In this article, unless the context otherwise requires—

Definitions.

"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.

"Employee" shall include every person, including a minor, in the service of another under any contract of employment, express 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.

"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, the earnings for the remainder of such 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 employee earned wages shall be followed, provided results just and fair to both parties will thereby be obtained.

Where, by reason 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.

"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.

Approved March 10, 1917.

ACTS OF 1919.

CHAPTER 362.—*Workmen's compensation—Operation of threshing machines.*

- Extension of law. SECTION 1. The provisions of article 4 of chapter 5 of part 19 of the South Dakota Revised Code of 1919, sections 9436 to 9491, both inclusive, not inconsistent with the provisions of this act, are hereby extended and shall apply to the occupation of operating threshing machines, including traction engines and separators, in the State of South Dakota, and it shall be unlawful for any person, firm, association, or corporation to operate a threshing machine and engage in the threshing of grain in this State without first providing insurance for the compensation of employees who may be injured in the performance of their duty.
- Insurance. SEC. 2. The policy of insurance procured under the provisions of this act may be written by any mutual or other insurance company organized under the laws of this State or authorized to do business within this State, and the form of the policy shall be approved by the commissioner of insurance. Before any person, firm, association, or corporation shall do any threshing in this State the policy of insurance required under the provisions of this act shall be first filed in the office of the clerk of the circuit court of the county in which the operator resides and it shall be open for public inspection.
- What contracts void. SEC. 3. All contracts for the threshing of any grain, entered into by any person, firm, association, or corporation without first having procured and filed the policy of insurance required under the provisions of this act, shall be null and void and no compensation shall be recoverable thereunder.
- Scope of law. SEC. 4. The provisions of this act shall apply only to those engaged in the operation of threshing machines for profit and not to the operation of threshing machines by the owner for the threshing of his own grain crops, or those who are not generally engaged in the operation of threshing machines for commercial purposes.
- Approved March 11, 1919.

TENNESSEE.

ACTS OF 1919.

CHAPTER 123.—*Compensation of workmen for injury.*

SECTION 1. This act shall be known as the workmen's compensation act. Title.

SEC. 2. In this act, unless the context otherwise requires—

(a) "Employer" shall include 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 not less than ten persons for pay. If the employer is insured it shall include his insurer, unless otherwise herein provided. Definitions.

(b) "Employee" shall include every person, including a minor, in the service of an employer, as "employer" is defined in paragraph (a) above, under any contract of hire, apprenticeship, written or implied. Any reference herein 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 under this act.

(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 days during such period when he did not work, 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 employee earned wages shall be followed: *Provided*, Results just and fair to both parties will thereby be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of his employer, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the first fifty-two weeks prior to the injury or death was being earned by a person in the same grade, employed at the same work by the same employer, and, if there is no such 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" and "personal injury" shall mean only injury by accident arising out of and in the course of employment, and shall not include a disease in any form except as it shall naturally result from the injury.

SEC. 3. 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, unless he shall have given prior to any accident resulting in injury or death, notice to the contrary in the manner herein provided. Election presumed.

SEC. 4. Either an employer or employee who has excepted 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. Waiving rejection.

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 injury or death occurs 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 of election not to accept the provisions of this act shall be as follows:

Rejection to be posted. (a) The employer shall post and keep posted in his shop or place of business a written or printed notice of his election not to be bound by the provisions of this act, and shall file a duplicate thereof with the bureau of workshop and factory inspection of the State of Tennessee.

(b) The employee shall give written or printed notice to the employer of his election not to be bound by the provisions of this act and file a duplicate, with proof of service on the employer attached thereto, together with an affidavit of the employee that the action of the employee in rejecting the provisions of this act was not advised, counseled, or encouraged by the employer or by anyone acting for the employer with the bureau of workshop and factory inspection of the State of Tennessee.

Relation to other acts. SEC. 5. Nothing in this act contained shall be construed as amending or repealing any statute or municipal ordinance relating to associations or funds for the relief, pensioning, retirement, or other benefit of any employees of such municipal employer, or of the widows, children, or dependents of such employees, or as in any manner interfering with the same as now or hereafter established.

Excluded occupations. SEC. 6. This act shall not apply to—

(a) Any common carrier doing an interstate business while engaged in interstate commerce.

(b) Any person whose employment at the time of injury is casual—that is, one who is not employed in the usual course of trade, business, profession, or occupation of the employer.

(c) Domestic servants and employers thereof; nor to farm or agricultural laborers and employers thereof.

This act shall not apply to employers engaged in the operation of coal mines nor to the employees thereof, except that any employer engaged in the operation of a coal mine or mines may accept the provisions of this act by filing written notice thereof with the State factory inspector at least thirty (30) days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of withdrawal.

(d) In case where less than ten persons are regularly employed: *Provided, however,* That in such cases the employer may accept the provisions of this act by filing written notice thereof with the State factory inspector at least thirty days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of withdrawal.

(e) To the State of Tennessee, counties thereof, and municipal corporations: *Provided, however,* That the State, any county or municipal corporation, may accept the provisions of this act by filing written notice thereof with the State factory inspector at least thirty days before the happening of any accident or death and may at any time withdraw the acceptance by giving like notice of the withdrawal.

What payment valid. SEC. 7. 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 a child or children, the written receipt thereof by such widow or widower shall acquit the employer.

Whenever payment is made to any person eighteen (18) years of age or over the written receipt of such person shall acquit the employer.

Whenever payment is made to a person under the age of eighteen (18) years, or to a dependent child as defined in subsection 2 of section 30 over the age of eighteen (18) years, the same shall be paid to a duly and regularly appointed guardian or trustee of such child, and the receipt of such guardian or trustee shall acquit the employer and shall be in lieu of any claim of the parents of such child or minor for loss of services.

Remedy exclusive. SEC. 8. The rights and remedies herein granted to an employee subject to this act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, dependents or next of kin, at common law or otherwise, on account of such injury or death.

SEC. 9. Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty. Statutory duties.

SEC. 10. No compensation shall be allowed for an injury or death due to the employee's willful misconduct or intentional self-inflicted injury, due to intoxication, or willful failure or refusal to use a safety appliance or perform a duty required by law. If the employer defends on the ground that the injury arose in any or all of the above-stated ways the burden of proof shall be on the employer to establish such defense. Willful, etc., acts.

SEC. 11. Every employer who elects not to operate under this act as herein provided shall not, in any suit brought against him by an employee, who has elected to operate under the provisions of this act, to recover damages for personal injury or death arising from accident, be permitted to defend such suit upon any of the following grounds, namely: Defenses abrogated.

(a) That the employee was negligent.

(b) That the injury was caused by the negligence of a fellow servant or fellow employee.

(c) That the employee had assumed the risk of the injury.

SEC. 12. Every employee who elects not to operate under the provisions of this act, in any action to recover damages for personal injury or death by accident brought against an employer who has elected to operate under this act, shall proceed as at common law, and the employer in such suit may avail himself of all common law defenses. Available, when.

SEC. 13. When both employer and employee elect not to operate under this act the liability of the employer for injury or death from accident shall be the same as at common law, and the employer may avail himself of all common law defenses in actions brought by such employee to recover damages for personal injury or death due to accident. Same.

SEC. 14. 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 be entitled to 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 in the name of the injured employee in a suit brought for the purpose, from the other person in whom legal liability for damages exists, the indemnity paid or payable to the injured employee. Liability of third parties.

SEC. 15. A principal, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any of his subcontractors and engaged upon the subject matter of the contract to the same extent as the immediate employer. Employees of contractors.

Any principal, intermediate, or subcontractor who shall pay compensation under the foregoing provisions may recover the amount paid from any person who, independently of this section, would have been liable to pay compensation to the injured employee, or from any intermediate contractor.

Every claim for compensation under this section shall be in the first instance presented to and instituted against the immediate employer, but such proceedings 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.

SEC. 16. No contract or agreement, written or implied, nor 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. Waivers.

- Preference. SEC. 17. 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: *Provided, however,* That such compensation shall not prejudice or be superior to the rights and interests of third persons in and to such assets if such rights and interests are secured by registered mortgage or in any form or manner which is valid as to general creditors of the employer.
- Assignments, etc. SEC. 18. No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from claims of creditors.
- Injuries outside State. SEC. 19. When an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation had it happened in this State, the employee or his dependents shall be entitled to compensation under this act if the contract of employment was made in this State, unless otherwise expressly provided by said contract.
- Second injuries. SEC. 20. If an employee has previously sustained a permanent injury elsewhere than in the employment in which he sustains a subsequent permanent injury, he shall be entitled to compensation only for the disability that would have resulted from the latter accident if the earlier injury had not existed, and such earlier injury shall not be considered in estimating the compensation on the basis of either a total or partial disability to which the employee may be entitled under this act.
- Prior injuries. SEC. 21. This act shall have no retroactive effect, and shall not apply to actions for accidental injury or death occurring prior to the passage of this act, but claims for damages with respect thereto shall be redressed by the law as it stood prior to the enactment of this statute.
- Notice of injury. SEC. 22. Every injured employee or his representative shall, immediately upon occurrence of an injury or as soon thereafter as is reasonable or 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 fees nor any compensation which may have accrued under the provisions of this act from the date of the accident to the giving of such notice, unless it can be shown that the employer had actual knowledge of the accident; and no compensation shall be payable under the provisions of this act unless such written notice is given the employer within thirty days after the occurrence of the accident, unless reasonable excuse for failure to give such notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.
- Contents. SEC. 23. The notice required to be given of the occurrence of an accident to the employer shall state in plain and simple language the name and address of the employee, the time, place and nature and cause of the accident resulting in injury or death, and shall be signed by the claimant or by some person in his behalf, or by any one or more of the claimant's dependents if the accident resulted in death to the employee. But no defect or inaccuracy in the notice shall be a bar to compensation unless the employer can show to the satisfaction of the tribunal in which the matter is pending that he was prejudiced by the failure to give the proper notice, and then only to the extent of such prejudice. The notice shall be given personally to the employer or to his agent or agents having charge of the business in working at which the injury was sustained by the employee.
- Limitation. SEC. 24. The right to compensation under this act shall be forever barred unless within one year after the accident resulting in injury or death occurred the notice required by section 23 is given the employer and a claim for compensation under the provisions of this act is filed with the tribunal having jurisdiction to hear and determine the matter.
- Medical, etc., aid. SEC. 25. During the thirty days after the notice required by section 23 of this act to be given the employer or his agent, the employer shall furnish free of charge to the injured employee such medical and surgical treatment, medicine, medical, and surgical supplies, crutches, and apparatus as may be reasonably required, and the injured employee shall accept the same; and at the option of the employer he may furnish the same free of charge to the injured employee for such length of time after the expiration of the thirty days as the employer may elect, and the employee shall accept the same: *Provided, however,* That the total liability of the employer under this section shall not ex-

ceed one hundred dollars: *And provided further*, That the pecuniary liability of the employer for such services rendered the employee shall be limited to such charges as prevail for similar treatment in the community where the injured employee resides. All cases of dispute as to the value of such services shall be determined by the tribunal having jurisdiction of the claim of the injured employee for compensation.

In case death results from the injury, the employer shall, in addition to the medical service, etc., referred to above, pay the burial expenses of the deceased employee, not exceeding one hundred dollars. If the deceased employee leaves no dependents entitled to claim compensation under the provisions of this act, the employer shall not be further liable to any one for compensation on account of the accident except for the medical service and burial expense herein provided for.

Burial expenses.

The injured employee must submit himself to the examination of the employer's physician at all reasonable times if requested to do so by the employer, but the employee shall have the right to have his own physician present at such examination, in which case the employee shall be liable to such physician for his services. The employer shall pay for the services of the physician making the examination at the instance of the employer. And in case of dispute as to the injury, the court may, at the instance of either party or of its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured person and report his findings to the court, the expense of which examination shall be borne equally by the parties. If the injured employee refuses to comply with any reasonable request for examination, or refuses to accept the medical service which the employer is required to furnish under the provisions of this act, his right to compensation shall be suspended, and no compensation shall be due and payable while he continues such refusal.

Medical examination.

In all death claims where the cause of death is obscure or is disputed, any interested party may require an autopsy, the cost of which is to be borne by the party demanding the same.

Autopsy.

Any physician whose services are furnished or paid for by the employer and who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge acquired by him in the course of such treatment or examination as same relates to the injury or disability arising therefrom.

Evidence.

If in an emergency or on account of the employer's failure or refusal to provide the medical care and service required by this act, the injured employee or his dependents may provide the same, and the cost thereof, not exceeding one hundred dollars, shall be borne by the employer: *Provided*, That the pecuniary liability of such employer shall be limited to the charges for such service as prevail in the community where the services are rendered. All cases of dispute as to the value of such services shall be determined by the tribunal having jurisdiction of the matter of compensation to the employee.

Cost of treatment.

SEC. 26. No compensation shall be allowed for the first fourteen days of disability resulting from the injury except the benefits provided for in section 25 of this act, but if disability extends beyond that period, compensation shall commence with the fifteenth day after the injury. In the event, however, the disability from the injury exists for a period as much as six weeks, then compensation shall be allowed beginning with the first day after the injury.

Waiting time.

SEC. 27. The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be approved by the judge of the circuit court of the county where the claim for compensation under this act is entitled to be made. Upon such settlement being approved, judgment shall be rendered thereon by the court and duly entered by the clerk. The costs of the proceeding, which shall not exceed two (\$2) dollars, shall be borne by the employer.

Agreements.

SEC. 28. The following is the schedule of compensation to be allowed employees under the provisions of this act:

Compensation for—

(a) For injury producing temporary total disability, fifty per centum of the average weekly wages as defined in this act, subject to a maximum compensation of \$11 per week and a minimum of \$5 per week: *Provided*, That if the employee receives \$5 or more per week, then he

Temporary total disability;

shall receive as compensation not less than \$5 per week; if he receives \$5 or less per week, then the full amount of his weekly wages. This compensation shall be paid during the period of the disability of employee, but, however, not to exceed three hundred weeks. The compensation shall be paid at intervals when the wage was payable, as nearly as may be.

Temporary partial disability:

(b) In all cases of temporary partial disability the compensation shall be fifty per centum of the difference between the wage of the workman at the time of the injury and the wage he is able to earn in his partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum and minimum as stated in subdivision (a) of this section.

Permanent partial disability.

(c) For the permanent partial disability, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to wit:

Schedule.

For the loss of a thumb, fifty per centum of the average weekly wages during sixty (60) weeks.

For the loss of a first finger, commonly called index finger, fifty per centum of average weekly wages during thirty-five (35) weeks.

For the loss of a second finger, fifty per centum of average weekly wages during thirty (30) weeks.

For the loss of a third finger, fifty per centum of average weekly wages during twenty (20) weeks.

For the loss of a fourth finger, commonly called little finger, fifty per centum of average weekly wages during fifteen (15) weeks.

For the loss of the first phalange of the thumb, or of any finger, shall be considered equal to the loss of one-half of such thumb, or finger, and compensation shall be paid at the prescribed rate during one-half of the time specified above for such thumb or finger.

The loss of substantially 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 the great toe, fifty per centum of average weekly wages during thirty (30) weeks.

For the loss of one of the toes other than the great toe, fifty per centum of the average weekly wages during ten (10) 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 paid at the prescribed rate during one-half the time specified above for such toe.

The loss of substantially more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, fifty per centum of average weekly wages during one hundred and fifty (150) weeks.

For the loss of an arm, fifty per centum of the average weekly wages during two hundred (200) weeks.

For the loss of a foot, fifty per centum of average weekly wages during one hundred and twenty-five (125) weeks.

For the loss of a leg, fifty per centum of average weekly wages during one hundred and seventy-five (175) weeks.

For the loss of an eye, fifty per centum of average weekly wages during one hundred (100) weeks.

For the complete permanent loss of hearing in both ears, fifty per centum of average weekly wages during one hundred and fifty (150) weeks.

For the loss of an eye and a leg, fifty per centum of average weekly wages during three hundred and fifty (350) weeks.

For the loss of an eye and an arm, fifty per centum of average weekly wages during three hundred and fifty (350) weeks.

For the loss of an eye and a hand, fifty per centum of average weekly wages during three hundred and twenty-five (325) weeks.

For the loss of an eye and a foot, fifty per centum of average weekly wages during three hundred (300) weeks.

For the loss of two arms, other than at the shoulder, fifty per centum of average weekly wages during four hundred (400) weeks.

For the loss of two hands, fifty per centum of average weekly wages during four hundred (400) weeks.

For the loss of two legs, fifty per centum of average weekly wages during four hundred (400) weeks.

For the loss of two feet, fifty per centum of average weekly wages during four hundred (400) weeks.

For the loss of one arm and the other hand, fifty per centum of the average weekly wages during four hundred (400) weeks.

For the loss of one hand and one foot, fifty per centum of the average weekly wages during four hundred (400) weeks.

For the loss of one leg and one hand, fifty per centum of the average weekly wages during four hundred (400) weeks.

For the loss of one arm and one foot, fifty per centum of the average weekly wages during four hundred (400) weeks.

For the loss of one arm and one leg, fifty per centum of the average weekly wages during four hundred (400) weeks.

Where an employee sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which produced the longest period of disability, but this section shall not affect liability for the concurrent loss of more than one member, for which members compensations are provided, in the specific schedule and in subsection (e) below. In all cases the permanent and total loss of the use of a member shall be considered as equivalent to the loss of that member, but in such cases the compensation in and by said schedule provided shall be in lieu of all other compensation. Concurrent injuries.

In cases of permanent disability due to injury to a member resulting in less than total loss of use of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member, which the extent of injury to the member bears to its total loss. If an injured employee refuses employment suitable to his capacity, offered to or procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal, unless at any time in the opinion of the judge or chairman of the court of the county of his residence such refusal is justifiable. All compensations provided in clause (c) of this section for loss of members, or loss of use of members, are subject to the same limitations as to maximum and minimum as are stated in clause (a). Less than total loss of use.

In all other cases of permanent partial disability not above enumerated the compensation shall be fifty per centum of the difference between the wage of the workman at the time of the injury and the wage he is able to earn in his partially disabled condition, subject to a maximum of eleven (\$11) per week. Compensation shall continue during disability, not, however, beyond three hundred (300) weeks. Injuries not enumerated.

(d) For permanent total disability as defined in subsection (e) below, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of eleven (\$11) dollars per week and a minimum compensation of five (\$5) dollars per week, unless the wages of the employee are less than \$5 per week, in which latter case he shall receive the full amount of his weekly wages as compensation. This compensation shall be paid during such permanent total disability, not exceeding five hundred and fifty (550) weeks, but in all such cases drawing more compensation than five (\$5) dollars per week, the payments after the first four hundred (400) weeks shall be reduced to five (\$5) dollars per week for the remainder of the five hundred and fifty (550) weeks, while the permanent total disability continues, payments to be made at the intervals when the wage was payable, as nearly as may be. The total amount of compensation payable under this subsection shall not exceed five thousand (\$5,000) dollars in any case: *Provided, however,* That in case an employee who is permanently and totally disabled becomes an inmate of a public institution, then no compensation shall be payable unless he has wholly dependent on him for support a person or persons named in subsection (1), (2), and (3) of Permanent total disability.

section 30 of this act (whose dependency shall be determined as if the employee were deceased), and in which case the compensation provided for in this subsection shall be paid for the benefit of said persons so dependent, during dependency, in such institution.

What constitutes total disability.

(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 an occupation which brings him an income, shall constitute total disability.

Payments prior to death.

(f) In case a workman sustains an injury due to accident arising out of and in the course of his employment, and during the period of disability caused thereby death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of death.

Two or more employers.

SEC. 29. In case any employee for whose injury or death compensation is payable under this act shall at the time of injury be employed and paid jointly by two or more employers subject to this act, such employers shall contribute to payment of such compensation in a proportion of their several wage liability to such employee. If one or more, but not all, of such employers should be subject to this act and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their portion of the wage liability bears to the wages of the employee: *Provided, however,* That nothing in this section shall prevent any agreement between the different employers between themselves as to the distribution of the ultimate burden of such compensation.

Dependents.

SEC. 30. For the purposes of this act the following described persons shall be conclusively presumed to be wholly dependent:

(1) A wife, unless it be shown that she was voluntarily living apart from her husband at the time of his injury, and minor children under the age of sixteen years.

(2) 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.

(3) Wife, child, husband, mother, father, grandmother, grandfather, sister, brother, mother-in-law, and father-in-law 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.

(3a) Any member of a class named in subdivision (3) 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 dependent, and payment of compensation shall be made to such dependents in the order named.

Benefits.

(4) In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled thereto, without administration:

(5) If the deceased employee leave a widow and no dependent child, there shall be paid to the widow thirty per centum of the average weekly wages of deceased.

(6) If the deceased employee leave a widow and one dependent child, there shall be paid to the widow for the benefit of herself and such child, forty per centum of the average weekly wages of deceased.

(7) If the deceased employee leave a widow and two or more dependent children, there shall be paid to the widow for the benefit of herself and such children, fifty per centum of the average weekly wages of deceased.

(8) In all cases where compensation is payable to a widow for the benefit of herself and dependent child or children, the court shall have power to determine in its discretion what portion of the compensation shall be applied for the benefit of any such child or children, and may order the same paid to a guardian.

(9) For the purpose of this act, the dependents of a widow or widower of a deceased employee and dependent children shall terminate with remarriage of the widow, excepting a child physically or mentally in-

capacitated from earning, and the dependence of such a child shall terminate with the age of eighteen.

(10) If the deceased employee leave a dependent orphan, there shall be paid thirty per centum of the monthly wages of deceased, with ten per centum additional for each additional orphan, with a maximum of fifty per centum of such wages.

(11) If the deceased employee leave a dependent husband and no dependent child, there shall be paid to the husband twenty per centum of the average weekly wages of deceased.

(12) If the deceased employee leave no widow or child or husband entitled to any payment hereunder, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one parent, twenty-five per centum of the average weekly wages of the deceased to such parent, and if both parents, thirty-five per centum of the average weekly wages of the deceased to such parents.

(13) If the deceased leave no widow or dependent child or husband or parent entitled to any payment hereunder, but leaves a grandparent, brother, sister, mother-in-law, or father-in-law wholly dependent on him for support, there shall be paid to such dependent, if but one, twenty per centum of the average weekly wages of the deceased, or if more than one, twenty-five per centum of the average weekly wages of the deceased, divided between or among them, share and share alike.

(14) If compensation is being paid under this act to any dependent, such compensation shall cease upon the death or marriage of such dependent, unless otherwise provided herein.

(15) 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 to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time.

Partial dependents.

(16) The compensation payable in case of death to persons wholly dependent shall be subject to a maximum compensation of eleven (\$11) dollars per week and a minimum of five (\$5) per week: *Provided*, That if at the time of the injury the employee receives wages of less than five (\$5) dollars per week, the compensation shall be the full amount of such wages per week. The compensation payable to partial dependents shall be subject to a maximum of eleven (\$11) dollars per week, and a minimum of five (\$5) dollars per week; *Provided*, That if the income loss of said partial dependents by such death is less than five (\$5) dollars per week, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency not exceeding four hundred (400) weeks, payments to be made at the intervals when the wage was payable as nearly as may be.

Maximum and minimum payments.

(17) In computing and paying compensation to orphans or other children, in all cases, only those under eighteen years of age, or those over eighteen years of age who are physically or mentally incapacitated from earning, shall be included, the former to receive compensation only during the time they are under eighteen, the latter only for the time they are so incapacitated, within the period of four hundred (400) weeks.

Children.

(18) Actual dependents shall be entitled to take compensation in the order named in subsection (3) above until fifty per centum of the monthly wages of the deceased during the time specified in this act shall have been exhausted, but the total compensation to be paid to all actual dependents of a deceased employee shall not exceed in the aggregate eleven (\$11) dollars per week.

Order of beneficiaries.

Sec. 31. The time within which the following acts shall be performed under this act shall be limited to the following periods, respectively:

Limitations.

(1) Actions or proceedings by an injured employee to determine or recover compensation, one (1) year after the occurrence of the injury.

(2) Actions or proceedings by dependents to determine or recover compensation, one year after the date of notice in writing given by the employer to the bureau of workshop and factory inspection of the State, stating his willingness to pay compensation when it is shown that the death is one for which compensation is payable. In case the deceased was a native of a foreign country and leaves no known dependent or

dependents within the United States, it shall be the duty of the bureau of workshop and factory inspection to give written notice forthwith of said death to the consul or other representative of said foreign country residing within the State.

(3) Proceedings to obtain judgment in case of default of employer for thirty (30) days to pay any compensation due under any settlement or determination, one (1) year after such default.

(4) In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act required within the time in this section specified, the period of limitation in any such case shall be extended for one year from the date when such incapacity ceases.

Disputes.

SEC. 32. In case of a dispute over or failure to agree upon compensation under this act between the employer and employee or the dependents of the employee, either party may submit the entire matter for determination to the judge or chairman of the county court in which the accident occurred, and such judge or chairman is hereby vested with jurisdiction to hear and determine the issues and render judgment and enforce the same in the same manner as courts of record render and enforce judgment. The county judge or chairman shall have the power to subpoena witnesses, administer oaths, and punish witnesses for contempt, and, in short, he shall have such powers in conducting hearings under this act as are possessed by the judges of the circuit courts of the State of Tennessee as courts of general jurisdiction. Officers serving process, subpoenas, and other papers shall have the same fees now provided by law for such officers in the magistrates' courts.

Court to act.

Petition.

The party invoking the power of said court shall file a petition setting out the facts on which the claim is based under this act. Upon said petition being filed, the clerk of the county court shall issue and cause to be served on the defendant named in said petition a summons, accompanied by a certified copy of the petition, commanding the defendant to appear and make defense to said petition before the judge or chairman of said county court. Said summons shall be served on the defendant as in other civil cases at least ten days before the time the matter is to be heard. The county judge or chairman shall set claims for hearing not more than fifteen days after the filing of the petition unless for good cause shown. The defendant shall file an answer to said petition on or against the day specified in the summons, unless the court grants further time in which to answer on good cause shown by affidavit. Should the defendant fail to answer the petition within the time prescribed, a judgment pro confesso will be entered against him and the cause proceeded with ex parte. The judge or chairman trying the case shall hear the evidence offered by either or both parties and render judgment. Either party dissatisfied with the judgment of the judge or chairman may appeal, as in other civil cases,

Answer.

Appeals.

to the next term of the circuit court of the country, where the cause will be heard by the circuit judge de novo. The cause shall be heard by the circuit judge without a jury and as other nonjury civil cases are heard in the circuit court. Neither party shall have the right to demand a jury. It shall be the duty of the county judge or chairman of the county court in carrying out the provisions of this act to keep a docket of all claims presented to him for settlement or adjudication, and he shall cause to be entered on a separate minute book a final record of his findings and conclusions in litigated cases as well as of orders, compromises or settlements made by him. For acting in each of such cases which is contested or litigated the county judge or chairman of the county court shall receive a fee of \$5, which shall be taxed as a part of the costs of the case against the unsuccessful party. For entering all orders, settlements, or compromises of claims which are not controverted or litigated, the county judge or chairman of the county court shall receive as compensation a fee of two (\$2) dollars, which shall be taxed equally against both parties. In the event of failure of either party to appear within ten days, excluding holidays and Sundays, the judgment of a county judge or chairman shall be final. The

Fees.

Option of courts.

party filing the petition may, at his option, instead of filing the same before the county judge or chairman, file the same as an original petition in either the circuit, criminal, or chancery court of the county in which

petitioner resides or in which the alleged accident happens, in which event summons shall be issued him by the clerk of the court in which the proceeding is instituted, and shall be returned before said court within the time provided for proceedings before a county judge or county chairman. The issue shall be made in the same manner and the presiding judge shall proceed to hear the case as provided in case of appeal from the county judge or chairman. Whenever any matter is brought before the county judge or chairman or before any judge as provided herein, the said county judge or chairman, or any judge, may, if he so desires, visit the scene of the accident and examine the surroundings.

Any party to the proceedings in the circuit, criminal, or chancery court may, if dissatisfied or aggrieved by the judgment or decree of that court, pray an appeal in the nature of a writ of error to the supreme court of Tennessee, where the cause shall be heard and determined in accordance with the practice governing other appeals in the nature of a writ of error in civil causes.

Writ to supreme court.

Sec. 33. The fees of attorneys and physicians and charges of hospitals for services to employees under this act shall be subject to the approval of the county judge or chairman of the county court, or other court before which the matter is pending: *And provided*, That no attorney's fees to be charged employees shall be in excess of twenty (20) per cent of the amount of the recovery or award to be paid by the party employing the attorney.

Fees.

[The provision as to the amounts of court fees violates specific provisions of the State constitution, and is void; but this does not affect the remainder of the law, which is constitutional.] *Scott v. National Bridge Co.*, 223 S. W. 844.

Sec. 34. In case a deceased employee for whose injury or death compensation is payable under the provisions of this act leaves surviving him an alien dependent or dependents residing outside of the United States, the circuit court, instead of the judge or chairman of the county court, shall hear and determine the matter and order payment of any compensation due from the employer to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, if there is such consular officer residing in this State, and if not, to the designated representative of such consular officer residing within this State, and such consular officer or his representative shall be fully authorized and empowered by this act to settle all claims for compensation and receive for distribution to the persons entitled thereto such compensation. The distribution of such funds in such case shall be only made on the order of the circuit court. If required so to do by the court, such consular officer or his representative shall execute a good and sufficient bond, to be approved by the court, conditioned upon the faithful accounting of the moneys so received by him, and before such bond is discharged a verified statement of receipts and disbursements of said moneys shall be made and filed in said circuit court. Such consular officer or his representative shall, before receiving the first payment of such compensation, and at reasonable times thereafter, upon the request of the employer, furnish to the employer a sworn statement containing a list of the dependents, with the name, age, residence, extent of dependency, and relationship to the deceased of each dependent.

Alien beneficiaries.

Sec. 35. Copies of all settlements and releases shall be filed by the employer with the bureau of workshop and factory inspection within ten (10) days after such settlements are made, and shall become part of the permanent records of that department.

Settlements to be filed.

Sec. 36. The amounts of compensation payable periodically hereunder may be commuted to one or more lump-sum payments. These may be commuted only with the consent of the circuit court. In making such commutation the lump-sum payment shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a six per cent basis. No settlement or compromise shall be made except on the terms herein provided.

Lump sums.

Sec. 37. All settlements of compensation by agreement of the parties and all awards of compensation made by the court, where the amount paid or to be paid in settlement or by award does not exceed the compensation for six months' disability, shall be final, and not subject to readjustment.

What settlements final.

Review.

SEC. 38. All amounts paid by employer and received by the employee or his dependents, by lump-sum payment, shall be final, but the amount of any award payable periodically for more than six (6) months may be modified as follows:

(a) At any time by agreement of the parties and approved by the court.

(b) If the parties can not agree, then at any time after six (6) months from date of the award an application may be made to the courts by either party on the ground of increase or decrease of incapacity due solely to the injury. In such cases the same procedure shall be followed as in section 32, in case of disputed claim for compensation.

Payment trustee.

to

SEC. 39. Any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court a sum equal to the present value of all future installments of compensation, calculated on a six per cent basis, 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 to any savings bank or trust company of this State to be approved and designated by the court, 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 receipts in duplicate of the trustee, one of which shall be filed with the bureau of workshop and factory inspection, and the other filed with the clerk of the circuit court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by 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 dependent of the deceased employee, as the case may be.

Insurance carriers.

SEC. 40. Every person, partnership, association, or organization, or corporation, whether organized under the laws of this or any other State or country which has or may hereafter comply with the laws of the State of Tennessee and is authorized to write accident or indemnity insurance in the State of Tennessee, shall be authorized and empowered to write workmen's compensation insurance under the terms and provisions of this act, and likewise every reciprocal or mutual insurance association or corporation shall have the like privilege, and shall be subject to the same tax on premiums now imposed by law on casualty or indemnity insurance underwriters.

Every insurance corporation or mutual corporation or reciprocal exchange, authorized to transact business in this State, which insures employers against liability for compensation under the provisions of this act, shall file with the insurance commissioner 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 insurance commissioner shall have approved the same as adequate. The insurance commissioner may withdraw his approval of any premium rate or schedule made by any such insurance corporation, mutual corporation or reciprocal exchange, if, in his judgment, such premium rate or schedule is inadequate to provide the necessary reserves.

Insurance.

SEC. 41. Every employer under and affected by this act (1) shall insure and keep insured his liability hereunder in some person or persons, association, organization or corporation authorized to transact the business of workmen's compensation insurance in this State, or

Self-insurers.

(2) shall furnish to the insurance commissioner of the State of Tennessee satisfactory proof of his financial ability to pay all claims that may arise against him under this act, and guarantee the payment of the same in the amount and manner and when due as provided for in this act. If the employer elects to pursue the latter course, the insurance commissioner of the State of Tennessee may in his discretion require the deposit of an acceptable security or indemnity bond to secure the payment of compensation liability as may be incurred under this act. Said bond shall be conditioned to run directly for the benefit

the employees subject to this act and may be enforced by them directly in an action in their name. This act shall not apply to policies of insurance against loss from explosion of boilers or flywheels or other similar single catastrophe hazards.

Every employer accepting the provisions of this act shall, within thirty (30) days after this act takes effect, file with the insurance commissioner of the State of Tennessee and annually thereafter, or as often as may be necessary under the ruling of said insurance commissioner, evidence of his compliance with the provisions of this act relating to insurance or indemnity to employees. ^{Evidence of insurance.} Until these provisions are complied with, the employer shall from the date this act becomes effective, be liable to an employee either for compensation under this act or at law in the same manner as if the employer had refused to accept the provisions of this act, and in any suit brought by the employee against the employer the defense of contributory negligence, the fellow-servants' rule, and assumption of the risk by the employee shall not be open to or set up by the employer in any common law court in which such suit may be brought. Claim of compensation in such cases under this act shall be deemed a waiver of the right to proceed at law and the institution of an action at law shall be deemed a waiver of all claims to compensation hereunder. No agreement by any employee to pay any portion of the insurance premium paid by his employer ^{Cost on 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 \$100 for each offense.

Sec. 42. Every employer accepting the provisions of this act shall, within thirty (30) days after this act takes effect, file with the insurance commissioner of the State of Tennessee on a form prescribed by the commissioner, and thereafter annually or as often as the commissioner in his discretion deems necessary, evidence of his compliance with the provisions of section 41 of this act. ^{Failure to file evidence.} If any such employer refuses or willfully neglects to comply with these provisions, he shall be punished by a fine of not less than \$10 nor more than \$100, and after such conviction shall be subject to a fine of not less than \$1 nor more than \$10 for each day of such refusal or neglect and until he shall comply with said provisions, and also such employer so refusing or neglecting to comply with said provisions during the continuance of such refusal or neglect shall be liable to an injured employee either for compensation as provided in this act to be recovered in an action brought in a court of competent jurisdiction for that purpose or for damages to be recovered as if this act had not been passed, as such employee may elect; and in case suit for damages is brought instead of a suit to recover compensation under the provisions of this act, the employer, when sued, shall not be allowed to set up as defense to the action that the employee was guilty of contributory negligence, or that the injury was occasioned by the negligence of a fellow servant of the employee, or that the employee had assumed the risk of the injury. Claim of compensation made under this act shall be deemed a waiver of the right to sue for damages, and the institution of a suit for damages shall be deemed a waiver of a right to claim compensation under this act.

Sec. 43. Whenever an employer has complied with the provisions of this act relating to insurance the insurance commissioner of the State of Tennessee shall issue to such employer a certificate which shall remain in force for a period to be fixed by the insurance commission, but the insurance commissioner may, upon thirty (30) days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the insurance commissioner may grant a new certificate to the employer upon his petition. ^{Certificate.}

Sec. 44. 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 of 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 insurer, 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 ^{Provisions of policies.}

awards, orders, judgments or decrees rendered against such insured, whether a formal party to the proceedings or not.

Same. SEC. 45. No policy of insurance against liability arising under this act shall be issued unless it contains an express 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 this obligation shall not be affected by any default of the insured for 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 under this act, and may be enforced directly by such person in his name, and the failure, if any, of the insured to comply with any provisions of the policy regarding notice of injury and such matters shall not be a defense in a suit on the policy by the insured employee or his dependents or representatives, unless it can be shown that such insured employee or his representatives or dependents aided and abetted in seeking to mislead or defraud the insurer.

Power of insurance commissioner. SEC. 46. There is hereby conferred upon the insurance commissioner of the State of Tennessee the power to enforce the provisions of this act which relate to the assurance of payments of the award thereunder. The insurance commissioner shall have the power, subject to the approval of the governor, to employ such clerical assistance as he may deem necessary and fix the compensation of the person or persons so employed. He may make rules and regulations not inconsistent with this act for the purpose of discharging his duties under the provisions of this act. He may provide forms for the use of employers and such other literature as may be necessary, and shall furnish free of charge to any employee or employer such literature and blank forms as he may deem requisite to facilitate or promote the efficient administration of this act.

Construction to be equitable. SEC. 47. The rule of common law requiring strict construction of statutes in derogation of common law shall not be applicable to the provisions of this act, but the same is hereby declared to be a remedial act, which shall be given an equitable construction by the courts to the end that the objects and purposes of this act may be realized and attained.

Provisions severable. SEC. 48. If any section or provisions of this act shall be decided or declared by the courts to be unconstitutional and invalid, the same shall not affect the validity of this act as a whole or any part or section thereof other than the part or section so decided to be unconstitutional and invalid, as the remaining sections or portions of the act would have been passed by the general assembly of Tennessee if the unconstitutional section or sections of the act had been elided by the general assembly of the State of Tennessee before the passage of the act.

Appropriation. SEC. 49. For the purpose of defraying the expenses of enforcing this act and putting the same in operation, the sum of ten thousand (\$10,000) dollars, or so much thereof as may be necessary, is hereby appropriated out of the revenues of the State of Tennessee not otherwise appropriated. Such sum or so much thereof as may be necessary for clerical assistance to the insurance commissioner of the State of Tennessee, literature, blank forms, necessary traveling expenses of said commissioner in the administration of this act or of his clerical assistants shall be first approved by the governor of the State of Tennessee.

Repealer. SEC. 50. All laws or parts of laws in conflict with the provisions of this act be and the same are hereby repealed to the extent of such inconsistency, but the provisions of this act shall not be construed or held to affect any litigation pending at the time this act goes into effect.

Pending actions. SEC. 51. This act, except as to the duties and powers of the insurance commissioner of the State, as provided in section 49, shall become effective on July 1, 1919, and such provisions hereof as relate to the power and duties of the insurance commissioner of the State requiring said commissioner to prepare blank forms, literature and such other steps by him deemed necessary as provided in section 49 shall be effective from and after the passage of this act, the public welfare requiring it.

Act in effect.

Approved April 15, 1919.

TEXAS.

ACTS OF 1913.

CHAPTER 179 (as amended by ch. 103, acts of 1917).—*Compensation of workmen for injuries.*

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 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

Waiver presumed.

- 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 service 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 services 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.

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.

Change of physician.

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.

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 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.

Attorneys' fees.

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 ($\frac{1}{3}$) 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.

Same.

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.

Death.

SEC. 8a. The compensation provided for in the foregoing section of this act shall be for the sole and exclusive benefit of the surviving

Beneficiaries.

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 the 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 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.

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.

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:

Partial disability schedule.

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 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, 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 in-
juries.

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 effect 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 paragraph would be less than \$3 per week, the period may be shortened, and the payments correspondingly increased by the board.

Refusing em-
ployment.

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 an operation which has been found by the examination herein provided for not to be more than ordinarily unsafe.

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.

Second injuries.

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.

Review.

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

Beneficial surgical operations.

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 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 provision 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.

Sec. 14. No agreement by an employee to waive his rights to compensation under this act shall be valid.

Waivers.

Sec. 15. In case 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 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.

Lump sum.

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 case of lump-sum settlement.

Readjustments

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.

Survival of action.

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.

Nonresident aliens.

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.

Payments.

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.

Extraterritoriality.

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 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.

Process and procedure shall be as summary as may be under this act. The board or any member thereof shall have power to subpoena 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 shall be upon questions of fact and in accord with the provisions of this act.

Procedure.

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.

Notice.

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 be bound 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.

Disputes.

Appeals to courts.

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 reasonable attorney's fee for the prosecution and collection of such claim.

Enforcement of awards.

Penalty.

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. 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.

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 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.

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.

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.

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.

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.

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.

PART III.

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.

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.

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

Quorum.

Seal.

Copies of awards.

Investigations.

Suspension of payments.

Payments.

Compromises, etc.

Insurance association.

Directors.

By-laws.

- 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, 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.

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.

Dividends.

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.

Surplus.

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.

No participating policies.

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 such a manner as to take account of the peculiar hazard of each individual risk.

Premiums.

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.

Rates to be approved.

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.

Rules for safety.

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

Statements by employers, etc.

- 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. Reserves.** 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.

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.

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.

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.

Officers.

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.

Insurance companies.

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

Withdrawal.

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 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.

UTAH.

COMPILED LAWS—1917.

COMPENSATION OF WORKMEN FOR INJURIES.

SECTION 3061 (as amended by ch. 63, Acts of 1919). There is hereby created the industrial commission of Utah, to be composed of three members who shall be appointed by the governor, by and with the advice of the senate, one member of said 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 from the first Monday in January, 1919; and thereafter each member shall be appointed for a term of six years. Not more than two members of the commission shall belong to the same political party.

Commission created.

SEC. 3062. The governor at any time may remove any member of the commission for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

Removals for cause.

SEC. 3063 (as amended by ch. 63, Acts of 1919). 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 nor any regular employee of the commission shall serve on any committee of any political party.

Qualifications.

SEC. 3064. 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 \$10,000, 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.

Salary.

Bonds.

SEC. 3065. Within thirty days after this title 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.

Organization.

Quorum.

SEC. 3066. The commission shall keep and maintain its offices at the State capitol, in 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.

Offices.

SEC. 3067. 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.

Official seal.

SEC. 3068. The commission shall be open for the transaction of business during all business hours of each and every day except Sunday 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.

Sessions.

Rules. Sec. 3069. Subject to the provisions of this title, the commission may adopt its own rules of procedure, and may change the same from time to time in its discretion.

Employees. Sec. 3070. 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 3071 to 3093, 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.]

Employer's statements. Sec. 3094 (as amended by ch. 63, acts of 1919). Every employer shall furnish the commission, upon request, all information required by it to carry out the purpose of this title. In the month of July of each year every employer shall prepare and mail to the commission at the State capitol, Salt Lake City, Utah, a statement containing the following information, viz: The number of employees employed during the preceding year from July 1 to June 30, inclusive; the number of such employees employed at each kind of employment; and the scale of wages paid to each class of employment, showing the minimum and maximum wage paid, and the aggregate amount of wages paid to all employees, which information shall be furnished on a blank or blanks to be prepared by the commission; and it shall be the duty of the commission to furnish such blanks to employers, free of charge, upon request therefor. Every employer shall cause said blanks to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or, if unable to do so, he shall give to the commission, in writing, good and sufficient reasons for such failure. The commission may require the information herein required to be furnished to be certified under oath and returned to the commission within the period fixed by it or by law. The commission, or any member thereof, or any person employed by the commission for that purpose, shall have the right to examine, under oath, any employer, or the officer, agent, or employee thereof, for the purpose of ascertaining any information which such employer is required by this title to furnish to the commission. Any employer who shall refuse to furnish to the commission the annual statement herein required, or who shall refuse to furnish such other information as may be required by the commission under authority of this section, or who shall willfully furnish a false or untrue statement, shall be liable to a penalty of not to exceed \$500 for each offense, to be collected in a civil action brought against said employer in the name of the State; all such penalties, when collected, shall be paid to the State insurance fund hereinafter provided for.

Refusal. Sec. 3095. 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 title, and of assuring to the persons entitled thereto the compensation provided by this title. 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 title.

State insurance fund.

SEC. 3096. 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 title.

Administration of fund.

SEC. 3097. 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. The commission shall determine the hazards of the 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.

Classification of employments.

SEC. 3098. 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.

Status of commission.

SEC. 3099 (as amended by ch. 63, acts of 1919). 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. Such contracts of insurance may include and cover the entire underlying liability of employers insured in the State insurance fund, so that such employers may be fully protected, not only for all compensation claims, but for all liability claims whatsoever by employees or the dependents or heirs of killed employees, including the cost of defense in the event of suit.

Insurance contracts.

SEC. 3100. 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 title; 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 title; 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.

Deputies.

SEC. 3101. 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.

Policies.

2. Except as otherwise provided in this title, 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.

Premiums.

SEC. 3102. Any employer may, upon complying with subdivisions 2 or 3 of section 3114, 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.

Withdrawal from fund.

- Reinsurance.** **SEC. 3103.** 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. 3104.** 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 \$100,000, and thereafter 5 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 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 injuries or deaths 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 deaths of his employees during such period, shall be entitled to a credit on the installment or installments of premium 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 and regulations.** **SEC. 3105.** 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, 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 suc-

ceeding 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, 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.

Sec. 3106. 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.

Sec. 3107. 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 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 herein given shall be collected by him and placed to the credit of such fund.

Sec. 3108. 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 40 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.

Sec. 3109. 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.

Sec. 3110 (as amended by ch. 63, acts of 1919). The following shall constitute employers subject to the provisions of this title:

(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 three or more workmen or operatives regularly employed 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 three employees and employers of agricultural laborers and domestic servants shall have the right to come under the terms of this title by complying with the provisions thereof and all 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

Custody.

Deposits.

Investment of surplus.

Payments.

Bond.

Employers covered.

the year. It means all employments in the usual course of the trade, business, profession, or occupation of an employer.

Contractors.

Where any employer procures any work to be done wholly or in part for him by a contractor over whose work he retains supervision or control, and the work so procured to be done is a part or process in the trade or business of said employer, then such contractor and all persons employed by him, and all subcontractors under him, and all persons employed by any such subcontractors, shall be deemed, within the meaning of this section, employees of such original employer. Any person, firm, or corporation engaged in the performance of work as an independent contractor, shall be deemed an employer within the meaning of this section. The words "independent contractor" as herein used is defined to be any person, association, or corporation engaged in the performance of any work for another, and while so engaged is independent of the employer in all that pertains to the execution of the work, is not subject to the rule or control of the employer, is engaged only in the performance of a definite job or piece of work, and is subordinate to the employer only in effecting a result in accordance with the employer's design.

SEC. 3111 (as amended by ch. 63, acts of 1919). The terms "employee," "workman," and "operative" as used in this title shall be construed to mean:

Employees.

(1) Every person in the service of the State, and of every county, city, town, or school district, 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 employer, as defined in subdivision 2 of section 3110, who employs three 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, 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 and is not in the usual course of trade, business, or occupation of his employer.

All lessees in mines or of mining property, and the employees and contractors of all such lessees who are engaged in the performance of work which is a part or process in the business that is being actually conducted by the lessor, and over whose work the lessor retains supervision or control, shall be deemed, within the meaning of this section, employees of such lessor drawing such wages as are paid employees for similar work: *Provided*, That the lessor may deduct from the proceeds of ores mined by the lessees the premium required to be paid.

Definitions.

SEC. 3112 (as amended by ch. 63, acts of 1919). The following terms as used in this title shall be construed as follows:

(1) The term "order" shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission, or any other determination arrived at or decision made by such commission.

(2) The term "general order" shall mean and include such order as applies generally throughout the State to all persons, employments or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(3) The term "welfare" shall mean and include comfort, decency and moral well-being.

(4) The terms "safe" and "safety" as applied to any employment or a place of employment shall mean such freedom from danger to the life, health, safety or welfare of employees as the nature of the employment will reasonably permit.

(5) The words "personal injury by accident arising out of or 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 title.

(7) The term "award" shall mean the finding or decision of the commission as to the amount of compensation due any injured or the dependents of any deceased employee.

Sec. 3113 (as amended by ch. 63, acts of 1919). Every employee mentioned in section 3111, who is injured and the dependents of every such employee who is killed by accident arising out of or in the course of his employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, shall be entitled to receive, and shall be paid such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medicines, and such amount of funeral expense, in case of death, as is herein provided. Compensation payable.

Sec. 3114 (as amended by ch. 63, acts of 1919). Employers, but not including municipal bodies, shall secure compensation to their employees in one of the following ways: Security of payments.

(1) By insuring and keeping insured the payment of such compensation with the State insurance fund.

(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: *Provided*, That any such stock corporation or mutual association must write and carry all risks or insurance for which application may be made to it, which are not prohibited by the provisions of section 1148, Compiled Laws of Utah, 1917, and any carrier assuming a risk shall carry it to the conclusion of the policy period unless cancellation is agreed to by the industrial commission and the employer: *And provided*, That any policy written shall be subject to cancellation at any time by the legislature.

(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, including rates to be charged and methods of compensation to be used; and only such corporations or mutual associations shall be permitted to transact in this State the business of workmen's compensation insurance as shall be possessed of a paid-up capital stock of \$500,000 and surplus of \$100,000, or an aggregate capital and surplus of \$600,000 in the case of stock corporations, and in the case of mutual associations of net assets over and above all liability of \$600,000 and in both cases their liability shall include a reinsurance reserve which shall equal 65 per cent of the gross annual premiums or deposits received by such corporation or association on account of workmen's compensation insurance, and 50 per cent of the gross annual premiums on all other lines of insurance and a pro rata amount of gross premiums collected for more than one year: *Provided further*, That a satisfactory bond to be approved by the commissioner of insurance executed by a surety company authorized to do business in this State shall be filed with the commissioner of insurance for an amount equal to 75 per cent of the 65 per cent of the gross annual premiums or deposits received by such corporations or associations on account of workmen's compensation insurance collected by it in the State of Utah, or in lieu thereof such corporations or mutual associations may make a deposit of a similar amount in approved securities, said bond or securities to be held by the said commissioner as security for the fulfillment of its obligations in the State of Utah. Companies subject to act.

Sec. 3115. If the insurance so effected is not with the State insurance fund, the employer shall forthwith file with the commission in Notice to be filed.

- form prescribed by it a notice of his insurance, together with a copy of the contract or policy of insurance.
- Provisions of policies. of SEC. 3116. 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.
- Notice of injury. SEC. 3117. 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 title, 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, and awards rendered against the employer for the payment of compensation under the provisions of this title.
- Insolvency of employer. SEC. 3118. 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. 3119. 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.
- Contribution by State. SEC. 3120. 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 1 of section 3111, the amount of such payments and the method of making the same to be determined as hereinafter provided.
- Payments by State. SEC. 3121. 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 1 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. 3122 (as amended by ch. 63, acts of 1919). Every employee covered by insurance in the State insurance fund, who is injured, by accident arising out of or in the course of employment, and the dependents of such as are killed: *Provided,* The same was not purposely self-inflicted, on or after July 1, 1919, 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. 3123 (as amended by ch. 63, acts of 1919). 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, 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. In the event any employer shall fail to pay to the State insurance fund or to any insurance company, authorized to do business in this State, the premium, when the same shall become due, and suit shall be instituted to recover such premium, the prevailing party shall be entitled to a reasonable attorney's fee to be fixed by the court.

Sec. 3124. 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 title. 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 title, nor if it requires contributions from the employees unless it confers benefits in addition to those provided under this title 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 title; 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 title shall be guilty of a misdemeanor: *Provided*, That, subject to the supervision of the commission, nothing in this title 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 title 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 title 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.

Sec. 3125. 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.

Sec. 3126. 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 title, 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,

Substitute
schemes.

Contributions
by employees.

Employers not
insuring.

Injuries outside
State.

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.

Remedy exclusive.

Sec. 3127 (as amended by ch. 63, acts of 1919). Employers who comply with the provisions of section 3114 shall not be liable to respond in damages at common law or by statute, except as hereinafter provided, for injury or death of any employee, wherever occurring: *Provided, however,* That for injuries resulting in death the right of action to recover damages shall remain the same as now provided by law, and the amount recoverable in any such action is not limited by this title. In any action for death the employer sued may plead such defenses as are now provided for by the laws of this State. If a judgment is recovered in any such action the commission shall determine the amount to which the plaintiff would be entitled by accepting the provisions of this title, and the same shall be paid by the State fund, or other insurance carrier, insuring such risk toward the satisfaction of such judgment. Any deficiency shall be paid by the employer against whom the judgment is recovered. In all such cases, before action is brought, all heirs and dependents of deceased employees who are sui juris may waive any such right of action by accepting the benefits of this title. Minor heirs and dependents who are not sui juris may, through their legal representative and by order of the district court, accept the compensation herein provided in full satisfaction of any right of action on their part against any employer for damages on account of death of deceased employee. The bringing of any action for death of a deceased employee shall constitute a waiver by the plaintiff in such action of any right to compensation under this title.

Death cases.

Notice to be posted.

Sec. 3128. 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 sub. 1 of section 3110, 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 title 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.

Suits, when.

Sec. 3129. Employers who shall fail to comply with the provisions of section 3114 shall not be entitled to the benefits of this title 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. And such employers shall also be subject to the provisions of the two sections next succeeding.

Defenses abrogated.

Options of employee.

Sec. 3130 (as amended by ch. 63, acts of 1919). Any employee whose employer has failed to comply with the provisions of section 3114 hereof, who has been injured by accident arising out of or 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 title, 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 compensation which said commission may ascertain and determine to be due to such injured employee, or 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.

Sec. 3130x (added by ch. 63, acts of 1919). An abstract of any award may be filed in the office of the clerk of the district court of any county in the State and must be docketed in the judgment docket of the district court thereof. The time of the receipt of the abstract must be noted by him thereon and entered in the docket. The award when so filed and docketed is a lien upon the real property of the employer situated in the county for a period of eight years from the date of the award unless previously satisfied. Execution may be issued thereon within the same time and in the same manner and with like effect as if said award were a judgment of the district court.

Enforcement of awards.

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.

Rules.

Sec. 3131. 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 12 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 title 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.

Default by employers.

Sec. 3132. The right to recover compensation pursuant to the provisions of this title 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 title 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.

Remedy exclusive. Exception.

Sec. 3133. If an employee entitled to compensation under this title 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 title, elect whether to take compensation under this title 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 title, 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 title for such case. Such a cause of action assigned to the State may be prosecuted or compromised by the

Injuries by third parties.

commission. A compromise of any such cause of action by the employee or his dependents at an amount less than the compensation provided for by this title 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.

Acts construed as waivers.

Sec. 3134. 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 title, waives his right to any award or direct payment of compensation from his employer.

Preference.

Sec. 3135. All judgments obtained in any action prosecuted by the commission or by the State under the authority of this title shall have the same preference against the assets of the employer as claims for taxes now have.

Waiting time.

Sec. 3136 (as amended by ch. 63, acts of 1919). No compensation shall be allowed for the first three 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. 3137 (as amended by ch. 63, acts of 1919). In case of temporary disability the employee shall receive 60 per cent of his average weekly wages so long as such disability is total, not to exceed a maximum of \$16 per week, and not less than a minimum of \$7 per week; but in no case to continue for more than six years from the date of the injury or to exceed \$5,000.

Partial disability.

Sec. 3138 (as amended by ch. 63, acts of 1919). 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 fourth day of disability, a weekly compensation equal to 60 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 \$16 a week. In no case shall the weekly payments continue after the disability ends, or death of the injured person, 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 60 per cent of the average weekly wages, but not more than \$16 to be paid weekly for the periods stated against such injuries respectively, and shall be in addition to the compensation hereinbefore provided for temporary total disability, to wit: For loss of—

Schedule.

| | |
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| 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. |
| 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. |

Any other disfigurement, or the loss of bodily function not otherwise provided for herein, such period of compensation as the commission shall deem equitable and in proportion to compensation in other cases not exceeding two hundred 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 \$5,000 be required to be paid.

SEC. 3139 (as amended by ch. 63, acts of 1919). In cases of permanent total disability the award shall be 60 per cent of the average weekly wages for five years from date of injury, and thereafter 45 per cent of such average weekly wages until the death of such person so totally disabled, but not to exceed a maximum of \$16 per week and not less than a minimum of \$7 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. Permanent total disability.

SEC. 3140 (as amended by ch. 63, acts of 1919). In case the injury causes death within the period of three years, the benefits shall be in the amounts and to the persons following: Death.

(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 treasury the sum of \$750 unless the employer is insured in the State insurance fund. Such payments shall be held in a special fund for the purposes provided in subdivision 6 of this section. The State treasurer shall be the custodian of this special fund and the commission shall direct the distribution thereof.

(2) If there are wholly dependent persons at the time of the death the payment shall be 60 per cent of the average weekly wage, but not to exceed a maximum of \$16 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 \$5,000, 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 60 per cent of the average weekly wages, but not to exceed the maximum of \$16 per week, and to continue for all such portion of the period of six years after the date of injury as the commission in each case may determine, and not to amount to more than a maximum of \$5,000.

(4) If there are wholly dependent persons and also partially dependent persons at the time of death, the commission may apportion the benefits as it may deem just and equitable: *Provided*, That the total benefits awarded to all parties concerned shall not exceed the maximum provided for by law.

(5) The following persons shall be presumed to be wholly dependent for support upon a deceased employee: Dependents.

(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 descendent, ancestor, or brother or sister. The word "child" as used in this title shall include a posthumous child, and a child legally adopted prior to the injury.

- Second injuries.** (6) If any employee who has previously incurred permanent partial disability incurs a subsequent permanent partial disability such that the compensation payable for the disability resulting from the combined injuries is greater than the compensation which except for the preexisting disability would have been payable for the latter injury, the employee shall receive compensation on the basis of the combined injuries, but the liability of his employer shall be for the latter injury only and the remainder shall be paid out of the special fund provided for in subdivision 1 of this section.
- Apportionment of benefits.** SEC. 3141. 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 title shall cease.
- Wage basis.** SEC. 3142. 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.
- Minors, etc.** SEC. 3143. 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. 3144. 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. 3145. 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. 3146. 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. 3147 (as amended by ch. 63, acts of 1919). 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 \$500 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 \$150, and the commission shall have full power to adopt rules and regulations with respect to the furnishing medical, nurse, and hospital service and medicine to injured employees entitled thereto, and for the payment therefor.
- Appeals.** SEC. 3148 (as amended by ch. 63, acts of 1919). (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 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 award or the 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, which shall include all the proceedings and the evidence taken 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 to the commission as certified to by it. The review shall not be extended further than to determine whether or not—

(1) The commission acted without or in excess of its powers.

(2) If findings of fact are made, whether or not such findings of fact support the award under review.

(c) The findings and conclusions of the commission on question 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 award.

(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) shall have jurisdiction to review, reverse, or annul any award of the commission, or to suspend or delay the operation or execution thereof: *Provided*, That a writ of mandamus shall lie from the supreme court in all proper cases.

Sec. 3149. The commission 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 its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this title.

Procedure.

Sec. 3150. A minor working at an age legally permitted under the laws of this State shall be deemed sui juris for the purpose of this title, 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.

Minors.

Sec. 3151. No agreement by an employee to waive his rights to compensation under this title 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 title shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$100 for each such offense.

Waivers.

Sec. 3152. Any employee claiming the right to receive compensation under this title 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.

Medical examinations.

Sec. 3153. 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

Access to records.

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 \$100 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. 3154. Any employer who misrepresents to the commission the amount of pay roll upon which the premium under this title 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 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.

Interstate commerce. SEC. 3155 (as amended by ch. 63, acts of 1919). The provisions of this title 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.

Accidents to be reported. SEC. 3156 (as amended by ch. 63, acts of 1919). Every employer shall keep a record of all injuries, fatal, or otherwise, received by his employees, arising out of or 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. All physicians and surgeons attending injured employees shall comply with all of the rules and regulations, including a schedule of fees for their services adopted by the commission, and shall make report to the commission at any and all times required by it, as to the condition or treatment of any injured employee, or as to any other matters concerning cases in which they are employed, any employer, or physician, or surgeon 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 \$500 for such offense.

Enforcement of law. SEC. 3157. 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 title, 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. 3158. The commission may make necessary expenditures to obtain statistical and other information provided for herein.

Reports. SEC. 3159. Annually, on or before the 15th 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. 3160. 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.

SEC. 3161 (as amended by ch. 63, acts of 1919). No injunction shall issue suspending or restraining any order, award, classification, or rate adopted by the commission, or 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 title; 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 title. Injunctions.

SEC. 3162. Should any section or provision of this title be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the title as a whole or any part thereof other than the part so decided to be unconstitutional. Provisions severable.

SEC. 3163. 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 title; 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. Appropriation.

VERMONT.
CONSTITUTION.

COMPENSATION FOR INJURIES TO EMPLOYEES.

Legislation authorized. ARTICLE 32. The general assembly may pass laws compelling compensation for injuries received by employees in the course of their employment resulting in death or bodily hurt, for the benefit of such employees, their widows or next of kin. It may designate the class or classes of employers and employees to which such laws shall apply.
Ratified March 4, 1913.

GENERAL LAWS—1917.

CHAPTER 241.—*Employer's liability and workmen's compensation.*

Commissioner of industries. SECTION 5752. The governor shall biennially, in the month of January, with the advice and consent of the senate, appoint a commissioner of industries.

Office. SEC. 5753. 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."

Deputies. SEC. 5754. 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.

Office assistance. SEC. 5755. Said commissioner 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.

Duties of commissioner. SEC. 5756. Said commissioner shall make examinations and investigations to see that the laws pertaining to the employment of minors and women and to the weekly payment of wages are being complied with, and for such purposes may enter any place where persons are employed, summon witnesses, administer oaths, and demand the production of books and papers. The county court, a justice of the supreme court, or a superior judge shall have power to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, records, and documents before said commissioner, and, in the case of a corporation, the provisions of sections four thousand nine hundred and fifty-one to four thousand nine hundred and fifty-five, both inclusive, shall apply. Whenever said commissioner finds a violation of the provisions of chapter two hundred and forty-three; of the provisions of law relating to the employment of minors and women; of the provisions of law relating to the weekly payment of wages and the provisions of law relating to the health, lives, and limbs of operators in factories, workshops, railroads, and other places, and the provisions of law relating to the protection of the working classes, he shall submit the evidence thereof to the proper prosecuting officer, who shall prosecute the offender.

Definitions. SEC. 5758. Words and phrases used in this chapter, unless the context otherwise requires, shall be construed as follows:
I. "Employer" to include any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer, and to include the owner or lessee of premises, or other person 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 insured, "employer" includes his insurer so far as applicable.

II. "Workman" and "employee" to mean a person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer, but not to include a person whose employment is purely casual or not for the purpose of the employer's trade or business, or whose remuneration exceeds two thousand dollars a year: *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 chapter shall apply. 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.

III. "Injury" and "personal injury" to include death resulting from injury within two years.

IV. "Personal injury by accident arising out of and in the course of such employment" to include an injury caused by the willful act of a third person directed against an employee because of his employment, but not to include a disease unless it results from the injury.

V. "Employment," in the case of private employers, to include employment only in a trade or occupation which is carried on by the employer for the sake of pecuniary gain. "Public employment" to mean employment by any of the public corporations mentioned in section five thousand seven hundred and sixty-nine, but not to include the employment of public officials who are elected by popular vote or who receive salaries exceeding two thousand dollars a year.

VI. "Partial disability" may be held to include diminished ability to obtain employment owing to disfigurement resulting from an injury.

VII. "Wages" to include the market value of board, lodging, fuel, and other advantages which can be estimated in money and which the employee receives from the employer as a part of his remuneration; but not to include any sum paid by the employer to his employee to cover any special expenses entailed on the employee by the nature of his employment.

VIII. "Insurance carrier" to include any corporation from which an employer has obtained workmen's compensation insurance or guaranty insurance in accordance with the provisions of this chapter.

SEC. 5759. Words used in this chapter shall be construed as follows:

I. "Child" to include a stepchild, adopted child, posthumous child, and an acknowledged illegitimate child, but not to include a married child unless dependent.

II. "Brother" and "sister" to include a stepbrother and stepsister, half brother and half sister, and a brother and sister by adoption, but not to include a married brother or a married sister unless dependent.

III. "Grandchild" to include a child of an adopted child and a child of a stepchild, but not to include a stepchild of a child, a stepchild of a stepchild, a stepchild of an adopted child, or a married grandchild, unless dependent.

IV. "Parent" to include a step-parent and a parent by adoption; and

V. "Grandparent" to include a parent of a parent by adoption, but not to include a parent of a step-parent, a step-parent of a parent, or a step-parent of a step-parent.

SEC. 5760. All process and procedure under the provisions of this chapter shall be as summary and simple as reasonably may be. Said commissioner may make rules not inconsistent with such provisions for carrying out the same, and shall cause to be printed and furnished, free of charge, to any employer or employee such blank forms as he deems necessary to facilitate or promote the efficient administration of such provisions. Said commissioner shall have the power, so far as it is necessary for the determination of matters within his jurisdiction, to subpoena witnesses, administer oaths, and to examine the books and records of parties to such proceedings. The county court or a superior judge shall, by proper proceedings, have power to enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records before said commissioner, and, in the case of a cor-

Same.

Rules and procedure.

- poration, the provisions of sections four thousand nine hundred and fifty-one to four thousand nine hundred and fifty-five, both inclusive, shall apply.
- Evidence, etc.** SEC. 5761 (as amended by act No. 158, acts of 1919). The commissioner of industries shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as provided in this chapter, 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.
- Powers of commissioner.** SEC. 5762. Questions arising under the provisions of this chapter, if not settled by agreement of the parties interested therein with the approval of said commissioner, shall, except as otherwise provided, be determined by said commissioner. The decisions of said commissioner shall be enforceable by the county court under the provisions of section five thousand eight hundred and nine. From such a decision an appeal shall lie in the same manner as other appeals from said commissioner; but in no case shall such an appeal operate as a supersedeas or stay unless said commissioner or the court to which such appeal is taken shall so order.
- Application of chapter.** SEC. 5763. The provisions of this chapter, except sections five thousand seven hundred and sixty six, five thousand seven hundred and sixty-seven, and five thousand eight hundred and twenty-six, shall not apply to an employer or employee unless prior to the injury they shall have so elected by agreement, either express or implied, as hereinafter provided. Such agreement shall be a surrender by the parties thereto of their rights to any other method, form, or amount of compensation or determination thereof than as provided in this chapter, and shall bind the employee himself, his widow, the employee's widower, personal representative, and next of kin and dependents as hereinafter defined, as well as the employer and those conducting his business during bankruptcy or insolvency.
- Presumption.** SEC. 5764. Every contract of hiring, verbal, written, or implied, made or implied prior to July first, nineteen hundred and fifteen, shall be presumed to continue subject to the provisions of this chapter unless either party shall at any time prior to accident, in writing, notify the other party to such contract and the commissioner of industries that the provisions of this chapter, other than sections five thousand seven hundred and sixty-six, five thousand seven hundred and sixty-seven, and five thousand eight hundred and twenty-six, are not intended to apply.
- New contracts.** SEC. 5765. Every contract of hiring, verbal, written or implied, made subsequent to July first, nineteen hundred and fifteen, shall be presumed to have been made subject to the provisions of this chapter, unless there is, as a part of such contract, an express statement in writing prior to accident, either in the contract itself or by written notice by either party to the other and to said commissioner, that the provisions of this chapter, other than sections five thousand seven hundred and sixty-six, five thousand seven hundred and sixty-seven, and five thousand eight hundred and twenty-six, are not intended to apply, and it shall be presumed that the parties have elected to be subject to the provisions of this chapter and to be bound thereby. In the employment of minors this chapter shall be presumed to apply unless the notice is given by or to the parent or guardian of the minor. The agreement for the operation of the provisions of this chapter, other than sections five thousand seven hundred and sixty-six, five thousand seven hundred and sixty seven, and five thousand eight hundred and twenty-six, may be terminated by either party upon sixty days' notice to the other and to said commissioner, in writing, prior to any accident.
- Defenses abrogated.** SEC. 5766. If an employee has elected as hereinbefore provided to come under the provisions of this chapter and his employer has elected not to come under the provisions of this chapter, then if an action is brought by the employee or his next of kin or personal representative to recover for personal injuries sustained after such election by the employer, arising out of and in the course of his employment, it shall not be a defense:
- I. That the employee was negligent.

II. That the injury was caused by the negligence of a fellow employee.

III. That the employee had assumed the risk of the injury.

SEC. 5767. If an employer has elected as hereinbefore provided to come under the provisions of this chapter, and his employee has elected not to come under the provisions of this chapter, then if an action is brought by the employee to recover damages for personal injuries or by his personal representative for damages on account of his death resulting from personal injuries sustained after the employee has so elected, and arising out of and in the course of his employment, the employer shall have all the defenses which he would have had if the provisions of this chapter were not in force.

Available, when.

SEC. 5768. The provisions of this chapter shall apply to all public and industrial employment, as hereinbefore defined, but shall not apply to domestic servants or to employers who regularly employ but ten employees or less, provided that an employer who employs ten men or less may notify said commissioner that he wishes to be included within the provisions of this chapter; and thereafter, the provisions of this chapter shall apply to him, the same as if he employed more than ten men. If a workman receives personal injury by accident arising out of and in the course of such employment, his employer or the insurance carrier shall pay compensation in the amounts and to the person or persons hereinafter specified.

Employments covered.

SEC. 5769. The provisions of this chapter shall apply to employees, other than officials as hereinbefore defined, of towns, town school districts, incorporated school districts, incorporated villages, and fire districts. Policemen, firemen, and others entitled to pensions shall be deemed employees within the meaning of this chapter. If, however, any policeman, fireman, or other person entitled to a pension claims compensation under the provisions of this chapter, there shall be deducted from such compensation any sum which such policeman, fireman, or other person may be entitled to receive from any pension or other benefit fund to which the municipal body may contribute: *Provided, however,* That the provisions of this chapter shall not apply unless and until such municipal body so votes at a meeting duly warned for that purpose.

State and municipal bodies.

SEC. 5770. 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.

Injuries outside State.

SEC. 5771. 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 be reasonably determined and dealt with by said commissioner and the court in this State.

Same.

SEC. 5772. The provisions of this chapter 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.

Interstate commerce.

SEC. 5773. The provisions of this chapter shall not apply to injuries sustained or accidents which occurred prior to July first, nineteen hundred and fifteen.

Prior injuries.

SEC. 5774. The rights and remedies granted by the provisions of this chapter to an employee on account of a personal injury for which he is entitled to compensation under the provisions of this chapter, 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 the provisions of this chapter 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.

Remedy exclusive.

Liability of third persons. SEC. 5775. When an injury for which compensation is payable under the provisions of this chapter has been sustained under circumstances creating in some person other than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under the provisions of this chapter or obtain damages from or proceed at law against such other person to recover damages; and, if compensation is claimed and awarded under the provisions of this chapter, an 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 recovers from such other person damages in excess of the compensation already paid or awarded to be paid under the provisions of this chapter, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

Waivers. SEC. 5776. An employer shall not be relieved in whole or in part from liability created by the provisions of this chapter, by any contract, rule, regulation, or device whatsoever.

Death benefits. SEC. 5777. 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 five thousand seven hundred and ninety: *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:

I. To the dependent widow or widower, if there are no dependent children, thirty-three and a third per cent.

II. To the dependent widow or widower, if there are one or two dependent children, forty per cent; or if there are 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.

III. If there is 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.

IV. If there is neither dependent widow, widower, nor child, but there is 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 are dependent then half of the foregoing compensation to each of them; or, if there is no such parent, but a dependent grandparent, then to every such grandparent the same compensation as to a parent.

V. If there is neither dependent widow, widower, child, parent, nor grandparent, but there is a dependent grandchild, brother, or sister, or two or more of them, to such dependents, 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. Said commissioner shall, from time to time, apportion such compensation between any and all dependents named in this section in such manner as he deems best, and in making such apportionment said commissioner shall, in so far as it is possible, apportion said sum so that each dependent shall be self-supporting.

Dependents. SEC. 5778. The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of this chapter:

I. A child, if under eighteen years of age, or incapable of self-support and unmarried, whether ever actually dependent upon the deceased or not.

II. The widow if living with the deceased, or living apart from him for justifiable cause, or actually dependent, wholly or partially, upon him.

III. The widower only if incapable of self-support and actually dependent wholly or partially, upon the deceased at the time of her injury.

IV. A parent or grandparent only if actually dependent, wholly or partially, upon the deceased.

V. 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.

Sec. 5779. The compensation provided for by the provisions of this chapter shall be payable during the following periods: Periods of compensation.

I. To a widow, until death or remarriage, but in no case to exceed two hundred and sixty weeks.

II. To a widower, during disability or until remarriage, but in no case to exceed two hundred and sixty weeks.

III. To or for a child, during dependency as hereinbefore defined, but in no case to exceed two hundred and sixty weeks.

IV. To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed two hundred and eight weeks; and

V. To or for a grandchild, brother or sister, during dependency as hereinbefore defined, but in no case to exceed two hundred and eight 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.

Sec. 5780. In computing death benefits the average weekly wages of the deceased employee shall be considered to be not less than five dollars. Minimum basis.

Sec. 5781. 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 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 said commissioner to decide between them. Payment discharge.

Sec. 5782. In case death occurs after a period of disability, either total or partial, the period of disability shall be deducted from the total period of compensation respectively stated in section five thousand seven hundred and seventy-nine. The compensation of a person who is insane shall be paid to his guardian. Incompetents.

Sec. 5783. In case of the death of a person from any cause other than the accident during the period of payments for the permanent injury, the remaining payments shall be made to his dependents according to the provisions of section five thousand seven hundred and seventy-nine, or if there are none, the remaining amount due, but not exceeding one hundred dollars, shall be paid in a lump sum to the proper person for funeral expenses. Death during benefit period.

Sec. 5784. During the first fourteen days of disability the employer shall furnish reasonable surgical, medical and hospital services and supplies not exceeding the amount of one hundred dollars. The pecuniary liability of the employer for the medical, surgical, and hospital services 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., aid.

Sec. 5785. Where the injury causes total disability for work, the employer during such disability, not including the first fourteen days thereof if said injury is received prior to the first day of July, nineteen hundred and eighteen, and not including the first seven days thereof if received on or after said last named day, shall pay the injured employee a weekly compensation equal to fifty per cent of the average weekly wages, but not more than twelve dollars and fifty cent nor less than three dollars a week. Payments shall not continue after the disability ends, nor longer than two hundred and sixty weeks; and in case the Total disability.

total disability begins after a period of partial disability, the period of partial disability shall be deducted from such total period of two hundred and sixty weeks. In case of an employee whose average weekly wages are less than three dollars a week, the compensation shall be the full amount of such average weekly wages.

Total disability. Sec. 5786. In case of the following injuries, the disability caused thereby shall be deemed total and permanent:

I. The total and permanent loss of sight in both eyes.

II. The loss of both feet at or above the ankle.

III. The loss of both hands at or above the wrist.

IV. The loss of one hand and one foot.

V. An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or of one leg and of one arm; and

VI. An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive: *Provided, however,* That the total amount payable on account of an accident to one person resulting in permanent total disability shall not exceed the sum of four thousand dollars.

Partial disability. Sec. 5787. Where the disability for work resulting from an injury is partial, the employer, during such disability and beginning on the fifteenth day thereof if the injury causing the same occurred prior to July first, nineteen hundred and eighteen, and on the eighth day thereof, if such injury occurred on or after said July first, nineteen hundred and eighteen, shall pay the injured employee a weekly compensation equal to half of the difference between his average weekly wage before the injury and the average weekly wage which he will probably be able to earn thereafter, but not more than ten dollars a week. Payments shall not continue after the disability ends nor longer than two hundred and sixty weeks, 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 two hundred and sixty weeks.

Same. Sec. 5788 (as amended by act No. 159, acts of 1919). 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 five thousand seven hundred and ninety, and at the termination of the total disability occasioned by said injuries, the employer shall pay to said injured employee fifty per cent of the average weekly wages, computed as above, and subject to the maximum and minimum as provided in section 5785 for the periods 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 five thousand seven hundred and eighty-four:

Schedule. I. 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, one hundred and seventy weeks.

II. The permanent and complete loss of hearing in both ears, one hundred and seventy weeks.

III. 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, one hundred and seventy weeks.

IV. 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, one hundred and forty weeks. The loss of the thumb and all four fingers of the hand shall be considered equal to the loss of the entire hand.

V. 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, one hundred and twenty weeks.

VI. The loss by separation of a thumb, forty weeks.

VII. The loss by separation of a first finger, commonly called the index finger, twenty-five weeks.

VIII. The loss by separation of a second finger, twenty weeks.

.IX The loss by separation of a third finger, fifteen weeks.

X. The loss by separation of a fourth finger, ten weeks.

XI. The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of half of such thumb or finger, and compensation shall be for half of the periods of time above speci-

fied, and compensation for loss of half of the first phalange shall be for a fourth of the periods of time above specified.

XII. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb: *Providing, 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.

XIII. The loss by separation of a great toe, twenty weeks.

XIV. The loss by separation of one of the toes other than the great toe, eight weeks.

XV. The loss of the first phalange of any toe shall be considered to be equal to the loss of half of such toe and compensation shall be half of the amount specified above.

XVI. The loss of more than one phalange of any toe shall be considered as the loss of the entire toe.

XVII. The loss of an eye, one hundred weeks.

XVIII. 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 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 and sixty weeks.

XIX. 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.

Other injuries.

XX. 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 five thousand seven hundred and eighty-four:

(a) The permanent and complete loss of hearing in one ear, forty-two and a half weeks.

(b) Simple hernia, four weeks.

(c) Strangulated hernia, eight weeks.

XXI. In event an employee shall receive an injury which results in the permanent impairment of any physical function not herein specifically mentioned the commissioner of industries shall determine the percentage of loss and award compensation accordingly.

Sec. 5789. Compensation shall not be allowed for an injury caused by an employee's willful intention to injure himself or another or by or during his intoxication or by an employee's failure to use a safety appliance provided for his use. The burden of proof shall be upon the employer if he claims the benefit of the provisions of this section.

Willful intent.

Sec. 5790 (as amended by act No. 159, acts of 1919). 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 weeks 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, or the terms 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 weeks 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 such a person is not 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 twelve weeks preceding such injury and with larger regular wages, only such larger wages shall be taken into consideration in computing his average weekly wages; if during said period of twelve weeks an injured employee has been absent from his employment on account of sickness, then only such time during said period as he was able to work shall be taken into consideration in determining his average weekly wage.

Computation of wages.

Sec. 5791. Payments made by an employer or his insurer to an injured workman during the period of his disability, or to his depend-

Voluntary payments.

- ents, which, by the provisions of this chapter, were not due and payable when made, may, subject to the approval of said commissioner, 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 under sections five thousand seven hundred and eighty-five to five thousand seven hundred and eighty-eight, both inclusive.
- Time of payments.** SEC. 5792. Said commissioner, upon the application of either party, may, in his 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. 5793. The compensation herein provided may be commuted by said commissioner 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 appears 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.
- Payments to trustees.** SEC. 5794. Whenever, for any reason, said commissioner 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 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. 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 said commissioner, 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 said commissioner, and shall be a charge upon the compensation so deposited.
- Medical examination.** SEC. 5795. After an injury and during the period of disability the workman, if so requested by his employer, or ordered by said commissioner, shall submit himself to examination, at reasonable times and places, to a duly licensed 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 the provisions of this chapter shall be suspended until such refusal or obstruction ceases, and compensation shall not be payable for the period during which such refusal or obstruction continues.
- Notice of injury.** SEC. 5796 (as amended by act No. 159, acts of 1919). A proceeding under the provisions of this chapter for compensation shall not be maintained unless a notice of the injury has been given to the employer as soon as practicable after the happening thereof, and unless a claim for compensation with respect to an injury has been made within six months after the date of the injury; or, in case of death, then within six months after such death, whether or not a claim has 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 in his behalf. If payments of compensation have been made voluntarily, the making of a claim within such period shall not be required. But in case, through mistake of law or fact, suit or suits shall have been brought to recover damages in any court and final judgment is against the employee, the above limitation shall not begin to run until six months after such suit or suits shall have been finally determined.
- Form.** SEC. 5797. The notice and claim required under the provisions of the preceding section shall be in writing; and such notice shall contain the name and address of the employee, shall state in ordinary language the time, place, nature, and cause of the injury 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. The notice and the claim may be combined.

Sec. 5798. A notice under the provisions of this chapter shall be given to the employer, or, if the employer is a partnership, then to any one of the partners. If the employer is 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. Service.

Sec. 5799. A notice given under the provisions of section five thousand seven hundred and ninety-six 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 or delay in giving such notice shall not be a bar to proceedings under the provisions of this chapter if it is shown that the employer, his agent, or representative, had knowledge of the accident or that the employer has not been prejudiced by such delay or want of notice. Sufficiency.

Sec. 5800. Limitation of time provided by this chapter shall not run as against any person who is mentally incompetent or a minor dependent so long as such person has no guardian. Incompetents.

Sec. 5801. If the employer and an injured employee enter into an agreement in regard to compensation payable under the provisions of this chapter, a memorandum thereof shall be filed with said commissioner; and, if approved by him, such agreement shall be enforceable and subject to modification as provided by section five thousand eight hundred and five and five thousand eight hundred and nine. Said commissioner shall approve such agreement only when the terms thereof conform to the provisions of this chapter. Agreements.

Sec. 5802 (as amended by act No. 159, acts of 1919). If the compensation is not fixed by agreement, either party may apply to said commissioner for hearing and award in the premises; and said commissioner shall set a time and place for hearing and give at least six days' notice thereof to the parties. Such hearing shall be held at the county seat in the county within which the injury occurred, or in such town within said county as said commissioner may designate. So far as possible all hearings shall be held at the county courthouse or the municipal court room, and it shall be the duty of the sheriff of the county in which said hearings are held to furnish proper accommodations and cause the same to be properly heated and lighted, but if the injury occurred outside the State, said commissioner shall designate some place within the State for such hearing. At such hearing a full trial shall be had; and, within six months thereafter, said commissioner shall make his award setting forth his findings of fact and the law applicable thereto, and shall forthwith send to each of the parties a copy of such award. Hearings and awards.

Sec. 5803. Notices of hearings under the provisions of this chapter 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 the said insurance company at his or its last known residence or place of business. The foregoing provision shall apply alike to individuals, partnerships, and corporations. Notice of hearing.

Sec. 5804. When application is made to said commissioner under the provisions of the second preceding section, a duly licensed and impartial physician may be appointed by said commissioner to examine the injured employee and to report to said commissioner. Said physician shall receive for such an examination a fee of five dollars and necessary traveling and hotel expenses, which shall be paid by the State on accounts approved by said commissioner, and said commissioner may allow additional reasonable amounts in extraordinary cases. Medical examinations.

Sec. 5805. Upon his own motion or upon the application of any party in interest upon the ground of a change in the conditions, said commissioner may at any time review any award, and on such review, may make an order ending, diminishing, or increasing the compensation Review.

- 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. Such review shall not affect such award as regards any money already paid.
- Awards final.** Sec. 5806. An award of said commissioner shall, in the absence of a fraud, be conclusive between the parties except as provided in the preceding section, unless an appeal is taken therefrom as hereinafter provided.
- Appeals to county court.** Sec. 5807. Within ten days after copies of an award have been sent as provided by this chapter, either party may appeal to the county court of a county wherein a civil action between the parties would be triable. The provisions of sections one thousand six hundred and ninety-five and one thousand six hundred and ninety-six as to the time for entering and docketing such appeals and for the appellee's appearance shall apply to such appeals. The superior judges shall, by general rules, provide for the procedure to be followed on such appeals, and either party shall be entitled to a trial by jury under such general rules as said judges may prescribe.
- Appeals to supreme court.** Sec. 5808. If an appeal is not taken under the provisions of the preceding section, within the time limited therefor, either party may, within five days thereafter, appeal to the supreme court; and the jurisdiction of said court shall be limited to a review of questions of law certified to it by said commissioner. Said court may render final judgment on such appeal and award execution or may remand the cause to said commissioner for further findings. Said court shall, by general rules, prescribe the procedure to be followed in case of such appeals.
- Enforcement of award.** Sec. 5809. A party in interest may file in the county court for the county in which the injury occurred, or for the county of Washington, a certified copy of a decision of said commissioner awarding compensation, from which an appeal has not been taken within the time allowed therefor, or a certified copy of a memorandum of agreement approved by said commissioner, whereupon said court shall render judgment in accordance therewith and notify the parties thereof. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by said court, except that there shall not be an appeal therefrom.
- Revision of decrees.** Sec. 5810. A county court which has rendered judgment as provided by this chapter, shall, upon the filing with it of a certified copy of a decision of said commissioner ending, diminishing, or increasing compensation previously awarded, revoke, or modify its prior judgment so that it will conform to such decision.
- New hearings.** Sec. 5811. Said commissioner 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 said commissioner in granting or denying said hearing shall be final and conclusive. If a party petitions said commissioner 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.
- Sheriffs' and witness fees.** Sec. 5812. If said commissioner, or a court before whom proceedings are pending under the provisions of this chapter, determines 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 so brought, prosecuted, or defended them.
- Preferences.** Sec. 5813. Sheriffs and witnesses shall receive the same fees for the service of process and attendance before said commissioner as are paid sheriffs and witnesses in county court. Costs shall not be taxed or allowed either party except as provided in the preceding section.
- Sec. 5814. All rights of compensation granted by the provisions of this chapter shall have the same preference or priority against the assets of the employer as is allowed by section two thousand eight hundred and twenty-four.
- Assignments.** Sec. 5815. Claims for compensation under the provisions of this chapter shall not be assignable; and compensation and claims therefor

shall be exempt from all claims of creditors, except as herein provided. Claims of physicians for services rendered under the provisions of this chapter and claims of attorneys for services rendered an employee in prosecuting a claim under the provisions of this chapter shall be approved by said commissioner; and, when so approved, may be enforced against compensation awards in such manner as said commissioner may direct.

Fees.

SEC. 5816 (as amended by ch. 159, acts of 1919). Employers, but not including the State, county, or the municipal bodies mentioned in section five thousand seven hundred and sixty-nine, shall secure compensation to their employees in one of the following ways:

Security for compensation.

I. By insuring and keeping insured the payment of such compensation with any corporation authorized to transact the business of workmen's compensation insurance in this State.

II. By obtaining and keeping in force guarantee insurance with any company authorized to do such guarantee business within the State.

III. By depositing and maintaining with the State treasurer a surety bond or other security satisfactory to said commissioner, securing the payment by said employer of compensation according to the terms of this chapter.

IV. By satisfying said commissioner as to the financial responsibility of the employer to comply with the provisions of this chapter; or

V. By depositing in such bank or trust company in this State as said commissioner may designate such sum of money as said commissioner may require to the joint credit of said commissioner 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.

VI. An insurance company authorized to transact compensation insurance in this State, which refuses or neglects to comply with the reasonable rules and regulations of the commissioner of industries or which neglects or refuses to properly and promptly adjust and pay compensation and medical bills in accordance with the provisions of law may be cited by the commissioner of industries before the insurance commissioner. If, after a hearing, the insurance commissioner finds that such insurance company has failed to comply with such rules and regulations or has failed to properly and promptly pay compensation and medical bills as provided by law, he may suspend the license of such company to do business in the State for such time as in his judgment seems just.

Violations.

If an employer who secures the payment of compensation under the provisions of subdivisions three, four, or five of this section neglects or refuses to comply with the reasonable rules and regulations of the commissioner of industries, or neglects and refuses to promptly adjust and pay all compensation and medical bills as required by law, the commissioner of industries may cite in such employer, and if on hearing it is found that such neglect or refusal is willful, he may revoke the permission granted to said employer to secure the payment of compensation under either one or all of such subdivisions and compel said employer to take out insurance in an insurance company authorized to transact compensation insurance in the State.

SEC. 5817. An employer subject to the provisions of this chapter shall file with said commissioner, in form prescribed by him, a notice of the insurance mentioned in the preceding section carried by such employer, together with a copy of the contract or policy of insurance.

Notice of insurance.

SEC. 5818. An employer who has complied with the provisions of section five thousand eight hundred and sixteen shall post and maintain in a conspicuous place in and about each of his places of business typewritten or printed notices in form prescribed by said commissioner, stating the fact that the provisions of this chapter relating to securing the payment of compensation to his employees and their dependents have been complied with.

Posting notice.

SEC. 5819. An employer who fails to comply with the provisions of section five thousand eight hundred and sixteen, for a period of thirty days, may be enjoined by a superior judge, on notice and hearing, from carrying on his business until such time as the provisions of such section are complied with. The superior judges shall, by general rules,

Failure to secure compensation.

prescribe the procedure to be followed under the provisions of this section.

Provisions of policies. of Sec. 5820. Every policy of insurance and every guarantee contract covering the liability of an employer for compensation shall cover the entire liability of such employer to his employees covered by such policy or contract, and also shall contain a provision setting forth the right of the employees to enforce, in their own names, the liability of the insurance carrier in whole or in part for the payment of such compensation, either by filing a separate claim at any time or by making at any time the insurance carrier a party to the original claim: *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 knowledge. of Sec. 5821. Such policies and contracts shall contain a provision that, as between the employee and the insurance carrier, notice to or knowledge of the occurrence of an 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 chapter, 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 under the provisions of this chapter.

Insolvency of employer. of Sec. 5822. Such policies and contracts 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 a policy or contract.

Cancellation of insurance contracts. of Sec. 5823. Such a policy or contract shall not be canceled within the time limited in such policy or contract for its expiration until at least ten days after a notice of intention to cancel such policy or contract, on a date specified in such notice, has been filed in the office of said commissioner and also served on the employer. Such cancellation shall not affect the liability of an insurance carrier on account of an injury occurring prior to such cancellation.

Insurance by municipalities. of Sec. 5824. Municipalities which are liable to their employees for compensation under the provisions of this chapter may insure with an authorized insurance carrier.

Cost on employer. of Sec. 5825. An agreement by an employee to pay any portion of the cost of insurance of any kind maintained or carried by an employer for the purpose of securing compensation under the provisions of this chapter shall be void; and an employer who makes a deduction for such purpose from the wages or salary of an employee entitled to the benefits of this chapter shall be fined not more than five hundred dollars.

Accidents to be reported. of Sec. 5826. 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 employer; the location of the place where the accident occurred; the name, age, sex, wages, and occupation of said injured employee; and shall state the date and hour of the accident 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.

SEC. 5827. Every employer doing business in this State, employing five men or more, and every employer accepting the provisions of this chapter, 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 may require. An employer who refuses or neglects to file the certificate required by this section shall be fined not more than one hundred dollars.

Statement as to employees.

SEC. 5828. Said commissioner shall, in each even year, make a report to the governor showing the work done during the preceding two years and shall include therein a properly classified statement of his expenses, statistical information relating to the number and character of industrial accidents during such two years, information as to the general industrial conditions prevailing within the State, and such other information and recommendations as seem pertinent. Such report shall be printed.

Biennial reports.

SEC. 5829. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for himself or for any other person, shall be fined not more than one hundred dollars, and shall forfeit all right to compensation under the provisions of this chapter after conviction for such offense.

False representations.

SEC. 5830. If any portion of this chapter is held unconstitutional or invalid, such holding shall not affect the validity of the chapter as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid.

Provisions severable.

SEC. 5831. In construing the provisions of this chapter, the rule of law that statutes in derogation of the common law are to be strictly construed shall not be applied. The provisions of this chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those States which enact it.

Rules of construction.

ACTS OF 1919.

Act. No. 156.—*Mutual associations for workmen's compensation insurance.*

SECTION 1. Employers who have accepted the provisions of the workmen's compensation act and are bound to pay compensation to their employees thereunder, may, with the approval of the insurance commissioner, associate themselves in accordance with the law for the formation of corporations without capital stock for the purpose of establishing and maintaining mutual associations to insure their liabilities under such act.

Mutual associations authorized.

SEC. 2. The insurance commissioner may require the incorporators of such association to include in their proposed certificate of incorporation such lawful provisions for the regulation of the affairs of the association and the definition of its powers and the powers of its officers, directors, and incorporators as shall satisfy him that it is well designed and wisely adapted to its proposed purposes. When such a certificate in form and substance acceptable to the insurance commissioner has been approved by and filed with the secretary of State, the incorporators shall forthwith cause copies thereof to be filed in the office of the insurance commissioner and of the commissioner of industries.

Approval by insurance commissioner.

SEC. 3. Membership in such association shall be limited to such employers as are liable for compensation to their employees under the workmen's compensation law, and such association shall have power by appropriate by-laws to provide for the admission, suspension, withdrawal or expulsion of members.

Membership.

SEC. 4. Except as herein otherwise provided such association shall be subject to the same regulations and control as is or may be imposed by law upon other corporations or associations taking similar risks in this State, and the insurance commissioner shall have such jurisdiction and power over such association as may be now or hereafter given by the insurance laws of this State.

Control.

- Policies issue when.** SEC. 5. A policy shall not be issued by such association until membership in such number and with such numbers of employees as the insurance commissioner may decide will give a fair diffusion of risks shall have obligated themselves to take policies immediately upon their authorization, nor shall a policy be issued except such as the insurance commissioner shall have approved as conforming in all respects to the requirements of this act. If at any time by the retirement of members, reduction of numbers of employees, or other cause the membership of any association shall appear to the insurance commissioner no longer to afford a fair diffusion of risks, he may suspend or forbid the further issue of policies until the former conditions of the association have been restored.
- Officers.** SEC. 6. The affairs of an association incorporated under this act shall be managed by such officers and directors as may be chosen in a manner prescribed by the by-laws of the association: *Provided*, Each member shall be entitled to cast at least one ballot in all elections and votes, and that a member who has had for six months an average of more than one hundred and not more than two hundred fifty employees to whom he is bound to pay compensation under the workmen's compensation act shall be entitled to two ballots, and that each additional one hundred and fifty employees shall entitle such member to an additional ballot: *Provided, however*, That no member shall be entitled to cast more than ten ballots.
- Voting.**
- Safety rules.** SEC. 7. Such association shall have power to prescribe and enforce reasonable rules for safety regulations on the premises of its members, subject, however, to the approval of the commissioner of industries, and for that purpose its inspectors shall have free access to all such premises during regular working hours.
- Premium rates.** SEC. 8. Such association shall have power to determine the premium rates for each occupation of risk insured by it, and to prescribe rates of cash premiums sufficient to cover losses incurred and current cost. The premium rate on each policy shall prevail for a full year, but annually may be changed by the directors. The current cost herein specified shall be such an amount as is sufficient to cover the losses and expenses incurred and a premium reserve equal to fifty per cent of all premiums and assessments levied or paid. Members of such association shall be required to pay yearly in advance cash premiums, and in addition thereto an amount in negotiable notes or cash sufficient to maintain a reserve equal to that required of other companies doing the same class of business. Notes shall be payable in whole or in part on the vote of the directors of the association as such payments may be required to meet estimated losses or expenses in excess of the current cost and to meet claims covering losses not payable within the same fiscal year within which the claim originated. The directors may fix rates of interest on either notes or balances.
- Assessments.** SEC. 9. If an association has not sufficient funds for the payment of losses incurred, reserves, and expenses, it shall make an assessment for the amount needed to pay such losses, reserves, and expenses upon the members in proportion to their several pay rolls and rates.
- Investments.** SEC. 10. The funds of such association shall be invested by the directors in the same class of securities in which the funds of insurance companies may be lawfully invested.
- By-laws and regulations.** SEC. 11. Such association may, subject to the approval of the insurance commissioner, determine the premiums, contingent liabilities, assessments, penalties, and dividends of its members and enforce or administer the same. It may also make and amend by-laws or regulations, not inconsistent with its certificate of incorporation, for the prompt, economical, and safe conduct of its affairs. All by-laws and regulations of such association, except safety rules made under the provisions of section seven of this act shall be filed with the insurance commissioner and shall be subject to his approval.
- Appeals to supreme court.** SEC. 12. An association may appeal to the supreme court from a decision or order of the insurance commissioner affecting such association.

Approved April 3, 1919.

VIRGINIA.

ACTS OF 1918.

CHAPTER 400.—*Compensation of workmen for injuries—Industrial commission—Insurance fund.*

SECTION 1. This act shall be known as "The Virginia Workmen's Compensation Act."

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 the service 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 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.

(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.

(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.

(e) In all claims for compensation for hernia resulting from injury by accident arising out of and in the course of the employee'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;

Title.

Definitions.
Employers.

Employees.

Wages.

Injury.

Hernia.

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.

Election presumed.

SEC. 3. The provisions of this act shall not affect pending litigation. 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 bound thereby, unless he shall have given prior to any 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 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.

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. Public employ-
ees.

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. Interstate com-
merce.

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. Prior injuries.

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. Insurance.

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. Remedy exclu-
sive.

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. Violation of
statutes.

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. Injuries ex-
empt.

SEC. 15. This act shall not apply to common carriers whose motive power is steam and engaged in intrastate trade or commerce, 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 Intrastate rail-
roads.

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 herein-after specified to be bound by this act.

Defenses abro-
gated. 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 em-
ployees. 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 the 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 set-
tlements. 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 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 codefendant.

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.

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.

Notice.

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.

Form.

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.

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.

Service.

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.

Claim.

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.

Medical, etc. 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 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.

Rejecting 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.

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 deemed part of the injury resulting from the accident and shall be compensated for as such.

Costs of service.

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

Medical examinations.

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 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.

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. Refusing employment.

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 from the later accident if the earlier disability or injury had not existed. Second injuries.

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. No double benefits.

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. Second maimings.

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.

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. Injuries outside 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.

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 com- Death from other cause.

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 earnings 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.

Alien beneficiaries. 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.

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, [sic] 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.

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. Times of payment.

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 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. Lump-sum payments.

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 where in 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. Payments in trust.

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. Review of awards.

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. Receipts.

(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.

(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. Payments to minors.

(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 dependents prior in right shall have given him notice of his or their Subsequent dependents.

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 employ-
ment. 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 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 com-
mission. 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 ex-
penses. (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, proce-
dure, 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 wit-

nesses, 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 subpoenas 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 in obedience to such subpoena 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.

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.

Blanks, etc.

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.

Accident re-ports.

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.

Agreements.

If approved by the commission, thereupon the memorandum shall for all purposes be enforceable by the court's decree as hereinafter specified.

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.

Disputes.

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.

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.

Hearings.

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.

Review.

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 commission 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 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.

Reports.

(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.

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.

Insurance.

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.

Evidence to be filed.

(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.

Sec. 70. Whenever an employee 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.

Certificate as to self-insurance.

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

Substitute systems.

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.

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 for the same kind and degree of hazards, 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 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.

(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 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 on the manner provided by section seventy-eight hereof.

Returns by insurance carriers.

(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.

(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 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.

Withdrawing companies.

(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 fraudulent 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 or more than ninety days, or both such fine and imprisonment, in the discretion of the jury.

Offenses agents.

(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

Notice.

- 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 payroll, 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 payroll 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.
- 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.

WASHINGTON.

REMINGTON & BALLINGER'S ANNOTATED CODES AND STATUTES—1915.

COMPENSATION OF WORKMEN FOR INJURIES—STATE INSURANCE FUND.

SECTION 6604-1. The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the State depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, 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 workmen, injured in extrahazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceedings or compensation, except as 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.

Grounds of law.

Suits abolished.

Sec. 6604-2 (as amended by ch. 131, acts of 1919). There is a hazard in all employment, but certain employments have come to be, and to be recognized as being, inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the State, in the following enumeration, and they are intended to be embraced within the term "extrahazardous" wherever used in this act, to wit:

Extra hazardous works.

Factories, mills, and workshops where machinery is used; printing electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, water-works, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries; engineering works; logging, lumbering, and shipbuilding operations; logging, street, and interurban railroads; buildings being constructed, repaired, moved, or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries, and railroads. If there be or arise any extrahazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

The commission shall have power, after hearing had upon its own motion or upon the application of any party interested, to declare any such extrahazardous occupation or work to be under this act. The commission shall fix the time and place of such hearing, and shall cause notice thereof to be published once at least ten days before the hearing in at least one daily newspaper of general circulation, published and circulated in each city of the first class in this State. No defects or inaccuracy in such notice or in the publication thereof shall invalidate any order issued by the commission after hearing had. Any person affected shall have the right to appear and be heard at any such hearing. Any order, finding, or decision of the commission made and entered under the foregoing provisions of this act shall be subject to review by the courts within the time and in the manner specified in section 6604-20, and not otherwise.

Definitions.

SEC. 6604-3 (as amended by ch. 131, acts of 1919). 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 article, machine or thing, over which premises, room, or place the employer of the person working therein has the right of access or control.

Mill means any plant, premises, room, or place wherein 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 a 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 purposes.

Engineering work means any work of construction, improvement, or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, 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 the construction, alteration, or repair of which machinery driven by mechanical power is used.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this State in any extrahazardous work.

Certain injuries
away from plant
of employer.

Workman means every person in this State who is engaged in the employment of an employer coming under this act, whether by way of manual labor or otherwise, and whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant of his employer: *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 the 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 under this section; 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.

Working em-
ployers.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the pay roll at a salary or wage not less than the average salary or wage named in such pay roll and who shall be injured, shall be entitled to the benefits of this act as and under the same circumstances as and subject to the same obligations as a workman: *Provided,* That no such employer or the beneficiaries or dependents of such employer 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 employer is being carried upon the pay roll prior to the date of the injury as the result of which claims for compensation are made.

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 eighteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half sister, half brother, niece, nephew, who at the time of the accident are dependent 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, not residing within the United States at the time of the accident, are not included.

Dependents.

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 stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

The words "injury" or "injured" as used in this act refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease.

SEC. 6604-4 (as amended by ch. 131, acts of 1919). Inasmuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the State treasury, in accordance with the following schedule, a sum equal to a percentage of his total pay roll for that year, to wit (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard):

Premium rates.

CONSTRUCTION WORK.

| | |
|---|-------|
| Tunnels; bridges; trestles; subaqueous works; ditches and canals (other than irrigation without blasting); dock excavation; fire escapes; sewers; house moving; house wrecking..... | 0.065 |
| Iron, or steel frame structures or parts of structures..... | .080 |
| Electric light or power plants or systems; telegraph or telephone systems; pile driving; steam railroads..... | .050 |
| Steeple, towers, or grain elevators, not metal frames; dry docks without excavation; jetties; breakwaters; chimneys; marine railways; water works or systems; electric railways with rock work or blasting; blasting; erecting fireproof doors or shutters..... | .050 |
| Steam heating plants; tanks, water towers or windmills, not metal frames..... | .040 |
| Shaft sinking..... | .060 |
| Concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin works; gas works, or systems; marble, stone, or brick work; road making with blasting; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys..... | .050 |
| Excavations not otherwise specified; blast furnaces..... | .040 |
| Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings..... | .035 |
| Ship or boat building or wrecking with scaffolds; floating docks..... | .045 |
| Carpenter work not otherwise specified..... | .035 |
| Installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; marble, stone, or tile setting, inside work; mantel setting; metal ceiling work; mill or ship wrighting; painting of buildings or structures; installation of automatic sprinklers; ship or boat rigging; concrete laying in floors; foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified..... | .030 |
| Drilling wells; installing electrical apparatus or fire-alarm systems in buildings; house heating or ventilating systems; glass setting; building hot houses; lathing; paper hanging; plastering; inside plumbing; wooden stair building; road making.... | .020 |

OPERATION (INCLUDING REPAIR WORK) OF
(All combinations of material take the higher rate when not otherwise provided.)

Logging railroads; railroads; dredges; interurban electric railroads using third-rail system; dry or floating docks..... 0. 050
 Electric light or power plants; interurban electric railroads not using third rail system; quarries..... .040
 Street railways, all employees; telegraph or telephone systems; stone crushing; blasting furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries..... .030
 Mines, other than coal; steam heating or power plants..... .025
 Grain elevators; laundries; water works; paper or pulp mills; garbage works..... .020

FACTORIES USING POWER-DRIVEN MACHINERY.

Stamping tin or metal..... .045
 Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw mills; shingle mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel, keg, pail; basket; tub; wooden ware or wooden fibre ware; rolling mills; making steam shovels or dredges; tanks, water towers; asphalt, building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without machinery; canneries, metal stamping extra; creosoting works; pile treating works..... .025
 Excelsior, iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware; tile, brick; terra cotta; fire clay; pottery, earthen ware; porcelain ware; peat fuel; briquettes..... .020
 Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified..... .020
 Cordage; working in foodstuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified..... .015
 Making jewelry, soap, tallow, lard, grease, condensed milk.... .015
 Creameries; printing; electrotyping; photo-engraving; engraving; lithographing..... .015

MISCELLANEOUS WORK.

Stevedoring; longshoring..... .030
 Operating stock yards, with or without railroad entry; packing houses..... .025
 Wharf operation; artificial ice, refrigerating or cold-storage plants; tanneries; electric systems not otherwise specified.... .020
 Theater stage employees..... .015
 Fireworks manufacturing..... .050
 Powder works..... .100

Preliminary payments to fund.

The application of this act as between employers and workmen shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the payroll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual pay roll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day, or who shall resume operations in any work or plant after the final adjustment of his pay roll in connection therewith, shall, before so commencing or resuming operations, as the case may be, notify the commission of such fact, accompanying such notification with an estimate of his pay roll for the initial year or portion thereof, and shall make payment of the premium on such estimated pay roll for the first three months of operations. Every such employer shall be liable for a premium of at least three dollars irrespective of the amount of his pay roll. An adjustment upon such pay roll shall be made as in other cases.

Every employer within the provisions of this act shall on or before the fifteenth day of January, the fifteenth day of May, and the fifteenth day of September of each year furnish the department with a true and accurate pay roll, showing the aggregate number of work days, that is men-days, during which workmen were employed by him during the four preceding calendar months, the total amount paid to such workmen during said four months, 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.

Every employer shall keep at his place of business a record of his employment from which the above information may be obtained, and such record shall at all times be open to the inspection of the commissioners or the traveling auditors, agents, or assistants of the departments, as provided in section 6604-15 of Rem. & Bal. Code.

Pay rolls.

In all cases where partners or other persons are excluded on the pay roll such statement shall state both the names and occupations of the parties excluded, and no such persons shall be entitled to compensation unless notice in writing that such excluded person has been included is received by the department prior to the date of injury to such person. Such employer shall at the time of reporting his pay roll also state the names and addresses of any contractor or subcontractor operating for or under him.

Every person, firm, or corporation who shall fail to keep such record or fail to make such report in the manner and at the time herein provided shall be subject to a penalty of one hundred dollars (\$100) for each such offense, to be collected by civil action in the name of the State and paid into the accident fund.

Every employer who shall fail to furnish an estimated pay roll and make payments as above provided shall be liable to a penalty in three times the amount of the premium on such pay roll, to be collected in a civil action in the name of the State, and paid into the accident fund. The commission may waive the whole or any part of such penalty.

For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the first day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: *Provided*, Any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund. The fund thereby created shall be termed the "accident fund," which shall be devoted exclusively to the purpose specified for it in this act.

Accounts.

In that the intent is that the fund created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, the rates named in this section are subject to future adjustment by the industrial insurance department, in accordance with any relative increase or decrease in hazard shown by experience, and if in the adjustment of the industrial insurance department the moneys paid into the fund of any class or classes shall be insufficient to properly and safely distribute the burden of accidents occurring therein, the department may divide, rearrange, or consolidate such class or classes, making such adjustment or transfer of funds as it may deem proper.

Readjustments.

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 1st day of Janu-

Deductions from wages.

ary, 1920, and annually thereafter make corrections of classifications as between classes of industries if and as experience shall show error or inaccuracy therein. 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 6604-20 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 first day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

Classes of industries.

For the purpose of such payment and making good of deficit the particular classes of industry shall be as follows:

CONSTRUCTION WORK.

- Class 1. Tunnels; sewer; shaft sinking; drilling wells.
 Class 2. Bridges; millwrighting; trestles; steeples, towers, or grain elevators not metal framed; tanks; water towers, windmills not metal framed.
 Class 3. Subaqueous works; canal other than irrigation or docks, with or without blasting; pile driving; jetties; breakwaters; marine railways.
 Class 4. House moving; house wrecking; safe moving.
 Class 5. Iron or steel frame structures or parts of structures; fire escapes; erecting fireproof doors or shutters; blast furnaces; concrete chimneys; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; marble, stone, or brick work; roof work; slate work; plumbing work; metal smokestacks or chimneys; advertising signs; ornamental metal work in buildings; carpenter work not otherwise specified; marble, stone, or tile setting; mantel setting; metal ceiling work; painting of buildings or structures; concrete laying in floors or foundations; glass setting; building hothouses; lathing; paper hanging; plastering; wooden stair building.
 Class 6. Electric light and power plants or systems, telegraph or telephone systems; cable or electric railways, with or without rock-work or blasting; waterworks or systems; steam heating plants; gas works or systems; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; installation of automatic sprinklers; covering steam pipes or boilers; installation of machinery not otherwise specified; installing electric apparatus or fire-alarm systems in buildings; house heating or ventilating systems.
 Class 7. Steam railroads; logging railroads.
 Class 8. Road making; street or other grading; concrete laying in street paving; asphalt laying.
 Class 9. Ship or boat building, with scaffold; shipwrighting; ship or boat rigging; floating decks.

OPERATION (INCLUDING REPAIR WORK) OF

- Class 10. Logging; sawmills; shingle mills; lath mills; masts and spars with or without machinery.
 Class 11. [Omitted by the legislature.]
 Class 12. Dredges; dry or floating docks.
 Class 13. Electric light or power plants or systems; steam heat or power plants or systems; electric systems not otherwise specified.
 Class 14. Street railways.
 Class 15. Telegraph systems; telephone systems.
 Class 16. Coal mines.
 Class 17. Quarries; stone crushing; mines other than coal.
 Class 18. Blast furnaces; smelters; rolling mills.
 Class 19. Gas works.
 Class 20. Steamboats; tugs; ferries.
 Class 21. Grain elevators.
 Class 22. Laundries.
 Class 23. Waterworks.
 Class 24. Paper or pulp mills.
 Class 25. Garbage works; fertilizer.

FACTORIES (USING POWER-DRIVEN MACHINERY).

- Class 26. Stamping tin or metal.
- Class 27. Bridge work; making steam shovels or dredges; tanks; water towers.
- Class 28. Railroad car or locomotive making or repairing.
- Class 29. Cooperage; staves; veneer; box; packing cases; sash, door, or blinds; barrel; keg; pail; basket; tub; wood ware or wood fiber ware; kindling wood; excelsior; working in wood not otherwise specified.
- Class 30. Asphalt.
- Class 31. Cement; stone with or without machinery; building material not otherwise specified.
- Class 32. Canneries of fruits or vegetables.
- Class 33. Canneries of fish or meat products.
- Class 34. Iron, steel, copper, zinc, brass, or lead articles in wares; hardware; boiler works; foundries; machine shops not otherwise specified.
- Class 35. Tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware.
- Class 36. Peat fuel; briquettes.
- Class 37. Breweries; bottling works.
- Class 38. Cordage; working in wool, cloth, leather, paper, brush, rubber, or textile not otherwise specified.
- Class 39. Working in foodstuffs, including oils, fruits, vegetables.
- Class 40. Condensed milk, creameries.
- Class 41. Printing; electrotyping; photo-engraving; engraving; lithographing; making jewelry.
- Class 42. Stevedoring; longshoring; wharf operation.
- Class 43. Stockyards; packing houses; making soap, tallow, lard, grease; tanneries.
- Class 44. Artificial ice, refrigerating or cold storage plants.
- Class 45. Theater stage employees.
- Class 46. Fireworks manufacturing; powder works.
- Class 47. Creosoting works; pile-treating works.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the pay roll of each occupation if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards. In computing the pay roll the entire compensation received by every workman employed in extrahazardous employment shall be included, whether it be in the form of salary, wage, piecework, overtime, or any allowance in the way of profit-sharing, premium, or otherwise, and whether payable in money, board, or otherwise.

Different classes
in same establish-
ment.

Sec. 6604-5 (as amended by ch. 131, acts of 1919). Each workman who shall be injured whether upon the premises or at the plant, or he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

Compensation—

(a) Where death results from the injury the expenses of burial not to exceed seventy-five dollars (\$75) in any case where the deceased was an unmarried man, or one hundred dollars in any case where the deceased left a widow or an orphan child or children; and

Death

(1) If the workman leaves a widow or invalid widower, a monthly payment of thirty dollars (\$30) shall be made 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 five dollars (\$5) 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 child shall reach the age of sixteen years. An invalid child over sixteen years of age shall be here and in paragraphs (2), (3), and (4) of subdivision (a), and in paragraphs (2) and (3) of subdivision (b), and in subdivision (c), and in paragraphs (1) and (3) but not in paragraph (2) of subdivision (d) considered to be a child under sixteen years of age until such in-

valid child shall arrive at the age of eighteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed fifty dollars (\$50.00): *Provided*, That in addition to the monthly payments above provided for, a surviving widow of any such deceased workman shall be forthwith paid the sum of two hundred and fifty dollars (\$250) in any case where the commission shall be satisfied and shall make of record in their office a finding that the burial expenses have not exceeded and shall not exceed the amount above specified for burial expenses; and, further, that no part of said additional payment can be diverted to the payment of burial expenses.

Upon remarriage of a widow she shall receive once and for all, a lump sum of two hundred forty dollars (\$240), but the monthly payment for the child or children shall continue as before.

(2) If the workman leave no wife or husband, but a child or children under the age of sixteen years, a monthly payment of ten dollars (\$10) shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed forty dollars (\$40), 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 twenty dollars (\$20) 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 sixteen years. 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 dollars (\$20) per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event of a surviving spouse receiving monthly payment 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 be thereafter, until such child shall arrive at the age of sixteen years, paid to the child increased 100 per cent, but the total to all children shall not exceed the sum of forty dollars (\$40) per month.

Permanent
total disability.

(b) Permanent total disability means the loss of both legs or arms, of one leg and one arm, total loss of eyesight, 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 dollars (\$30). If the husband is not an invalid, the monthly payment of thirty dollars (\$30), shall be reduced to fifteen dollars (\$15).

(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, having any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars (\$5) 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).

(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 6604-33 to 6604-46, inclusive.

(c) If the injured workman die, during the period of permanent 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 five dollars (\$5) 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 ten dollars (\$10) per month until arriving at the age of sixteen years. The total combined monthly payments under this paragraph shall in no case exceed fifty dollars (\$50). Upon remarriage the payments on account of the child or children shall continue as before to such child or children.

Death during benefit period.

An invalid child while being supported and cared for in a State institution shall not receive compensation under this act.

(d) (1) 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, (2) but if the injured workman has a wife or husband and have no child or have a wife or husband with, or being a widow or widower with one or more children under the age of sixteen years, the compensation for the case during the first six months or such lesser period of time as the total temporary disability shall continue, shall be per month as follows, to-wit: Injured workman whose husband is not an invalid, twenty-two and 50-100 dollars (\$22.50); injured workman having one child, whose husband is not an invalid, thirty dollars (\$30); injured workman having two children, whose husband is not an invalid, thirty-seven and 50-100 dollars (\$37.50); injured workman having three children, whose husband is not an invalid, forty-five dollars (\$45); injured workman having four or more children, whose husband is not an invalid, fifty-two and 50-100 dollars (\$52.50); injured workman with wife or invalid husband and no child, thirty-seven and 50-100 dollars (\$37.50); injured workman with a wife or invalid husband and one child, or being a widow or widower and having one child, forty-five dollars (\$45); injured workman with a wife or invalid husband and two or more children, or being a widow or widower and having two or more children, fifty-two and 50-100 dollars (\$52.50). (3) If such temporary total disability shall endure longer than said six months' period, the schedule of compensation contained in paragraphs (1), (2), and (3) of the foregoing subdivision (b) shall at the end of said six months' period again obtain. (4) As soon as recovery is so complete that the present earning power of the workmen, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

Temporary disability.

Recovery.

(e) There is hereby created in the office of the State treasurer a fund to be known and designated as the reserve fund out of which shall be made the payments specified in this section for all cases of death or permanent total disability, including future payments to be made for the cases of that character which have heretofore arisen. Into the reserve fund there shall be forthwith placed all unexpended funds, in cash or invested, heretofore set aside for cases requiring a reserve. For every case resulting in death or permanent total disability hereafter arising it shall be the duty of the department to make transfer on their books 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 annum.

Reserve fund.

Investments.

The department shall notify the State treasurer from time to time of such transfers as a whole and the State treasurer shall invest the reserve 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 of other earnings of the reserve fund shall become a part of the reserve fund itself. The department shall, on October 1st of each year, apportion the interest or other earnings of the reserve fund as certified to it by the State treasurer, to the various class reserve funds according to the average class balance for the preceding year. As soon as possible after October 1st 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 1st, 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 department and to the State treasurer in writing not later than December 31st. If the report show that there was on said October 1st, 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 the reserve fund and the investment and earnings thereof, to the end that the total reserve funds shall at all times, as near as may be, be properly and fully invested, and to meet current demands for pension or lump-sum payments may, if necessary, make temporary loans to the reserve fund out of the accident funds 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.

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 in surgery to be permanent partial disability. For the permanent partial disabilities here specifically described, the injured workman shall receive compensation as follows:

| | |
|--|---------|
| Loss of one leg amputated so near the hip that an artificial limb can not be worn..... | \$2,000 |
| 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.

Second injuries

(g) Should a further accident occur to a workman who has been previously the recipient of a lump-sum payment under this act, his future compensation shall be adjudged 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.

Should such further accident result in the permanent total disability of such injured workman, he shall receive the pension to which he would be entitled notwithstanding the payment of a lump sum for his prior injury.

(h) 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 department may upon the application of the beneficiary or upon its own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment.

Review.

(i) A husband or wife of an injured workman, living in a State of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

Spouses living apart.

(j) If a beneficiary shall reside or remove out of the State the department may, in its discretion, convert any monthly payments provided for such case into a lump-sum payment (not in any case to exceed the value of the annuity then remaining, to be fixed and certified by the State insurance commissioner, but in no case to exceed the sum of \$4,000), or, with the consent of the beneficiary, for a smaller sum.

Removal from State.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

Court review.

(l) No workman injured after June 30th, 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.

Waiting time.

Sec. 6604-6 (as amended by ch. 131, acts of 1919). 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 result 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 enacted, for any excess of damages over the amount received or receivable under this act.

Intentional injuries.

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: *Provided*, That in the event it is necessary to procure the appointment of a guardian to receive the money to which any minor workman is entitled under the provisions of this act, the commission may allow from the accident fund, toward the expenses of such guardianship, not to exceed the sum of twenty-five dollars (\$25) in any one case: *Provided, further*, That in case any such minor shall be awarded a lump-sum payment of the sum of two hundred fifty dollars (\$250) or less, the industrial insurance commission shall have power, in its discretion, to make payment direct to such minor without the necessity of the appointment of a guardian.

Minors.

Sec. 6604-7 (as amended by ch. 28, acts of 1917). 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.

Lump sums.

Defaulting em-
ployers.

Sec. 6604-8 (as amended by ch. 120, acts of 1917). 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 centum 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 extrahazardous 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, assignment 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 the receiver or assignee 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.

Violation of
safety law.

Sec. 6604-9. If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any department regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the same required by section 4 to be paid:

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to 50 per cent of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to 50 per cent of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself, or with his knowledge by any of his fellow workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or anyone placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself, or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or anyone placed by the employer in control or direction of such workman, the schedule of compensation provided in section 5 shall be reduced 10 per cent for the individual case of such workman.

Assignments,
etc.

Sec. 6604-10 (as amended by ch. 131, acts of 1919). No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnisheed, nor shall the same pass to any other person by operation of law. Any such

assignments or charge will be void: *Provided*, That if any workman shall suffer a permanent partial injury, and shall die from some other cause than the accident which produced such injury before he shall have received payment of his award for such permanent partial injury, or if any workman shall suffer any other injury and shall die from some other cause than the accident which produced such injury before he shall have received payment of any monthly installment covering any period of time prior to his death, the amount of such permanent partial award, or of such monthly payment or both, shall be paid to his widow, if he leave a widow, or to his child or children if he leave a child or children and shall not leave a widow: *Provided*, If the injured workman shall have resided in the United States as long as three years such payment will not be made to any widow or child who is at the time a nonresident of the United States.

If any beneficiary shall reside without the United States and shall so direct in writing, the commission may cause any warrant or warrants to which such beneficiary is entitled to be issued in the name of and delivered to the consul or consular agent of the country in which such beneficiary is resident, designated by such beneficiary.

Sec. 6604-11. No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void.

Sec. 6604-12. (a) Where a workman is entitled to compensation under this act he shall file with the department his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant 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 unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

Sec. 6604-12a. In all hearings, actions, or proceedings before the commission, or before any court on appeal from the commission, any physician having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of physician to patient.

Sec. 6604-13 (as amended by ch. 28, Acts of 1917). Any workman entitled to receive compensation under this act is required, if requested by the department, 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 department. 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; or, if any injured workman shall persist in unsanitary or injurious practices which tend to imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his recovery, the commission may reduce or suspend the compensation of such workman. 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.

Waivers.

Claims.

Physicians to testify.

Medical examinations.

- Reports of accidents.** Sec. 6604-14. Whenever any accident occurs to any workman it shall be the duty of such workman or some one in his behalf to forthwith report such accident to his employer, superintendent, or foreman in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department and also to any local representative of the department.
- Employers' records.** Sec. 6604-15. The books, records, and pay rolls of the employer pertinent to the administration of this act shall always be open to inspection by the department or its traveling auditor, agent, or assistant, for the purpose of ascertaining the correctness of the pay roll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records, and pay rolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the State and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.
- Misrepresentation.** Sec. 6604-16. Any employer who shall misrepresent to the department 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 have paid. The liability to the State under this section shall be enforced in a civil action in the name of the State. All sums collected under this section shall be paid into the accident fund.
- Public works.** Sec. 6604-17. Whenever the State, county, any municipal corporation, or other taxing district shall engage in any extrahazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the State, county, municipality, or other taxing district. If said work is being done by contract, the pay roll of the contractor and the subcontractor shall be the basis of computation; and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total pay roll. The contractor and any subcontractor shall be subject to the provisions of the act, and the State for its general fund; the county, municipal corporation, or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the subcontractor his proportionate amount of the payment. The provisions of this section shall apply to all extrahazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total pay roll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by State law, city charter, or municipal ordinance, provision is made for municipal employees injured in the course of employment, such employees shall not be entitled to the benefits of this act and shall not be included in the pay roll of the municipality under this act.
- Interstate commerce.** Sec. 6604-18 (as amended by ch. 67, acts of 1919). 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 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: *Provided further, however,* That if any interstate common carrier by railroad shall also be engaged in one or more intrastate enterprises or industries (including street railways and power plants) other than its railroad, the foregoing provisions of this section shall not exclude from the operation of the other sections of this act or bring under the foregoing proviso of this section any extrahazardous work of such other enterprise or industry, the pay roll of which may be clearly separable and distinguishable from the pay roll of the maintenance operation of such railroad, or of the maintenance or construction of its equipment.

SEC. 6604-18a (added by ch. 67, acts of 1919). The provisions of this act shall apply to employers and workmen engaged in maritime works or occupations only in cases where and to the extent that the pay roll of such workmen may and shall be clearly separable and distinguishable from the pay roll of workmen employed under circumstances in which a liability now exists or may hereafter exist in the courts of the admiralty of the United States: *Provided,* That as to workmen whose pay roll is not so clearly separable and distinguishable the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of section 6604-18. Maritime occupations.

SEC. 6604-18b (added by ch. 67, acts of 1919). The provisions of this act shall apply to employers and workmen (other than railways and their workmen) engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation now exists under or may hereafter be established by the Congress of the United States, only to the extent that the pay roll of such workmen may and shall be clearly separable and distinguishable from the pay roll of workmen engaged in interstate or foreign commerce: *Provided,* That as to workmen whose pay roll is not so clearly separable and distinguishable, the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of section 6604-18. When pay rolls are separable.

SEC. 6604-19. Any employer and his employees engaged in works not extrahazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law. Election, when.

SEC. 6604-20. Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivision (1) of section numbered 5), in so far as such decision rests upon questions of fact; or on the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Court review.

cept in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 9, 15, and 16 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the commissioners. In all court proceedings under or pursuant to this act the decision of the department shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

Industrial insurance department.

Sec. 6604-21. The administration of this act is imposed upon a department, to be known as the industrial insurance department, to consist of three commissioners to be appointed by the governor. One of them shall hold office for the first two years, another for the first four years, and another for the first six years, following the passage and approval of this act. Thereafter the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the commissioners shall be the decision of the department. The governor may at any time remove any commissioner from office in his discretion, but within ten days following any such removal the governor shall file in the office of the secretary of state a statement of his reasons therefor. The commission shall elect one of their members as chairman. The main office of the commission shall be at the State capital, but branch offices may be established at other places in the State. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents.

Witnesses and records.

Sec. 6604-21a. The superior 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 before the industrial insurance department.

Salary of commissioners.

Sec. 6604-22 (as amended by ch. 131, acts of 1919). The salary of each of the commissioners shall be forty-two hundred dollars (\$4,200) per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and such compensation as the commission may deem proper. 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.

Auditors and assistants.

Sec. 6604-23 (as amended by ch. 131, acts of 1919). The commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act and fix the compensation of such auditors and assistants at a total expense of not to exceed one hundred twenty thousand dollars (\$120,000) per year. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars (\$5) for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms, and blanks. They may establish and require all employers to install and maintain a uniform form of pay roll.

Duties of department.

Sec. 6604-24. The commission shall, in accordance with the provisions of this act—

1. Establish and promulgate rules governing the administration of this act.

2. Ascertain and establish the amounts to be paid into and out of the accident fund.

3. Regulate the proof of accident and extent thereof, the proof of death, and the proof of relationship and the extent of dependency.

4. Supervise the medical, surgical, and hospital treatment to the intent that same may be in all cases suitable and wholesome.

5. Issue proper receipts for moneys received and certificates for benefits accrued and accruing.

6. Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observations of the department.

7. Compile and preserve statistics showing the number of accidents occurring in the establishment or works of each employer, the liabilities and expenditures of the accident fund on account of, and the premiums collected from the same, and hospital charges and expenses.

8. Make annual report to the governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident fund, and the statistics aforesaid.

SEC. 6604-24a. Every person, firm, or corporation who shall violate or fail to obey, observe, or comply with any rule of the department promulgated under authority of this act shall be subject to a penalty of not to exceed two hundred and fifty dollars (\$250). Such penalty may be recovered in a civil action in the name of the State, and shall be paid into the accident fund.

Failure to comply with rules.

SEC. 25. [Repealed.]

SEC. 6604-26. Disbursement out of the funds shall be made only upon warrants drawn by the State auditor upon vouchers therefor transmitted to him by the department and audited by him. The State treasurer shall pay every warrant out of the fund upon which it is drawn. If at any time there shall not be sufficient money in the fund on which any such warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. 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 provided by law for the investment of the permanent school fund. The State treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for State depositories and to regulate the deposits of State moneys therein," shall be applied to said moneys and the handling thereof by the State treasurer.

Disbursement of funds.

SEC. 6604-27. If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workmen, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act making the compensation to the workmen provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

When act does not apply.

- Rights saved.** SEC. 6604-28. If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the 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: *Provided*, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited, but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.
- Appropriations.** SEC. 6604-29. There is hereby appropriated out of the State treasury the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of \$1,500,000, or so much thereof as shall be necessary for the purposes of this act.
- Safety regulations.** SEC. 6604-30. 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 extrahazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or methods, but sections 8, 9, and 10 of the act approved March 6, 1905, entitled "An act providing for the protection and health of employees in factories, mills, or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled 'An act providing for the protection of employees in factories, mills, or workshops where machinery is used, and providing for the punishment of the violation thereof,' approved March 6, 1903, and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.
- Effect of repeal.** SEC. 6604-31. If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.
- SEC. 6604-32. [Act in effect.]
- Medical, etc. aid.** [SECTIONS 6604-33 to 6604-46 were added by ch. 28, acts of 1917.] SEC. 6604-33. 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 follows: 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 be-
- Classification of industries.**

tween 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 standing 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 6604-20, 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.

Sec. 6604-34 (as amended by ch. 129, acts of 1919). 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 extrahazardous 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. Any such monthly payment in any class 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 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 extrahazardous 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, 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, 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.

Medical aid fund.

Contributions by workmen.

Sec. 6604-35 (as amended by ch. 129, acts of 1919). Upon the occurrence, after June 30, 1917, of any injury to a workman entitled to compensation under the provisions of said section 6604, other than section 6604-19, 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. But after any injured workman shall have returned

Medical aid to be furnished.

to his work his medical and surgical treatment may be continued at the expense of the medical aid fund if, and so long as, such continuation is deemed by the State board to be necessary to his complete recovery. In order to authorize said continued treatment in any case the written order of the State board issued in advance of the continuation shall be necessary. Every employer, who employs less than fifty workmen shall keep at his plant a first-aid kit equipped as required by the State board with materials for first-aid to his injured workmen. Every employer, who employs within a radius of one-half mile of any plant or establishment fifty or more workmen, shall keep there one first-aid station equipped as required by the State board with materials for first aid to his injured workmen. The maintenance of such first-aid kits and stations shall be deemed to be a part of any educational standards established under the provisions of sections 6604-55 and 6604-57. 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 for proper treatment. Every workman whose injury shall result in the loss of limb or eye shall be once provided by the State board at the expense, not to exceed the sum of one hundred sixty-five dollars (\$165) in any case, of the accident fund, out of which his compensation shall come, an artificial substitute. Every workman who shall suffer a penetrating wound of the cornea producing an error of refraction shall be once provided by his local aid board at the expense of the accident fund, out of which his compensation shall come, proper and properly equipped lenses to correct such error of refraction, and his disability rating shall be based upon the corrected result. A workman, whose injury is of such short duration as to bring him within the provisions of subdivision 1 of section 6604-5, shall nevertheless receive during the omitted period medical, surgical, and hospital care and service and transportation under the provisions of this section.

First-aid kits. Sec. 6604-36. 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 6604-33, 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 [divers] surrounding circumstances and locations of industries will permit. 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 6604-33, and from the decision an appeal will lie to the courts in the manner provided in section 6604-20.

Artificial members. Sec. 6604-37 (as amended by ch. 129, acts of 1919). It shall be the duty of the State board to supervise and control the administration of the rules, regulations, and practices promulgated by it and the details thereof, and it shall have supervisory power over the acts and practices of the local aid boards.

Medical aid board. Sec. 6604-38 (as amended by ch. 129, acts of 1919). The State board shall consist of three members as follows: Two members shall be appointed by the governor. Any State-wide association of workmen whose organization purposes shall first include or be made to include the making of such nominations and whose membership is open to all

Fee bill.

Duties.

Salaries.

classes of workmen engaged in extrahazardous 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 extrahazardous 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 said two members 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 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 of said two members 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 all members shall also receive their 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.

Nominations.

The third member shall be appointed by the said two members. He must be a physician and surgeon qualified to practice under the laws of the State. He shall be chairman of the said board. His term of office shall be six years. He shall receive a salary of five hundred dollars (\$500) per month, payable out of the medical aid fund upon like vouchers and audit.

Chairman.

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.

The State board may employ, and at will discharge, a secretary at a monthly salary to be fixed by them not exceeding two hundred and fifty dollars (\$250), 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. 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 resolution of the State board passed and entered of record at one of said three meetings.

Secretary.

The chairman shall devote to the performance of his said duties all of his time and attention during the office hours of each day, and he shall not engage in private practice. 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 ten thousand dollars (\$10,000) a year.

Sec. 6604-39 (as amended by ch. 130, acts of 1919). Subject always to the rules and regulations established and promulgated by the State board, the administration of, caring for, 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 numbers corresponding to the numbers of their respective districts.

Local boards.

Sec. 6604-40 (as amended by ch. 130, acts of 1919). It shall be the duty of each local aid board to provide care and treatment for each workman injured after June 30, 1917, in extrahazardous employment, to forthwith report to the State board, and through the State board to

Duties of local boards.

the industrial insurance commission, the commencement of every disability and the termination of the same, and each such report shall be a part of the record of the case in the office of the industrial insurance commission and shall be taken into consideration in the adjustment or settlement of the amount of the award in the case. Each local aid board shall also report to the State board the cause of each injury, with recommendations for the improvement of the service, and of the administration, and also, subject to the provisions of section 6604-37, to 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 6604-36.

It shall also be the duty of each local aid board to promptly inspect and analyze all serious accidents to workmen (other than coal miners) occurring within its district, and to report to the State safety board the cause of the accident, and to suggest a remedy to prevent repetition of the same, not only in the establishment in which the accident occurred, but also in all other like establishments; and, subject to the supervision in the first instance of the State labor commissioner and secondarily of the State safety board, to have charge of the educational features of safety work (other than for coal mining), within its own district. At the end of each calendar year each local aid board shall issue to the State safety board a certificate of compliance or noncompliance during that year of each establishment or employer in its district within its jurisdiction of the educational standards established for the same. The State safety board shall have the power of revision of such certificates and shall forthwith issue to the industrial insurance commission a final certificate of such compliance or noncompliance for each case for that year.

Right of appeal. SEC. 6604-41. 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 6604-33. From a decision of the State board an appeal will lie to the courts as provided in section 6604-20, 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 6604-36.

Misrepresentation. SEC. 6604-42. 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 be also guilty of a misdemeanor.

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 send written notice thereof to said secretary within five days after such establishing or entering, shall be guilty of a misdemeanor.

Public work. SEC. 6604-43. 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 6604-17.

Custody of funds. SEC. 6604-44. The State treasurer shall be liable on his official bond for the safe custody of the moneys of the medical aid fund. All provisions of the act referred to in section 6604-26 shall be applied to said moneys and the handling thereof by the State treasurer.

Contracts for medical, etc., aid. SEC. 6604-45 (as amended by ch. 129, acts of 1919). Any contract made in violation of this act shall be invalid, except that any employer engaged in extrahazardous work may with the consent of a

majority of his workmen, enter into written contracts with physicians, surgeons, and/or owners of hospitals operating the same, or with hospital associations, 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. Such a contract shall not be assignable or transferable by operation of law or otherwise except with the consent of the State board indorsed thereon. 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 6604-36, and if a contract so submitted be with the owner of a hospital operating the same, or with a hospital association, the State board shall have power to disapprove the same if in their judgment the ownership or management of such hospital or hospital association will not be such as to produce satisfactory service. Any such contract with physician, surgeon, or owner and operator of hospital, or with a hospital association, so disapproved 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 the 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 6604-33 to 6604-44, inclusive, and section 6604-46, other than the provisions of section 6604-35 relating to artificial substitutes and lenses and the basis of compensation when lenses supplied, and to transportation of injured workmen, and to educational standards of safety, and other than the provisions of section 6604-40 relating to the analyses and reports of accidents by local aid boards, and the employer shall not be required to make the payments specified in section 6604-34, except that the employer shall pay monthly into the medical aid fund ten per centum 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 centum 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 6604-36, 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 6604-33. The employer or any interested workman may appeal from such decision to the courts in the manner provided in section 6604-20. 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. If, during the operation of any such contract, any injured workman shall not receive medical or surgical treatment with reasonable promptness upon the occurrence of his injury, or at any time during his treatment, his local aid board may provide such treatment during the emergency at the expense of his employer, who may charge such expense against such contract, and such emergency treatment shall continue until supplanted by like treatment under such contract, notwithstanding the pendency of an appeal from such action of the local aid board. The cost of such emergency treatment shall not exceed the rates specified in the fee bill provided by section 6604-36. 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.

Terms .

No contract for medical, surgical, or hospital care of injured workmen entered into prior to the time this act shall go into effect shall be invalidated by anything in this act contained.

Application of law.

SEC. 6604-46 (as amended by ch. 129, acts of 1919). The provisions of section 6604-1 to 6604-32, inclusive, shall be applicable to the collection 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 sections 6604-33 to 6604-120, inclusive. Disbursements for the salaries of the secretary and office employees, and for the office and printing expenses of the State board, and in the payment of bills incurred for the medical, surgical, or hospital care of injured workmen shall be made by warrants drawn against the medical aid fund by the State auditor upon certificate thereof or requisition therefor signed by the members of the State board or a majority thereof.

Collection of funds from employees.

SEC. 6604-47. 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 6604-34 and 6604-45, 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.

WEST VIRGINIA.

ACTS OF 1913.

CHAPTER 10 (as amended by ch. 9, acts of 1915, and ch. 1, acts of 1915, first extra session).—*Compensation of workmen for injuries—State insurance fund.*

SECTION 1. The office of State compensation commissioner is hereby created. The governor, by and with the consent of the senate, shall on or before the thirty-first day of May, one thousand nine hundred and fifteen, appoint as State workmen's compensation commissioner some citizen of this State entitled to vote, whose term of office shall begin at the date of appointment and shall continue for six years and until the successor of such commissioner is appointed and qualified, unless he be sooner removed. An appointment may be made to fill a vacancy or otherwise when the senate is not in session, but shall be acted upon at the next session thereof. The person so appointed shall make the oath or affirmation prescribed by section five of article four of the constitution, and such oath shall be certified by the person who administers the same and shall be filed in the office of the secretary of State. He shall give bond in the penalty of ten thousand dollars conditioned for the faithful performance of the duties of his office; which bond shall be approved by the attorney general as to form, and by the governor as to sufficiency, and when so approved, shall be filed and recorded in the office of the secretary of State. The surety of said bond may be a bonding or surety company, in which case the premium shall be paid out of the appropriation made for the administration of this act.

(a) The commissioner may be removed by the governor for incompetency, neglect of duty, gross immorality, or malfeasance in office, after giving him notice and a copy of the charges and the right to be heard in an investigation of the truth thereof. A record of the proceedings, including the evidence, shall be kept.

(b) The attorney general shall perform all legal services required by the commissioner under the provisions of this act.

(c) The commissioner shall hold no position of trust or profit, or engage in any occupation or business, interfering or inconsistent with his duties as such commissioner.

(d) The said commissioner shall receive an annual salary of six thousand dollars, payable in the same manner as the salaries of other State officers are paid and charged to the appropriations which shall be made from time to time hereafter by the State for the administration of this act.

(e) The commissioner shall have an official seal for the authentication of his orders and proceedings, upon which seal shall be engraved the words, "West Virginia Compensation Commissioner," and such other design as the commissioner may prescribe; and the courts in this State shall take judicial notice of the seal of the said commissioner, and in all cases copies of orders, proceedings, or records in the office of the West Virginia compensation commissioner certified by the secretary of the said commissioner under his seal, shall be equal to the original in evidence.

Until the appointment and qualification of said compensation commissioner the duties of said compensation commissioner shall be performed by the public service commission as is now prescribed by law.

SEC. 2 (as amended by ch. 131, acts of 1919). All expenses peculiar to the administration of this act, including the premiums to be paid for the bonds of the State treasurer, the State auditor, and the compensation commissioner required under this act, and when on official business the traveling and incidental expenses of the commissioner, and salaries or other compensation, traveling and other expenses of all officers or employees of the commissioner, and all expenses for furniture, books, maps, stationery, appliances, and property of all kinds,

Compensation
commissioner.

Salary.

Seal.

Expenses.

shall be paid out of the workmen's compensation fund, hereinafter created, and the sum of one hundred forty thousand dollars per annum, or so much thereof as may be necessary, is hereby fixed as the amount to be appropriated out of the said fund for the purpose of paying the salaries and expenses necessary in the administration of this act.

Charges against fund.

SEC. 3. All payments of salaries and expenses in the administration of this act shall be made by the State treasurer upon order or voucher signed by the secretary and approved by the commissioner, directed to the auditor of the State who shall draw his warrant therefor, and any such payment shall be charged to the workmen's compensation fund: *Provided*, That the total charges against said fund under this section for any one fiscal year shall not exceed the amount appropriated under section two of this act.

Office hours.

SEC. 4. The offices of the commissioner shall be open for the transaction of business between the hours of nine o'clock a. m. and five o'clock p. m. of each and every day, excepting Sundays and legal holidays, and be in charge of his secretary or some other competent person. All proceedings of the commissioner shall be shown on his record of proceedings, which shall be a public record and shall contain a record of each case considered and the award with respect thereto and of all salaries allowed to any employee of the commissioner or to any other person for services.

SEC. 5. [Repealed.]

Duty of commissioner.

SEC. 6. The commissioner shall keep and maintain his office at the seat of government, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals, maps, and other equipment. After due notice, showing the time and place, the commissioner may hold hearings anywhere within the State.

As soon as said commissioner shall have been appointed and qualified, all records, books, papers, documents, office supplies, and furniture, and other effects, appertaining to the administration of the workmen's compensation fund, shall be turned over to said commissioner, and placed in his custody and control, and the workmen's compensation fund heretofore created shall thereupon become subject to orders or vouchers approved by him as hereinafter provided, and from such time he shall have the same jurisdiction, rights, powers, and duties, in respect to the payment of compensation out of the workmen's compensation fund upon awards theretofore made by the public service commission under said chapter ten of the acts of one thousand nine hundred and thirteen, and the same continuing jurisdiction in respect to awards theretofore made by said public service commission as was vested by said chapter ten in the public service commission and is vested by this act in the said commissioner; and said commissioner shall also have jurisdiction of all applications for compensation from said fund pending before said public service commission when said commissioner shall have been appointed and have qualified, and of all applications for compensation based upon accidents theretofore occurring as if they had occurred thereafter.

Powers.

Employees.

SEC. 7. The commissioner may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers, and other assistants, and fix their compensation, which shall be paid as provided in sections two and three of this act. The commissioner, secretary, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers, and other assistants that may be employed shall be entitled to receive from the workmen's compensation fund their actual and necessary expense while traveling on business of the commissioner. Such expenses shall be itemized and sworn to by person who incurred the expense and allowed by the commissioner.

Rules, etc.

SEC. 8. The commissioner shall adopt reasonable and proper rules of procedure, regulate and provide for the kind and character of notices, and the service thereof, in cases of accident and injury to employees the nature and extent of the proofs and evidence, and the method of taking and furnishing the same to establish the rights to benefits or compensation from the fund hereinafter provided for, or directly from employers as hereinafter provided, as the case may require, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical exami-

nations and inspections, and prescribe the time within which adjudications and awards shall be made.

Sec. 9 (as amended by ch. 131, acts of 1919). All persons, firms, associations, and corporations regularly employing other persons for the purpose of carrying on any form of industry or business in this State, county and municipal corporations, the State of West Virginia, and all governmental agencies or departments created by it, are employers within the meaning of this act, and subject to its provisions. All persons in the service of employers as herein defined and employed by them for the purpose of carrying on the industry, business or work in which they are engaged, and check weighmen as provided for in chapter twenty, acts of one thousand nine hundred and eleven, are employees within the meaning of this act and subject to its provisions: *Provided*, That the act shall not apply to employers of employees in domestic or agricultural service, persons prohibited by law from being employed, traveling salesmen, to employees of any employer while employed without the State; nor shall a member of a firm of employers, or any officer of an association, or of a corporation employer, including managers, superintendents, assistant managers, and assistant superintendents, any elective official of the State, county or municipal corporation be deemed an employee within the meaning of this act.

Scope of law.

Exempt employees.

The premiums and all expenses in connection with the election of the governmental agencies and departments of the State of West Virginia shall be paid out of the State treasury out of the appropriations made for such agencies and departments, in the same manner as other disbursements are made by such agencies and departments.

Public employees.

Municipal corporations shall provide for the funds to pay their prescribed premiums into the fund, and said premiums and premiums of State agencies and departments shall be paid into the fund in the same manner as herein provided for other employers subject to this act.

Payment of premiums.

Any employer whose employment in this State is to be for a definite or limited period, which could not be considered "regularly employing" within the meaning of this act, may elect to pay into the workmen's compensation fund the premiums herein provided for, and at the time of making application to the commissioner, such employer shall furnish statement under oath showing the probable length of time the employment will continue in this State, the character of the work, an estimate of the monthly pay roll, and any other information which may be required by the commissioner. At the time of making application such employer shall deposit with the State compensation commissioner to the credit of the workmen's compensation fund the amount required by section twenty-four of this act, which amount shall be returned to such employer if his application be rejected by the commissioner. Upon notice to such employer of the acceptance of his application by the commissioner, he shall be an employer within the meaning of this act, and subject to all of its provisions.

Temporary business.

Any foreign corporation employer electing to comply with the provisions of this act and to receive the benefits hereunder, shall at the time of making application to the commissioner, in addition to the other requirements of this act, furnish such commissioner with a certificate from the secretary of state showing that it has complied with all the requirements necessary to enable it to legally do business in this State, and no application of such foreign corporation employer shall be accepted by the commissioner until such certificate is filed.

Foreign corporations.

For the purpose of this act a mine shall be adjudicated within this State when the main opening, drift, shaft or slope is located wholly within this State.

Mine within State.

Any employee within the meaning of this act whose employment necessitates his temporary absence from this State in connection with such employment and such absence is directly incidental to carrying on an industry in this State who shall have received injury during such absence in the course of and resulting from his employment, shall not be denied the right to participate in the workmen's compensation fund.

Injuries outside State.

An independent contractor who sublets any portion of his contract shall be considered the employer of the employees of any subcontractor and shall carry on his pay roll the names of such subcontractor's employees and pay the prescribed premium on their wages during the period such employees are working under his contract.

Contractors.

1000 WORKMEN'S COMPENSATION LAWS OF THE UNITED STATES.

- Information to be furnished. Sec. 10. Every employer shall furnish the commissioner, upon request, all information required by him to carry out the purposes of this act. The commissioner, or any person employed by the commissioner for that purpose, shall have the right to examine under oath any employer or officer, agent, or employee of any employer.
- Blanks. Sec. 11. The commissioner shall prepare report blanks for the use of, and furnish the same to, employers subject to this act; and every employer receiving from the commissioner any blank or blanks with directions for filling out and returning the same, shall return the same filled out so as to answer fully and correctly all pertinent questions therein propounded, and, if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the commissioner within the period fixed by the commissioner for such return. Every employer subject to the provisions of this act, who may hereafter elect to pay the premiums as provided herein, and to receive the benefits hereunder, shall make application on the forms prescribed by the commissioner for such purpose; and all employers who desire to discontinue the payment of the premiums required under this act, shall so notify the commissioner on forms to be furnished by the commissioner for the purpose.
- Duty of employers. Sec. 12. The commissioner, secretary, and every inspector or examiner appointed by the commissioner shall, for the purposes contemplated by this act, have power to administer oaths, certify official acts, take depositions, issue subpoenas and compel the attendance of witnesses, and the production of pertinent books, accounts, papers, records, documents, and testimony.
- Power to administer oaths, etc. Sec. 13. In case of failure, or refusal of any person, to comply with the order of the commissioner or subpoena issued by him, secretary, or one of his inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the circuit judge of the county in which the person resides, on application of the commissioner, or any inspector or examiner appointed by him, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of a subpoena issued from said court on a refusal to testify therein.
- Contempt. Sec. 14. Each officer who serves such subpoena shall receive the same fee as a sheriff, and each witness who appears, in obedience to a subpoena, before the commissioner, or an inspector, or an examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the circuit court, which shall be audited and paid out of the workmen's compensation fund in the same manner as other expenses are audited and paid upon presentation of proper vouchers approved by the commissioner.
- Fees. No witness subpoenaed at the instance of a party other than the commissioner, or an inspector, or an examiner, shall be entitled to receive any fee or mileage out of the workmen's compensation fund unless the commissioner shall certify that his testimony was material to the matter investigated.
- Depositions. Sec. 15. In an investigation the commissioner may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions as provided for transcripts in the circuit court.
- Evidence. Sec. 16. A transcribed copy of the evidence and proceeding or any specific part thereof, on any investigation, taken by a stenographer appointed by the commissioner, being certified and sworn to by such stenographer to be a true and correct transcript of the testimony in the investigation, or of a particular witness, or of a specific part thereof, or to be a correct transcript of the proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the 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 upon payment of the fee therefor, as provided for transcripts in the circuit court.
- Forms. Sec. 17. The commissioner shall prepare and furnish free of cost blank forms (and provide in his rules for their distribution so that the same may be readily available) of applications for benefits for compen-

sation from the workmen's compensation fund, or directly from employers, as the case may be, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks.

SEC. 18 (as amended by ch. 131, Acts of 1919). for the purpose of this act the industries that now are or hereafter may be subject thereto are divided into schedules, as follows: Classes of industries.

(a) Coal mines, including their tipples, power, light, heating, and ventilating plants, tramways, private tracks, and sidings, and accessory and auxiliary plants working in or with by-products.

(b) Paint manufactories, oil refineries, oil and gas wells, including their pipe lines, storage, power, and light plants, tramways, private tracks and sidings, and accessory and auxiliary plants working in or with by-products.

(c) Iron and steel mills, including blast furnaces, smelters, tube works, rolling mills, and their accessory and auxiliary plants working in or with by-products, generating power, light, or heat, or operating tramways, private tracks, and sidings.

(d) Sheet and tin plate mills, including their accessory and auxiliary plants working in or with by-products, generating power, light, or heat or operating tramways, private tracks, and sidings.

(e) Foundries, machine shops, firearms factories, tool factories, car building and repairing, structural ironworks, and working in or with iron or steel, not otherwise specified, where power-driven machinery is used, together with their accessory and auxiliary plants working in or with by-products, or generating power, light, or heat, or operating tramways, private tracks, and sidings.

(f) Stamped metal works, can factories, enamel ironworks, and working in or with sheet iron or tin plate, not otherwise specified, where power-driven machinery is used, together with their accessory and auxiliary plants working in or with by-products or generating power, light, or heat, or operating tramways, private tracks, and sidings.

(g) Logging, logging railroads, and tramways, sawmills, including their accessory and auxiliary plants working in or with by-products, or generating power, light, or heat, or operating tramways, private tracks, and sidings.

(h) Planing mills, wood pulp, cordage and paper mills, box factories, cooperage plants, furniture factories, woodenware or wood fiber ware manufactories, vehicle works of every kind, including their accessory and auxiliary plants working in or with by-products, or generating power, light, or heat, or operating tramways, private tracks, and sidings.

(i) Glasshouses of all kinds, including manufactories of tableware, bar goods, bottles, tumblers, lamps, glass light fixture parts, window, and plate glass; potteries of all kinds, including tile, bricks, terra-cotta, fire clay, earthenware, porcelain, china and crockery ware using automatic machinery, together with accessory and auxiliary plants working in or with by-products, or generating light or heat, or operating tramways, private tracks, and sidings.

(k) Printing plants of all kinds, electrotyping, photo-engraving, engraving, lithographing, embossing, bookbinding, and accessory and auxiliary lines of work and manufacture.

(l) Woolen mills, knitting mills, cotton mills, carpet and rug mills, clothing manufactories of every kind and working in or with textiles not otherwise specified.

(m) Bottling works, canneries of fruits, vegetables, oils, fish, milk or meat, manufactories of preserves, jellies, ketchup, sauces, relishes, pickles, flour and feed mills, bakeries, confectioneries, drug and extract manufactories, tobacco, cigar, stogie, and cigarette manufactories, in which power-driven machinery is used.

(n) Slaughter and packing houses, stockyards, soap, tallow, lard, and grease manufactories, tanneries, artificial ice and refrigerating and cold-storage plants, creameries and carbon-black factories, in which power-driven machinery is used.

(o) Steam laundries, dyeing and cleaning plants, stamping, embossing, and working with leather, shoe and harness manufactories, mattress and bedding factories, upholstering factories, manufacturers of

rubber goods, and auxiliary and accessory lines of work and manufacture not otherwise specified.

(p) Steam and other railroads and transportation systems not otherwise specified.

(q) Street and interurban railways, whether propelled by electricity or other power.

(r) Telegraph and telephone plants and systems, electric light and power plants and systems, steam heat and power plants and systems, waterworks systems, gas works and systems, grain elevators, and all lighting, heating, and power systems not otherwise specified.

(s) Quarries, stone crushers, gravel pits, mines other than coal mines, and working with asphalt, cement, stone, or other building material not otherwise specified, power-propelled ferries, sand diggers, and other water craft.

(t) Such works, occupations, and manufactories specified in the foregoing schedules as are operated without power-driven machinery.

(u) Match factories, powder mills, fireworks factories, and works in which articles of any explosive nature are mixed or manufactured.

(v) Construction of tunnels, shafts, bridges, trestles, steeples, towers, grain elevators, tanks, water towers, windmills, subaqueous works, iron and steel frame structures or parts of structures, blast furnaces, smokestacks, cupolas, or chimneys, waterworks and systems, electric lights and power plants and systems, gas works and systems, installation of steam boilers, engines, and dynamos, steam railroads, logging railroads, street railways and systems, boat building with scaffolds, floating docks, engineering works, structural work on buildings over three stories in height not otherwise specified, and drilling of wells.

(w) Construction and installation of sewers, fire escapes, freight or passenger elevators, advertising signs, ornamental metal works on or in buildings, metal ceilings, plate or window glass, electric wiring, stairways, buildings which require galvanized iron or tin work, marble, stone, or brick work, roof work, slate work, plumbing work, carpenter work, electric work, installing automatic sprinklers, electric or fire alarm systems, heating or ventilating systems, or machinery not otherwise specified, covering steam pipes and boilers, road and street making, street or other grading, and structural work not otherwise specified.

Industries not specified.

(x) Any industry or business not specified in the foregoing schedules, for which any employer shall voluntarily apply to the commissioner to be brought under the provisions of this act; and the commissioner shall have the authority to classify and place in one of the schedules aforesaid, or any schedule created by him as hereinafter mentioned, any industry or business subject to this act not hereinbefore specifically mentioned.

Reclassification.

The commissioner shall have the power to reclassify into schedules, at any time, the industries subject to this act, to create additional schedules, and to divide any schedule into classes based upon the nature of employment and the risk of same.

Accounts.

(y) The commissioner shall keep an accurate account of all money or moneys paid or credited to the compensation fund, and of the liability incurred and disbursements made against same; and an accurate account of all money or moneys received from each individual subscriber, and of the liability incurred and disbursements made on account of injuries and death of the employees of each subscriber; and of the receipts and incurred liability of each schedule and class.

In fatal cases and permanent disability cases exceeding eighty-five per centum disability, the amount charged against the employer's account shall be such sum as is estimated to be the average cost of such cases to the fund: *Providing*, The commissioner decides that the injury or injuries causing death or permanent disability was received in the course of and resulting from the employee's employment.

Rates to be minimum.

(z) It shall be the duty of the commissioner to fix and maintain the lowest possible rates of premiums consistent with the maintenance of a solvent workmen's compensation fund and the creation and maintenance of a reasonable surplus in each schedule after providing for the payment to maturity of all liability incurred by reason of injury or death to employees entitled to benefits under the provisions of this act. A readjustment of rates shall be made yearly on the first day of October, or at any time same may become necessary.

The commissioner may fix a rate of premium applicable alike to all subscribers forming a schedule or class, and such rate shall be determined from the record of such schedule or class as shown upon the books of the commissioner: *Provided*, That if any schedule has a sufficient number of employers with considerable difference in their degrees of hazard, the commissioner may fix a rate for each subscriber of such schedule, such rate to be based upon the subscriber's record on the books of the commissioner for the twelve months last ending June thirtieth of the year in which the rate is to become effective; and the liability part of such record shall include such cases as have been acted upon by the commissioner during said twelve months' period, irrespective of the date the injury was received; and any subscriber, in a schedule so rated, whose record for said twelve months' period can not be obtained, shall be given a rate based upon his record for any part of said period or such rate as may be deemed just and equitable by the commissioner; and the commissioner shall have authority to fix a reasonable minimum and maximum for any schedule to which this individual method of rating is applied, and to add to the rate determined from the subscriber's record such amount as may be necessary to liquidate any deficit in the schedule or to create a reasonable surplus.

Merit rating.

It shall be the duty of the commissioner whenever he changes any rate to notify every employer affected thereby of that fact and of the new rate and when the same takes effect. It shall also be his duty to furnish to each employer yearly, or oftener if requested by the employer, a statement giving the name of each of his employees who were paid for injury and the amount so paid during the period covered by the statement.

Notice of changes.

SEC. 19 (as amended by ch. 131, acts of 1919). The commissioner shall establish a workmen's compensation fund from the premiums and other funds paid thereto by employers as herein provided, for the benefit of employees of employers that have paid the premium applicable to such employers and have otherwise complied fully with the provisions of section twenty-four of this act, and for the benefit of the dependents of such employees, and for the payment of the administration expenses of this act, and shall adopt rules and regulations with respect to the collection, maintenance and disbursement of said funds, not in conflict with the provisions of this act.

Fund to be established.

Employers electing as herein provided to individually and directly compensate their injured employees and their fatally injured employees' dependents, shall do so in the manner prescribed by the compensation commissioner and shall make all reports, execute all blanks, forms and papers as directed by said commissioner and as herein provided in this act.

SEC. 20 (as amended by ch. 131, acts of 1919). The State treasurer shall be the custodian of the workmen's compensation fund and all premiums, deposits, or other moneys paid thereto shall be deposited in the State treasury to the credit of the workmen's compensation fund in the manner prescribed in section twenty-four of this act. The workmen's compensation fund shall consist of the premiums and deposits provided by this act and all interest accruing thereto upon investments and deposits in the State depositories, and any other moneys or funds which may be given, appropriated or otherwise designated or accruing thereto. Said fund shall be a separate and distinct fund and shall be so kept upon the books and records of the auditor and treasurer and the State depositories in which any part is deposited. Disbursements from said fund shall be made upon requisition signed by the secretary and approved by the compensation commissioner. The board of public works shall have authority to invest the surplus, reserve, or other moneys belonging to the fund in the bonds of the United States, of this State, of any county, city, town, village, or school district of the State. No such investment shall be made nor any investment sold or otherwise disposed of without the concurrence of a majority of all members of the board of public works. It shall be the duty of every county, school district, or municipality issuing any bonds, to offer the same in writing to the board of public works, prior [to] advertising the same for sale, except such thereof as may have been taken by the trustees of the sinking fund of the county, district, or municipality, and the board of public works shall, within fifteen days after receipt of such offer, accept

Custody.

Maintenance.

Accounts.

Investment.

the same and purchase such bonds or any portion thereof at par and accrued interest, or make an offer to purchase the same at such price as the board named in such offer, or reject such offer. All bonds purchased by the board of public works for investment for the workmen's compensation fund shall be placed in the hands of the auditor as the custodian thereof, and it shall be his duty to keep and account for the same as he keeps and accounts for other securities of the State, and to collect the interest thereon as the same becomes due and payable, and the principal when the same is due. No bonds or other securities shall be purchased by the board of public works until and unless the attorney general shall investigate the issuance of such bonds or securities and shall give a written opinion to the board that the same have been regularly issued according to the constitution and laws of this State, which opinion, if such bonds or securities be purchased shall be filed with the auditor with such bonds or securities. The auditor of the State shall give a separate and additional bond in the sum of five hundred thousand dollars with sureties to be approved by the governor, conditioned for the faithful performance of his duties as custodian of the investment bonds as herein provided.

Bond. SEC. 21 (as amended by ch. 131, acts of 1919). The treasurer of the State shall give a separate and additional bond in the sum of two hundred thousand dollars with sureties to be approved by the governor, conditioned for the faithful performance of his duties as custodian of the workmen's compensation fund herein provided for.

Remedy. SEC. 22 (as amended by ch. 131, acts of 1919). Any employer subject to this act who shall elect to pay into the workmen's compensation fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute for the injury or death of any employee however occurring, after such election and during any period in which such employer shall not be in default in the payment of such premiums, and shall have complied fully with all other provisions of this act. *Provided*, The injured employee has remained in his service with notice that his employer has elected to pay into the workmen's compensation fund the premiums provided by this act. The continuation in the service of such employer with such notice shall be deemed a waiver by the employee and by the parents of any minor employee of the right of action as aforesaid, which the employee or his or her parents would otherwise have.

Notice to be posted. SEC. 23. Each employer electing to pay the premiums provided by this act into the workmen's compensation fund, or electing to make direct payments of compensation as hereinafter provided, shall post and keep posted in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he has made such election, and the same when so posted shall constitute sufficient notice to all his employees and to the parents of any minor employees of the fact that he has made such election.

No employer or employee shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void.

Premiums. SEC. 24 (as amended by ch. 131, acts of 1919). For the purpose of creating such workmen's compensation fund each employer subject to this act shall pay the premiums of liability based upon and being such a percentage of the pay roll of such employer as may have been determined by the commissioner and be then in effect. The premiums shall be paid monthly on or before the twenty-fifth of each month, for the preceding month, and shall be the prescribed percentage of the total earnings of all employees within the meaning of this act, whose work is within this State, for such preceding month. The minimum premium to be paid by any employer for any month shall be fifty cents. The premiums and deposits provided for in this act shall be paid by the employers to the State compensation commissioner, who shall issue receipts for all sums so received, mailing the original to the person, firm, or corporation paying the same, transmitting a copy thereof to the State treasurer and State auditor, retaining a copy for his own records. All sums received by the State compensation commissioner as herein provided shall be deposited in the State treasury to the credit of the work-

men's compensation fund in the manner now prescribed by law for depositing money in the State treasury.

Each employer shall make a pay roll report to the commissioner on or before the twenty-fifth of each month for the preceding month, and such report shall be on the form or forms prescribed by the commissioner, and furnish all information required by him.

Failure to pay premiums as herein provided or to make the monthly pay roll reports required by the commissioner shall deprive the employer so delinquent of the benefits and protection afforded by this act, and shall automatically terminate the election of such employer to pay into the workmen's compensation fund as herein provided, and such employer shall be liable to his employees as provided in section twenty-six of this act; and the commissioner shall not be required to notify the delinquent employer of such termination, but he shall notify the employees of such employer thereof in such manner as he may deem best and sufficient. The termination of election of such delinquent employer shall date from twelve o'clock p. m. of the last day of the month in which he fails to pay the premiums or make pay roll reports, as above provided, for the preceding month.

Failure to pay.

The employer so delinquent may be reinstated upon application under such terms as are prescribed by this act, and by the commissioner hereunder, after the payment into the workmen's compensation fund of all unpaid premiums, penalties, and charges. Such reinstatement shall be in effect from and after the date that the new application is accepted by the commissioner: *Provided, however,* That such delinquent employer shall be entitled to the benefits and protection of this act until twelve o'clock p. m. of the last day of the month immediately succeeding the month in which his election is terminated, and his employees shall be entitled to compensation for injuries received during said period, but not thereafter unless such delinquent employer becomes reinstated as herein provided.

To insure the payment of the monthly premiums herein provided, all employers who have heretofore elected to accept the provisions of the workmen's compensation act shall pay into the workmen's compensation fund, in addition to the premiums provided for, an amount at least equal to the amount of premiums paid for the last two months. Any employer hereafter electing to avail himself of the benefits of this act shall at the time of making application to the commissioner deposit in the workmen's compensation fund an amount estimated to be equal to the amount of the premiums which shall be paid by him for the next succeeding two months. Any employer whose deposit is less than the amount of his premiums for the last two months, shall, upon written request from the commissioner mailed to his address as carried upon the books of the commissioner by twelve o'clock p. m. of the twenty-fifth of the month in which request is mailed, pay to the commissioner a sum sufficient to make his deposit at least equal to the amount of his premiums for the last two preceding months; and failure of any employer to comply with such written request within the time specified shall deprive him of the benefits and protection afforded by this act, and shall automatically terminate his election to pay into the workmen's compensation fund as herein provided, and such employer shall be liable to his employees as provided in section twenty-six of this act; and the commissioner shall not be required to notify the delinquent employer of such termination, but he shall notify the employees of such employer thereof in such manner as he may deem best and sufficient. The termination of election of such employer shall date from twelve o'clock p. m. of the last day of the month in which he is notified by the commissioner that his deposit is not equal to the sum of his premium for the last two preceding months. Such employer may be reinstated upon application under such terms as are prescribed by this act and the rules of the commissioner. The deposit hereinbefore described shall be credited to the employer's account on the books of the commissioner and used to pay premiums and any other sums due the fund when said employer becomes delinquent in the payment of same.

Two months' payments.

Upon withdrawal from the fund or termination of election of any employer, he shall be refunded the balance due him of his deposit, after deducting all amounts owed by him to the workmen's compensation

Withdrawal from fund.

Disbursements. fund, and the commissioner shall notify the employees of such employer of said termination in such manner as he may deem best and sufficient. Sec. 25 (as amended by ch. 131, acts of 1919). The commissioner shall disburse the workmen's compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the month in which the injury occurs, and who have otherwise complied fully with the provisions of this act, and which employees shall have received personal injuries in this State in the course of and resulting from their employment, or to the dependents, if any, of such employees in case death has ensued according to the provisions hereinafter made; and also for the expenses of the administration of this act, as provided in section two hereof.

Hernia. In all claims for compensation for hernia resulting from personal injury received in the course of and resulting from the employee's employment, it must be definitely proven to the satisfaction of the commissioner—

- 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 injury.
- Fifth. That the hernia did not exist prior to the injury for which compensation is claimed.

All hernia, inguinal, femoral, or otherwise, so proven to be the result of an injury received in the course of and resulting from 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 thirty-three. In nonfatal cases, time loss only shall be paid, unless it is shown by special examination that the injured employee has a permanent partial disability resulting after the operation. If so, compensation shall be paid in accordance with the provisions in section thirty-one with reference to permanent 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 it is considered unsafe for him to undergo said operation, he shall be paid as provided in section thirty-one.

Defaulting employers. Sec. 26 (as amended by ch. 131, acts of 1919). All employers subject to this act, the State of West Virginia excepted, who shall not have elected to pay into the workmen's compensation fund the premiums provided by this act, or having so elected, shall be in default in the payment of same, or not having otherwise complied fully with the provisions of section twenty-four of this act, shall be liable to their employees (within the meaning of this act) for damages suffered by reason of accidental personal injuries sustained 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 accidental personal injuries, and in any action by any such employee or personal representative thereof such defendant shall not avail himself of the following common-law defenses: The defense of the fellow-servant rule; the defense of the assumption of risk; or the defense of contributory negligence; and further shall not avail himself of any defense that the negligence in question was that of some one whose duties are prescribed by statute.

Defenses abrogated. Sec 27 (as amended by ch. 131, acts of 1919). The commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

Medical, etc., benefits. (a) Such sums for medical, surgical, and hospital treatment as in the opinion of the commissioner may reasonably be required, not, however, in any case to exceed the sum of one hundred and fifty dollars: *Provided*, That in case an injured employee has sustained such extensive injury or injuries that in the opinion of the commissioner an expenditure in excess of the above stated amount is just, reasonable, and necessary, the amount expended for medical, surgical, and hospital

treatment may be, but shall not exceed, the sum of three hundred dollars in any case.

(b) In case of an injured employee having sustained a permanent disability, and such fact having been so determined by the commissioner, the said commissioner may, if in his opinion the per centum of said disability can be materially reduced or made negligible by medical or surgical treatment, expend an amount not to exceed the sum of three hundred dollars in addition to such sum or sums as may have been expended for medical, surgical, and hospital treatment under paragraph (a) of this section. No payment shall be made for such medical or surgical treatment as provided in this paragraph unless such treatment be duly authorized by the commissioner prior to the rendering of such treatment. Special treatment.

(c) Payment for such medical, surgical, or hospital treatment authorized under paragraph (a) hereof may be made to the injured employee, or to the person or persons who have furnished such service, or who have advanced payment for same, as the commissioner may deem proper.

(d) Notwithstanding anything hereinbefore contained, no payment shall be made out of the workmen's compensation fund for medical, surgical, or hospital treatment for an injured employee, if said employee be entitled under contract connected with his employment, or by reason of a subscription list, to medical, surgical, or hospital treatment without further charge to him. Contract service.

SEC. 23 (as amended by ch. 131, acts of 1919). Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the workmen's compensation fund, or to direct compensation from any employer making the election and receiving the permission mentioned in section fifty-four hereof, or otherwise under the provisions of this act on account of any personal injury to or death of any employee caused by a self-inflicted injury, the willful misconduct, or disobedience to such rules and regulations as may be adopted by the employer and approved by the commissioner, and which rules and regulations have been and are kept posted in conspicuous places in and about the work, or the intoxication of such employee, or the failure of such employee to use or make use of any protective or safety appliance or appliances prescribed by the commissioner and furnished by the employer for the use of or applicable to such employee. Willful misconduct, etc.

For the purpose of this act, and to prevent accidents to employees, the commissioner may require all employers to adopt rules, which have been approved by him, for the protection and safety of their employees and keep the same posted in conspicuous places in and about the work and the commissioner may require employers to install, use, or adopt such protective or safety appliance or appliances as in the commissioner's opinion are necessary for the protection of the employees. Rules.

If injury or death result to any employee from the deliberate intention of his employer to produce such injury or death, the employee, the widow, widower, child, or dependent of the employee 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 enacted, for any excess of damages over the amount received or receivable under this act. Intentional injuries.

SEC. 29 (as amended by chapter 131, acts of 1919). In case death ensues from the injury within the period of one year, reasonable funeral expense, not to exceed one hundred and fifty dollars, may be paid from the fund, payment to be made to the persons who have furnished the service and supplies, or to the persons who have advanced payment for same, as the commissioner may deem proper, in addition to such award as may be made to the employee's dependents. Burial expenses.

SEC. 30. If the period of disability does not last longer than one week from the day the employee leaves work as the result of the injury, no award shall be allowed, except the disbursement provided for in sections twenty-seven and twenty-nine. Waiting time.

(a) If the period of disability lasts longer than one week from the day the employee leaves work as the result of the injury, no award shall be allowed for the first week of such disability, except the disbursement provided for in sections twenty-seven and twenty-nine.

Temporary disability. Sec. 31 (as amended by chapter 131, acts of 1919). Where compensation is due an employee under the provisions of this act, such compensation shall be as provided in the following schedule:

(a) If the injury causes temporary total disability, the employee shall receive during the continuance thereof fifty per centum of his average weekly earnings, not to exceed a maximum of twelve dollars per week nor to be less than a minimum of five dollars per week.

(b) Paragraph (a) of this subdivision shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding fifty-two weeks: *Provided*, That in case an injured employee, by reason of having an ununited fracture, or having undergone a surgical operation to correct a vicious union following a fracture, or for the repair of an ununited fracture, or having suffered an injury to the spine or pelvic bones which is of a temporary nature, or for an ankylose joint, is disabled for a longer period than fifty-two weeks, the period which compensation shall be paid may be, but shall not exceed, seventy-eight weeks.

Permanent disability. (c) If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the award computed and allowed as follows:

For a five per centum disability, fifty per centum of the average weekly earnings for a period of twenty weeks.

For a ten per centum disability, fifty per centum of the average weekly earnings for a period of forty weeks.

For a fifteen per centum disability, fifty per centum of the average weekly earnings for a period of sixty weeks.

For a twenty per centum disability, fifty per centum of the average weekly earnings for a period of eighty weeks.

For a thirty per centum disability, fifty per centum of the average weekly earnings for a period of one hundred and twenty weeks.

For a forty per centum disability, fifty per centum of the average weekly earnings for a period of one hundred and sixty weeks.

For a fifty per centum disability, fifty per centum of the average weekly earnings for a period of two hundred weeks.

For a sixty per centum disability, fifty per centum of the average weekly earnings for a period of two hundred and forty weeks.

For a seventy per centum disability, fifty per centum of the average weekly earnings for a period of two hundred and eighty weeks.

For an eighty per centum disability, fifty per centum of the average weekly earnings for a period of three hundred and twenty weeks.

For an eighty-five per centum disability, fifty per centum of the average weekly earnings for a period of three hundred and forty weeks.

For a disability from eighty-five to one hundred per centum, fifty per centum of the average weekly earnings during the remainder of life.

Awards for permanent disability of from two per centum to eighty-five per centum shall be computed on the basis of four weeks' compensation for each per centum of disability determined.

Maimings. (d) If the injury results in the total loss by severance of any of the members named in this paragraph, the percentage of disability shall be determined in accordance with the following table, and award made as provided in paragraph (c) of this section:

The loss of a great toe shall be considered a ten per centum disability.

The loss of a great toe (one phalange) shall be considered a five per centum disability.

The loss of other toes shall be considered a four per centum disability.

The loss of other toes (one phalange) shall be considered a two per centum disability.

The loss of all toes shall be considered a twenty-five per centum disability.

The loss of forepart of foot shall be considered a thirty per centum disability.

The loss of foot shall be considered a thirty-five per centum disability.

The loss of leg shall be considered a forty-five per centum disability.

The loss of thigh shall be considered a fifty per centum disability.

The loss of thigh at hip joint shall be considered a sixty per centum disability.

The loss of little or fourth finger (one phalange) shall be considered a three per centum disability.

The loss of little or fourth finger shall be considered a five per centum disability.

The loss of ring or third finger (one phalange) shall be considered a three per centum disability.

The loss of ring or third finger shall be considered a five per centum disability.

The loss of middle or second finger (one phalange) shall be considered a three per centum disability.

The loss of middle or second finger shall be considered a seven per centum disability.

The loss of index or first finger (one phalange) shall be considered a six per centum disability.

The loss of index or first finger shall be considered a ten per centum disability.

The loss of thumb (one phalange) shall be considered a twelve per centum disability.

The loss of thumb shall be considered a twenty per centum disability.

The loss of thumb and index finger shall be considered a thirty-two per centum disability.

The loss of index and middle finger shall be considered a twenty per centum disability.

The loss of middle and ring finger shall be considered a fifteen per centum disability.

The loss of ring and little finger shall be considered a ten per centum disability.

The loss of thumb, index, and middle finger shall be considered a forty per centum disability.

The loss of index, middle, and ring finger shall be considered a thirty per centum disability.

The loss of middle, ring, and little finger shall be considered a twenty per centum disability.

The loss of four fingers shall be considered a thirty-two per centum disability.

The loss of hand shall be considered a fifty per centum disability.

The loss of fore arm shall be considered a fifty-five per centum disability.

The loss of arm shall be considered a sixty per centum disability.

(e) The total loss of one eye, or the total and irrecoverable loss of the sight thereof shall be considered a thirty-three per centum disability, and the injured employee shall be entitled to compensation for a period of one hundred and thirty-two weeks.

Eye.

For the partial loss of vision in one, or both eyes the percentage of disability shall be determined by the commissioner, using as a basis the total loss of one eye.

(f) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from five per centum to eighty-five per centum shall be in the same proportion and shall be computed and allowed by the commissioner.

Other injuries.

(g) The percentage of all permanent disabilities other than those enumerated in paragraphs (c), (d), (e), and (f) of this section shall be determined by the commissioner, using as a basis the loss of an arm at or above the elbow, and award made in accordance with the schedule in paragraph (c).

(h) Compensation payable under any paragraph of this section shall be limited as follows: Not to exceed a maximum of twelve dollars per week, nor to be less than a minimum of five dollars per week.

Maximum and minimum.

(i) An injury resulting in temporary total disability for which compensation is awarded under paragraph (a) of this section, and such injury is later determined a permanent partial disability under paragraph (c), the amount of compensation so paid shall be considered as payment of the compensation payable for such injury in accordance with the schedule in paragraph (c). Compensation under this section shall be payable only to the injured employee, and the right thereto shall not vest in his estate, except such compensation as may have accrued to the date of his or her death.

Awards to be considered.

Total disabilities.

(j) 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 practically total paralysis.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the schedule in paragraph (c).

SEC. 32. [Repealed.]

• Death.

SEC. 33 (as amended by ch. 131, acts of 1919). In case the personal injury causes death within the period of one year from the date of original injury and disability is continuous from date of such injury until date of death the benefits shall be in the amounts, and to the persons, as follows:

(a) If there be no dependents the disbursements shall be limited to the expense provided for in sections twenty-seven and twenty-nine of this act.

(b) If the deceased employee be under the age of twenty-one years and unmarried and leave a wholly dependent father or mother, the father, or, if there be no father, the mother shall be entitled to a payment of fifty per centum of the average weekly wages of the deceased employee not to exceed a maximum of six dollars per week, to continue for such portion of the period of six years after the date of death as the commissioner in the case may determine: *Provided, however,* That in case the deceased employee be under the age of fifteen years at the time of death, payment shall continue until such employee would have been twenty-one years of age.

Compensation in either case to cease upon the death of the dependent.

(c) If the deceased employee be under the age of twenty-one and unmarried and leave a partially dependent father or mother, the father, or, if there be no father, the mother shall be entitled to a payment of fifty per centum of the average weekly wages, not to exceed a maximum of six dollars per week, to continue until the employee would have been twenty-one years of age.

(d) If the deceased employee leaves a dependent widow or invalid widower, the payment shall be twenty dollars per month until death or remarriage of such widow or widower, and in addition five dollars per month for each child under fifteen years of age, to be paid until such child reaches such age: *Provided,* If such widow or invalid widower shall remarry within two years from date of the death of such employee, such widow or widower shall be paid at the time of remarriage twenty per centum of the amount that would be due for the period remaining between the date of such remarriage and the end of ten years from the date of death of said employee: *Provided, further,* That if upon investigation it shall be ascertained that said widow or widower is living with a man or woman, as the case may be, as man and wife and not married, or the widow living a life of prostitution, the commissioner shall stop the payment of the benefits herein provided to said widow or widower.

(e) If the deceased employee be an adult and there be no dependent widow or widower, or child under fifteen years of age, but there are wholly dependent persons at the time of death, the payment shall be fifty per centum of the average monthly support actually received from the employee during the preceding twelve months, to continue for the remainder of the period between the date of death and six years after the date of injury, and shall not amount to more than a maximum of twenty dollars per month.

(f) If the deceased employee be an adult and there be no dependent widow, widower or child under fifteen years of age, or wholly dependent persons, but there are partly dependent persons at the time of death, the payment shall be fifty per centum of the average monthly support actually received from employee during the preceding twelve months, and to continue for such portion of the period of six years after the date of death as the commissioner in the case may determine, and not to amount to more than a maximum of twenty dollars per month.

Compensation under subsections (e) and (f) hereof shall cease upon the death of the dependent, and the right thereto shall not vest in his or her estate.

(g) Dependent, as used in this act, means a widow, invalid widower, child under fifteen years of age, invalid child over such age, or a posthumous child who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; also the following persons who are and continue to be residents of the United States or its territorial possessions: Stepchild under fifteen years of age, child under fifteen years of age legally adopted prior to the injury causing death; father, mother, grandfather, or grandmother who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; an invalid brother or sister wholly dependent for his or her support upon the earnings of the employee at the time of the injury causing death.

Dependents.

Sec. 34. The benefits, in case of death, shall be paid to such one or more dependents of the decedent, or to such other persons, for the benefits of all of the dependents, as may be determined by the commissioner, who may apportion the benefits among the dependents in such manner as he may deem just and equitable. Payment to a dependent subsequent in right may be made if the commissioner deems proper, and shall operate to discharge all other claims therefor.

Payment of death benefits.

Sec. 35. The dependent or person 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 commissioner.

Duty of recipient.

Sec. 36 (as amended by ch. 131, acts of 1919). Notwithstanding anything herein contained no sum shall be paid a widow or widower who shall have been living separate and apart from, or has been abandoned by the employee, and who shall not have been supported by him or her at the time of the injury causing death.

Spouses living apart.

Sec. 37 (as amended by ch. 131, acts of 1919). The average weekly wage or earnings of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits. The time of injury within the meaning of this section shall be such reasonable length of time immediately preceding the date of injury as shall enable the commissioner to make a fair and just award.

Computing wages.

Sec. 38. [Repealed.]

Sec. 39 (as amended by ch. 131, acts of 1919). To entitle any employee or dependent of a deceased employee to compensation under this act the application therefor must be made on form or forms prescribed by the commissioner and filed in the office of the commissioner within six months from and after the date of injury or death, as the case may be, and all proofs of dependency in fatal cases must be filed with the commissioner within nine months from and after the date of death: *Provided*, That in case the employer fails to report an injury within six months from and after the date such injury is received the commissioner may, in his discretion, accept an application for compensation filed after the expiration of six months as above provided and award compensation to an employee who would have been so entitled had the injury been reported and application filed within the prescribed period of six months. Nonresident aliens may be officially represented by the consular officers of the country of which such aliens may be citizens or subjects: *Provided*, That nothing herein contained shall be construed as giving such consular officer the right to make application for compensation in behalf of nonresident aliens.

Claims.

Nonresident aliens.

Sec. 40. The power and jurisdiction of the commissioner over each case shall be continuing, and he may from time to time make such modification or change with respect to former findings or orders with respect thereto as, in his opinion, may be justified.

Review.

Sec. 41. The commissioner, under special circumstances and when the same is deemed advisable, may commute periodical benefits to one or more lump-sum payments.

Lump sums.

Sec. 42 (as amended by ch. 131, acts of 1919). Compensation shall be paid only to or for the use of such employees or their dependents as hereinbefore provided and shall be exempt from all claims of creditors and from any attachment, execution, or assignment. Payments may be made in such periodical installment as may seem best to the commissioner in each case.

Attachments, etc.

1012 WORKMEN'S COMPENSATION LAWS OF THE UNITED STATES.

- Decisions of Sec. 43 (as amended by ch. 131, acts of 1919). The commissioner shall have full power and authority to hear and determine all questions within his jurisdiction, and to review the action of any employer taken under section fifty-four thereof, and the decision of the commissioner thereon shall be final: *Provided*, In case the final action of said commissioner denies the right of the claimant to receive compensation from the fund or directly from the employer, as the case may be, on the ground that the injury was self-inflicted, or on the ground that the injury was not received in the course of and resulting from his employment, or upon any other ground going to the basis of the claimant's rights, then the claimant may, within ninety days after notice of the final action of such commissioner, apply for an appeal to the supreme court of appeals. The appellant shall file a petition before said supreme court of appeals against such commissioner as defendant, within said period of ninety days, and the commissioner shall be notified by the clerk of said court, forthwith, of the filing of such petition for appeal. And the commissioner shall within ten days after the receipt of such notice file with the clerk of said court the record of such proceedings before the commissioner, including a transcript of the evidence. The court, or any judge thereof, may thereupon decide whether an appeal shall be granted or not, and if a nonresident of the State be granted such appeal he shall execute and file before the clerk of said court, before such appeal becomes effective an appeal bond with surety to be approved by said clerk conditioned to pay all costs which may be awarded against him on such appeal. If granted, the commissioner and the claimant or the claimant's attorney shall be notified of the fact by mail. If an appeal is granted the case shall be tried by said court in the same manner as other cases before it, save and except that neither the record nor briefs need be printed, and that every such appeal granted prior to thirty days before the beginning of any term shall be on the docket for such term, and such appeals shall have precedence over other cases on such docket. The attorney general, without extra compensation, or other counsel if the commissioner sees fit to employ the same, shall represent the commissioner on such appeal. The supreme court on such appeal shall determine the right of the claimant and certify its decision to the commissioner, and, if it determines the right in his favor, the commissioner shall fix his compensation within the limits and under the rules prescribed in this act. The cost of such proceedings, including a reasonable attorney's fee, not exceeding one hundred dollars, to the claimant's attorney, to be fixed by the court, shall be taxed against the unsuccessful party. No fees, expenses, or costs shall be paid out of any compensation awarded.
- Appeals.
- Fees, etc.
- Procedure. Sec. 44 (as amended by ch. 131, acts of 1919). The commissioner shall not be bound by the usual common law or statutory rules of evidence, but shall adopt formal rules of practice and procedure as herein provided, and may make investigations in such manner as in his judgment is best calculated to ascertain the substantial rights of the parties and to carry out the provisions of this act.
- Expenditures. Sec. 45. The commissioner may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section eighteen.
- Reports. Sec. 46. Annually on or about the fifteenth day of September in each year the commissioner, under oath, shall make a report as of the thirtieth day of June, to the governor, which shall include a statement of the number of awards made by him, and a general statement of the causes of the accidents leading to the injuries for which the awards were made; a detailed statement of all disbursements, and the condition of the fund, together with any other matters which such commissioner deems it proper to call to the attention of the governor, including any recommendations he may have to make, and the commissioner, whenever required by the governor, shall report to him as to any designated subject or matter, and furnish such information as may be required.
- Deputy. Sec. 47. [Repealed.]
- Sec. 48. Whenever it shall appear that the commissioner will be absent or unable to act for one week or more, the secretary of the commissioner may be designated by the commissioner to act during his absence or inability to act, and during such period he shall have all the duties and powers of the commissioner.

SEC. 49. Any person, firm, or corporation knowingly failing to make any report or perform any duty required by the commissioner within the time specified, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than twenty-five hundred dollars. Any person, or firm, or the officer of any corporation who knowingly makes a false report or statement under oath, or affidavit respecting any information required by the commissioner, or who shall knowingly testify falsely in any proceeding before the commissioner, shall be deemed guilty of perjury, and upon conviction thereof shall be punished as provided by law.

Failure to report.

SEC. 50. Any person who shall knowingly secure or attempt to secure larger compensation, or compensation for a longer term than he is entitled to, from said workmen's compensation fund, or knowingly secure or attempt to secure compensation from said fund when he is not entitled to any, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding twelve months, or both, in the discretion of the court, and shall, from and after such conviction, cease to receive any compensation from such fund.

Misrepresentations.

SEC. 51 (as amended by ch. 131, acts of 1919). Whenever there shall be in the State treasury any funds belonging to the workmen's compensation fund not likely, in the opinion of the commissioner, to be required for immediate use, it shall be the duty of the board of public works to invest the same as prescribed in section twenty hereof. Whenever it may become necessary or expedient to use any of the funds so invested, the board of public works at the direction of the compensation commissioner shall collect, sell, or otherwise realize upon any investment to the amount deemed necessary or expedient to use.

Investment etc., of funds.

SEC. 52 (as amended by ch. 131, acts of 1919). In case any employer within the meaning of this act is also engaged in interstate or foreign commerce, and for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, this act shall apply to him only to the extent that his mutual connection with work in this State is clearly separable and distinguishable from his interstate work, and in such case such employer and any of his employees thus engaged in both intrastate and interstate work may, with the approval of the commissioner, elect to pay into the fund the premiums provided by this act on account of work done in this State only, by filing written acceptances, or a joint election with the commissioner, and such election when filed and approved by the commissioner shall subject the acceptor irrevocably to the provisions of the act to all intents and purposes as if they had been originally included in its terms. Payments of premiums shall be on the basis of the pay roll of the employees who accept as aforesaid, for work done in this State only.

Interstate commerce.

SEC. 53. If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his employee; or if any employee shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of this act for the creation of the fund, or the provisions of this act making the compensation to the employee provided in it exclusive of any other remedy on the part of the employee shall be held invalid, the entire act shall be thereby invalidated and an accounting according to the justice of the case shall be had of money received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof.

Persons outside act.

SEC. 54. Notwithstanding anything contained in this act, employers subject to this act who are of sufficient financial responsibility to insure the payment of compensation to injured employees and the dependents of fatally injured employees, whether in the form of pecuniary compensation or medical attention, funeral expenses or otherwise as herein provided, of the value at least equal to the compensation provided in this act, or employers of such financial responsibility,

Provisions severable.

Self-insurance.

Security. who maintain their own benefit funds or systems of compensation, to which their employees are not required or permitted to contribute, or such employers as shall furnish bond or other security to insure such payments, may, upon a finding of such facts by the compensation commissioner, elect to pay individually and directly or from such benefit funds, department, or association the said compensation and expenses to injured employees or fatally injured employees' dependents; and the compensation commissioner shall require such security or bond from said employer to be approved by him and of such amount as is by him considered adequate and sufficient to compel or secure to said employees, or their dependents, payment of the compensation and expenses herein provided for, which shall in no event be less than the compensation paid or furnished out of the State workmen's compensation fund in similar cases to injured employees or the dependents of fatally injured employees whose employers contribute to said fund: *Provided*, That any employer electing under this section shall, on or before the twenty-fifth day of each month, for the preceding month, file with the commissioner a sworn statement of the total earnings of all his employees subject to this act for such preceding month and shall pay into the workmen's compensation fund a sum sufficient to pay his proper proportion of the expense of the administration of this act, as may be determined by the commissioner. The commissioner 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 the finding of facts by said commissioner, to consider and pass upon such election by employers subject to this act, which said rules and regulations shall be general in their application; and any employer subject to this act who shall elect to carry his own risk and who has complied with the requirements of this section and the rules of the compensation commissioner, shall not be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after such election and during the period that he is allowed to carry his own risk, by said commissioner: *Provided*, The injured employee has remained in his service with notice given, as provided for in section twenty-three of this act, that his employer has elected to carry his own risk as herein provided. The continuation in the service of such employer with such notice shall be deemed a waiver by the employee and by the parents of any minor employee of the right of action, as aforesaid, which the employee or his or her parents would otherwise have: *And provided further*, That any employer whose record upon the books of the public service commission or compensation commissioner shows a liability against the workmen's compensation fund, incurred on account of injury to or death of any of his employees, in excess of premiums paid by said employer, shall not be granted the right to individually and directly or from such such benefit funds, department, or association, to compensate his injured employees and the dependents of his fatally injured employees until he has paid into the workmen's compensation fund the amount of said excess of liability over premiums paid, including his proper proportion of the liability incurred on account of explosions or catastrophes occurring within the State and charged against said fund: *And provided further*, That in any case under the provisions of this section that shall require the payment of compensation or benefits by an employer in periodical payments, and the nature of the case makes it possible to compute the present value of all future payments the commissioner may, in his discretion, at any time, compute and permit or require to be paid into the workmen's compensation fund an amount equal to the present value of all unpaid compensation for which liability exists, in trust; and thereupon such employer shall be discharged from any further liability upon such award, and payment of the same shall be assumed by the workmen's compensation fund.

Security.

Remedy exclusive.

Employer indebted to fund.

Payment of present value of benefits.

Approved February 22, 1913.

WISCONSIN.

ACTS OF 1917.

CHAPTER 624.—*Liability of employers for injuries—Workmen's compensation.*

[This act amends ch. 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:

SEC. 2394-1 (as amended by ch. 457, acts of 1919). 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:

Defenses abolished, when.

(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 injury, 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 injury, 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.

2. Any employer who has elected to pay compensation as hereinafter provided shall not be subject to the provisions of this section 2394-1.

Who exempt.

3. Subdivisions (1), (2), and (3) of subsection 1 of section 2394-1 of the statutes shall not apply to farm labor.

SEC. 2394-2. No contract, rule or regulation shall exempt the employer from any of the provisions of section 2394-1.

Waivers.

SEC. 2394-3. Liability for the compensation hereinafter provided 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:

Compensation payable when.

(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.

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 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.

Remedy exclusive.

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:

Who are employers.

(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 pre-
sumed.

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 em-
ployees.

SEC. 2394-7 (as amended by ch. 577, acts of 1919). The term "employee" as used in sections 2394-1 to 2394-31, inclusive, shall be construed to mean:

Public employ-
ment.

(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, except 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 except as provided in subdivision (2) 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 compensa-

tion to employees of such contractor or employees of a subcontractor under him.

(2) Sheriffs, deputy sheriffs, constables, marshals, 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: *Provided, further*, That any peace officer other than sheriffs, deputy sheriffs, constables, marshals and policemen shall be considered an employee while engaged in the enforcement of peace or in and about the pursuit and capture of those charged with crime.

(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 policeman or firemen therefrom.

(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. Private employment.

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: Public employees covered.

(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.

(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 while the common carrier and the employee are engaged in interstate commerce. Railroads.

SEC. 2394-9 (as amended by chs. 680 and 692, acts of 1919). Where liability for compensation under sections 2394-3 to 2394-31, inclusive, exists, the same shall be as provided in the following schedule: Compensation.

(1) Such medical, surgical, and hospital treatment, medicines, medical and surgical supplies, crutches, and apparatus or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, medicines and medical supplies as may be reasonably required for ninety days immediately following the accident, to cure and relieve Medical, etc., aid.

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, or in the case of permanent total disability for such period of time as the commission may deem advisable, 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. 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. Any employer may elect not to be subject to the provision for Christian Science treatment provided for in this subsection by filing written notice of such election with the industrial commission.

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.

Maximum benefits. (d) 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 or 6 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.

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 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.

(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:

(a) Where the accident proximately causes permanent total disability, it shall be the same as if the accident had caused death. Permanent total 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. Permanent partial disability.

(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. Partial dependents.

(d) Where death proximately results from the accident, the death benefit shall include reasonable expense of burial, not exceeding one hundred dollars. Burial expenses.

(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.

(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: Schedule of awards.

(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;

(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 second joint, seven weeks;
- (35) The loss of the second toe at the distal joint, five weeks;
- (36) The loss of the third, fourth, or little toe with the metatarsal bone thereof, twenty weeks;
- (37) The loss of the third, fourth, or little toe at the proximal joint, eight weeks;
- (38) The loss of the third, fourth, or little toe at the second or distal joint, five weeks;
- (39) The loss of all the toes of one foot, seventy weeks;
- (40) The loss of an eye by enucleation, or evisceration, one hundred sixty weeks;
- (41) Total blindness of one eye, one hundred forty weeks;
- (42) Total deafness of both ears, one hundred sixty weeks;
- (43) Total deafness of one ear, forty weeks;
- (44) Total deafness of the second ear, one hundred twenty weeks;
- (45) 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 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.

(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. Disfigurement.

(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. Aged employ-
ees.

(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. Awards in-
creased, when;

(i) Where injury is caused by the willful failure of the employee to use safety devices where provided by the employer, or Reduced
when.

(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 and death benefit provided herein shall be reduced fifteen per cent.

(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 be 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. Lump sums.

(m) Aggregate allowances for injuries shall in no case exceed six times the average annual earnings, except in cases of permanent total disability. Measure of al-
lowances.

(6) In the following cases special indemnity shall be paid an employee only from the funds provided for in subdivisions (d), (e), and Special indem-
nity.

(f) of this subsection in addition to the allowance provided in subsection (5) of this section, after cessation of the payments therein prescribed.

(a) If an employee has previously incurred permanent partial disability through the loss or total impairment of a hand, arm, foot, leg, or eye, and by a subsequent accident incurs permanent total disability through the loss or total impairment of the other hand, or the other arm, or the other foot, or the other leg, or the other eye, or through the loss or total impairment of another member or organ, an amount sufficient to complete indemnity liability as for permanent total disability. Second injuries.

(b) If, by reason of the loss or permanent impairment of any member or organ specified in the foregoing subdivision by a subsequent accident, where loss or total impairment of another member or organ existed because of a prior accident, the employee shall sustain necessary wage loss in excess of that for which indemnity is provided in subsection (5) of this section, an amount sufficient to complete the payment of such indemnity as would have accrued if the injury to both members or organs had been caused by a single accident.

(c) Where permanent impairment of both eyes is caused by a single accident, such additional amount as shall be necessary to complete indemnity for such disability period as the nature of the injury bears to one causing permanent total disability. Both eyes.

(d) In each case of the loss or of the total impairment of a hand, arm, foot, leg, or eye, the employer shall be required to pay the sum of one hundred and fifty dollars into the State treasury. Loss of mem-
ber.

(e) The moneys paid into the State treasury pursuant to the foregoing subdivision, with all accrued interest, is hereby appropriated to the industrial commission for the discharge of all liability for special additional indemnity accruing under this subsection. Special fund.

(f) For the proper administration of the funds available under subdivisions (d) and (e) the commission shall, by order, set aside in the Reserves.

State treasury suitable reserves to carry to maturity the liability for special additional indemnity in each case, and for any contingent death benefit.

Treble recovery. (7) 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.

(c) If treble the amount recoverable shall be less than the actual loss of wage sustained by the minor employee, then liability shall exist for such loss of wage.

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.

(8) 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 (as amended by ch. 692, acts of 1919). 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 and twenty-five dollars nor more than one thousand two hundred and fifty dollars per annum; and for all other employees such average annual earnings shall be taken at not less than five hundred and twenty-five dollars nor more than one thousand one hundred and twenty-five 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 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.

(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.

Minors.

(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.

Subsequent injuries.

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.

Wage loss.

3. The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

Dependents.

(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 descendant, 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 subsequent 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.

Non resident aliens.

No person shall be excluded as a dependent who is a nonresident alien. 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.

Dependents not parties, when.

- 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. 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. 3394-14. 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 fur-

nished. 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.

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.

Disputes.

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.

Medical, etc., bills.

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.

Deductions from wages.

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.

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 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 subpoenas, 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.

Hearings.

Any person who shall willfully fail or neglect to appear and testify or to produce books, papers, and records as required by such subpoena duly served upon him shall be guilty of a misdemeanor and upon con-

viction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisonment 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 notwithstanding, 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, conditioned 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 (as amended by ch. 680, Acts of 1919). Whenever an award is made by the commission against any county, city, village, town, or school district, the person in whose favor it is made shall file a certified copy thereof with the county, city, village, town, or school district 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, town, or school district 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, towns, and school districts shall not apply to the payment of an award or judgment under the provisions of this section.

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. Delayed pay-
ments.

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 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.

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. Time for trial.

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.

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. If order set
aside, what.

- 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 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 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 (as amended by ch. 680, acts of 1919). 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.

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. As a condition for the granting of an exemption the commission shall have authority to require the employer to furnish such security as it may consider sufficient to insure payment of all claims under compensation. Where the security is in the form of a bond or other personal guaranty, the commission may at any time either before or after the entry of an award, upon at least 10 days' notice and opportunity to be heard, require the sureties to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced.

Security of pay-
ments.

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.

Sec. 2394-25 (as amended by ch. 680, acts of 1919). 1. The making of a lawful claim against an employer or compensation insurer for compensation under sections 2394-3 to 2394-31, inclusive, for the injury or death of an 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 or insurer may enforce in their own name or names the liability of such other party for their benefit as their interests may appear. If a recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary or beneficiaries shall be entitled to any amount recovered over and above the amount that the employer or insurer, or both, have paid or are liable for in compensation to such beneficiary or beneficiaries, after deducting reasonable cost of collection, and in no event shall the beneficiary receive less than one-third the amount recovered from the third party, less the reasonable cost of collection. Settlements of such claims and the distribution of the proceeds therefrom must have the approval of the court wherein the litigation is pending, or if not in suit, of the industrial commission. The beneficiary shall be entitled to reasonable notice and opportunity to be present in person or by counsel at the approval proceedings. The failure of the employer or compensation insurer in interest to pursue his remedy against the third party within ninety days after written demand by a compensation beneficiary shall entitle such beneficiary or his representatives to enforce liability in his own name, accounting of the proceeds to be made on the basis above provided.

Claims against
third parties.

2. The commencement of an action by an employee against a third party for damages by reason of an accident covered by sections 2394-3 to 2394-31, inclusive, or the adjustment of any such claim, shall operate as a waiver of any claim for compensation against the employer.

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.

Malpractice.

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 com-

Insurance.

Liability not to be reduced. pen- sation 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.

Insurance gov- erned by act. 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.

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 section 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.

Sec. 2394-29 (as amended by chapter 680, acts of 1919). 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. Every employer who shall have affirmatively elected not to accept the provisions of sections 2394-3 to 2394-31, inclusive, shall post and maintain printed notices of such nonselection on their premises, of such design, in such numbers, and at such places as the commission, shall, by order, determine to be necessary to give information to their employees.

Blanks, etc., to be furnished.

Notice to be posted.

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.

Provisions severable.

Sec. 2394-32 (added by ch. 457, amended by ch. 668, acts of 1919). The provisions of sections 2394-1 to 2394-31, both inclusive, are extended so as to include, in addition to accidental injuries, all other injuries including occupational diseases growing out of and incidental to the employment.

Occupational diseases.

SEC. 2. This act shall take effect on September 1, 1917.

Act in effect.

Approved July 10, 1917.

WYOMING.
CONSTITUTION.

ARTICLE 10.—Liability of employers for injuries to employees—Workmen's compensation.

SECTION 4 (as amended, 1914). No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person. Any contract or agreement with any employee waiving any right to recover damages for causing the death or injury of any employee shall be void.

As to all extrahazardous employments, the legislature shall provide by law for the accumulation and maintenance of a fund or funds out of which shall be paid compensation as may be fixed by law according to proper classifications to each person injured in such employment or to the dependent families of such as die as the result of such injuries, except in case of injuries due solely to the culpable negligence of the injured employee. Such fund or funds shall be accumulated, paid into the State treasury, and maintained in such manner as may be provided by law. The right of each employee to compensation from such fund shall be in lieu of and shall take the place of any and all rights of action against any employer contributing as required by law to such fund in favor of any person or persons by reason of any such injuries or death.

Amendment adopted November 3, 1914.

ACTS OF 1915.

CHAPTER 124.—Compensation of workmen for injuries.

| | |
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| Title. | SECTION 1. This act shall be known as the "workmen's compensation law." |
| Compensation payable. | SEC. 2. Compensation herein provided for shall be payable to persons injured in extrahazardous employments, as herein defined, or the dependent families of such as die as the result of such injuries, except in case of injuries due solely to the culpable negligence of the injured employee. Said compensation shall be payable from funds in the State treasury to be accumulated and maintained in the manner herein provided. The right of each employee to compensation from such funds shall be in lieu of and shall take the place of any and all rights of action against any employer contributing, as required by law, to such fund in favor of any such person or persons by reason of any such injury or death. Sections 3526, 4291, and 4292, and all other laws or parts of laws relating to damages for injuries or death from injuries or in anywise in conflict with this act are hereby repealed, as to the employments, employers, and employees coming within the terms of this act. |
| Remedy exclusive. | SEC. 3. The rights and remedies provided in this act for an employee on account of an injury shall be exclusive of all other rights and remedies of such employee, his personal or legal representatives or dependent family at common law or otherwise on account of such injury; and the terms, conditions, and provisions of this act for the payment of compensation and the amount thereof for injuries sustained or death resulting from such injuries shall be exclusive, compulsory, and obligatory upon both employers and employees coming within the provisions hereof. |
| Same. | SEC. 4 (as amended by ch. 117, acts of 1919). The extrahazardous 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, general teaming; smelters; |
| Extra hazardous occupations. | |

powder works; laundries operated by power; quarries; engineering works; logging; lumber yards; lumbering and sawmill operations; street and interurban railroads not engaged in interstate commerce; buildings being constructed, repaired, moved, or demolished; painting and painting operations; telephone, telegraph, electric light or power plants or lines; steam heating or power plants; railroads not engaged in interstate commerce; bridge building 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 extrahazardous and in which from the nature, conditions, or means of prosecution of the work therein requires risks to the life and limb of the workmen 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. This act shall apply to the employers by whom workmen have been employed continuously for more than one month at the time of the accident.

SEC. 5. 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. Interstate commerce.

SEC. 6 (as amended by ch. 117, acts of 1919). In this act unless the context otherwise requires: Definitions.

(a) "Factories" mean any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article for the purpose of trade or gain or the business carried on therein, 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 stand-pipes, power plant, blast furnace, paper mill, printing plant, flour mill, glass factory, cement plant, artificial gas plant, machine or repair shop, salt plant, oil-refinery plant, and chemical-manufacturing plant.

(b) "Workshop" means any yard, plant, premises, room, or place where power-driven machinery is employed and manual labor is exercised by way of trade or gain or otherwise 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 adjacent work place where the material from a mine is prepared for use or shipment.

(e) "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 the employer's trade or business.

(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, 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 buildings, moving saies, 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 is in use (excluding mining and quarrying).

(h) "Employer" includes any person, or body of persons, corporate or incorporate, and the legal representatives of a deceased employer or the receiver or trustee of a person, corporation, association, or partnership.

(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, or those engaged in clerical work and not subject to the hazards of the business, or one holding an official position. The term "workmen" shall include "employee" and the term "employee" shall include "workmen," and each shall include the singular and plural of both sexes. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his "dependent family" as hereinafter defined or to his legal representative, or where the workman is a minor or incompetent, to his guardian or next friend.

(j) "Dependent families" as used in this act means such members of the workman's family as were wholly or in part dependent upon the workman for support at the time of the injury and shall include widow or husband, as the case may be, and children, or if no widow, husband, or children the parents of the injured workman, if actually dependent upon him for support at the time of the injury; if it be shown that the surviving spouse willfully deserted deceased without fault upon the part of the deceased, such surviving spouse will not be regarded as a dependent in any degree. No surviving spouse shall be entitled to the benefits of this act unless she shall have been married to the deceased at the time of the injury.

(k) "Child or children" means such that are under sixteen (16) years of age (and over said age, if physically or mentally incapacitated from earning) and shall also include legitimate children of the injured workman born after his death from injury. In other cases questions of family dependency in whole or in part shall be determined in accordance with the fact, as the case may be at the time of the injury; the foregoing definition of "dependent families" shall not include any of the persons named, who are aliens residing beyond the jurisdiction of the United States of America, except a surviving widow, or children under sixteen (16) years of age and as to such nonresident aliens the rate of compensation shall not exceed thirty-three and one-third per cent (33 $\frac{1}{3}$ per cent) of the rates of compensation herein provided.

Nonresident
aliens.

Injuries.

(l) The words "injuries sustained in extrahazardous employment," as used in this act shall include death resulting from injury and injuries to employees 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 places where their employer's business requires their presence and subjects them to extrahazardous duties incident to the business: but shall not include injuries of the employee 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.

(m) The words "injury and personal injury" shall not include injury caused by the willful act of a third person directed against an employee for reasons personal to such employee, or because of his employment; nor a disease, except as it shall directly result from an injury incurred in the employment.

(n) "Invalid" means one who is physically or mentally incapacitated from earning wages.

Sec. 7. 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 be mentally incompetent or a minor, at the time when any right or privilege accrues to him under this act, his guardian may, in his behalf, claim and exercise such right or privilege and no limitation of time, in this act provided for, shall run, so long as such incompetent or minor has no guardian.

Incompetents.

Sec. 8. Where an employee coming under the provisions of this act received an injury under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, and no legal liability attaching to the employer, then and in such case such employee shall be left to his remedy at law against such other person, and compensation shall not be payable under this act.

Liability of third persons.

Sec. 9. No contract, rule, regulation, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this act except as herein provided.

Waivers.

Sec. 10. It shall be the duty of the State treasurer to prepare, cause to be printed and supplied free for use in the administration of this law such blank forms as may be needed by employers for reporting and certifying pay rolls of persons employed by them in extrahazardous employments and for reporting injuries; and forms for use of injured persons in making claims for compensation; also to provide himself with such other books, records, or forms as may be deemed necessary to expedite the transaction of business under the provisions of this act.

Blanks.

Sec. 11. Whenever an accident occurs causing injury to any workman engaged in any of the extrahazardous employments defined by this act, it shall be the duty of the employer within 20 days thereafter to make a report of such accident and the injury resulting therefrom and to file said report in the office of the clerk of the district court of the county wherein such accident occurred, which report shall state:

Accidents to be reported.

(1) The name of the injured workman and the time, cause, and nature of the accident and injury; also whether the injury has disabled the workman from continuing the performance of his duties.

(2) Whether the accident occurred while the workman was engaged in the duties of his employment, and grew out of the employment.

(3) The nature of the employment and duties and how long the workman had been engaged in the service of such employer.

(4) Whether the accident was or was not due solely to the culpable negligence of the injured employee and if so, a statement of the facts.

(5) Whether the injured workman is married or single; if married, whether he has a dependent family, and if so, the names of the persons comprising such dependent family and their place of residence.

(6) Whether the injured workman claims compensation under this act, and whether his right to compensation or the amount of compensation is disputed by his employer.

Said report may be made upon a printed form prepared by the State treasurer for such purposes, and shall be verified as pleadings in civil actions. Failure or neglect on the part of any employer whose business or occupation is one enumerated and defined herein, as being extrahazardous, to report accidents causing injury to any of his employees, shall be a misdemeanor and upon conviction such employer shall be punished by a fine of not exceeding five hundred (\$500) dollars.

Sec. 12. Whenever an injury or death resulting from injury is reported to the clerk of the district court of the county wherein such injury occurred, in accordance with the preceding section, it shall be the duty of said clerk to at once notify the judge of said court, that such injury report has been filed in his office. It shall thereupon be the duty of said judge to investigate the nature of said injury and claim for compensation at the earliest possible date, in such a manner as he may deem necessary to ascertain whether the claim for compensation or the amount thereof is disputed by the employer, and if there be no dispute as to the right of the injured workman to receive compensation, or as to the amount thereof, and the claim appear to be free from collusion, said judge shall thereupon make an order directing payment for such compensation from the State industrial accident fund in accordance with the facts by him ascertained and the terms of this law. If there be a dispute as to the right of said injured employee or his dependent family to receive compensation, or as to the amount

Investigation.

Disputes.

thereof, then it shall be the duty of said judge to set the case down for a hearing at the earliest possible date and to direct notice of such hearing to be issued by the clerk of said court for service upon the employer and the employee at least seven (7) days before the date fixed for said hearing, which said notice shall be served by the sheriff of said county without expense to either party, except that his actual traveling expenses shall be allowed and taxed, as costs. The hearing shall be conducted upon the statement and report filed by the employer and such formal claims as may be presented and filed with the clerk of the district court by or on behalf of the injured workman. If the employer in his report of the injury alleges that the injury was due solely to the culpable negligence of the injured employee, or that the claim for compensation is one not coming within the provisions of this law, then a jury may be demanded by either party and the cause shall be tried, as a court proceeding. If a jury is demanded it may be selected from names drawn from the five-mile limit jury box, as in civil cases, at any time in term time or vacation unless a regular jury panel be in attendance at court on the date any such hearing may occur. The taking of evidence shall be summary, giving a full opportunity to all parties to develop the facts fully. The official court reporter of the district shall attend the hearing and make a stenographic report of the evidence without cost to either party. The court or judge shall direct the county and prosecuting attorney or other competent attorney appointed by the court to conduct the examination of witnesses on behalf of the injured workman, and it shall be the duty of said attorney to appear and perform such service without expense to either party. The employer may appear in person or by counsel and introduce evidence at the same hearing. No costs shall be taxed by the clerk except fees for witnesses, who may be subpoenaed and who shall be allowed the same fees for attendance and mileage as is fixed by law in civil actions, and jury costs shall also be taxed to and paid from the accident fund, if the verdict and judgment be in favor of the employer, but if against the employer, then he shall pay the costs. At the conclusion of the hearing, the court shall enter an order pursuant to the verdict of the jury, if a jury be called, and if no jury be called, the court or judge shall render a decision upon the facts and law of the case pursuant to the provisions of this act, and make an order allowing or disallowing compensation, as the law and the evidence may warrant. In any proceeding before a court or judge, as aforesaid, the court or judge shall have authority to appoint a duly qualified impartial physician to examine the injured employee and give testimony. The fee for such service shall be five (\$5) dollars, unless otherwise ordered by the court, with mileage allowed, as is allowed to other witnesses, which shall be taxed, as costs, and paid as other witness fees are paid. The employer or employee may at his own expense also appoint a qualified physician, who may attend and be present at any such examination of an injured employee and give testimony at such hearing or investigation.

Decision.

Appeals.

SEC. 13. Any order given and made in any investigation or hearing by a court or judge pursuant to the provisions of this act shall be reviewable by the State supreme court on proceedings in error in the manner prescribed by the code of civil procedure: *Provided, however,* That the petition in error, bill of exceptions, and record on appeal must be filed in the supreme court within thirty (30) days from the date of decision or order on motion for new trial by a court or a judge; unless the time be extended by order of court or judge, and thirty (30) days shall be allowed all parties thereafter for filing briefs, and said appeal shall be advanced on the calendar and disposed of as promptly as possible. In case an appeal to the supreme court is prosecuted on behalf of the injured workman, the county and prosecuting attorney, or other attorney representing said workman, shall order a transcript of the record of the hearing and proceeding to be prepared by the official court reporter of the district wherein said injury occurred and duly certified without cost to said injured workman, and said county and prosecuting attorney or other attorney shall order the papers on file in the office of the district court to be by said clerk prepared, transcribed, certified, and forwarded to the clerk of the supreme court without cost to the injured workman, and the proceedings in the supreme court shall be conducted on behalf of the injured workman by the attorney general

of the State as a part of his official duties, and by other attorney representing said workman. In case an appeal be prosecuted on behalf of the employer, the record of the proceedings at the original hearing shall be supplied without cost to such employer, but such employer may employ counsel to conduct such appeal on his behalf.

Sec. 14. Every order given and made by a district court or judge awarding payment from the industrial accident fund to an injured employee or his dependent family, shall be entered of record by the clerk of the court where given, and true copies thereof shall be immediately made and certified by said clerk and forwarded to the State auditor and State treasurer, respectively, of Wyoming, and shall be by each of said officers entered upon a record to be known as the compensation docket, and shall be the authority and direction of the State auditor to issue warrants for compensation awards against the industrial accident fund and for the State treasurer to pay such compensation awards from said fund.

Records.

Sec. 15 (as amended by ch. 117, acts of 1919). There is hereby created a fund to be known as the "industrial accident fund," which shall be held by the State treasurer and by him deposited in such banks as are authorized to receive deposits of funds of the State. The treasurer in making said deposits shall divide the said industrial accident fund into two distinct funds, one to be known as the "general fund" and the other to be known as the "reserve fund." The "general fund," as near as may be, shall be used for payment of all awards, claims, and items of expense chargeable against the industrial accident fund, and the "reserve fund" shall not be used for any of said payments unless the general fund at the time is insufficient to meet the demands upon it, in which case the treasurer shall transfer from the reserve fund to the general fund a sufficient amount to meet the immediate demands upon said general fund. The purpose of creating said reserve fund is to provide a fund within the industrial accident fund sufficiently large to pay great and unusual demands upon the industrial accident fund which might be caused by a large disaster or by several such disasters occurring within a short time, and the reserve fund shall be kept apart from the general fund and as near as may be unused in accordance with said purpose. Within thirty days from the date on which this act shall take effect, the State treasurer shall set aside in the reserve fund three hundred thousand dollars (\$300,000), and thereafter shall set aside in this said reserve fund at the end of each month twenty-five per cent (25%) of all moneys received in the industrial accident fund during said month in excess of the amount expended, the balance of moneys so received to be used in the general fund. Three-fourths of the reserve fund shall as near as may be kept invested in United States Government bonds. All moneys received by the State treasurer under the provisions of this act shall become a part of the industrial accident fund and there is hereby appropriated out of the funds of the State treasury not otherwise appropriated the sum of thirty thousand dollars (\$30,000) which shall be paid into and become a part of such fund. There is also appropriated annually, until otherwise provided by law out of any moneys in the State treasury not otherwise appropriated, a sum equal to one-fourth of the total sum which shall be received by the State treasurer from employers under the provisions of section 16 hereof, not, however, to exceed the sum of forty thousand dollars (\$40,000) per annum, and the money so appropriated shall be credited to and become a part of such fund. All fees or mileage of witnesses, jurors, and physicians adjudged to be paid from the accident fund in any court proceeding under this act, and all contingent expenses incurred in preparing for and in the administration of this act shall be paid from the industrial accident fund on proper vouchers and warrants.

Industrial accident fund.

Reserve fund.

Sec. 16 (as amended by ch. 117, acts of 1919). Every employer engaged in any of the occupations herein defined as extrahazardous, is hereby required to pay into the State treasury for the benefit of the industrial accident fund a sum of money equal to one and one-half per cent (1½%) of the moneys earned by each of his employees engaged in such extrahazardous employment during each calendar month of such employment. Such payment shall be so made on or before the 15th day of the month following the month for which such payments are computed and paid. The State treasurer shall keep a separate

Premiums.

account for each employer so contributing to said fund, but he shall not charge against any employer the amount of any warrant until the same has been paid. Each employer shall continue to make monthly contributions as above provided, unless the sum theretofore contributed by him, after deducting all payments made on account of injuries to his employees and all allowances made on account of such injuries, shall equal full one and one-half per cent (1½%) of his annual pay roll computed by multiplying his current month's pay roll of workmen engaged in extrahazardous employment by twelve and shall likewise be not less than five thousand (\$5,000) dollars. Such employer shall not be compelled to contribute when his contributions in the fund, after making deductions as aforesaid, shall equal one and one-half per cent (1½%) of his annual pay roll, and shall likewise be not less than five thousand (\$5,000) dollars.

Copy of pay roll. SEC. 17 (as amended by ch. 117, acts of 1919). 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 extrahazardous employment during the current 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 assessor to make list. SEC. 18 (as amended by ch. 69, acts of 1917). 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 extrahazardous industries as defined by this act, and to forward such list of extrahazardous 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, extrahazardous industries have suspended business permanently, and what, if any, new extrahazardous industries have been established and commenced in his county during the preceding month, and also showing each extrahazardous 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 an extrahazardous business or industry and 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 extrahazardous 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.

Compensation. SEC. 19 (as amended by ch. 117, acts of 1919). Each employee, who shall be injured in any of the extrahazardous employments, as herein defined, or the dependent family of any such injured workman, who may die as a result of such injuries, except in case of injuries due solely to the culpable negligence of such injured employee, shall receive out of the industrial accident fund, compensation in accordance with the following schedule, and such payment shall be in lieu of and take the place of any and all rights of action against any employer contributing

as required by this act to the industrial accident fund in favor of any person or persons by reason of any such injuries or death:

(a) "Permanent partial disability" means the loss of either one foot, one leg, one hand, one arm, one eye, or the sight of one eye one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. For any permanent partial disability resulting from any injury the workman shall receive a lump sum as hereinafter specified.

For the loss of a thumb, \$225.

For the loss of a first finger, \$200.

For the loss of a second finger, \$150.

For the loss of a third finger, \$150.

For the loss of a fourth finger, \$150.

For the loss of a palm (metacarpal bone), \$600.

For the loss of a hand, \$1,000.

For the loss of an arm at or below elbow, \$1,200.

For the loss of an arm above elbow, \$1,500.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes the fingers more than useless, the same amounts apply to such finger or fingers (not thumb) as given above.

The loss of the third 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 two-thirds of such finger.

The loss of more than the middle and distal phalanges 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 more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, \$200.

For the loss of one of the toes other than great toe, \$150.

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 equal to the loss of one-half of the toe.

For the loss of a foot, \$1,000.

For the loss of a leg below the knee, \$1,200.

For the loss of a leg above the knee, \$1,500.

For the loss of an eye or the sight thereof, \$1,500.

For any other injury known to surgery to be permanent partial disability the workman shall receive a lump sum in an amount proportioned to the extent of such permanent partial disability based as near as may be upon the foregoing schedule.

(b) "Permanent total disability" means the loss of both legs, or both arms, or one leg and one arm; total loss of eyesight, paralysis, or other condition permanently incapacitating the workman from performing any work at any gainful occupation. Where there has been a previous disability, as the loss of one eye or the sight thereof, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury. When permanent total disability results from the injury, the workman shall receive:

(1) If unmarried at the time of injury, a lump sum of \$2,500.

(2) If the workman had a wife or invalid husband, but no child under the age of sixteen (16) years, a lump sum of \$2,500.

(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 one hundred (\$100) dollars per year 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 lump sum of five thousand five hundred dollars (\$5,500) in any such case.

(c) "Temporary total disability" means an injury which temporarily incapacitates the injured person from performing any work at

Partial disability.

Total disability—

Permanent;

Temporary.

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 thirty-five (\$35) 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 forty (\$40) dollars per month, and if he have children under sixteen (16) years of age, he shall receive six (\$6) dollars per month for each child under sixteen (16) years of age, but the total monthly payment shall not exceed sixty (\$60) dollars 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.

Medical, etc.,
aid.

(d) In all cases of total disability and permanent partial disability the expense of medical attention and of care in hospital of the injured workman shall be paid, not to exceed, however, one hundred dollars (\$100) in any case, unless under general arrangement workman is entitled to medical attention and care in hospital. 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 two thousand (\$2,000) dollars: *Provided*, 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. If said workman leaves a surviving child or children under sixteen (16) years of age, the guardian of said children, appointed as hereinafter provided, shall receive for the use and benefit of said children, a lump sum of one hundred dollars (\$100) 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 lump sum paid to said guardian shall in no case exceed three thousand dollars (\$3,000). 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 funds shall be disbursed under a proper guardianship to be created by the court or judge making such an order.

(2) If the injured workman die during a period of temporary total disability, and after receiving compensation therefor as herein provided, and his death be shown to have resulted from such injuries, the total amount of payments received by him during such disability and prior to his death will be deducted from the lump amount herein provided to be paid to the surviving widow and children under sixteen (16) years of age in case of death resulting from injuries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen (16) years, but leaves a parent or parents surviving who were actually dependent upon him for support, such surviving parent or parents shall receive a lump sum which shall be computed at the rate of fifty per cent (50 per cent) of the average monthly support actually received by such parent or parents from the workman during the twelve months next preceding the occurrence of the injury, calculated as near as may be over the probable period such support would have continued, but in no case exceeding the sum of one thousand (\$1,000) dollars.

Refusing treat-
ment.

SEC. 20. If any injured employee shall persist in unsanitary or injurious practice, which tends to imperil or retard his recovery, or if he shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, he shall forfeit all right to compensation under this act; and where an injured employee is under care and treatment of a physician, he shall not be permitted to personally receive or use any compensation payments allowed him

under this act, except upon the order of such physician, but such payments shall be withheld and delivered to such injured workman upon his recovery or discharge by such physician.

SEC. 21. No money paid or payable under this act out of the industrial accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, or ever be taken in execution or attached or garnishe[d], or shall the same pass to any other person by operation of law any such assignment or charges shall be void. Assignments, etc.

SEC. 22. 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 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 same shall be within the probate jurisdiction of the courts, the same as any other properties of minors. Minors.

SEC. 23. Whenever the State, county, or any municipal corporation shall engage in any extrahazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the industrial accident fund shall be made from the treasury of the State, county, or municipality. If said work is being done by contract, the pay roll of the contractor and the subcontractor shall be the basis of computation and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be subject to the provisions of this act and the State for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the industrial accident fund and the contractor, in turn, shall be entitled to collect from the subcontractor his proportionate amount of payment; the provisions of this section shall apply to all extrahazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the industrial accident fund for the proper percentage of the total pay roll of the work and for the amounts due it, and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as the State law, city charter, or municipal ordinance provision is made for municipal employees injured in the course of employment, such employee shall not be entitled to the benefits of this act and shall not be included in the pay roll of the municipality under this act. Public work.

SEC. 24. 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 extrahazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means, or method. Safety devices.

SEC. 25. 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 to procuring any benefit or benefits under this act, any sum or sums aggregating more than fifty dollars or more than five per centum of the whole amount received or to be received by such beneficiary or beneficiaries on account of injuries to any employee. 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. Fees.

SEC. 26. Any physician having attended an employee in a professional capacity may be required to testify before any court or judge when so directed in cases coming within the provisions of this act, and the law of privileged communication between physician and patient, as fixed by statutes, shall not apply in such cases. Physicians to testify.

SEC. 27. Any employee or workman who shall make or cause to be made on his behalf any misrepresentation or false statement for the purpose of receiving compensation under this act to which he is not lawfully entitled shall be guilty of a misdemeanor, and shall, on conviction, be fined not more than three hundred (\$300) dollars or imprisoned for not more than ninety (90) days. False statements.

1042 WORKMEN'S COMPENSATION LAWS OF THE UNITED STATES.

Accident sta-
tistics. SEC. 28 (as amended by ch. 69, acts of 1917). It shall be the duty of the State treasurer to secure and compile statistical information concerning accidents occurring in the extrahazardous employment defined by this act, showing the number of accidents or fatalities occurring in each of said employments, the amount paid in by each employer coming within the provisions of this act, the amount paid out on account of injuries or death resulting from injuries in such employments, and any other information relating to the operation or administration of this law that may be of interest, and to make a full report thereof, together with such recommendations as he may deem proper for changes or amendments herein, and to publish a full report thereof, to the governor on or before the 31st day of December in each year.

Employer's
books. SEC. 29. The State treasurer may direct the State examiner to examine the books, accounts, or pay rolls of any employer at any time for the purpose of securing any information desired in the administration of this act, and it shall be the duty of the State examiner to perform such service when called upon by the State treasurer.

Medical exami-
nations. SEC. 30. Any workman awarded compensation for temporary total disability under this act as defined by clause (c) of section 19 hereof shall, if thereafter requested by his employer, submit himself for medical examination by a physician licensed to practice medicine in this State, at a place designated by the employer 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. If it be agreed that the workman has recovered so that his earning power at any kind of work is restored, the fact shall be reported by the employer and said physician to the judge of the district court who made the award in the first instance, or if there be a dispute as to the recovery of the workman and his restoration to earning power, it shall be likewise reported to said judge by filing a statement in either case in the office of the clerk of the district court of the county where the award was made and the matter shall be disposed of in such manner as said judge may deem proper under the facts. If said judge find that said workman has recovered and has been restored to his earning power, and that compensation should be discontinued, his decision and judgment in the premises shall be certified to the State auditor and State treasurer, and shall be authority and direction to said officers to discontinue compensation payments. If the workman in such case refuse 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 or for account of such period or refusal.

Dependents. SEC. 31. All employees or workmen coming within the provisions of this act shall be required upon entering service in any of the extrahazardous employments herein defined to make and sign a written statement setting forth the names of the persons dependent upon them for support or constituting members of their dependent families, in each case giving the names and ages of their children under the age of sixteen (16) years.

Payments to
fund. SEC. 32. All payments made into the accident fund by any and every employer under the provisions of this act shall be taken as paid and received in consideration of the indemnity to such employer by reason of his contributing to the industrial accident fund and in consideration of the payments made by the State to such fund, and no part of any moneys so paid in by any employer shall ever be refunded to him either during the time when he continues in business as such employer or after he ceases such business: *Provided, however,* If this act shall be hereafter repealed or held invalid, all moneys which are in the industrial fund at the time of the repeal or final holding of invalidity shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Act in effect. SEC. 34. This act shall take effect and be in force from and after the 1st day of April, 1915.

Approved February 27, 1915.

UNITED STATES.

ACTS OF 1915-16.

(Public No. 267.)

Compensation for injuries to civil employees of the United States.

SECTION 1. The United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death.

Compensation payable when.

Sec. 2. During the first three days of disability the employee shall not be entitled to compensation except as provided in section nine. No compensation shall at any time be paid for such period.

Waiting time.

Sec. 3. If the disability is total the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of his monthly pay, except as hereinafter provided.

Compensation for total disability.

Sec. 4. If the disability is partial the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of such partial disability. The commission may, from time to time, require a partially disabled employee to make an affidavit as to the wages which he is then receiving. In such affidavit the employee shall include a statement of the value of housing, board, lodging, and other advantages which are received from the employer as a part of his remuneration and which can be estimated in money. If the employee, when required, fails to make such affidavit, he shall not be entitled to any compensation while such failure continues, and the period of such failure shall be deducted from the period during which compensation is payable to him.

Partial disability.

Statements as to earnings.

Sec. 5. 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.

Refusing work.

Sec. 6. The monthly compensation for total disability shall not be more than \$66.67 nor less than \$33.33, unless the employee's monthly pay is less than \$33.33, in which case his monthly compensation shall be the full amount of his monthly pay. The monthly compensation for partial disability shall not be more than \$66.67. In the case of persons who at the time of the injury were minors or employed in a learner's capacity and who were not physically or mentally defective, the commission shall, on any review after the time when the monthly wage-earning capacity of such persons would probably, but for the injury, have increased, award compensation based on such probable monthly wage-earning capacity. The commission may, on any review after the time when the monthly wage-earning capacity of the disabled employee would probably, irrespective of the injury, have decreased on account of old age, award compensation based on such probable monthly wage-earning capacity.

Maximum and minimum payments.

Learners.

Aged employees.

Sec. 7. As long as the employee is in receipt of compensation under this act, or, if he has been paid a lump sum in commutation of installment payments, until the expiration of the period during which such installment payments would have continued, he shall not receive from the United States any salary, pay, or remuneration whatsoever except in return for services actually performed, and except pensions for service in the Army or Navy of the United States.

Other payments.

Sec. 8. If at the time the disability begins the employee has annual or sick leave to his credit he may, subject to the approval of

Annual and sick leave.

- the head of the department, use such leave until it is exhausted, in which case his compensation shall begin on the fourth day of disability after the annual or sick leave has ceased.
- Medical, etc., services.** SEC. 9. Immediately after an injury sustained by an employee while in the performance of his duty, whether or not disability has arisen, and for a reasonable time thereafter, the United States shall furnish to such employee reasonable medical, surgical, and hospital services and supplies unless he refuses to accept them. Such services and supplies shall be furnished by United States medical officers and hospitals, but where this is not practicable shall be furnished by private physicians and hospitals designated or approved by the commission and paid for from the employees' compensation fund. If necessary for the securing of proper medical, surgical, and hospital treatment, the employee, in the discretion of the commission, may be furnished transportation at the expense of the employees' compensation fund.
- Compensation for death.** SEC. 10. If death results from the injury within six years the United States shall pay to the following persons for the following periods a monthly compensation equal to the following percentages of the deceased employee's monthly pay, subject to the modification that no compensation shall be paid where the death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury:
- Widow.** (A) To the widow, if there is no child, thirty-five per centum. This compensation shall be paid until her death or marriage.
- Widower.** (B) To the widower, if there is no child, thirty-five per centum if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or marriage.
- Children.** (C) To the widow or widower, if there is a child, the compensation payable under clause (A) or clause (B) and in addition thereto ten per centum for each child, not to exceed a total of sixty-six and two-thirds per centum for such widow or widower and children. 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. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of eighteen, or, if over eighteen, and incapable of self-support, becomes capable of self-support.
- Orphan children.** (D) To the children, if there is no widow or widower, twenty-five per centum for one child and ten per centum additional for each additional child, not to exceed a total of sixty-six and two-thirds per centum, divided among such children share and share alike. The compensation of each child shall be paid until he dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian.
- Parents.** (E) To the parents, if one is 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 centum; if both are wholly dependent, twenty per centum to each; if one is or both are partly dependent, a proportionate amount in the discretion of the commission. The above percentages shall be paid if there is no widow, widower, or child. If there is 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 sixty-six and two-thirds per centum.
- Other dependents.** (F) To the brothers, sisters, grandparents, and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his death, twenty per centum to such dependent; if more than one are wholly dependent, thirty per centum, 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 centum divided among such dependents share and share alike. The above percentages shall be paid if there is no widow, widower, child, or dependent parent. If there is a widow, widower, child, or dependent 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 sixty-six and two-thirds per centum.

(G) The compensation of each beneficiary under clauses (E) and (F) shall be paid for a period of eight years from the time of the death, unless before that time he, if a parent or grandparent, dies, marries, or ceases to be dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister, or grandchild under legal age shall be paid to his or her guardian. Term of payments.

(H) As used in this section, the term "child" includes stepchildren adopted children, and posthumous children, but does not include married children. The terms "brother" and "sister" include step-brothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters. All of the above terms and the term "grandchild" include only persons who at the time of the death of the deceased employee are under eighteen years of age or over that age and incapable of self-support. The term "parent" includes step-parents and parents by adoption. The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death. The term "widower" includes only the decedent's husband dependent for support upon her at the time of her death. The terms "adopted" and "adoption" as used in this clause include only legal adoption prior to the time of the injury. Definitions.

(I) 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. Readjustments.

(J) 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 commission may, in its discretion, modify the apportionment to meet the requirements of the case. Apportionments.

(K) In computing compensation under this section, the monthly pay shall be considered not to be more than \$100 nor less than \$50, but the total monthly compensation shall not exceed the monthly pay computed as provided in section twelve. Wage basis.

(L) If any person entitled to compensation under this section, whose compensation by the terms of this section ceases upon his marriage, accepts any payments of compensation after his marriage he shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. Accepting payments after marriage.

SEC. 11. If death results from the injury within six years the United States shall pay to the personal representative of the deceased employee burial expenses not to exceed \$100, in the discretion of the commission. In the case of an employee whose home is within the United States, if his death occurs away from his home office or outside of the United States, and if so desired by his relatives, the body shall, in the discretion of the commission, be embalmed and transported in a hermetically sealed casket to the home of the employee. Such burial expenses shall not be paid and such transportation shall not be furnished where the death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury. Burial, etc., expenses.

SEC. 12. In computing the monthly pay the usual practice of the service in which the employee was employed shall be followed. Subsistence and the value of quarters furnished an employee shall be included as part of the pay, but overtime pay shall not be taken into account. Computation of pay.

SEC. 13. In the determination of the employee's monthly wage-earning capacity after the beginning of partial disability, the value of housing, board, lodging, and other advantages which are received from his employer as a part of his remuneration and which can be estimated in money shall be taken into account. Housing, board, etc.

SEC. 14. In cases of death or of permanent total or permanent partial disability, if the monthly payment to the beneficiary is less than \$5 Lump sums.

a month, or if the beneficiary is or is about to become a nonresident of the United States, or if the commission determines that it is for the best interests of the beneficiary, the liability of the United States for compensation to such beneficiary may be discharged by the payment of a lump sum equal to the present value of all future payments of compensation computed at four per centum true discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality; but in case of compensation to the widow or widower of the deceased employee, such lump sum shall not exceed sixty months' compensation. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

- Notice.** SEC. 15. Every employee injured in the performance of his duty, or someone on his behalf, shall, within forty-eight hours after the injury, give written notice thereof to the immediate superior of the employee. Such notice shall be given by delivering it personally or by depositing it properly stamped and addressed in the mail.
- Contents.** SEC. 16. The notice shall state the name and address of the employee, the year, month, day, and hour when and the particular locality where the injury occurred, and the cause and nature of the injury, and shall be signed by and contain the address of the person giving the notice.
- Compensation withheld, when.** SEC. 17. Unless notice is given within the time specified or unless the immediate superior has actual knowledge of the injury, no compensation shall be allowed, but for any reasonable cause shown, the commission may allow compensation if the notice is filed within one year after the injury.
- Claims.** SEC. 18. No compensation under this act shall be allowed to any person, except as provided in section thirty-eight, unless he or some one on his behalf shall, within the time specified in section twenty, make a written claim therefor. Such claim shall be made by delivering it at the office of the commission or to any commissioner or to any person whom the commission may by regulation designate, or by depositing it in the mail properly stamped and addressed to the commission or to any person whom the commission may by regulation designate.
- Forms.** SEC. 19. Every claim shall be made on forms to be furnished by the commission and shall contain all the information required by the commission. Each claim shall be sworn to by the person entitled to compensation or by the person acting on his behalf, and, except in case of death, shall be accompanied by a certificate of the employee's physician stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown the commission may waive the provisions of this section.
- Time for claims.** SEC. 20. All original claims for compensation for disability shall be made within sixty days after the injury. All original claims for compensation for death shall be made within one year after the death. For any reasonable cause shown the commission may allow original claims for compensation for disability to be made at any time within one year.
- Medical examinations.** SEC. 21. After the injury the employee 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 commission. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations after the first the employee shall, in the discretion of the commission, be paid his reasonable traveling and other expenses and loss of wages incurred in order to submit to such examination. If the employee refuses to submit himself for or in any way obstructs any examination, his right to claim compensation under this act shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him.
- Medical referee.** SEC. 22. In case of any disagreement between the physician making an examination on the part of the United States and the employee's physician the commission shall appoint a third physician, duly qualified, who shall make an examination.

Sec. 23. Fees for examinations made on the part of the United States under sections twenty-one and twenty-two by physicians who are not already in the service of the United States shall be fixed by the commission. Such fees, and any sum payable to the employee under section twenty-one, shall be paid out of the appropriation for the work of the commission. Fees.

Sec. 24. Immediately after an injury to an employee resulting in his death or in his probable disability, his immediate superior shall make a report to the commission containing such information as the commission may require, and shall thereafter make such supplementary reports as the commission may require. Reports of inju-
ries.

Sec. 25. Any assignment of a claim for compensation under this act shall be void and all compensation and claims therefor shall be exempt from all claims of creditors. Assignments, etc.

Sec. 26. If an injury or death for which compensation is payable under this act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, the commission may 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, or the commission may require said beneficiary to prosecute said action in his own name. Assignments of
damage claims
against third par-
ties.

If the beneficiary shall refuse to make such assignment or to prosecute said action in his own name when required by the commission, he shall not be entitled to any compensation under this act.

The cause of action when assigned to the United States may be prosecuted or compromised by the commission, and if the commission realizes upon such cause of action, it shall apply the money or other property so received in the following manner: After deducting the amount of any compensation already paid to the beneficiary and the expenses of such realization or collection, which sum shall be placed to the credit of the employees' compensation fund, the surplus, if any, shall be paid to the beneficiary and credited upon any future payments of compensation payable to him on account of the same injury.

Sec. 27. If an injury or death for which compensation is payable under this act is caused under circumstances creating a legal liability in some person other than the United States to pay damages therefor, and a beneficiary entitled to compensation from the United States for such injury or death receives, as a result of a suit brought by him or on his behalf, or as a result of a settlement made by him or on his behalf, any money or other property in satisfaction of the liability of such other person, such beneficiary shall, after deducting the costs of suit and a reasonable attorney's fee, apply the money or other property so received in the following manner: Settlement,
with third par-
ties.

(A) If his compensation has been paid in whole or in part, he shall refund to the United States the amount of compensation which has been paid by the United States and credit any surplus upon future payments of compensation payable to him on account of the same injury. Any amount so refunded to the United States shall be placed to the credit of the employees' compensation fund.

(B) If no compensation has been paid to him by the United States, he shall credit the money or other property so received upon any compensation payable to him by the United States on account of the same injury.

Sec. 28. A commission is hereby created, to be known as the United States Employees' Compensation Commission, and to be composed of three commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman. No commissioner shall hold any other office or position under the United States. No more than two of said commissioners shall be members of the same political party. One of said commissioners shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, and at the expiration of each of said terms, the commissioner then appointed shall be appointed for a period of six years. Each commissioner shall receive a salary of \$4,000 a year. The principal office of said commission shall be in Washington, District of Columbia, but the said commission is Commission
created.

authorized to perform its work at any place deemed necessary by said commission, subject to the restrictions and limitations of this act.

Transfer of claims and employees. Sec. 28a. Upon the organization of said commission and notification of the heads of all executive departments that the commission is ready to take up the work devolved upon it by this act, all commissions and independent bureaus, by or in which payments for compensation are now provided, together with the adjustment and settlement of such claims, shall cease and determine, and such executive departments, commissions, and independent bureaus, shall transfer all pending claims to said commission to be administered by it. The said commission may obtain, in all cases, in addition to the reports provided in section 24, such information and such reports from employees of the departments as may be agreed upon by the commission and the heads of the respective departments. All clerks and employees now exclusively engaged in carrying on said work in the various executive departments, commissions, and independent bureaus, shall be transferred to, and become employees of, the commission at their present grades and salaries.

Powers as to witnesses. Sec. 29. The commission, or any commissioner by authority of the commission, shall have power to issue subpoenas for and compel the attendance of witnesses within a radius of one hundred miles, to require the production of books, papers, documents, and other evidence, to administer oaths, and to examine witnesses, upon any matter within the jurisdiction of the commission.

Employees of commission. Sec. 30. The commission shall have such assistants, clerks, and other employees as may be from time to time provided by Congress. They shall be appointed from lists of eligibles to be supplied by the Civil Service Commission, and in accordance with the civil-service law.

Estimates. Sec. 31. The commission shall submit annually to the Secretary of the Treasury estimates of the appropriation necessary for the work of the commission.

Rules, regulations, etc. Sec. 32. The commission is authorized to make necessary rules and regulations for the enforcement of this act, and shall decide all questions arising under this act.

Annual reports. Sec. 33. The commission shall make to Congress at the beginning of each regular session a report of its work for the preceding fiscal year, including a detailed statement of appropriations and expenditures, a detailed statement showing receipts of and expenditures from the employees' compensation fund, and its recommendations for legislation.

Expenses. Sec. 34. For the fiscal year ending June thirtieth, nineteen hundred and seventeen, there is hereby authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$50,000 for the work of the commission, including salaries of the commissioners and of such assistants, clerks, and other employees as the commission may deem necessary, and for traveling expenses, expenses of medical examinations under sections twenty-one and twenty-two, reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, rent and equipment of offices, purchase of books, stationery, and other supplies, printing and binding to be done at the Government Printing Office, and other necessary expenses.

Compensation fund. Sec. 35. There is hereby authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$500,000, to be set aside as a separate fund in the Treasury, to be known as the employees' compensation fund. To this fund there shall be added such sums as Congress may from time to time appropriate for the purpose. Such fund, including all additions that may be made to it, is hereby authorized to be permanently appropriated for the payment of the compensation provided by this act, including the medical, surgical, and hospital services and supplies provided by section nine, and the transportation and burial expenses provided by sections nine and eleven. The commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the maintenance of the fund.

Findings and awards. Sec. 36. The commission, upon consideration of the claim presented by the beneficiary, and the report furnished by the immediate superior and the completion of such investigation as it may deem necessary, shall determine and make a finding of facts thereon and make an award for

or against payment of the compensation provided for in this act. Compensation when awarded shall be paid from the employees' compensation fund.

SEC. 37. If the original claim for compensation has been made within the time specified in section twenty, the commission may, at any time, on its own motion or on application, review the award, and, in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, award compensation.

Review.

SEC. 38. If any compensation is paid under a mistake of law or of fact, the commission shall immediately cancel any award under which such compensation has been paid and shall recover, as far as practicable, any amount which has been so paid. Any amount so recovered shall be placed to the credit of the employees' compensation fund.

Mistakes.

SEC. 39. Whoever makes, in any affidavit required under section four or in any claim for compensation, any statement, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

False statements.

SEC. 40. Wherever used in this act—

Definitions.

The singular includes the plural and the masculine includes the feminine.

The term "employee" includes all civil employees of the United States and of the Panama Railroad Company.

The term "commission" shall be taken to refer to the United States Employees' Compensation Commission provided for in section twenty-eight.

The term "physician" includes surgeons.

The term "monthly pay" shall be taken to refer to the monthly pay at the time of the injury.

SEC. 41. All acts or parts of acts inconsistent with this act are hereby repealed: *Provided, however,* That for injuries occurring prior to the passage of this act compensation shall be paid under the law in force at the time of the passage of this act: *And provided further,* That if an injury or death for which compensation is payable under this act is caused under circumstances creating a legal liability in the Panama Railroad Company to pay damages therefor under the laws of any State, Territory, or possession of the United States or of the District of Columbia or of any foreign country, no compensation shall be payable until the person entitled to compensation release to the Panama Railroad Company any right of action which he may have to enforce such liability of the Panama Railroad Company, or until he assigns to the United States any right which he may have to share in any money or other property received in satisfaction of such liability of the Panama Railroad Company.

Repeal.

Liability of Panama Railroad Company.

SEC. 42. The President may, from time to time, transfer the administration of this act so far as employees of the Panama Canal and of the Panama Railroad Company are concerned to the governor of the Panama Canal, and so far as employees of the Alaskan Engineering Commission are concerned to the chairman of that commission, in which cases the words "commission" and "its" wherever they appear in this act shall, so far as necessary to give effect to such transfer, be read "governor of the Panama Canal" or "chairman of the Alaskan Engineering Commission," as the case may be, and "his"; and the expenses of medical examinations under sections twenty-one and twenty-two, and the reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, shall be paid out of appropriations for the Panama Canal or for the Alaskan Engineering Commission or out of funds of the Panama Railroad, as the case may be, instead of out of the appropriation for the work of the commission.

Administration for Canal Zone and Alaskan Railways.

In the case of compensation to employees of the Panama Canal or of the Panama Railroad Company for temporary disability, either total or partial, the President may authorize the governor of the Panama Canal to waive, at his discretion, the making of the claim required by section eighteen. In the case of alien employees of the Panama Canal or of the Panama Railroad Company, or of any class or classes of them, the President may remove or modify the minimum limit established by section six on the monthly compensation for disability and the mini-

imum limit established by clause (K) of section ten on the monthly pay on which death compensation is to be computed. The President may authorize the governor of the Panama Canal and the chairman of the Alaskan Engineering Commission to pay the compensation provided by this act, including the medical, surgical, and hospital services and supplies provided by section nine and the transportation and burial expenses provided by sections nine and eleven, out of the appropriations for the Panama Canal and for the Alaskan Engineering Commission, such appropriations to be reimbursed for such payments by the transfer of funds from the employees' compensation fund.

Approved September 7, 1916.

EXECUTIVE ORDERS.

No. 2455.—*Employees of the Panama Canal and Panama Railroad Co.*

By virtue of the authority vested in me by section 42 of 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 7, 1916, it is hereby ordered:

- Transfer of powers.** 1. That the administration of 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 7, 1916, so far as employees of the Panama Canal and of the Panama Railroad Co. are concerned, is hereby transferred to the governor of the Panama Canal.
- Power to waive claims.** 2. That in the case of compensation to employees of the Panama Canal, or of the Panama Railroad Co., for temporary disability, either total or partial, the governor of the Panama Canal is hereby authorized to waive, at his discretion, the making of the claim required by section eighteen of said act.
- Alien employees.** 3. That in the case of alien employees of the Panama Canal, or of the Panama Railroad Co., the minimum limit established by section six on the monthly compensation for disability, and the minimum limit established by clause (K) of section ten on the monthly pay on which death compensation is to be computed, is hereby removed.
- Benefits.** 4. That the governor of the Panama Canal is hereby authorized to pay the compensation provided by said act, including the medical, surgical, and hospital services and supplies provided by section nine and the transportation and burial expenses provided by sections nine and eleven, out of the appropriations for the Panama Canal, such appropriations to be reimbursed for such payments by transfer of funds from the employees' compensation fund.

September 15, 1916.

No. 2463.—*Employees of the Alaskan Engineering Commission.*

Upon the recommendations of the Secretary of the Interior and the chairman of the Alaskan Engineering Commission, and by virtue of authority contained in section forty-two of "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes" (Public, No. 267, 64th Cong., 39 Stat., p. 742), approved September 7, 1916, I hereby direct the chairman of the Alaskan Engineering Commission to administer the provisions of this act in so far as employees of the Alaskan Engineering Commission are concerned; and the expenses of medical examinations under sections twenty-one and twenty-two, and the reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, shall be paid out of appropriations for "Construction and operation of railroads in Alaska."

- Transfer of powers.**
- Expenses.**
- Benefits.**
- I further direct the chairman of the Alaskan Engineering Commission to pay the compensation provided by the aforementioned act, including the medical, surgical, and hospital services and supplies provided by section nine and the transportation and burial expenses provided by sections nine and eleven out of appropriations for the "Construction and operation of railroads in Alaska," such appropriations to be reimbursed for such payments by transfer of funds from the employees' compensation fund.

September 29, 1916.

TEXT OF WORKMEN'S COMPENSATION LAWS OF CANADA.

ALBERTA.

ACTS OF 1918.

CHAPTER 5.—*Compensation of workmen for injuries.*

SECTION 1. This act may be cited as "The workmen's compensation act, 1918." Title.

SEC. 2. In this act, and in the schedules hereto, unless the context otherwise requires— Definitions.

(a) "Accident" shall include a willful and intentional act, not being the act of the workman, and shall also include a chance event occasioned by a physical or natural cause.

(b) "Accident funds" shall mean the funds provided for the payment of compensation, outlays, and expenses and the cost of installation and operation of mine rescue stations under this act.

(c) "Board" shall mean the commission as constituted under this act.

(d) "Compensation" shall include medical aid except where such interpretation is inconsistent with the context.

(e) "Dependents" shall mean such of the members of the family of a workman as were wholly or partially dependent upon his earnings at the time of his death or who but for the incapacity due to the accident would have been so dependent.

(f) "Employer" shall include every person having in his service under a contract of hiring, or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry to which this act applies and includes municipal corporations, school boards, commissions and boards having the management of any work or service operated for a municipal corporation and shall include the Crown in the right of the province, and any permanent board or commission appointed thereunder in respect of any employment whatsoever; and where the services of a workman are temporarily let or hired to another person by the person with whom the workman has entered into such a contract the latter shall be deemed to continue to be the employer of the workman while he is working for that other person.

(g) "Employment" means and includes employment in any establishment, undertaking, trade or business within the scope of this act, and in the case of any undertaking not as a whole an industry within the scope of this act, includes any department or part of such undertaking as would if carried on separately be an industry within the scope of this act.

(h) "Industry" in this act shall include establishment, undertaking, trade, and business as included in the schedules hereto.

(i) "Industrial disease" shall mean any of the diseases mentioned in the form hereto and any other disease which by the regulations is declared to be an industrial disease.

(j) "Invalid" shall mean physically or mentally incapable of earning.

(k) "Medical referee" shall mean medical referee appointed by the board.

(l) "Member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, half sister, and a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related and where the workman is the parent or grandparent of an illegitimate child shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents.

(m) "Mine" shall mean mine as defined by an act respecting mines, being chapter 4 of the statutes of Alberta, 1913.

(n) "Regulations" shall mean regulations made by the board under the authority of this act.

(o) "Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labor or otherwise, and shall also include any person engaged in training for mine rescue work or who, with the knowledge and consent of the management, is doing recovery work after an explosion, accident or catastrophe.

(p) "Construction" shall include reconstruction, repair, alteration and demolition.

(q) "Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials.

(r) "Manufacturing" shall include making, preparing, altering, repairing, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any article or commodity.

Board.

SEC. 3. There is hereby constituted a commission for the administration of this act, to be called the workmen's compensation board, which shall consist of not more than three members to be appointed by the lieutenant governor in council and shall be a body corporate.

Chairman.

SEC. 4. One of the commissioners shall be appointed by the lieutenant governor in council to be chairman of the board and he shall hold that office while he remains a member of the board.

Temporary appointees.

SEC. 5. In case of the death, illness, or absence from Alberta of a commissioner or of his inability to act from any cause the lieutenant governor in council may appoint some person to act pro tempore in his stead and the person so appointed shall have all the powers and perform all the duties of a commissioner.

Term.

SEC. 6. Each commissioner shall hold office during good behavior, but may be removed at any time for cause.

Quorum.

SEC. 7. The presence of two commissioners shall be necessary to constitute a quorum of the board.

Same.

SEC. 8. A vacancy in the board shall not if there remain two members of it impair the authority of such two members to act.

Office.

SEC. 9. The office of the board shall be situated in the city of Edmonton, and its sittings shall be held there except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Alberta.

Salaries.

SEC. 10. The members of the board shall receive such salaries as may be fixed by the lieutenant governor in council.

Powers.

SEC. 11. The board shall have like powers as the supreme court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents, and things.

(2) The board may cause depositions of witnesses residing within or without the province to be taken before any person appointed by the board in similar manner to that prescribed by the rules of the supreme court for the taking of like depositions in that court before a commissioner.

Officers.

SEC. 12. The board may appoint such officers as the board may deem necessary for carrying out the provisions of this act and may prescribe their duties and fix their remuneration.

(2) Every person so appointed shall hold office during the pleasure of the board.

Jurisdiction.

SEC. 13. The board shall have exclusive jurisdiction to examine into, hear, and determine all matters and questions arising under this act, and the action or decision of the board thereon shall be final and conclusive and shall not be open to question or review in any court, and no proceedings by or before the board shall be restrained by injunction, prohibition or other process or proceedings in any court or be removable by certiorari or otherwise into any court.

(2) Nothing in subsection 1 shall prevent the board from reconsidering any matter which has been dealt with by it or from rescinding,

altering or amending any decision or order previously made, all of which the board shall have authority to do.

(3) The decisions of the board shall be upon the real merits and justice of the case, and it shall not be bound to follow strict legal precedent.

(4) Without thereby limiting the generality of the provisions of subsection 1 it is declared that the exclusive jurisdiction of the board shall extend to determining—

(a) The question whether an injury has arisen out of or in the course of an employment within the scope of this act.

(b) The existence and degree of disability by reason of any injury.

(c) The permanence of disability by reason of any injury.

(d) The degree of diminution of earning capacity by reason of any injury.

(e) The amount of average earnings.

(f) The existence, for the purpose of this act, of the relationship of any member of the family of a workman as defined by this act.

(g) The existence of dependency.

(h) Whether or not any industry or any part, branch, or department of any industry is within the scope of this act, as defined in the schedules hereto, and the class to which any industry or any part, branch, or department of any industry within the scope of this act should be assigned.

(i) Whether or not any workman in any industry within the scope of this act, as defined in the schedules hereto, is within the scope of this act and entitled to compensation thereunder.

SEC. 14. The board may act upon the report of any of its officers and any inquiry which it shall be deemed necessary to make may be made by a commissioner, or by an officer of the board or some other person appointed to make the inquiry and the board may act upon his report as to the result of the inquiry.

Acts of officers.

(2) The person appointed to make the inquiry shall for the purposes of the inquiry have all the powers conferred upon the board.

SEC. 15. The board may make such regulations and prescribe such forms as may be deemed expedient for carrying out the provisions of this act and any such regulations shall come into force at the expiration of thirty days from the date of their publication in the Alberta Gazette.

Regulations.

SEC. 16. The board may add to, withdraw or rearrange any industries which are or may be included in the schedules hereto.

Power as to coverage.

SEC. 17. If any question arises as to whether an industry or any part thereof is an industry to which this act applies, the question shall be decided by the board, whose decision shall be final.

Same.

SEC. 18. The accounts of the board shall be audited by the provincial auditor.

Audits.

SEC. 19. The board shall on or before the fifteenth day of February in each year make a report to the lieutenant governor in council of its transactions during the next preceding calendar year.

Reports.

(2) Every such report shall be forthwith laid before the legislature if the legislature is then in session, and if it is not then in session, within fifteen days after the opening of the next session.

SEC. 20. For the purposes of this act and to cover the cost of the administration thereof the board shall from time to time as it may deem expedient, and at least quarterly, make an assessment of such amount as the board may consider necessary or proper on each employer for the period which has elapsed since the next preceding assessment was made, but in no event shall the assessment be less than at the rate of \$2.50 per month.

Expense account.

(2) The sums to be so assessed may be either a percentage of the pay roll of the employer or a specific sum as the board may determine.

(3) Where the pay roll includes the wages or salary of a workman who has been paid more than \$165 in any calendar month, the excess shall be deducted from the amount of the pay roll for that month, and the assessments shall be based on the amount of it as so reduced.

(4) The assessment may be made in such manner and form as the board may deem adequate and expedient.

(5) Upon the board so requiring, an employer in any industry under this act shall be entitled to and shall deduct from the wages of any workmen in his employment and pay to the board an amount

- fixed by the board sufficient in the aggregate to meet the assessment upon any person or persons employed by such workmen in such industry.
- Payment of assessments.** SEC. 21. Every employer shall pay to the board the sum payable by him within fifteen days after the notice of the assessment of the amount so payable has been given to him.
 (2) The notice may be sent by registered post to the employer and shall be deemed to have been given to him on the day on which the notice was posted.
- Employers to pay.** SEC. 22. If for any reason an employer liable to assessment is not assessed he shall nevertheless be liable to pay to the board the amount for which he should have been assessed and payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.
- Defaults.** SEC. 23. Notwithstanding that the deficiency arising from a default in the payment of the whole or part of any assessment has been made up by a special assessment the defaulting employer shall continue liable to pay to the board the amount of every assessment made upon him or so much of it as remains unpaid.
- Reserve fund.** SEC. 24. If in the opinion of the board it is necessary to provide and maintain a reserve fund to meet the payments to be made in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in future years with payments which are to be made in these years in respect of accidents which have previously happened, the board may from time to time set apart an amount from the assessments for that purpose, and the amount so set apart shall form a reserve fund and may be invested by the board in securities in which a trustee may by law invest moneys.
- Collection of assessments.** SEC. 25. Where default is made in the payment of any assessment or any special assessment or any part thereof, the board may issue its certificate stating that the assessment was made the amount remaining unpaid on account of it, and the person by whom it was payable, and such certificate, or a copy of it, certified by the secretary under the seal of the board to be a true copy, may be filed with the clerk of the supreme court or the clerk of the district court of any district, and when so filed shall become an order of the court and shall be enforced as a judgment of the court.
 (2) The board shall have the like power and be entitled to the like remedies of enforcing payment of any sum (other than an assessment) which an employer is required to pay to the board under any of the provisions of this act, as it possesses or is entitled to in respect of assessments.
- New industries.** SEC. 26. When any industry coming under the provisions of this act is established or commenced the employer shall forthwith notify the board of the fact and furnish to the board an estimate of the probable amount of his pay roll for the remainder of the year, verified by a statutory declaration, and shall pay to the board a sum equal to that for which he would have been liable if his industry had been established or commenced before the last assessment was made or so much thereof as the board may deem reasonable.
 (2) The board shall have the like powers and be entitled to the like remedies for enforcing payment of the sum payable by the employer under subsection 1 as it possesses or is entitled to in respect of assessments.
- Statements by employers.** SEC. 27. Subject to the regulations of the board every employer included in this act shall before the twentieth day of each month prepare and transmit to the board a statement of the total amount of wages earned by all his workmen during the calendar month then last past and such statements shall be accompanied by such additional information as the board may require and shall be verified by a statutory declaration of the employer, or his representative, or where the employer is a corporation by an officer of the corporation having a personal knowledge of the matter to which the declaration relates.
 (2) If an employer does not make and transmit to the board the prescribed statement or cause same to be done within the prescribed time the board may base any assessment thereafter made upon such sum as in its opinion is the probable amount of the pay roll of the em-

ployer and the employer shall be bound thereby, but if it is afterwards ascertained that such amount is less than the actual amount of the pay roll the employer shall be liable to pay to the board the difference between the amount for which he was assessed and the amount for which he should have been assessed on the basis of his pay roll.

SEC. 28. The board or any member of it or any officer or person authorized by it for that purpose shall have the right to examine the books and accounts of the employer and to make such other inquiry as the board may deem necessary for the purpose of ascertaining the amounts of the pay roll of any employer; and for the purpose of any such examination and inquiry the board and person so appointed shall have all the powers which may be conferred on a commissioner appointed under an act respecting inquiries concerning public matters.

Access to books.

(2) No person shall obstruct or hinder the making of an examination or inquiry mentioned in subsection 1 or refuse to permit it to be made.

(3) If a statement is found to be incorrect the assessment shall be made on the true amount of the pay roll as ascertained by such examination and inquiry, or if an assessment has been made against an employer on the basis of his pay roll being as shown by the statement, the employer shall pay to the board the difference between the amount for which he was assessed and the amount for which he should have been assessed.

SEC. 29. The board or any member of it or any officer or person authorized by it for that purpose shall have the right at any time to enter into the establishment of any employer who is liable to contribute to the accident fund, and the premises connected with it and every part of them for the purpose of ascertaining whether the ways, works, machinery, or appliances therein are safe, adequate, and sufficient, and whether all proper precautions are taken for the prevention of accidents as to the workmen employed in or about the establishment or premises, and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the board may deem necessary for the purpose of determining the proportion in which such employer should contribute to the accident fund.

Inspection of premises.

SEC. 30. Every employer shall keep in such form and with such detail as may be required for the purposes of this act a careful and accurate account of all wages paid to his employees, and such account shall be kept within the province, and shall be produced to the board or its officers when so required.

Wage records.

(2) There shall be included among the debts which under the assignments act, the trustee ordinance, or the companies winding up ordinance are, in the distribution of the property in the case of an assignment or death, or in the distribution of the assets of a company being wound up under the said acts, respectively, to be paid in priority to all other debts, the amount of any assessment the liability wherefor accrued before the date of the assignment or death or before the commencement of the winding up, and the said acts shall have effect accordingly.

SEC. 31. A separate accident fund shall be provided for each schedule by contributions to be made in the manner herein provided, by all employers included in that schedule and compensation payable in respect of accidents under each schedule and the costs of administration shall be paid out of the accident fund provided for by that schedule.

Accident fund.

SEC. 32. Where at any time there is not money available in any accident fund for payment of the compensation which has become due, the lieutenant governor in council may direct that the same be advanced out of the consolidated revenue fund and in that case the amount advanced shall be repaid to the provincial treasurer after the next assessment, together with interest at the rate of six per centum per annum.

Advances.

SEC. 33. Separate accounts shall be kept of the amounts collected and expended in respect of each employer, but for the purpose of paying compensation each accident fund shall nevertheless be deemed one and indivisible.

Separate accounts.

(2) Where a greater number of accidents has happened to workmen in the employ of any employer than in the opinion of the board ought to have happened, the board may add to the amount of any contribution to the accident fund for which such employer is liable such a per-

Added levies.

centage thereof as the board may deem just and may assess and levy the same upon such employer.

(3) The powers conferred by the preceding subsections herein may be exercised from time to time and as often as in the opinion of the board occasion may require.

Compensation. SEC. 34. Where in any employment to which this act applies personal injury by accident arising out of and in the course of the employment is caused to a workman compensation shall be paid in the manner and to the extent herein mentioned—

Waiting time. (a) If a workman is disabled for a period of ten days or more he shall be paid compensation from the day of the accident, but if he is disabled for a period of less than ten days he shall be paid for and from the fourth day after the accident.

(b) Except where the injury is attributable solely to the serious and willful misconduct of the workman unless the injury results in death or serious disablement.

Benefit to employers. (2) Compensation shall not in general be payable out of the accident fund to an employer or a member of the family of an employer, but the board may in its discretion deem an employer or member of his family to be a workman within the meaning of this act, and may require the employer to pay such assessment as the board may determine, and in such case the employer, member of his family or his or their dependents, as the case may be, shall be entitled to compensation under this act upon compliance with section 21 hereof: *Provided, however,* That where an employer or member of his family is at the time of the accident carried on the pay roll of the employer, and his wages are included in the then last statement furnished to the board under sections 26 and 27, such employer or member of his family shall be deemed to be a workman within the act, and shall upon the compliance of the employer with said section 21 be entitled to compensation accordingly.

Dependents. SEC. 35. In the case of any injury to a workman after the expiry of two years from his arrival in Canada, it shall be conclusively presumed that he has, at the time of such injury, no dependents other than his father and mother or either of them, save such dependents as are resident in Canada.

(2) The above period shall in the case of a workman who is not of British nationality be a period of one year in lieu of two years.

(3) This section shall not take effect until January 1st, 1920.

Aliens. SEC. 36. Employers to whom this act applies shall be liable to contribute to the accident funds, as herein provided.

Employers to contribute to fund. (2) Where any work within the scope of this act is undertaken for any person, in this section referred to as the principal, by a contractor it shall be the duty of the principal to see that any sum which the contractor or any subcontractor is liable to contribute to the accident fund in respect of the work so undertaken is paid, and if any such principal fails to do so he shall be personally liable to pay it to the board, and the board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

(a) Where contribution to the accident fund is claimed from the principal, in this act reference to the principal shall be substituted for reference to the employer.

(b) Where the principal is liable to contribute to the accident fund under this section, he shall be entitled to be indemnified by any person who should have paid the same, and all questions as to the right to and the amount of any such indemnity shall be determined by the board.

(c) Nothing in this section shall prevent the board from levying or collecting contribution to the accident fund on or from the contractor or any subcontractor instead of on or from the principal.

(3) Subject to the provisions of this act it shall not be lawful for any employer, either directly or indirectly, to deduct from the wages of his workmen any part of any sum which the employer is or may become liable to pay to the board or to require or to permit any of his workmen to contribute in any manner toward indemnifying the employer against any liability which he has incurred or may incur under this act.

Sec. 37. Where an accident happens while the workman is employed elsewhere than in the Province which would entitle him or his dependents to compensation under this act if it had happened in the Province, the workman or his dependents shall be entitled to compensation under this act—

Accidents out side Province.

(a) If the place or chief place of business of the employer is situate in the Province and the residence and the usual place of employment of the workman are in the Province and his employment out of the Province has immediately followed his employment by the same employer within the Province and has lasted less than six months; or

(b) If an accident happens to a workman who is a resident of the Province and the nature of the employment is such that in the course of the work or service which the workman performs it is required to be performed both within and without the Province.

(2) Except as provided by subsection 1 no compensation shall be payable under this act where the accident to the workman happens elsewhere than in the Province.

(3) Where by the law of the country or place in which the accident happens the workman or his dependents are entitled to compensation in respect of it they shall be bound to elect whether they will claim compensation under the law of such country or place or under this act and to give notice of such election, and if such election is not made and notice given it shall be presumed that they have elected not to claim compensation under this act.

(4) Where the compensation is payable out of the accident fund notice of the election shall be given to the board within three months after the happening of the accident, or in case it results in death within three months after the death or such longer period as either before or after the expiration of such three months the board may allow.

Sec. 38. No action shall lie for the recovery of compensation, but all claims for compensation shall be heard and determined by the board.

Suits forbidden.

(2) The provisions of this act shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependents are or may be entitled against the employer of such workman for or by reason of any accident happening to him while in the employment of such employer and no action in respect thereof shall lie.

Sec. 39. If a workman receiving periodical payments ceases to reside in the Province he shall not thereafter be entitled to receive any such payments unless a medical referee certifies that the disability resulting from the injury is likely to be of a permanent nature, and if a medical referee so certifies and the board so directs the workman shall be entitled quarterly to the amount of the periodical payments accruing due if he proves in such manner as may be prescribed by the regulations his identity and the continuance of the disability in respect of which the same is payable: *Provided*, That a workman who claims compensation or to whom compensation is payable under this section shall, if so required by the board, submit himself for examination by a medical referee.

Change of residence.

Sec. 40. It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependents may become entitled under this act, and every agreement to that end shall be absolutely void.

Waivers.

Sec. 41. No sum payable as compensation or by way of commutation of any periodical payment in respect of it shall be capable of being assigned, charged, or attached, nor shall any claim be set off against it by operation of law or otherwise unless with the approval of the board.

Assignment, etc.

Sec. 42. Subject to subsection 4 compensation shall not be payable unless notice of the accident is given to the employer or his representative before the injured person leaves the works on the date of the accident, if he is able to do so, and in every case before he has voluntarily left the employment in which he was injured.

Notice of accident.

(2) The notice shall give the name and address of the workman, and shall be sufficient if it states in ordinary language the cause of the injury and where the accident happened.

(3) All claims for compensation shall be made to the board within three months from the happening of the accident, or in case of death within three months from the time of death.

- (4) Failure to give the prescribed notice or to make such claim or any defect or inaccuracy in the notice shall not bar the right to compensation if in the opinion of the board the claim for compensation is a just one and ought to be allowed.
- Physical examinations.** SEC. 43. A workman who claims compensation or to whom compensation is payable under this act shall if so required by the board submit himself for examination by a medical referee.
- (2) A workman shall not be required to submit himself for examination otherwise than in accordance with the provisions of subsection 1 of this section.
- (3) Upon the board being satisfied that a workman's recovery from any injury coming within this act has been prevented or retarded by his own misconduct, it may reduce, suspend, or terminate any payment to such workman under this act.
- Medical certificates.** SEC. 44. The medical referee who has examined a workman by direction of the board under subsection 1 of section 43 shall certify to the board as to the condition of the workman and his fitness for employment, specifying where necessary the kind of employment; and if unfit the cause of such unfitness and his certificate unless the board otherwise directs shall be conclusive to the matters certified.
- (2) If a workman does not submit himself for examination by a medical referee as provided by subsection 1 of section 43, or in any way obstructs an examination, his right to compensation, or if he is in receipt of a periodical payment his right thereto, shall be suspended until such examination has taken place.
- Special treatment.** SEC. 45. Where in any case, in the opinion of the board, it will be in the interest of the accident funds to provide a special surgical operation or other special medical treatment for a workman, and the furnishing of the same by the board is in its opinion the only means of avoiding heavy payment for permanent disability, the expense of such operation or treatment may be paid out of the accident fund.
- Appliances.** (2) Where in the case of any claim for compensation the board is of the opinion that the injury may be alleviated to some appreciable extent by the supplying of any apparatus usually provided in such cases, it may supply such apparatus to the workman, and the cost thereof may be taken from the accident fund; but any such action shall not affect in any way the payments made to the workman.
- Review.** SEC. 46. Any payment to a workman may be reviewed on the board's own motion or at the request of the workman, and on such review the board may put an end to or diminish or may increase such payment to a sum not beyond the maximum hereinafter prescribed.
- Lump sums.** SEC. 47. Where compensation is payable the board may commute the payments payable to a workman or a dependent to a lump sum.
- (2) The board may in any case where in its opinion the interest or pressing need of the workman or dependent warrants it, advance or pay to or for the workman or dependent such lump sum as the circumstances warrant and as the board may determine.
- Death benefits.** SEC. 48. Where death results from an injury the amount of compensation not exceeding \$2,500 in the whole shall be—
- (a) The necessary expenses of the burial of the workman not exceeding \$100;
- (b) Where the widow or invalid husband is the sole dependent, a monthly payment of \$20.
- (c) Where the dependents are a widow or an invalid widower and one or more children a monthly payment of \$20, with an additional monthly payment of \$5 for each child under the age of sixteen years, to be increased upon the death of the widow or invalid widower to \$10, not exceeding in the whole \$40 per month.
- (d) Where the only dependents are children a monthly payment of \$10 to each child under the age of sixteen years, not exceeding in the whole \$40 per month: *Provided*, That where there are more than four children the payments may be proportioned.
- (e) Where the only dependents are persons other than those mentioned in the foregoing clauses, a sum reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the board, but not exceeding to the parents or parent \$20 per month, and not exceeding in the whole \$30 per month.

(2) In the case provided for by clause (c) of subsection 1 the payments shall continue only so long as in the opinion of the board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependents.

(a) Compensation shall be payable to an invalid child without regard to the age of such child, and payments to such child shall continue so long as in the opinion of the board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of such child.

(3) Where there are both total and partial dependents the compensation may be allotted partly to the total and partly to the partial dependents.

(4) Where the board is of the opinion that for any reason it is necessary or desirable that a payment in respect of a child should not be made directly to its parent, the board may direct that the payment be made to such persons or be applied in such manner as it may deem most for the advantage of the child.

(5) Where a payment to any one of a number of dependents ceases the board may in its discretion readjust the payments to the remaining dependents so that the remaining dependents shall thereafter be entitled to receive the same compensation as though they had been the only dependents at the time of the death of the workman.

Sec. 49. Subject to the provisions of section 48 if a dependent widow marries the monthly payments to her shall cease, but she shall be entitled in lieu of them to a lump sum equal to the monthly payments for two years, and such lump sum shall be payable within one month after the date of her marriage.

Remarriage.

(2) Subsection 1 shall not apply to payments to a widow in respect of a child but the payments provided in section 48 subsection 1 clause (c) in respect of a child shall cease when the child attains the age of sixteen years or dies.

Sec. 50. Where a workman leaves no dependents such sum as the board may deem reasonable for the expenses of his medical attendance, nursing, care, and maintenance shall be paid to the persons to whom such expenses are due.

Medical expenses.

Sec. 51. Where permanent total disability results from the injury the amount of compensation shall be a weekly payment of \$10, and where there are dependents, the further sum of \$2 for the first dependent and \$1 for each additional dependent until the total weekly compensation reaches \$16, but in no case exceeding in the whole \$2,500.

Permanent total disability.

(a) For the purposes of this section, a dependent shall mean the husband, wife, or child of a workman dependent upon his earnings and no other.

(2) In the following cases it shall be conclusively presumed that the injury is permanent and results in total incapacity, to wit:

(a) Total and permanent loss of sight of both eyes.

(b) The loss of both feet at or above the ankle.

(c) The loss of both hands at or above the wrist.

(d) The loss of one hand at or above the wrist and one foot at or above the ankle:

(e) Any injury to the spine resulting in permanent and complete paralysis of legs or arms or one leg and one arm.

(f) Any injury to the skull resulting in incurable imbecility or insanity: *Provided*, That this enumeration shall not be conclusive but in other cases the board shall find the facts.

Sec. 52. Where permanent partial disability results from the injury the total compensation shall be:

Permanent partial disability.

(a) For the loss by separation of one arm at or above the elbow joint or the permanent or complete loss of the use of one arm, \$1,000.

(b) For the loss by separation of one leg at or above the knee joint or the permanent or complete loss of the use of one leg, \$800.

(c) For the loss by separation of one foot at or above the ankle or the permanent or complete loss of the use of one foot, \$625.

(d) For the permanent or complete loss of hearing, \$600.

(e) For the permanent and irrecoverable loss of sight of one eye, \$550.

(f) For the loss by separation of a thumb, \$150.

(g) For the loss by separation of a finger or a great toe, \$100.

(h) For the loss by separation of any toe except the great toe, \$50.

(i) The loss of one phalanx of a thumb or two phalanges of a finger shall be considered equal to the loss of half a thumb or of a finger and compensation shall be one-half that of the loss of a thumb or of a finger.

(j) The loss of more than one phalanx of a thumb and more than two phalanges of a finger shall be considered as the loss of an entire thumb or finger.

(2) In all other cases of injury resulting in permanent partial disability the compensation shall be fixed by the board and shall be as near as possible in proportion to the amounts fixed herein for specified cases.

Temporary total disability.

SEC. 53. Where temporary total disability results from the injury the compensation shall be the same as that prescribed by section 51 subsection 1 but shall be payable only so long as the disability lasts.

(2) *Provided*, That in the case of any person who is under the age of twenty-one years and has no person wholly dependent upon him the amount shall be \$7.50 per week.

Temporary partial disability.

SEC. 54. Where temporary partial disability results from an injury and the workman is at work at reduced earnings which are less than 90 per cent of the earnings he was receiving at the time of the injury he shall receive compensation equal to 55 per cent of the difference between the average weekly earnings received at the time of the injury and the average weekly earnings at which he is actually employed, computed in accordance with the provisions of this act.

Average earnings.

(2) For the purposes of the provisions of this section relating to "earnings" and "average weekly earnings" of a workman the following shall be observed:

(a) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated: *Provided*, That where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which during the twelve months previous to the accident, 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 and in the same district.

(b) Where the workman had entered into concurrent contracts of service with two or more employers under whom he worked at one time for one such employer and at another time for another such employer, his average weekly 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 accident.

(c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

Other benefits.

SEC. 55. In fixing the amount of a payment regard shall be had to any payment, allowance, or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity, or other allowance provided wholly at the expense of the employer.

Minors.

SEC. 56. Where a workman or a dependent is under the age of twenty-one years or under any other legal disability the compensation to which he is entitled may be paid to such person or be applied in such manner as the board may deem most for his advantage.

Time of payments.

SEC. 57. All compensation due from the first day to the fifteenth day of a month, both days inclusive, shall be paid on the first Saturday of the month following, and all compensation due from the sixteenth to the last day of a month, both days inclusive, shall be paid on the third Saturday of the month following.

(2) For the purpose of ascertaining the amount of compensation due such amount may be computed on a daily basis, and regard may be had for a week of six days.

Sec. 58. No plan for providing medical aid to workmen coming within the provisions of this act shall be valid, and after the passing of this section no employer shall be entitled to retain from the moneys earned by any such workman in his employment any sum as a contribution toward the cost of medical aid under any such plan, unless and until after investigation of the facts such plan is found on the whole to be efficient, and is approved of by the board: *Provided*, The board may at any time for cause withdraw its approval to any such plan, and no plan shall be valid after such approval has been withdrawn.

Medical aid.

(2) Where any plan as mentioned in this section is approved of by the board, an employer shall be entitled to retain from the moneys earned by any workman in his employment such sum as a contribution towards the cost of medical aid as may be provided therein.

(3) When no such plan has been approved of, the board may from time to time as it deems necessary require any employer to retain from the moneys earned by any workman in his employment such sum to cover medical aid as may be determined by the board, and to pay the sum so retained to the board, and the moneys so received by the board shall form part of the accident fund, and shall constitute a special fund to be used in defraying the cost of medical aid to the workmen so contributing.

Sec. 59. (a) Where a workman suffers from an industrial disease as defined by this act and is thereby disabled from earning full wages at the work at which he was employed; or (b) the death of the workman is caused by such industrial disease and the disease is due to the nature of the employment in which the workman was employed at any time within the twelve months previous to the date of the disablement, whether under one or more employments, the workman or his dependents shall be entitled to compensation under this act as if the disease were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:

Industrial diseases.

(c) The disablement shall be treated as the happening of an accident; and

(d) If the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable.

(2) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of the form hereto and the disease contracted is the disease in the first column of the form set opposite to the description of the process the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

(3) The board may by the regulations require every physician treating a patient who is suffering from an industrial disease to report to the board such information relating thereto as it may require.

(4) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply, if the disease is the result of an injury in respect of which he is entitled to compensation under this act.

Sec. 60. Every employer included in this act shall keep posted in a conspicuous place on the premises where the work is carried on where it may be seen a certificate or duplicate of his last assessment receipt issued by the board.

Act to be posted.

(2) Every workman shall before entering into any employment to which this act applies satisfy himself that his employer has paid his assessment and that the same is paid thereafter when due, so that he may receive compensation in case of injury.

Duty of workman.

(3) Any person knowing of any violation of the provisions of this act shall immediately report same to the board or to some person appointed by the board.

Sec. 61. No employer as defined by this act shall keep or have in his employment any workman unless such employer has complied with the provisions of this act.

Compliance with act.

(2) When an employer as defined by this act ceases to be an employer he shall within ten days notify the board by registered mail of his ceasing to be an employer within the meaning of this act.

Notice of accidents.

SEC. 62. Every employer to whom this act applies having knowledge of the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages shall notify the board by registered mail within twenty-four hours of—(a) name and postal address of employer; (b) name and postal address of person killed or injured; (c) occupation; (d) age; (e) date of accident; (f) time of accident; (g) cause of accident; (h) date of first employment; (i) nature of injury; (j) place of accident; (k) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury.

(2) The physician or surgeon who attends an injured workman shall forward to the board a report within seven days after the date of his first attendance upon such workman on a form prescribed by the board.

Violations.

SEC. 63. Any person who violates any of the provisions of this act or any regulations made thereunder shall be liable on summary conviction to a penalty not exceeding five hundred dollars and costs, and in default of payment to imprisonment for a period not exceeding three months.

Recovery of penalties.

SEC. 64. The penalties imposed by or under the authority of this act shall be recoverable on summary conviction before a justice of the peace or a police magistrate, and the provisions of part XV of chapter 146 of the Revised Statutes of Canada, 1906 (the Criminal Code), shall apply to all prosecutions under this act.

(2) All penalties imposed by this act shall when collected be paid over to the board and form part of the accident fund.

Unlawful employment.

SEC. 65. The supreme court or any judge thereof, whether any other proceedings have been taken or not may upon the application of the board prohibit by injunction the employment of any person in contravention of this act, and may award such costs in the matter of the injunction as the court or judge thinks just; but this provision shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this act.

Prosecutions.

SEC. 66. No prosecution shall be instituted for a violation against this act except by some person appointed by the board.

Act in force.

SEC. 67. This act shall except as provided in sections 20 and 27 come into force and effect on the first day of August, A. D. 1918, in so far as it applies to employment covered by the first schedule hereto, and on the first day of January, A. D. 1919, in so far as it applies to employment covered by the second schedule hereto.

SEC. 68. [Repealed.]

Exempt employments.

SEC. 69. This act shall not apply to—

(a) Persons engaged as traveling salesmen or in clerical work and not exposed to the hazards incident to the nature of the work carried on in the industry.

(b) Persons whose employment is of a casual nature and who are employed otherwise than for the purpose of the employer's trade or business.

(c) Outworkers.

(d) Persons employed in an industry of an itinerant nature assessments with regard to whom it is impracticable or difficult to collect.

(e) Persons employed by—the Canadian Pacific Railway Company, the Canadian National Railways, the Grand Trunk Pacific Railway Company, the Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company, the Alberta and Great Waterways Railway Company, the Lacombe and Blindman Valley Railway Company, as locomotive engineers, locomotive firemen, wipers, hostlers, watchmen on locomotives, coal passers, conductors, trainmen, train baggagemen, train brakemen, train flagmen, yard masters, assistant yard masters, yard agents, transfer men, yard conductors, yard foremen, switchmen, yardmen, ground switch tenders, pilots, engine herders, station masters, depot masters, station agents, assistant agents, dispatchers and telegraphers, steam shovel and dredge men, steam shovel engineers, cranesmen, and firemen, watchmen on steam shovels, oilers, jackmen, ditcher engineers and

firemen, watchmen on ditchers, dumpmen, Lidgerwood engineers, cablemen, locomotive crane engineers, rotary snowplow engineers, maintenance of way employees, section men, section foremen, bridge and building foremen and men, towermen, signal maintainers and repairmen, pump repairmen, pumpmen, extra gang foremen, snow-plow and flanger foremen, pile drivers, ditchers, and hoisting engineers, track and bridge watchmen, signal men or watchmen on highway or railway crossings, nor to pipe fitters, blacksmiths, plumbers, painters, tinsmiths, masons, concrete foremen and men, bricklayers and plasterers employed in connection with maintenance of way of the said railways.

SCHEDULE 1.

- Class 1. Employment in or about coal mines. Employments covered.
 Class 2. Employment in or about coke ovens.
 Class 3. Employment in or about briquetting plants.
 Class 4. Employment in or about mines other than coal.

SCHEDULE 2.

Any trade or business connected with the industries of lumbering; fishing; manufacturing; building; construction; engineering; transportation; operation of electric power lines and power plants; waterworks and other public utilities; operation of municipal police forces; municipal fire departments; navigation; operation of boats, ships, tugs and dredges; operation of grain elevators; operation of warehouses; teaming; scavenging and street cleaning; painting; decorating and renovating; dyeing and cleaning; planing mills; flour milling; packing plants; printing; lithographing and engraving; telephone and telegraph systems; laundries run by mechanical power; excavation; well drilling; operation of gas and oil wells; quarrying; lumber yards; wood yards; coal yards; ice; and any occupation incidental to or connected with the industries enumerated in this schedule, also including moving pictures and theatres and by way of specific enumeration, but not so as in any way to interfere with or affect the generality of the preceding words thereof, the following classes of industries:

Class 11. Lumbering, logging, river-driving, rafting, booming, rossing, bark peeling, sawmills, shingle mills, lath mills, manufacture of veneer, excelsior, staves, spokes, or headings, lumber yards (including the delivery of lumber) carried on in connection with sawmills, the crosscutting of timbers, pulp and paper mills. Classification.

Class 12. Manufacture of furniture, fixtures, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware, mattresses, bed-springs, artificial limbs, cork articles, cork carpets or linoleum, upholstering, picture framing.

Class 13. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, moulding, window and door screens, window shades, brooms or brushes, carpet sweepers, wooden toys, articles and wares or baskets, matches or shade rollers; lumber yards (including the delivery of lumber) carried on in connection with planing mills or sash and door factories; cooperage, not including the making of staves or headings; carpenter, joiner, or cabinet work in shop; lumber yards (including the delivery of lumber).

Class 14. Reduction of ores and smelting; preparation of metals or minerals; boring and drilling, including sinking of artesian wells; manufacture of calcium carbide, carborundum or alundum, abrasives or abrasive articles other than stone.

Class 15. Sand, shale, clay or gravel pits; marble works, stone cutting or dressing; manufacture of brick, tile, terra cotta, fire-proofing, sewer pipe, roof tile, plaster blocks, plaster board, slate or artificial stone; manufacture of brick, stone or artificial stone paving blocks, or cement or concrete blocks, quarries, stone crushing, lime kilns; manufacture of cement.

Class 16. Manufacture of glass, glass products, glassware, porcelain or pottery.

Class 17. Rolling mills; manufacture of heavy forgings, including ship anchors.

Class 18. Foundries; gas or electric welding; manufacture of stoves, furnaces, cast hot-water boilers, radiators, or metal sanitary ware, water fixtures or bedsteads.

Class 19. Fabrication of structural steel, iron or metal; ship building or ship repairing, manufacture of boilers, engines, locomotives, riveted pipes, tubing or tanks; safes, heavy machinery, cranes, or metal siding, ceiling, roofing, shingles, window frames or the like.

Class 20. Machine shops, metal stamping works, or blacksmith shops; manufacture of light forgings, carriage mountings, wires, cables, bolts, nuts, nails, screws, tools, cutlery, hardware; tin, sheet metal or sheet metal enamelled wares or articles not otherwise specified; metal wares, instruments, utensils and articles; wire goods, screens, cold drawn shafting, cold drawn tubing, firearms, ammunition shells (without explosives), windmills, gas or electric light fixtures, light machinery, scales, cash registers, typewriters, adding machines, dry batteries, cameras, sporting goods, metal toys, buttons of metal, ivory, pearl, or horn, ivory articles, rubber stamps, pads, or stencils.

Class 21. Manufacture of agricultural implements, threshing machines, wagons, carriages, sleighs, vehicles, motorcycles, bicycles, tricycles, toy wagons or sleighs, baby carriages, or aeroplanes; car shops.

Class 22. Manufacture of gold or silverware, plated ware, watches, watchcases, clocks, jewelry, or musical instruments.

Class 23. Manufacture of fire works, gunpowder, ammunition, nitroglycerine, dynamite, guncotton, or other high explosives, torpedoes, fuses, or cartridges.

Class 24. Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers; manufacture of chemicals, corrosive acids, or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, including the handling and delivery thereof; wood alcohol, celluloid articles; the manufacture, transmission, and distribution of natural or artificial gas or oil, and all operations connected therewith; the cutting, storing, handling, and delivery of natural ice.

Class 25. Distilleries, breweries; manufacture of spirituous or malt liquors; malt, alcohol, wine, vinegar, cider, mineral water, soda waters, or methylated spirits.

Class 26. Manufacture of nonhazardous chemicals, drugs, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, noncorrosive acids or chemical preparations; shoe-blackening or polish, yeast, baking powder or mucilage; tar, or tarred, pitched, or asphalted paper.

Class 27. Milling; manufacturing of cereals or cattle foods; warehousing or handling of grain or operation of grain elevators, threshing machines, clover mills, or ensilage cutters.

Class 28. Manufacture or preparation of meats or meat products or glue; packing houses, abattoirs; manufacture of fertilizers not incidental to any other industry.

Class 29. Tanneries.

Class 30. Manufacture of leather goods and products, belting, whips, saddlery, harness, trunks, valises, trusses, imitation leather, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires, or hose.

Class 31. Sugar refineries; manufacture of dairy products, butter, cheese, condensed milk or cream, biscuits, confectionery, chewing gum, spices, condiments, salt or any kind of starch; bakeries; canning or preparation of fruit, vegetables, fish, or food-stuffs; pickle factories.

Class 32. Manufacture of tobacco, cigars, cigarettes, or tobacco products.

Class 33. Flax mills; manufacture of textiles or fabrics; spinning, weaving, and knitting manufactories, manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy, felt, felt hats, cordage, ropes, fibre, asbestos goods, hair cloth and other hair goods; work in manila or hemp.

Class 34. Manufacture of men's or women's clothing, whitewear, shirts, collars, corsets, hats other than felt, caps, furs, robes, feathers or artificial flowers, quilts, clothing pads, tents, awnings, gloves, mittens, neckties, or other articles not otherwise specified made from fabrics; the erection of awnings.

Class 35. Power laundries; dyeing, cleaning, or bleaching.

Class 36. Printing, photo-engraving, engraving, lithographing, book-binding, embossing; manufacture of stationery, paper, cardboard boxes, bags, wall-paper, or papier-mâché.

Class 37. Heavy teaming or cartage; safe-moving or moving of boilers, heavy machinery, building stone and the like; warehousing, storage; teaming and cartage; scavenging, street cleaning or removal of snow or ice; scrap and junk dealers; wood yards (including the delivery of wood); coal yards (including the delivery of coal).

Class 38. Steel building and bridge construction; installation of elevators, fire escapes, boilers, engines or heavy machinery; the erection of windmills.

Class 39. Bricklaying, mason work, stone setting; plastering, concrete or cement work in or connected with buildings; excavation work for or connected with buildings; structural carpentry; lathing; installation of pipe organs; house wrecking or house moving; painting, decorating, or renovating; glazing or installation of plate glass; the business of window-cleaning; sheet metal work; roofing; the erection of lightning rods; electric wiring of buildings or installation of lighting fixtures; plumbing, heating or sanitary engineering; gas or steam-fitting.

Class 40. Road or street making or repairing; bridge or culvert construction not otherwise classified; manufacture of asphalt material or paving material not otherwise classified; concrete or cement work not otherwise classified; sewer construction, tunneling, shaft sinking, well digging; construction or operation of a waterworks system; excavation work for foundations other than for or in connection with buildings; trenching, less than six feet deep, for gas pipes, water pipes, or wire conduits; excavation work not otherwise classified where the depth is more than six feet and the width is less than half the depth.

Class 41. Construction, installation, or operation of electric power lines or appliances, and power transmission lines, construction or operation of an electric light system; construction and operation of power plants and electric light work; construction or operation of telegraph or telephone lines, construction or operation of telephone lines and works for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company.

Class 42. Construction or operation of railways or canals; construction or operation of drydocks; construction of piers, wharves, breakwaters, or other harbor improvements; stevedoring; operation of and work upon wharves; dredging, subaqueous construction or pile driving; fishing; operation of boats.

Class 43. Moving pictures and theaters.

Class 44. Manufacture of automobiles; motor trucks; repairs of same in public garages.

Class 45. The operation of the business of express companies which operate on or in conjunction with a railway.

Class 85. Employment by the city of Calgary in any of the industries enumerated in the above classes.

Class 86. Employment by the city of Edmonton in any of the industries enumerated in the above classes.

Class 87. Employment by the city of Lethbridge in any of the industries enumerated in the above classes.

Class 88. Employment by the city of Medicine Hat in any of the industries enumerated in the above classes.

Class 89. Employment by other municipalities in any of the industries enumerated in the above classes.

Class 90. Employment by the provincial government of Alberta.

Class 111. All industries, trades, businesses, and occupations mentioned in schedule 2 of the act not otherwise classified.

FORM.

| Industrial diseases. | Description of disease. | Description of process. |
|----------------------|-------------------------------------|---|
| | Anthrax | Handling of wool, hair, bristles, hides, and skins. |
| | Lead poisoning or its sequelæ. | Any process involving the use of lead or its preparations or compounds. |
| | Mercury poisoning or its sequelæ. | Any process involving the use of mercury or its preparations or compounds. |
| | Miners' phthisis | Mining. |
| | Phosphorus poisoning or its sequelæ | Any process involving the use of phosphorus or its preparations or compounds. |
| | Arsenic poisoning or its sequelæ. | Any process involving the use of arsenic or its preparations or compounds. |
| | Ankylostomiasis | Mining. |

Assented to April 13, 1918.

BRITISH COLUMBIA.

ACTS OF 1916.

CHAPTER 77.—*Compensation of workmen for injuries.*¹¹

SECTION 1. This act may be cited as the "workmen's compensation act." Short title.

SEC. 2. In this act, unless the context otherwise requires— Definitions.
"Accident" shall include a willful and an intentional act, not being the act of the workman, and shall include a fortuitous event occasioned by a physical or natural cause.

"Accident fund" shall mean the fund provided for the payment of compensation, outlays, and expenses under Part I.

"Board" shall mean workmen's compensation board.

"Compensation" shall include medical aid, except where such interpretation is inconsistent with the context.

"Construction" shall include reconstruction, repair, alteration, and demolition.

"Dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death, or who but for the incapacity due to the accident would have been so dependent; and no person shall be excluded as a dependent because he is a nonresident alien.

"Employer" shall include every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry, and in respect of any industry within the scope of Part I includes the Crown in right of the province and municipal corporations and boards and commissions having the management of any work or service operated for a municipal corporation.

"Employment," when used in Part I, means and refers to the whole or any part of any establishment, undertaking, trade, or business within the scope of that part, and in the case of any industry not as a whole within the scope of Part I includes any department or part of such industry as would if carried on separately be within the scope of Part I.

"Industrial disease" shall mean any of the diseases mentioned in the schedule, and any other disease which by the regulations is declared to be an industrial disease.

"Industry" shall include establishment, undertaking, work, trade, and business.

"Invalid" shall mean physically or mentally incapable of earning.

"Medical aid," when used in Part I, shall mean and include the several matters and things which the board under the provisions of section 21 is empowered to provide for injured workmen.

"Member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, and half sister, and a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents.

"Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials.

"Person" shall include females as well as males, and shall include any body corporate or politic.

¹¹ As amended 1918, 1919.

"Physician" shall mean and include any person registered under the "medical act."

"Regulations" shall mean and include rules and regulations made by the board under the authority of this act.

"Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labor or otherwise; and in respect of the industry of mining shall include a person while he is actually engaged in taking or attending a course of training or instruction in mine-rescue work under the direction or with the written approval of an employer in whose employment the person is employed as a workman in that industry, or while, with the knowledge and consent of any employer in that industry, either express or implied, he is actually engaged in rescuing or protecting or attempting to rescue or protect life or property in the case of an explosion or accident which endangers either life or property in a mine, and this irrespective of the fact whether during the time of his being so engaged such person is entitled to receive wages from such employer, or from any employer, or is performing such work or service as a volunteer; and, further, in respect to the industry of mining, shall include a person while he is engaged as a member of the inspection committee, appointed or elected by the workmen in the mine, or in default of such appointment or election by the workmen, if appointed by the chief inspector of mines, to inspect the mine on behalf of the workmen, as required by general rule 37, section 91 of the "coal-mines regulation act," chapter 160 of the Revised Statutes of British Columbia, 1911.

Sec. 3. This act is divided into three parts, relating to the following subjects:

| Part. | Section. |
|--|----------|
| Division of act. | |
| I. Compensation to workmen and dependents | 4-69 |
| Division (1). Scope of this part..... | 4-5 |
| Division (2). Compensation..... | 6-14 |
| Division (3). Scale of compensation..... | 15-24 |
| Division (4). Accident fund and assessments..... | 25-41 |
| Division (5). Procedure and miscellaneous..... | 42-55 |
| Division (6). Workmen's compensation board..... | 56-69 |
| II. Liability of employers in industries not within the scope of Part I..... | 70-73 |
| III. General provisions..... | 74-76 |

PART I.

SEC. 4. This part shall apply to employers and workmen in or about the industries of lumbering, mining, quarrying, excavation, well drilling, fishing, manufacturing, printing, construction, building, engineering, transportation; operation of railways or tramways; operation of telegraph or telephone systems; operation of lumber, wood, or coal yards; operation of steam-heating plants, power plants, electric-light and electric-power plants or systems, gas works, waterworks, or sewers; operation of municipal police forces or municipal fire departments; operation of theater stages or kinematographs; operation of power laundries, stockyards, packing houses, refrigerating or cold-storage plants, docks, wharves, warehouses, freight and passenger elevators, grain elevators, boats, ships, tugs, ferries, or dredges; navigation, stevedoring, teaming, horseshoeing, scavenging, street cleaning, painting, decorating, renovating, dyeing and cleaning, and such other industries and occupations as the board may by the regulations determine; and in and about any occupation incidental to or immediately connected with any of the industries enumerated in this section: *Provided*, That, subject to section 5, this part shall not apply to the following:

(a) Persons engaged as traveling salesmen or in office or other clerical work, and not exposed to the hazards incident to the nature of the work carried on in the industry;

(b) Persons whose employment is of a casual nature, and who are employed otherwise than for the purposes of the employer's trade or business;

(c) Outworkers; or

(d) Members of the family of the employer.

SEC. 5. (1) On the application of the workmen in the case of any industry not within the scope of this part, or on the application of the employer in the case of any industry or workman not within the scope of this part, the board may by order admit the industry or workmen, as the case may be, as being within the scope of this part, and upon such admission the workman or industry shall be deemed to be within the scope of this part.

Admission of industries.

(2) Any employer in an industry within the scope of this part may be admitted by the board as being entitled for himself and his dependents to the same compensation as if the employer were a workman within the scope of this part.

Admission of employer.

(3) Admissions under this section may be made from time to time in such manner and form and subject to such terms and conditions and for such period as the board may deem adequate and proper.

SEC. 5A. This part shall apply to any employment by or under the Crown in right of the Province to which this part would apply if the employer were a private person.

Public employes.

SEC. 6. (1) Where, in any industry within the scope of this part, personal injury by accident arising out of and in the course of the employment is caused to a workman, compensation as provided by this part shall be paid by the board out of the accident fund.

Compensation to be paid.

(2) If the injury does not disable the workman longer than the period of three days, exclusive of any holiday upon which the workman would not in the usual course of his employment have worked, from earning full wages at the work at which he was employed, no compensation, other than medical aid, shall be payable under this part. If the injury disables the workman longer than the period of three days, no compensation, other than medical aid, shall be payable for the first three days of disability reckoned exclusively of any such holiday.

Waiting time.

(3) Where the injury is attributable solely to the serious and willful misconduct of the workman, no compensation shall be payable unless the injury results in death or serious and permanent disablement.

Willful misconduct.

(4) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

Presumptions.

SEC. 7. (1) Where—(a) a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed; or (b) The death of a workman is caused by an industrial disease, and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement, whether under one or more employments, the workman or his dependents shall be entitled to compensation under this part as if the disease were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:

Industrial diseases.

(c) The disablement shall be treated as the happening of the accident; and

(d) If the workman has at the time of entering the employment willfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable.

(2) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of the schedule hereto, and the disease contracted is the disease in the first column of the schedule set opposite to the description in the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

(3) The board may by the regulations require every physician treating a patient who is suffering from any industrial disease to report to the board such information relating thereto as it may require.

(4) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply, if the disease is the result of an injury in respect of which he is entitled to compensation under this part.

Accidents hap-
pening out of
Province.

SEC. 8. (1) Where an accident happens while the workman is employed elsewhere than in the Province which would entitle him or his dependents to compensation under this part if it had happened in the Province, the workman or his dependents shall be entitled to compensation under this part—

(a) If the place or chief place of business of the employer is situate in the Province, and the residence and the usual place of employment of the workman are in the Province, and his employment out of the Province has immediately followed his employment by the same employer within the Province and has lasted less than six months; or

(b) If the accident happens on a steamboat, ship, or vessel, or on a railway, and the workman is a resident of the Province, and the nature of the employment is such that in the course of the work or service which the workman performs it is required to be performed both within and without the Province.

(2) Except as provided by subsection (1), no compensation shall be payable under this part where the accident to the workman happens elsewhere than in the Province.

(3) In any case where compensation is payable in respect of an accident happening elsewhere than in the Province, if the employer has not fully contributed to the accident fund in respect of all the wages of workmen in his employ who are engaged in the employment or work in which the accident happens, the employer shall pay to the board the full amount of capitalized value, as determined by the board, of the compensation payable in respect of the accident, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

(4) The board, if satisfied that the default of the employer in respect of his contribution to the accident fund was excusable, may in any case relieve the employer in whole or in part from liability under subsection (3).

Option of em-
ployees.

SEC. 9. (1) Where by the law of the country or place in which the accident happens the workman or his dependents are entitled to compensation in respect of it, they shall be bound to elect whether they will claim compensation under the law of such country or place or under this part, and to give notice of such election; and if such election is not made and notice given it shall be presumed that they have elected not to claim compensation under this part.

(2) Notice of the election shall be given to the board within three months after the happening of the accident, or, in case it results in death, within three months after the death, or within such longer period as either before or after the expiration of such three months the board may allow.

Third parties.

SEC. 10. (1) Where an accident happens to a workman in the course of his employment in such circumstances as entitle him or his dependents to an action against some person other than his employer, the workman or his dependents, if entitled to compensation under this part, may claim such compensation or may bring such action.

(2) If the workman or his dependents bring such action and less is recovered and collected than the amount of the compensation to which the workman or dependents would be entitled under this part, the workman or dependents shall be entitled to compensation under this part to the extent of the amount of such difference.

(3) If any such workman or dependent makes an application to the board claiming compensation under this part, the board shall be subrogated to the rights of the workman or dependent as against such other person for the whole or any outstanding part of the claim of the workman or dependent against such other person.

(4) In any case within the provisions of subsection (1), neither the workman nor his dependents nor the employer of such workman shall have any right of action in respect of such accident against an employer in any industry within the scope of this part; and in any such case where it appears to the satisfaction of the board that a workman of an employer in any class is injured owing to the negligence of an employer or of the workman of an employer in another class within the scope of this part, the board may direct that the compensation awarded in such case shall be directed against the last-mentioned class.

Sec. 11. (1) The provisions of this part shall be in lieu of all rights of action to which a workman or his dependents are entitled, either at common law or by any statute, against the employer of such workman for or by reason of any accident which happens to him arising out of and in the course of his employment, and no action against the employer shall lie in respect of such accident. Remedy exclusive.

(2) A workman under the age of twenty-one years, and working at an age and in an employment permitted under the laws of the Province, shall be deemed sui juris for the purpose of this part, and no other person shall have any cause of action or right to compensation for an injury to such workman except as expressly provided in this part. Minors.

(3) Where an action in respect of an injury is brought against an employer by a workman or a dependent, the board shall have jurisdiction upon the application of any party to the action to adjudicate and determine whether the action is one the right to bring which is taken away by this part, and such adjudication and determination shall be final and conclusive; and if the board determines that the action is one the right to bring which is taken away by this part the action shall be forever stayed. Stay of improper action.

Sec. 12. It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependents are or may become entitled under this part, and every agreement to that end shall be absolutely void. Waivers.

Sec. 13. (1) Subject to the provisions of subsection (1) of section 30 in respect of medical aid, it shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of any of his workmen any part of any sum which the employer is or may become liable to pay into the accident fund or otherwise under this part, or to require or to permit any of his workmen to contribute in any manner toward indemnifying the employer against any liability which he has incurred or may incur under this part. Contributions from workmen.

(2) Every person who contravenes any of the provisions of subsection (1) shall be guilty of an offense against this part, and shall also be liable to repay to the workman any sum which has been so deducted from his wages or which he has been required or permitted to pay in contravention of subsection (1).

Sec. 14. No sum payable as compensation or by way of commutation of any periodical payment in respect of it shall be capable of being assigned, charged, or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it. Assignments, etc.

Sec. 15. (1) Where death results from the injury, the necessary expenses of the burial of the workman, not exceeding the sum of seventy-five dollars, shall be paid in addition to all other compensation payable under this section. Compensation for death. Burial expenses.

(2) Where death results from the injury, compensation shall be paid to the dependents of the deceased workman as follows: Payments to dependents.

(a) Where the dependent is a widow or an invalid widower without any dependent children, a monthly payment of twenty dollars during the life of such surviving spouse.

(b) Where the dependents are a widow or an invalid widower and one or more children, a monthly payment of twenty dollars, with an additional monthly payment of five dollars for each child under the age of sixteen years and for each invalid child over that age, not exceeding in the whole forty dollars.

(c) Where the dependents are children without any widow or invalid widower, a monthly payment of ten dollars to each child under the age of sixteen years and to each invalid child over that age, not exceeding in the whole forty dollars; and

(d) Where there is no widow, invalid widower, child under the age of sixteen years, or invalid child over that age as a dependent, but the workman leaves other dependents, a sum reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the board, but not exceeding twenty dollars per month to a parent or parents, and not exceeding in the whole thirty dollars per month.

(e) In any case within the provisions of clause (a) or (c), if the workman leaves a parent or parents who are dependents, the board may in

- its discretion award to the parent or parents a sum to be determined by the board, but not exceeding twenty dollars per month, and not exceeding with the compensation otherwise payable under this subsection forty dollars per month.
- Aliens.** (f) Where the dependents are aliens residing outside of Canada and entitled to compensation under clauses (a), (b), (c), (d), or (e) of this subsection, the board may, in lieu of awarding such dependents compensation on the scale provided by clauses (a), (b), (c), (d), or (e), award such lesser sum by way of compensation as, according to the conditions and cost of living in the place of residence of such dependents, will in the opinion of the board maintain them in a like degree of comfort as dependents of the same class residing in Canada and receiving the full compensation authorized by this act would enjoy.
- Allotment of compensation.** (3) Where there are both total and partial dependents, the compensation may be allotted partly to the total and partly to the partial dependents.
- Duration of payments.** (4) The payments provided under clause (d) of subsection (2) shall continue only so long as, in the opinion of the board, it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependents.
- Payments to children.** (5) Payments in respect of a child under the age of sixteen years shall cease when the child attains the age of sixteen years or dies: *Provided*, That in case the child at the time of attaining the age of sixteen years is an invalid the payments shall continue until the child ceases to be an invalid. Payments in respect of an invalid child over the age of sixteen years shall cease when the child ceases to be an invalid or dies.
- Readjustment of payments.** (6) Where a payment to any one of a number of dependents ceases, the board may in its discretion readjust the payments to the remaining dependents so that the remaining dependents shall thereafter be entitled to receive the same compensation as though they had been the only dependents at the time of the death of the workman.
- Reserves.** (7) Where under the provisions of clause (f) of subsection (2) a lesser sum is awarded to alien dependents residing outside of Canada, the board shall, notwithstanding such award, create and provide the same reserve as if the award had been made according to the scale provided by such of the clauses (a), (b), (c), (d), or (e) of said subsection as would, except for the provisions of said clause (f), be applicable.
- (8) Where by reason of the payment of such lesser sum to alien dependents residing outside of Canada there remains an undistributed accumulation of money in the reserve provided, the board shall apply such accumulation every six months as follows:
- (a) In payment of such sums for and on behalf of children dependents under sixteen years of age, residing in Canada, who by reason of the maximum monthly limit of forty dollars fixed by subsection (2) are not receiving the full amount of compensation to which they would otherwise be entitled, as may be necessary to secure to such children dependents the full monthly payments of compensation which, except for such maximum limit, would be payable to them under said subsection; and
- (b) If after such children dependents are provided for there remains any accumulation undistributed, the same shall be applied in payment of an additional sum to widow dependents residing in Canada to increase pro tanto their monthly payments up to but not exceeding the monthly sum of thirty-five dollars, and to increase the monthly payments under subsection (2) to children dependents residing in Canada up to but not exceeding the monthly sum of seven dollars and fifty cents for each child; and
- (c) If there be any balance of such accumulation the same shall be applied in payment of increased monthly payments to other dependents residing in Canada.
- Marriage of widow.** (1) If a dependent widow marries, the monthly payments to her shall cease, but she shall be entitled in lieu of them to a sum equal to the monthly payments for two years.
- (2) Subsection (1) shall not apply to payments to a widow in respect of a child.
- Permanent total disability.** (1) Where permanent total disability results from the injury, the compensation shall be a periodical payment to the injured work-

man equal in amount to fifty-five per centum of his average earnings, and shall be payable during the lifetime of the workman.

(2) The compensation awarded under this section shall not be less than an amount equal to five dollars per week, unless the workman's average earnings are less than five dollars per week, in which case he shall receive compensation in an amount equal to his average earnings.

SEC. 18. (1) Where permanent partial disability results from the injury, the compensation shall be a periodical payment to the injured workman equal in amount to fifty-five per centum of the difference between the average earnings of the workman 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, and the compensation shall be payable during the lifetime of the workman.

Permanent partial disability.

(2) Notwithstanding the provisions of subsection (1), where in the circumstances the amount which the workman was able to earn before the accident has not been substantially diminished, the board may, in case the workman is seriously and permanently disfigured about the face or head, or otherwise permanently injured, recognize an impairment of earning capacity, and may allow a lump sum in compensation.

Disfigurement.

SEC. 19. (1) Where temporary total disability results from the injury, the compensation shall be the same as that prescribed by section 17, but shall be payable only so long as the disability lasts.

Temporary total disability.

(2) The compensation awarded under this section shall not be less than an amount equal to five dollars per week, unless the workman's average earnings are less than five dollars per week, in which case he shall receive compensation in an amount equal to his average earnings.

SEC. 20. Where temporary partial disability results from the injury, the compensation shall be the same as that prescribed by subsection (1) of section 18, but shall be payable only so long as the disability lasts.

Temporary partial disability.

SEC. 21. (1) In addition to the other compensation provided by this part, the board shall have authority to furnish or provide for the injured workman such medical, surgical, and hospital treatment, transportation, nursing, medicines, crutches, and apparatus, including artificial members, as it may deem reasonably necessary at the time of the injury, and thereafter during the disability to cure and relieve from the effects of the injury, and the board shall have full power to adopt rules and regulations with respect to furnishing medical aid to injured workmen entitled thereto and for the payment thereon.

Medical aid.

(2) Where in a case of emergency, or for other justifiable cause, a physician other than the one provided by the board is called in to treat the injured workman, and if the board finds there was such justifiable cause and that the charge for the services is reasonable, the cost of the services shall be paid by the board.

(3) The board may in its discretion authorize employers to furnish or provide medical aid at the expense of the board and upon terms fixed by it.

(4) Any plan for providing medical aid in force between an employer and his workmen or otherwise available to the workmen at the time of the coming into force of this part, or which is hereafter put into force, or made available to the workmen, and which in the opinion of the board, after investigation of the facts, is found on the whole to be not less efficient in the interests both of the employer and of the general body of workmen than the provisions for medical aid contained in this section, may by order of the board, subject to such conditions as the board may require, be declared to be a plan approved by the board. So long as the order of the board approving the plan is in force and unrevoked the provisions of subsections (1), (2), and (3) and of subsection (1) of section 30 shall not apply to any of the workmen in any employment embraced in such plan, and during the like period the provisions of section 12 of the "master and servant act" shall not apply in respect of any such workmen.

(5) Medical aid furnished or provided under any of the preceding subsections of this section shall at all times be subject to the supervision and control of the board; and the board shall have full power and authority to contract with doctors, nurses, hospitals, and other institutions for any medical aid required, and to agree on a scale of fees or remuneration for such medical aid.

(6) In the case of any workman employed as a master, mate, engineer, seaman, sailor, steward, fireman, or in any other capacity on board of any vessel on which duty has been paid or is payable for the purposes of the sick mariners' fund under Part V of the "Canada shipping act," being chapter 113 of the Revised Statutes of Canada, 1906, the provisions of subsections (1) to (5) shall not apply to such workman during the period in respect of which such duty has been paid or is payable.

(7) Without in any way limiting the power of the board under this section to supervise and provide for the furnishing of medical aid in every case where the board is of the opinion that the exercise of such power is expedient, the board shall, under this section, in all cases where the circumstances, in the opinion of the board, do not require the exercise of such power in order to procure prompt and efficient medical aid for the injured workman, permit medical aid to be administered, so far as the selection of a physician is concerned; by the physician who may be selected or employed by the injured workman or his employer, to the end that so far as possible all competent physicians without distinction may be employed and be available to injured workmen.

First aid.

(8) Employers in any industries in which it is deemed proper may be required by the board to maintain, as may be directed by the board, such first-aid appliances and service as the board may direct, and the board may make such order respecting the expense thereof as may be deemed just.

Where any employer fails, neglects, or refuses to install such first-aid appliances and service as the board directs under this section, the board may install such first-aid appliances and service, and charge the cost thereof to the employer; and the board may enforce payment thereof, and for that purpose shall have the same powers and be entitled to the same remedies for enforcing payment as it possesses or is entitled to in respect of assessments.

Average earnings.

SEC. 22. (1) The average earnings and earning capacity of a workman shall be determined with reference to the average earnings and earning capacity at the time of the accident, and may be calculated upon the daily, weekly, or monthly wages or other regular remuneration which the workman was receiving at the time of the accident, or upon the average yearly earnings of the workman for one or more years prior to the accident, or upon the probable yearly earning capacity of the workman at the time of the accident as may appear to the board best to represent the actual loss of earnings suffered by the workman by reason of the injury, but not so as in any case to exceed the rate of two thousand dollars per year.

Minors.

(2) Where the workman was at the date of the accident under twenty-one years of age, and it is established to the satisfaction of the board that under normal conditions his wages would probably increase, the fact shall be considered in arriving at his average earnings or earning capacity.

Deductions from compensation.

SEC. 23. In fixing the amount of a periodical payment of compensation, regard shall be had to any payment, allowance, or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity, or other allowance provided wholly at the expense of the employer; and any sum deducted under this section from the compensation otherwise payable may be paid to the employer out of the accident fund.

Payments.

SEC. 24. (1) Payments of compensation shall be made periodically at such times and in such manner and form as the board may deem advisable, and in the case of minors or persons of unsound mind, payments may be made to such persons as, in the opinion of the board, are best qualified in all the circumstances to administer such payments, whether or not the person to whom the payment is made is the legal guardian of such minor or person of unsound mind.

(2) The board may, in its discretion—

Lump sums.

(a) Commute the whole or any part of the periodical payments due or payable to the injured workman or any dependent to one or more lump-sum payments to be applied as directed by the board; and may

(b) Divide into periodical payments any compensation payable in a lump sum.

(3) In case of death or permanent total disability or in case of permanent partial disability where the impairment of the earning capacity of the workman exceeds ten per cent of his earning capacity at the time of the accident, no commutation of periodical payments shall be made under subsection (2) except upon the application of and at an amount agreed to by the dependent or workman entitled to such payments.

(4) Notwithstanding the provisions of subsection (3), the board may, in its discretion, commute the periodical payments payable under clause (f) of subsection (2) of section 15 to alien dependents residing outside of Canada for a lump sum, and may apply that lump sum to or for the use and benefit of those dependents in such manner as the board may determine to be most for the advantage of the dependents.

Sec. 25. For the purpose of assessment in order to create and maintain a fund, to be called the "accident fund," for the payment of the compensation, outlays, and expenses under this part, all industries within the scope of this part shall, subject to sections 26 and 27, be divided into the following classes:

Accident fund.

Class 1. Lumbering; logging; sawmills; manufacture of pulp or paper.

Classification of industries.

Class 2. Woodworking; planing mills; furniture factories; cooperage; manufacture of vehicles.

Class 3. Coal mining.

Class 4. Mining (other than coal); reduction of ores and smelting; quarrying; manufacture of brick or lime.

Class 5. Manufacture of iron and steel, and iron, steel, and metal products.

Class 6. Manufacture of compounds, paints, chemicals, liquors, or beverages; manufacture of leather, leather goods, rubber, or rubber goods; flour milling; handling of grain; canning, packing, or manufacture of food products; manufacture of cloth, textiles, and clothing; printing, lithographing, engraving; manufacture of stationery; teaming, cartage, warehousing, and storage.

Class 7. Construction of buildings and wooden ships; mason work, structural carpentry, plumbing, and painting; steel erection, steel-bridge building, steel-ship building; road making, sewer construction, excavation, well drilling, construction of irrigation works; subaqueous construction, dredging, pile driving, fishing.

Class 8. Construction and operation of electric railways, electric light and power plants, lines and appliances; construction and operation of telegraph and telephone systems; construction and operation of steam railways.

Class 9. Navigation and stevedoring.

Class 10. Canadian Pacific Railway Company; Canadian Pacific Ocean Services, Limited; Esquimalt and Nanaimo Railway Company; Kettle Valley Railway Company; Dominion Express Company; Consolidated Mining and Smelting Company of Canada, Limited; West Kootenay Power and Light Company, Limited.

Class 11. Grand Trunk Pacific Railway Company; The Grand Trunk Pacific Coast Steamship Company, Limited; Grand Trunk Pacific Telegraph Company; Canadian Express Company; The Grand Trunk Pacific Development Company, Limited.

Class 12. Canadian Northern Pacific Railway Company; The Great North Western Telegraph Company of Canada; Canadian Northern Express Company.

Class 13. The Crown in right of the Province of British Columbia.

Sec. 26. (1) The board may, by the regulations—

Creation, etc., of classes.

(a) Create new classes in addition to those mentioned in section 25. (b) Consolidate or rearrange from time to time any of the existing classes; and may

(c) Withdraw from a class any industry included therein and transfer it wholly or in part to any other class, or form it into a separate class.

(2) In case of any rearrangement of the classes, or the withdrawal of an industry from any class, the board may make such adjustment and disposition of the funds, reserves, and accounts of the classes affected as may be deemed just and expedient.

Adjustment of funds.

Power of board. SEC. 27. The board shall assign every industry within the scope of this part to its proper class; and where any industry includes several departments assignable to different classes, the board may either assign such industry to the class of its principal or chief department, or may, for the purpose of this part, divide such industry into two or more departments, assigning each of such departments to its proper class.

Employer to furnish pay rolls. SEC. 28. (1) Every employer shall, on or before the first day of October, 1916, or whenever thereafter he becomes an employer within the meaning of this part, and at such other times as may be required by the regulations or by the board, cause to be furnished to the board an estimate of the probable amount of the pay roll of each of his industries within the scope of this part for the year next following, together with such further and other information as may be required by the board for the purpose of assigning each industry to the proper class and of making the assessments hereunder; and every employer shall, at or after the close of each calendar year, and at such other times as may be required by the board, furnish certified copies or reports of his pay rolls, verified by statutory declaration.

(2) In computing the amount of the pay roll of any industry for the purpose of assessment, regard shall be had only to such portion of the pay roll as represents workmen and employment within the scope of this part; and where the wages of any workman exceed the rate of two thousand dollars per year, a deduction shall be made in respect of the excess.

(3) If an employer does not comply with the provisions of subsection (1), or if any statement made in pursuance of its provisions is not a true and accurate statement of any of the matters required to be set forth in it, the employer for every such noncompliance and for every such statement shall be guilty of an offense against this part.

Assessments.

SEC. 29. (1) For the purpose of creating and maintaining an adequate accident fund, the board shall every year assess and levy upon and collect from the employers in each class by an assessment or by assessments made from time to time rated upon the pay roll, or in such other manner as the board may deem proper, sufficient funds, according to an estimate to be made by the board—

(a) To provide in connection with section 30 a special fund to meet the cost of medical aid.

(b) To meet all other amounts payable from the accident fund under this part during the year.

(c) To provide a reserve by way of a contingent fund in aid of industries or classes which may become depleted or extinguished.

(d) To provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents which occur during the year; and

(e) To provide a reserve fund to be used to meet the loss arising from any disaster or other circumstance which, in the opinion of the board, would unfairly burden the employers in any class.

(2) Assessments may be made in such manner and form and by such procedure as the board may deem adequate and expedient, and may be general as applicable to any class or subclass, or special as applicable to any industry or part or department of an industry.

(3) Assessments may, wherever it is deemed expedient, be collected in half-yearly, quarterly, or monthly instalments, or otherwise; and where it appears that the funds in any class are sufficient for the time being, any instalment may be abated or its collection deferred.

(4) In case the estimated assessments in any class prove insufficient, the board may make such further assessments and levies as may be necessary, or the board may temporarily advance the amount of any deficiency out of any reserve provided for that purpose, and add such amount to any subsequent assessments.

(5) The board shall give notice to each employer of the amount of each assessment due from time to time in respect of his industry and the time when the same is payable. The notice may be sent by post to the employer, and shall be deemed to be given to him on the day on which the notice is posted.

Contribution from workmen for medical aid.

SEC. 30. (1) Every employer who is required to contribute to the accident fund by way of assessment under this part is hereby authorized and required to retain from the moneys earned by each workman

in his employment the sum of one cent for each day or part of day the workman is employed as a contribution toward the cost of medical aid, and to pay the sum so retained to the board from time to time at the time each assessment is due and payable by the employer, and at such other times as the board may direct.

(2) The moneys received by the board under subsection (1) shall form part of the accident fund, and shall constitute a special fund to be used only in defraying the cost of medical aid. Such additional amounts as are required from time to time to meet the cost of medical aid shall be provided by the board by assessment upon employers generally in all industries within the scope of this part, except in respect of employments embraced in any plan for providing medical aid approved by the board under subsection (4) of section 21. Employers' assessments.

For the purpose of levying and collecting assessments under this subsection, the board may charge the additional amounts required to meet the cost of medical aid against the funds to the credit of the several classes in such a manner as, on the annual adjustment of assessments under this part, will result in a general assessment of such additional amounts upon those employers only who are liable to assessment under this subsection.

(3) In the case of any workman employed as a master, mate, engineer, seaman, sailor, steward, fireman, or in any other capacity on board of any vessel on which duty has been paid for the purposes of the sick mariners' fund under Part V of the Canadian shipping act, being chapter 113 of the Revised Statutes of Canada, 1906, the provisions of subsections (1) and (2) of this section shall not apply to such workman during the period in respect of which such duty has been paid or is payable. Sick mariners' fund.

SEC. 31. To assist in defraying the expenses incurred in the administration of this part, such annual sum as the lieutenant governor in council may direct, not exceeding fifty thousand dollars, shall be paid out of the consolidated revenue fund to the board to form part of the accident fund. Contribution from Province.

SEC. 32. The board shall establish such subclassifications, differentials, and proportions in the rates as between the different kinds of employment in the same class as may be deemed just; and where in the opinion of the board any particular industry is shown to be so circumstanced or conducted that the hazard differs from the average of the class or subclass to which the industry is assigned, the board shall confer or impose upon such industry a special rate, differential, or assessment to correspond with the relative hazard of that industry; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of the individual plant or undertaking of each employer. Board to classify rates.

SEC. 33. (1) Where an employer engages in any of the industries within the scope of this part and has not been assessed in respect of it, the board, if it is of opinion that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the board of a sum sufficient to pay the assessment for which the employer would be liable if the industry had been in existence when the next preceding assessment was made. Temporary industries.

(2) Every employer who makes default in complying with any requirement of the board under subsection (1) shall be guilty of an offence against this part.

SEC. 34. (1) If any assessment or part thereof is not duly paid in accordance with the terms of the assessment and levy, the board shall have a right of action against the defaulting employer in respect of the amount unpaid, together with costs of such action. Collection of assessments.

(2) Where default is made in the payment of any assessment, or any part of it, the board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it, and the person by whom it was payable, and such certificate, or a copy of it certified by the secretary under the seal of the board to be a true copy, may be filed with any district registrar of the supreme court, or with the registrar or deputy registrar of any county court, and when so filed shall become an order of that court and may be enforced as a judgment of the court against such person for the amount mentioned in the certificate.

Money for medi- SEC. 35. The board shall have the like powers and be entitled to the
cal aid. like remedies of enforcing payment of any sum which an employer is
required to pay to the board under subsection (1) of section 30 as it
possesses or is entitled to in respect of assessments.

Defaulted as- SEC. 36. (1) If any sum which an employer is required to pay to the
sessments. board under subsection (1) of section 30 or if any assessment levied
under any provision of this part is not paid at the time when it becomes
payable, the defaulting employer shall be liable to pay and shall pay as
a penalty for his default such a percentage upon the amount unpaid as
may be prescribed by the regulations or may be determined by the
board.

(2) Any employer who refuses or neglects to make or transmit any
pay roll return or other statement required to be furnished by him
under the provisions of subsection (1) of section 28, or who refuses or
neglects to pay any assessment, or the provisional amount of any assess-
ment, or any instalment or part thereof, shall, in addition to any penalty
or other liability to which he may be subject, pay to the board the full
amount or capitalized value, as determined by the board, of the com-
pensation payable in respect of any accident to a workman in his
employ which happens during the period of such default, and the pay-
ment of such amount may be enforced in the same manner as the pay-
ment of an assessment may be enforced.

(3) The board, if satisfied that such default was excusable, may in
any case relieve such employer in whole or in part from liability under
this section.

Separate ac- SEC. 37. Separate accounts shall be kept of the amounts collected
counts. and expended in respect of every class and of every fund set aside by
way of reserve or as a special fund for any purpose, but for the purpose
of paying compensation the accident fund shall, nevertheless, be
deemed one and indivisible.

Annual adjust- SEC. 38. (1) On or before the first day of March in each year the
ments. amount of the assessment for the preceding calendar year shall be ad-
justed upon the actual requirements of the class and upon the correctly
ascertained pay roll of each industry, and the employer shall forth-
with make up and pay to the board any deficiency, or the board shall
refund to the employer any surplus, or credit the same upon the suc-
ceeding assessment as the case may require.

(2) Where in any industry a change of ownership or employership
has occurred, the board may levy any part of such deficiency on either
or any of the successive owners or employers, or pay or credit to any one
or more of such owners such surplus as the case may require, but as
between or amongst such successive owners the assessments in respect
of such employment shall, in the absence of an agreement between the
respective owners or employers determining the same, be apportionable,
as nearly as may be, in accordance with the proportions of the pay rolls
of the respective periods of ownership or employment.

Collection of SEC. 39. Where any work within the scope of this part is performed
assessments from under contract for any municipal corporation, or for any board or com-
contractors. mission having the management of any work or service operated for a
municipal corporation, any assessment in respect of such work may be
paid by such corporation, board, or commission, as the case may be, and
the amount of such assessment deducted from any moneys due the
contractor in respect of such work.

Contractor and SEC. 40. (1) Where any work within the scope of this part is under-
principal both taken for any person by a contractor, both the contractor and the per-
liable. son for whom such work is undertaken shall be liable for the amount of
any assessment in respect thereof, and such assessment may be levied
upon and collected from either of them, or partly from one and partly
from the other: *Provided*, That in the absence of any term in the con-
tract to the contrary the contractor shall, as between himself and the
person for whom the work is performed, be primarily liable for the
amount of such assessment.

Subcontractors. (2) Where any work within the scope of this part is performed under
subcontract, both the contractor and the subcontractor shall be liable
for the amount of the assessments in respect of such work; any such
assessments may be levied upon and collected from either, or partly
from one and partly from the other: *Provided*, That in the absence of

any term in the subcontract to the contrary the subcontractor shall, as between himself and the contractor, be primarily liable for such assessments.

Sec. 41. There shall be included among the debts which, in the distribution of the property or assets—(a) under the “creditors’ trust deeds act” in the case of an assignment; (b) under the “administration act” in the case of death; or (c) under the “companies act” in the case of a company being wound up—are to be paid in priority to all other debts, the amount of any assessment the liability whereof accrued before the date of the assignment or death or before the date of the commencement of the winding-up, and the said acts shall respectively have effect accordingly.

Sec. 42. (1) In every case of injury to a workman by accident in any industry within the scope of this part it shall be the duty of the workman, or in case of his death the duty of a dependent, as soon as practicable after the happening of the accident, to give notice thereof to the employer. The notice shall be in writing and contain the name and address of the workman, and state in ordinary language the nature and cause of the injury and the time when and place where the accident occurred, and shall be signed by the injured workman or some person on his behalf, or, in case of death, by any one or more of his dependents or by a person on their behalf.

(2) In the case of an industrial disease, the employer to whom notice of death, disablement, or suspension from employment is to be given shall be the employer who last employed the workman in the employment to the nature of which the disease was due.

(3) The notice may be served upon the employer, or upon any one employer if there are more employers than one, or upon any officer or agent of the corporation if the employer be a corporation, or upon any agent of the employer in charge of the business in the place where the injury occurred, by delivering the same to the person upon whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to him at his last-known residence or place of business.

(4) The failure to give any notice required by virtue of this section, unless excused by the board either on the ground—(a) that notice for some sufficient reason could not have been given; or (b) that the employer or his superintendent or agent in charge of the work where the accident happened had knowledge of the injury; or (c) that the board is of opinion that the claim is a just one and ought to be allowed, shall be a bar to any claim for compensation under this part.

Sec. 43. (1) In case of accident to a workman in his employment it shall be the duty of every employer, within three days after its occurrence, to report the accident and the injury resulting therefrom to the board, and also to any local representative of the board at the place where the accident occurred. The report shall be in writing and state—(a) the name and address of the workman and the nature of the industry in which he was employed; (b) the time when and place where the accident occurred; (c) the cause and nature of the accident and injury; (d) the name and address of the physician by whom the workman was or is attended for the injury; and (e) any other particulars required by the regulations; and may be made by mailing copies thereof addressed to the board and to the local representative at their usual addresses respectively, postage prepaid.

(2) It shall be the duty of the employer to make such further and other reports respecting the accident and workman as may be required by the board.

(3) The failure to make any report required by virtue of this section, unless excused by the board on the ground that the report for some sufficient reason could not have been made, shall constitute an offence against this part.

Sec. 44. (1) Where a workman or dependent is entitled to compensation under this part, he shall file with the board an application for the compensation, together with the certificate of the physician who attended the workman (if any), and such further or other proofs of his claim as may be required by the regulations or by the board.

- Application within one year.** (2) Unless application for the compensation is filed (a) within one year after the day upon which the injury occurred; or (b) in case the applicant is a dependent, then within one year after the death, no compensation in respect of any injury shall be payable under this part.
- Duty of physician.** SEC. 45. It shall be the duty of every physician attending or consulted upon any case of injury to a workman by accident in any industry within the scope of this part (a) to furnish from time to time such reports in respect of the injury in such form as may be required by the regulations or by the board; and (b) to give all reasonable and necessary information, advice, and assistance to the injured workman and his dependents in making application for compensation, and in furnishing in connection therewith such certificates and proofs as may be required, without charge to the workman.
- Examination of workman.** SEC. 46. (1) Every workman who applies for or is in receipt of compensation under this part, if requested by the board, shall submit himself to medical examination in accordance with the regulations at a place reasonably convenient for the workman to be fixed by the board. If the workman fails to submit himself to the examination, or obstructs the same, his right to compensation shall be suspended until the examination has taken place, and no compensation shall be payable during the period of such suspension.
- (2) If an injured workman persists in unsanitary or injurious practices which tend to imperil or retard his recovery, or refuses to submit to such medical or surgical treatment as in the opinion of the board, based upon independent expert medical or surgical advice, is reasonably essential to promote his recovery, the board may, in its discretion, reduce or suspend the compensation of such workman.
- Proof as to dependents.** SEC. 47. The board may from time to time require such proof of the existence and condition of any dependents in receipt of compensation payments as may be deemed necessary by the board, and pending the receipt of such proof may withhold further payments.
- Province liable for fund.** SEC. 48. (1) Subject to subsections (2) and (3), the minister of finance shall be custodian of all moneys and securities belonging to the accident fund, and the Province shall be liable for the safe-keeping thereof. All moneys belonging to the accident fund collected or received by the board shall be delivered to the minister of finance, or may be deposited to his credit in such banks throughout the Province as he may designate; and all moneys so delivered or deposited shall be credited by the minister of finance to the accident fund, and shall be accounted for as part of the consolidated revenue fund of the Province. No moneys collected or received on account of the accident fund shall be expended or paid out without first passing into the provincial treasury and being drawn therefrom as provided in this part. In like manner all securities belonging to the accident fund shall be delivered to the minister of finance and held by him until otherwise disposed of for the purposes of this part.
- (2) The board shall submit each month to the auditor general an estimate of the amount necessary to meet the current disbursements from the accident fund during the succeeding calendar month, and, when the estimate is approved by the auditor general, the minister of finance is directed to pay the amount thereof to the board. At the end of each calendar month the board shall account to the auditor general for all moneys so received, furnishing proper vouchers therefor.
- Investment of surplus.** (3) The board shall cause all moneys in the accident fund in excess of current requirements to be invested and reinvested in any securities which are under the "Trustee Act" a proper investment for trust funds. The board shall from time to time submit to the auditor general an estimate of the amount required by it for investment, which estimate shall be accompanied by a full description of the kind and character of the investments proposed to be made, and, when the estimate and investments are approved by the auditor general and by the minister of finance, the minister of finance is directed to pay out the amount thereof for the purpose of such investments. At the end of each calendar month the board shall account to the auditor general for all moneys so invested, furnishing proper vouchers therefor.
- (4) All investments shall be made in the names of the board and the minister of finance jointly, and all interest on investments shall be payable to the board and form part of the accident fund.

(5) Interest on all moneys belonging to the accident fund in the custody of the minister of finance in excess of current requirements and not invested shall, subject to the certificate of the auditor general, be paid by the minister of finance to the board at a rate not less than three per centum per annum payable quarterly, and shall form part of the accident fund.

SEC. 49. The accounts of the board shall be audited by the auditor general or by an auditor appointed by the lieutenant governor in council for that purpose, and the salary or remuneration of the last-mentioned auditor shall be paid by the board. Audit of ac-
counts.

SEC. 50. (1) The board shall, on or before the first day of March in each year, make a report to the lieutenant governor of its transactions during the next preceding calendar year, and such report shall contain such particulars as the lieutenant governor in council may prescribe. Annual report.

(2) Every such report shall be forthwith laid before the legislature if the legislature is then in session, and if it is not then in session, within fifteen days after the opening of the next session.

(3) It shall be the duty of the board from time to time to publish and distribute among employers and workmen such general information in respect of the business transacted by the board as in its judgment may be useful.

SEC. 51. (1) The board shall have power—

(a) To investigate from time to time employments and places of employment within the Province, and determine what suitable safety devices or other reasonable means or requirements for the prevention of accidents shall be adopted or followed in any or all employments or places of employment. Accident pre-
vention.

(b) To determine what suitable devices or other reasonable means or requirements for the prevention of industrial diseases shall be adopted or followed in any or all employments or places of employment.

(c) To make rules and regulations, whether of general or special application, and which may apply to both employers and workmen, for the prevention of accidents and the prevention of industrial diseases in employments or places of employment.

(d) To establish and maintain museums in which shall be exhibited safety devices, safeguards, and other means and methods for the protection of the life, health, and safety of workmen, and to publish and distribute bulletins on any phase of the subject of accident prevention.

(e) To cause lectures to be delivered, illustrated by stereopticon or other views, diagrams, or pictures, for the information of employers and their workmen and the general public in regard to the causes and prevention of industrial accidents, industrial diseases, and related subjects.

(f) To appoint advisory committees, on which employers and workmen shall be represented, to assist the board in establishing reasonable standards of safety in employments, and to recommend rules and regulations.

(2) Before the adoption of any rule or regulation by the board under this section a public hearing shall be held for the purpose of considering the same. Not less than ten days before the hearing a notice thereof shall be published in at least three newspapers, of which one shall be published in the city of Victoria and one in the city of Vancouver. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or regulation made by the board. Public hearings
on safety rules.

(3) The board and any member of it, and any officer or person authorized by it for that purpose, shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund and the premises connected with it, and every part of them, for the purpose of ascertaining whether the ways, works, machinery, or appliances therein are safe, adequate, and sufficient, and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises, and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the board may deem necessary, including the purpose of determining the proportion in which such employer should contribute to the accident fund. Power to in-
spect premises.

(4) Every person who obstructs or interferes with any commissioner, officer, or person in the exercise of the rights conferred by subsection (3) shall be guilty of an offence against this part.

Power of board
as to safety de-
vices.

SEC. 51A. (1) Where in any employment or place of employment safety devices or appliances are in the opinion of the board necessary for the prevention of accidents or of industrial diseases, the board may order the installation or adoption of such devices and appliances, and may fix a reasonable time within which they shall be installed or adopted, and the board shall give notice thereof to the employer.

(2) In any case where safety devices or appliances are by order of the board under this section required to be installed or adopted, or are prescribed by the regulations, and the employer fails, neglects, or refuses to install and adopt such safety devices or appliances in any employment or place of employment in accordance with the terms of the order or regulations and to the satisfaction of the board, or where under the circumstances the board is of opinion that conditions of immediate danger exist in any employment or place of employment which would otherwise be likely to result in the loss of life or serious injury to the workmen employed therein, the board may, in its discretion, order the employer to forthwith close down the whole or any part of such employment or place of employment and the industry carried on therein, and the board shall notify the employer of such order.

(3) Every employer who fails, neglects, or refuses to comply with any order made by the board under subsection (2) shall be guilty of an offence against this part, and each day's continuance of any such failure, neglect, or refusal to comply shall constitute a new and distinct offence.

Leave to oper-
ate.

SEC. 51B. (1) No employer shall, for the purpose of any industry within the scope of this part, commence the operation of or operate or carry on any mine, plant, or establishment which has not been in operation for the period of seven months next preceding, and in which power-driven machinery is used, until leave therefor is obtained from the board as provided in this section.

(2) Application for leave under this section shall be made to the board in writing, signed by the employer, and stating that the plant or establishment is ready for operation. Upon receipt of the application the board, or some member of the board, or some other person appointed by the board, shall make an inspection of the plant or establishment, and if on such inspection the plant or establishment is found to be reasonably free from danger to persons employed therein, the board shall grant leave for the operation of the plant or establishment. Pending inspection, the board may, by a temporary permit, grant leave to the employer for the operation of the plant or establishment.

(3) Every person who operates or carries on any plant or establishment in contravention of the provisions of this section shall be liable to a penalty of not less than fifty dollars and not more than two hundred dollars for each day on which the plant or establishment is so operated or carried on.

Regulations.

SEC. 52. (1) In addition to all other rules and regulations which may be made under the provisions of this part, the board may make such regulations as may be deemed requisite for the due administration and carrying out of the provisions of this part, and may likewise prescribe the form and use of such pay rolls, records, reports, certificates, declarations, and documents as may be requisite.

(2) The board may by regulations provide penalties to which every person who contravenes any rule or regulation made under this part shall be liable: *Provided*, That in no case shall the penalty exceed fifty dollars, and no prosecution for any such contravention shall be instituted without leave of the board.

Publication of
regulations.

SEC. 53. Every rule or regulation made by the board under this part shall upon its adoption be published in the Gazette, and shall take effect on the expiration of thirty days after the first publication in the Gazette, or at such later time as the board may fix.

SEC. 54. Every person who is guilty of an offence against this part shall be liable to a penalty not exceeding five hundred dollars. Penalties generally.

SEC. 55. The penalties imposed by or under the authority of this part shall be recoverable under the "summary convictions act" or by an action brought by the board in any court of competent jurisdiction, and such penalties when collected shall be paid over to the board and shall form part of the accident fund. Recovery of penalties.

SEC. 56. There is hereby constituted a commission for the administration of this part, to be called "The Workmen's Compensation Board," which shall consist of three members to be appointed by the lieutenant governor in council, and shall be a body corporate. Workmen's compensation board.

SEC. 57. (1) The first members of the board shall be appointed—one for a term of eight years, one for a term of nine years, and one for a term of ten years. All subsequent appointments shall be for a term of ten years. A commissioner may be removed at any time for cause. Term.

(2) A commissioner on the expiration of his term of office shall be eligible for reappointment.

SEC. 58. (1) One of the commissioners shall be appointed by the lieutenant governor in council to be the chairman of the board, and he shall hold that office while he remains a member of the board. Chairman.

(2) In the absence of the chairman, or, in case of his inability to act, or if there is a vacancy in the office, any other commissioner may act as chairman.

(3) When a commissioner appears to have acted for or instead of the chairman, it shall be conclusively presumed that he so acted for one of the reasons mentioned in subsection (2).

SEC. 59. (1) In the case of the illness or absence from the Province of a commissioner or of his inability to act from any cause, the lieutenant governor in council may appoint some person to act pro tempore in his stead, and the person so appointed shall have all the powers and perform all the duties of a commissioner. Appointment pro tempore.

(2) Subsection (1) shall apply in the case of the chairman of the board as well as in the case of any other member of it.

SEC. 60. (1) Each commissioner shall devote the whole of his time to the performance of his duties under this part. Commissioners to give whole time to duties.

(2) The salaries of the commissioners shall be payable out of the consolidated revenue fund, and, subject to the provisions of this subsection, shall be fixed by the lieutenant governor in council. The salary of the chairman shall be not less than five thousand dollars nor more than six thousand five hundred dollars per annum, and the salary of each of the other commissioners shall be not less than four thousand dollars nor more than five thousand dollars per annum. Salaries.

SEC. 61. (1) A commissioner shall not, directly or indirectly (a) have, purchase, take, or become interested in any industry to which this part applies, or any bond, debenture, or other security of the person owning or carrying it on; (b) have any interest in any device, machine, appliance, patented appliance, patented process, or article which may be required or used for the prevention of accidents. Who may not serve.

(2) If any such industry, or interest therein, or any such share, bond, debenture, security, or thing comes to or becomes vested in a commissioner by will or by operation of law, and he does not within three months thereafter sell and absolutely dispose of it, he shall cease to hold office.

SEC. 62. (1) The board shall maintain its principal office at such place in the Province as in the opinion of the board, based on considerations of economy in administration and the prompt discharge of its duties, is best adapted for the purpose; and the sittings of the board shall be held at the principal office, except when it is deemed expedient to hold sittings elsewhere, and in that case sittings may be held in any part of the Province. Office.

(2) The presence of two commissioners shall be necessary to constitute a quorum of the board. Quorum.

(3) A vacancy in the membership of the board shall not, if there remain two members of it, impair the authority of the two remaining members to act. Same.

- Proceedings. (4) The board shall sit at such times and conduct its proceedings in such manner as it may deem most convenient for the proper discharge and speedy dispatch of business.
- Officers. SEC. 63. (1) The board shall appoint a secretary and a chief medical officer, and may appoint such auditors, actuaries, accountants, inspectors, physicians, officers, clerks, and servants as the board may deem necessary for carrying out the provisions of this part, and may prescribe their duties and, subject to the approval of the lieutenant governor in council, may fix their salaries.
- (2) Every person so appointed shall hold office during the pleasure of the board, and his salary shall be paid out of the accident fund.
- Powers of board. SEC. 64. (1) The board shall have the like powers as the supreme court for compelling the attendance of witnesses and of examining them under oath, and compelling the production and inspection of books, papers, documents, and things.
- (2) The board may cause depositions of witnesses residing within or without the Province to be taken before any person appointed by the board in a similar manner to that prescribed by the rules of the supreme court for the taking of like depositions in that court before a commissioner.
- Acts of officers. SEC. 65. (1) The board may act upon the report of any of its officers, and any inquiry which it shall be deemed necessary to make may be made by any one of the commissioners or by an officer of the board, or some other person appointed to make the inquiry, and the board may act upon his report as to the result of the inquiry.
- (2) The commissioner, officer, and every other person appointed to make an inquiry shall for the purposes of any inquiry under subsection (1) have all the powers conferred upon the board by section 64.
- Access to books. (3) The board and any member of it, and any officer of the board or person authorized by it for that purpose, shall have the right to examine the books and accounts of every employer and to make such other inquiry as the board may deem necessary for the purpose of ascertaining whether any statement furnished to the board under the provisions of section 28 is an accurate statement of the matters which are required to be stated therein, or of ascertaining the amount of the pay roll of any employer, or of ascertaining whether any industry or person is within the scope of this part. For the purpose of any such examination or inquiry, the board or person authorized to make the examination or inquiry may give to the employer or his agent notice in writing requiring him to bring or produce before such board or person, at a place and time to be mentioned in the notice, which time shall be at least ten days after the giving of the notice, all documents, writings, books, deeds, and papers in the possession, custody, or power of the employer touching or in anywise relating to or concerning the subject-matter of the examination or inquiry referred to in the notice, and every employer and every agent of the employer named in and served with any such notice shall produce at the time and place required all such documents, writings, books, deeds, and papers according to the tenor of the notice.
- Affidavits. (4) Every member of the board and every officer or person authorized by it to make examination or inquiry under this section shall have power and authority to require and to take affidavits, affirmations, or declarations as to any matter of such examination or inquiry, and to take statutory declarations required under section 26, and in all such cases to administer oaths, affirmations, and declarations and certify to the same having been made.
- Obstruction of officers. (5) An employer and every other person who obstructs or hinders the making of any examination or inquiry mentioned in subsection (3), or who refuses to permit it to be made, or who neglects or refuses to produce such documents, writings, books, deeds, and papers at the place and time stated in the notice mentioned in subsection (3), shall be guilty of an offence against this part.
- Information confidential. SEC. 66. (1) No officer of the board and no person authorized to make an examination or inquiry under this part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the board, any information obtained by him or which has come to

his knowledge in making or in connection with an examination or inquiry under this part.

(2) Every person who violates the provisions of subsection (1) shall be guilty of an offence against this part.

SEC. 67. (1) The board shall have exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact and law necessary to be determined in connection with compensation payments and the administration thereof, and the collection of the funds therefor, and as to any matter or thing in respect of which any power, authority, or discretion is conferred upon the board under this part; and the action and decision of the board thereon shall be final and conclusive, and shall not be restrained by injunction, prohibition, or other process or proceeding in any court, or be removable by certiorari or otherwise into any court. Jurisdiction of board.

(2) Without thereby limiting the generality of the provisions of subsection (1), it is declared that the exclusive jurisdiction of the board shall extend to determining—

(a) The question whether an injury has arisen out of or in the course of an employment within the scope of this part.

(b) The existence and degree of disability by reason of any injury.

(c) The permanence of disability by reason of any injury.

(d) The degree of diminution of earning capacity by reason of any injury.

(e) The amount of average earnings.

(f) The existence, for the purpose of this part, of the relationship of any member of the family of a workman as defined by this act.

(g) The existence of dependency.

(h) Whether or not any industry or any part, branch, or department of any industry is within the scope of this part, and the class to which any industry or any part, branch, or department of any industry within the scope of this part should be assigned.

(i) Whether or not any workman in any industry within the scope of this part is within the scope of this part and entitled to compensation thereunder.

SEC. 68. The board may reopen, rehear, redetermine, review, or readjust any claim, decision, or adjustment, either because an injury or disease has proven more serious or less serious than it was deemed to be, or because a change has occurred in the condition of a workman or in the circumstances or condition of dependents or otherwise. Review.

SEC. 68A. The decision of the board shall be upon the real merits and justice of the case, and it shall not be bound to follow strict legal precedent. Precedents.

SEC. 69. The board may award such sum as it may deem reasonable to the successful party to a contested claim for compensation or to any other contested matter to meet the expenses he has been put to by reason of or incidental to the contest, and an order of the board for the payment by an employer or by a workman of any sum so awarded, when filed in the manner provided for the filing of certificates by subsection (2) of section 34, shall become a judgment of the court in which it is filed and may be enforced accordingly. Costs.

SEC. 69A. Every notice which the board is empowered or required to give to an employer or workman under the provisions of this part, or under any rules or regulations made hereunder, shall be in writing, and may be served either personally or by sending it by post to the address of the person to whom it is given. Where a notice is sent by post, service of the notice shall be deemed to be effected at the time at which the letter containing the notice, and properly addressed, postage prepaid, and posted, would be delivered in the ordinary course of post. Notices and service.

[PART II relates to employers' liability in industries not within the compensation law.]

PART III.

GENERAL.

Farm and domestic labor. SECTION 74. This act shall not apply to farm laborers or domestic servants or to their employers.

SEC. 75. [Repealed.]

Act in effect. SEC. 76. (1) The application of this act as between employers and workmen and as to the payment of compensation in respect of injuries to workmen shall take effect on the first day of January, 1917.

(2) Except as provided in subsection (1), this act shall take effect on the first day of October, 1916.

SCHEDULE.

| Description of disease. | Description of process. |
|--------------------------------------|---|
| Occupational diseases. | Anthrax..... Handling of wool, hair, bristles, hides and skins. |
| Lead poisoning or its sequela. | Any process involving the use of lead or its preparations or compounds. |
| Mercury poisoning or its sequela. | Any process involving the use of mercury or its preparations or compounds. |
| Phosphorus poisoning or its sequela. | Any process involving the use of phosphorus or its preparations or compounds. |
| Arsenic poisoning or its sequela. | Any process involving the use of arsenic or its preparations or compounds. |
| Ankylostomiasis..... | Mining. |

May 31, 1916.

MANITOBA.

ACTS OF 1916.

CHAPTER 125.—*Compensation of workmen for injuries.*¹²

SECTION 1. This act may be cited as the workmen's compensation act.

Title.

SEC. 2. (1) In this act—

Definitions.

(a) "Accident" means a fortuitous event occasioned by a physical or natural cause, and shall include a willful and an intentional act, not being the act of the injured workman.

(b) "Board" shall mean workmen's compensation board.

(c) "Construction" shall include reconstruction, repair, alteration, and demolition.

(d) "Dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death, or who, but for the incapacity due to the accident, would have been so dependent.

(e) "Employer" shall include every person having in his service under a contract for hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry, and where the services of a workman are temporarily let or hired to another person by the person with whom the workman has entered into such a contract the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person.

(f) "Employment" shall include employment in an industry or any part, branch or department of an industry.

(g) "Industry" shall include establishment, undertaking, trade, and business.

(h) "Invalid" shall mean physically or mentally incapable of earning.

(i) "Manufacturing" shall include altering, making, preparing, repairing, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any article or commodity.

(j) "Medical referee" shall mean medical referee appointed by the board.

(k) "Member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, and half-sister, and a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents.

(l) "Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials.

(m) "Regulations" shall mean regulations made by the board under the authority of this act.

(n) "Workman" shall include a person, whether under the age of twenty-one years or not, who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labor or otherwise, but when used in Part I shall not include an outworker, or a person engaged in clerical work and not exposed to the hazards incident to the nature of the work carried on in the employment.

(2) The exercise and performance of the powers and duties of: (a) a municipal corporation; (b) the greater Winnipeg water district; (c) any

Public employees.

¹² As amended to 1919, inclusive.

commission or board having the management and conduct of any work or service owned by or operated for a municipal corporation or for the Province of Manitoba; (d) a school board, shall for the purposes of this act be deemed the trade or business of the corporation, commission, board or school board; but the obligation to pay compensation under this act shall apply only to such part of the trade or business as, if it were carried on by a company or an individual, would be an industry for the time being, included within this act and to workmen employed in or in connection therewith.

PART I.

- Compensation payable, when.** SECTION 3. (1) Where in any employment to which this part applies, personal injury by accident arising out of and in the course of the employment is, after a day to be named by proclamation of the lieutenant governor in council, caused to a workman, his employer shall be liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned except where the injury, (a) does not disable the workman for the period of at least six consecutive days from earning full wages at the work at which he was employed: *Provided*, That the board may award compensation under this part in respect of a permanent disability suffered by a workman without any temporary total disability, or, (b) is attributable solely to the serious and willful misconduct of the workman unless the injury results in death or serious disablement.
- Short-time disabilities.** (2) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.
- Willful misconduct.** (3) Where compensation for disability is payable it shall be computed and be payable from the date of the disability.
- Presumption.** (4) This section shall not apply to a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business.
- Pay for full time.** SEC. 4. Employers in the industries for the time being included in the schedule to this act shall be individually liable to pay the compensation.
- Casual employments.** SEC. 5. (1) Where an accident happens while the workman is employed elsewhere than in Manitoba which would entitle him or his dependents to compensation under this part if it happened in Manitoba, the workman or his dependents shall be entitled to compensation under this part; (a) if the place or chief place of business of the employer is situate in Manitoba and the residence and the usual place of employment of the workman are in Manitoba, and his employment out of Manitoba has lasted less than six months: or, (b) if the accident happens on a steamboat, ship, or vessel or on a railway, and the workman is a resident of Manitoba, and the nature of the employment is such that, in the course of the work or service which the workman performs, it is required to be performed both within and without Manitoba.
- Employers liable.** (2) Except as provided by subsection 1 no compensation shall be payable under this part where the accident to the workman happens elsewhere than in Manitoba.
- Accidents outside Province.** SEC. 6. (1) Where by law of the country or place outside of Manitoba in which the accident happens the workman or his dependents are entitled to compensation in respect of it, they shall be bound to elect whether they will claim compensation under the law of such country or place or under this part and to give notice of such election, and if such election is not made and notice given it shall be presumed that they have elected not to claim compensation under this part.
- Claimant elect.** (2) Notice of the election shall be given to the employer and to the board within three months after the happening of the accident, or, in case it results in death, within three months after the death or within such longer period as either before or after the expiration of such three months, the board may allow.
- Nonresident beneficiaries.** SEC. 7. (1) Where a dependent is not a resident of Manitoba he shall not be entitled to compensation unless by the law of the place or country in which he resides the dependents of a workman to whom an accident happens in such place or country if resident in Manitoba would be entitled to compensation; and, where such dependents would be entitled

to compensation under such law the compensation to which the non-resident dependent shall be entitled under this part shall not be greater than the compensation payable in the like case under that law.

(2) Notwithstanding the provisions of subsection (1) the board may award such compensation, or sum in lieu of compensation, to any such nonresident dependent as may be deemed proper, and may pay the same out of the accident fund or order it to be paid by the insurance company, underwriter, or employer carrying his own insurance liable to pay same.

Sec. 8. (1) Where an accident happens to a workman in the course of his employment under such circumstances as entitle him or his dependents to an action against some person other than his employer, the workman or his dependents, if entitled to compensation under this part, may claim such compensation or may bring such action.

Third parties.

(2) If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependents are entitled under this part, the difference between the amount recovered and collected and the amount of such compensation shall be payable as compensation to such workman or his dependents: *Provided*, That the board shall have the right to require that any money recovered and collected in such action shall, when it is less than the amount of the compensation to which the workman or his dependents are entitled under this part, be paid over to and deposited with the board, to be kept and applied in or towards payment of the monthly or other periodical sums awarded to, or to be awarded, as compensation under this part, the employer, insurance company, or underwriter contributing whatever balance shall be required to meet such periodical payments as determined by the board.

(3) If the workman or his dependents elect to claim compensation under this part the employer and insurance company and underwriter liable for the same shall be subrogated to the rights of the workman or his dependents and may maintain an action in his or their names against the person against whom the action lies.

(4) The election shall be made and notice of it shall be given within the time and in the manner provided by section 6, otherwise it shall be presumed that they have elected not to claim compensation under this part.

(5) In case the person required to make an election under this section, or under section 6 of this act, is under the age of twenty-one years, his official guardian may make the election for him without the necessity of applying to any court or judge for directions in respect thereto.

Sec. 9. (1) Where the compensation is payable by the employer under this part and a person, in this section referred to as the principal, in the course of or for the purposes of his trade or business 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 any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work the compensation which he would have been liable to pay if that workman had been immediately employed by him.

Liability of principal.

(2) Subsection (1) shall not apply where the accident happens elsewhere than on or in or about the premises upon which the principal has undertaken to execute the work or which are otherwise under his control or management.

(3) Where a person, whether carrying on an industry included in the schedule to this part or not, in this section referred to as the principal, contracts with any other person for the execution by or under the contractor of the whole or any part of any work for the principal, it shall be the duty of the principal to see that such contractor files the statements, declarations, and policies required by this part, and if any such principal fails to do so he shall be liable to the penalties provided by section 71 hereof.

Duty of sub-contractors.

(4) Where compensation is claimed from the principal under this part, reference to the principal shall be substituted for reference to the employer, except that the amount of the compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

Employer's responsibility.

(5) Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and the amount of any such indemnity shall be determined by the board.

(6) Nothing in this section shall prevent a workman claiming through the board compensation under this part from the contractor instead of the principal.

Employees to be bona fide. SEC. 10. A member of the family of any employer, or the dependents of such member, shall not be entitled to compensation under this part unless it is established to the satisfaction of the board that such member was a bona fide employee of such employer at the time of the accident.

Suits forbidden. SEC. 11. No action shall lie for the recovery of the compensation, but all claims for compensation shall be heard and determined by the board, without the intervention of counsel or solicitors on either side except with the express permission of the board.

Beneficiary leaving Province. SEC. 12. If a workman receiving a weekly or other periodical payment as compensation under this part ceases to reside in Manitoba, he shall not thereafter be entitled to receive any such payment unless a medical referee certifies that the disability resulting from the injury is likely to be of a permanent nature, and if a medical referee so certifies and the board so directs the workman shall be entitled quarterly to the amount of the weekly or other periodical payments accruing due, if he proves, in such manner as may be prescribed by the regulations, his identity and the continuance of the disability in respect of which the same is payable.

Remedy exclusive. SEC. 13. (1) The right to compensation provided by this part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependents are or may be entitled against the employer of such workman for or by reason of any accident which happens to him while in the employment of such employer, after the day named by proclamation as mentioned in section 3, and no action in any court of law in respect thereof shall thereafter lie.

(2) Any party to such action if brought may apply to the board for adjudication and determination of the question of the plaintiff's right to compensation under this part, and as to whether the action is one the right to bring which is taken away by this part, and such adjudication and determination shall be final and conclusive.

Waivers. SEC. 14. It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependents are or may become entitled under this part, and every agreement to that end shall be absolutely void.

Deductions from wages. SEC. 15. It shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of his workmen any part of any sum which the employer is or may become liable to pay the workman as compensation under this part or to require or to permit any of his workmen to contribute in any manner towards indemnifying the employer against any liability which he has incurred or may incur under this part.

Penalty. SEC. 16. Every person who contravenes any of the provisions of the last preceding section shall, for every such contravention, incur a penalty not exceeding \$50 and shall also be liable to repay to the workman any sum which has been deducted from his wages or which he has been required or permitted to pay in contravention of the last preceding section.

Assignments, etc. SEC. 17. Unless with the approval of the board no sum payable as compensation or by way of commutation of any weekly or other periodical payment in respect of it shall be capable of being assigned, charged, or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it.

Notice of accident. SEC. 18. (1) Subject to subsection (6) of this section compensation shall not be payable unless notice of the accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation is made within six months from the happening of the accident, or, in case of death, within six months from the time of death.

(2) The notice shall give the name and address of the workman and shall be sufficient if it states in ordinary language the cause of the injury and where and when the accident happened.

(3) The notice may be served by delivering it at, or sending it by registered post addressed to, the place of business or the residence of the employer, or, where the employer is a body of persons corporate or unincorporate, by delivering it at, or sending it by registered post, addressed to the employer at the office, or, if there are more offices than one, at any of the offices of such body or persons.

(4) The notice shall also be given to the board by delivering it to or at the office of the secretary, or by sending it to him by registered post, addressed to his office, and a certificate of the attending physician, in the form approved of by the board for that purpose, shall be filed with the board. Notice to board.

(5) It shall be the duty of every physician or surgeon attending or consulted upon any case of injury to every workman to furnish or cause to be furnished from time to time, such reports, and in such form, as may be required by the board in respect of such injury; and for each such report such physician or surgeon shall be entitled to a fee of two dollars, payable by the board out of the accident fund. Physician's reports.

(6) Failure to give the prescribed notice or any defect or inaccuracy in a notice shall not bar the right to compensation if, in the opinion of the board, the employer was not prejudiced thereby, and if the board is of the opinion that the claim for compensation is a just one, and ought to be allowed. Failure to give notice.

Sec. 19. (1) A workman who claims compensation or to whom compensation is payable under this part shall, if so required by his employer, submit himself for examination by a duly qualified medical practitioner provided and paid for by the employer and shall, if so required by the board, submit himself for examination by a medical referee. Medical examinations.

(2) A workman shall not be required at the request of his employer to submit himself for examination otherwise than in accordance with the regulations.

Sec. 20. (1) Where a workman has upon the request of his employer submitted himself for examination, or has been examined by a duly qualified medical practitioner selected by himself, and a copy of the report of the medical practitioner as to the workman's condition has been furnished in the former case by the employer to the workman and in the latter case by the workman to the employer, the board may, on the application of either of them, refer the matter to a medical referee. Medical referee.

(2) The medical referee to whom a reference is made under the next preceding subsection, or who has examined the workman by the direction of the board under subsection (1) of section 19, shall certify to the board as to the condition of the workman and his fitness for employment, specifying where necessary the kind of employment, and his certificate, unless the board otherwise directs, shall be conclusive as to the matters certified.

(3) If a workman does not submit himself for examination when required to do so as provided by subsection (1) of section 19, or on being required to do so does not submit himself for examination to a medical referee under that subsection or under subsection (1) of this section, or in any way obstructs any examination, his right to compensation or if he is in receipt of a weekly or other periodical payment his right to it shall be suspended until such examination has taken place. Refusal to submit to examination.

Sec. 21. Where in any case in the opinion of the board the provision of a special surgical operation or other special medical treatment for a workman and the furnishing of the same by the board will be a means of avoiding heavy payment for permanent disability, the amount of the cost thereof shall be payable as compensation in addition to the amounts hereinafter mentioned. Special surgical operations.

Sec. 22. Any weekly or other periodical payment to a workman may be reviewed from time to time at the request of the employer or of the workman, and on such review the board may put an end to or diminish or may increase such payment to a sum not beyond the maximum hereinafter described. Review.

- Minors.** SEC. 23. Where the workman was, at the date of the accident, under twenty-one years of age, the amount of the weekly or other periodical payment may be fixed by the board by its first order, or at any subsequent review, on the basis of the earnings of an average workman aged twenty-one years, employed at a similar class of work, or on any lower basis: *Provided*, The same be not lower than: (a) in the case of a first order, his average earnings at the date of the accident, and (b) in the case of a subsequent review, the average earnings which, if he had not been injured, he would probably have been earning at the date of the review.
- Lump sum.** SEC. 24. (1) The board, on application in that behalf, may, with the consent of the workman or dependent to whom it is payable, but not otherwise, commute the weekly or other periodical payments payable to a workman or a dependent whether over the age of 21 years or not for a lump sum; and if the application is granted the board shall make an order for payment of the lump sum so fixed, which may be enforced in the manner provided for in section 60 of this act.
- (2) The lump sum shall be paid to the board.
- (3) The lump sum may be: (a) applied in such a manner as the workman or dependent may direct; or (b) paid to the workman or dependent; or (c) invested by the board in a like manner as by a trustee under the "Manitoba Trustee Act," and subject to the provisions of such act in regard to investments by a trustee and applied from time to time as the board may deem most for the advantage of the workman or dependent; or (d) paid to trustees to be used and employed upon and subject to such trusts and for the benefit of such persons as may be desired by the workman or dependent and approved by the board; or (e) applied partly in one and partly in another or others of the modes mentioned in the above paragraphs as the board may determine.
- Advances by board.** SEC. 25. Where compensation is payable under this part the board may in any case where in its opinion the interest or pressing need of the workman or dependent warrants it advance or pay to or for the workman or dependent such sum or sums as the circumstances warrant and as the board may determine by order, and the same shall immediately thereafter be recouped to the board by the employer, insurance company, or underwriter liable.
- Payments by insurance companies.** SEC. 26. Where an employer insured by a contract of insurance of an insurance company or any other underwriter is liable to make a weekly or other periodical payment to a workman or his dependents and the payment has continued for more than six months the liability may, if the board so directs, upon the application of the insurance company or underwriter liable, before the expiration of twelve months from the commencement of the disability of the workman or his death, if the accident resulted in death, be commuted by the payment of a lump sum, and the company or underwriter shall pay the lump sum to the board, and it shall be dealt with in the manner provided by section 24.
- Default in insurance.** SEC. 27. If any employer fails to insure his workmen and keep them insured against accidents in respect of which he may become liable to pay compensation in a company approved by the board for such amount as the board may direct the board may cause them to be so insured and may make an order for the employer to pay to the board the cost of effecting such insurance, and such order may be filed in the court of king's bench for Manitoba and enforced as hereinafter provided in section 60 hereof.
- Payments through board.** SEC. 28. All compensation payable under this part shall be paid to the board as hereinafter provided, and shall be paid by the board to the person or persons entitled thereto as herein provided.
- Notice of claim.** SEC. 29. (1) Where a claim for compensation under this part is made, a notice thereof shall be given in writing to an employer carrying his own insurance, or to the insurance company or underwriter, in case there is one, which notice shall be in the form following, or to the like effect:

THE WORKMAN'S COMPENSATION ACT.

Winnipeg, ———, 19—.

Claim.

DEAR SIR: Please note that we have received from ——— claim for compensation for injuries sustained while in the employ of ———, under your policy No. —.

The same will be dealt with at the first meeting of the board, following the completion of the file.

Should you desire to be present at the hearing and consideration of the claim, or to give evidence thereon, notice thereof must be given to the board within six days from this date, when a time will be fixed for such hearing, of which due notice shall be sent you, but if such notice is not received from you within that time the board will proceed to hear and adjudicate upon the claim without further notice to you.

Yours, truly,

Commissioner.

(2) If no notice is received by the board from the employer or insurance company or underwriter, as above provided, within the time limited, or such further time as the board may allow, the board may proceed ex parte to determine the question of the right of the workman or his dependents to compensation, and shall make an order for payment of any compensation awarded as hereinafter provided; and, if a notice of intention to be present or to give evidence at the hearing of the claim is received from the employer or insurance company or underwriter the board shall, after fixing a time for such hearing and giving due notice thereof, proceed to hear and determine the matter of said claim, and the amount of the compensation, if any, to be awarded, and shall make an order for payment of any compensation awarded as hereinafter provided.

Sec. 30. Where the accident causes permanent disability, either total or partial, or the death of the workman the insurance company or underwriter or employer liable shall, if the board deems it necessary or advisable, give to the board, within 30 days after request therefor, such security as the board may deem sufficient for the future payments, and shall be liable to a penalty of \$10 per day for every day's delay in giving such security recoverable on summary conviction before a justice of the peace, together with costs of prosecution. The board may invest any moneys received by it as such security, or any sum of money received by it under any other section of this act, when not required to be immediately paid out, in securities in which a trustee may by law invest trust moneys. Security for payments.

Sec. 31. Where a right to compensation is suspended under the provisions of this part no compensation shall be payable in respect of the period of suspension: *Provided*, That the board may, in its discretion, after removal of the suspension, order the payments for such period of suspension to be made good in whole or in part. Suspension of compensation.

Sec. 32. In addition to any compensation payable under this act the cost of medical attendance, nursing, care, and maintenance rendered necessary by accident, as the board may deem reasonable, not to exceed \$100, shall be paid by the board out of the accident fund to the persons to whom same may be due and payable. Medical attendance.

Sec. 33. (1) Where death results from any injury the amount of the compensation shall be: (a) The necessary expenses of the burial of the workman, not exceeding \$75; (b) where the widow or an invalid husband is the sole dependent, a monthly payment of \$20; (c) where the dependents are a widow or an invalid husband and one or more children, a monthly payment of \$20, with an additional monthly payment of \$5 for each child under the age of sixteen years, not exceeding in the whole \$40; (d) where the dependents are children, a monthly payment of \$10 for each child under the age of sixteen years, not exceeding in the whole \$40; (e) where the dependents are persons other than those mentioned in the preceding clauses, a sum reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the board, and not exceeding to the parents or parent \$20 per month, and not exceeding in the whole \$30 a month. Death benefits.

(2) In the case provided for by clause (e) of subsection (1), the payments shall continue only so long as, in the opinion of the board, it might reasonably have been expected, had the workman lived, that he would have continued to contribute to the support of the dependents.

- (3) Where there are both total and partial dependents the compensation may be allotted partly to the total and partly to the partial dependents.
- (4) Where the board is of opinion that for any reason it is necessary or desirable that a payment in respect of a dependent child shall not be made directly to its parent, the board may direct that the payment be made to such person or be applied in such manner as the board may deem most for the advantage of the child.
- Maximum of 55 per cent. (5) Exclusive of the amounts provided for by section 32 and paragraph (a) of subsection (1) of this section, the compensation payable as provided by subsection (1) of this section shall not in any case exceed 55 per cent of the average earnings of the workman mentioned in section 37, and if the compensation payable under that subsection in any case exceed that percentage, it shall be reduced accordingly, and, where several persons are entitled to monthly payments, the payments shall be reduced proportionately.
- Remarriage. Sec. 34. (1) If a dependent widow marries, the monthly payments to her shall cease, but she shall be entitled in lieu of them to a lump sum equal to the monthly payments for two years, and such lump sum shall be payable one month after the day of her marriage.
- (2) Subsection (1) shall not apply to payments to a widow in respect of a dependent child or children.
- Payments to children. Sec. 35. A monthly payment in respect of a child shall cease when the child attains the age of sixteen years or dies.
- No dependents. Sec. 36. Where a workman leaves no dependents such sum as the board may deem reasonable for the expenses of his medical attendance, nursing, care, maintenance, and burial shall be paid to the persons to whom such expenses are due.
- Total disability. Sec. 37. Where permanent total disability results from the injury the amount of the compensation shall be a weekly payment during the life of the workman equal to 55 per cent of his average weekly earnings during the period of twelve months, if he has been so long employed, but if not then for any less period during which he has been actually working in the employment of his employer: *Provided*, That such compensation shall not be less than six dollars per week, except in cases where the average earnings of the employee are less than six dollars per week, when he shall receive as weekly compensation the total amount of such average weekly earnings.
- Partial disability. Sec. 38. (1) Where permanent partial disability results from the injury the compensation shall be a weekly payment of 55 per cent of the difference between the average weekly earnings of the workman 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 and the compensation shall be payable during the lifetime of the workman.
- (2) Where the impairment of the earning capacity of the workman does not exceed 10 per cent of his earning capacity, the board shall, unless in the opinion of the board it would not be to the advantage of the workman to do so, direct that instead of such weekly payment such lump sum as may be deemed to be the equivalent of it shall be paid to the workman.
- Temporary total disability. Sec. 39. Where temporary total disability results from the injury the compensation shall be the same as that prescribed by section 37, but shall be payable only so long as the disability lasts and in case the period of disability appears, in the opinion of the board, to be unnecessarily prolonged, it may reduce temporarily or permanently the percentage of wages allowed as compensation by said section 37, with power to restore the full percentage at any time.
- Temporary partial disability. Sec. 40. Where temporary partial disability results from the injury the compensation shall be the same as that prescribed by section 38, but shall be payable only so long as the disability lasts and subsection (2) of that section shall apply.
- Computation of earnings. Sec. 41. (1) Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the workman was remunerated, but not so as in any case to exceed the rate of \$2,000 per annum.

(2) Where, owing to the shortness of the time during which the workman was in the employment of his employer or the casual nature of his employment or the terms of it, it is impracticable to compute the rate of remuneration as of the date of the accident, regard may be had to the average weekly or monthly amount which, during the twelve months previous to the accident, 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 then by a person in the same grade employed in the same class of employment and in the same locality.

(3) Where the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one of them and at another time for another of them, his average earnings shall be computed on the basis of what he would probably have been earning if he had been employed solely in the employment of the employer for whom he was working at the time of the accident.

(4) Employment by the same employer shall mean employment by the said employer in the grade in which the workman was employed at the time of the accident uninterrupted by absence from work due to illness or any other unavoidable cause.

(5) Where the employer was accustomed to pay the workman a sum to cover any special expenses entailed on him by the nature of his employment that sum shall not be reckoned as part of his earnings.

(6) Where in any case it seems more equitable the board may award compensation, having regard to the earnings of the workman at the time of the accident.

Sec. 42. In fixing the amount of a weekly or monthly payment regard shall be had to any payment, allowance, or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity, or other allowance provided wholly at the expense of the employer; and any sum so paid by the employer may be paid to the employer out of the compensation.

Other benefits.

Sec. 43. The board may, wherever it is deemed advisable, provide that the payments of compensation may be fortnightly or monthly instead of weekly.

Payment of compensation.

Sec. 44. Where a workman or a dependent is an infant under the age of twenty-one years, or under any other legal disability, the compensation to which he is entitled may be paid to such person or be applied in such manner as the board may deem most for his advantage.

Minors.

Sec. 45. Where medical, hospital, or surgical treatment or burial or other expenses have been paid or guaranteed for a workman or dependent, by any person, the board may, if it thinks proper, pay the same to the party entitled to the extent of the moneys referred to in section 32, and in subsection (1) (a) of section 33.

Medical, etc., costs.

Sec. 46. (1) There is hereby constituted a commission for the administration of this part to be called "The workmen's compensation board," which shall be a body corporate and shall consist of a commissioner and two directors, all of whom shall be appointed by the lieutenant governor in council.

Board created.

(2) The presence of the commissioner and one director, or a director duly appointed to act as commissioner and the other director, shall be necessary to constitute a quorum of the board.

Quorum.

Sec. 47. (1) In the case of the illness or absence from Manitoba of any member of the board, or of his inability to act from any cause, the lieutenant governor in council may appoint some person, who may be one of the directors, to act pro tempore in his stead, and the person so appointed shall have all the powers and perform all the duties of the commissioner or a director, as the case may be, during such illness, absence, or inability.

Members pro tempore.

(2) By resolution of the board one of the directors may act as commissioner during the temporary absence of the commissioner from any cause, but not longer than fifteen days in any one period.

Sec. 48. The commissioner shall, subject to section 49, hold office during good behavior, but may be removed at any time for cause.

Term.

Sec. 49. Unless otherwise directed by the lieutenant governor in council the commissioner shall cease to hold office when he attains the age of 75 years.

Age limit.

- Full-time service.** SEC. 50. (1) The commissioner shall devote the whole of his time to the performance of his duties under this part, except that he may devote the time necessary to carry out the provisions of any act of the parliament of Canada with respect to compensation for Dominion Government employees in Manitoba, and their dependents; and he shall, subject to the directions of the board, supervise and conduct all investigations and inquiries, and perform all administrative work which may be necessary in order to enable the board properly to exercise its powers.
(2) It shall be the duty of the directors to attend all meetings of the board.
- Salaries.** SEC. 51. (1) The salary of the commissioner shall be \$6,000 per annum, and the salary of each director shall be \$1,000 per annum, and such salaries shall be payable out of the administration fund.
(2) The lieutenant governor in council may authorize the payment to any director out of the administration fund of an additional allowance of \$15 for each meeting of the board in excess of fifty which any director attends in any year.
- Powers.** SEC. 52. The board shall have the like powers as the court of king's bench in Manitoba or a judge thereof for compelling the attendance of witnesses and of examining them under oath, and of compelling them to answer questions, and compelling the production of books, papers, documents, and things.
- Interests forbidden.** SEC. 53. (1) A commissioner shall not directly or indirectly: (a) have, purchase, take, or become interested in any industry, to which this part applies, or any bond, debenture, or other security of any person or corporation owning or carrying it on; (b) be the holder of shares, bonds, debentures, or other securities of any company which carries on the business of employers' liability or accident insurance; (c) have any interest in any device, machine, appliance, patented process, or articles which may be required or used for the prevention of accidents.
(2) If any such industry, or interest therein, or any such share, bond, debenture, security, or thing comes to or becomes vested in a commissioner by will or by operation of law, and he does not within three months thereafter sell and absolutely dispose of it he shall cease to hold office.
- Offices.** SEC. 54. The offices of the board shall be situated in the city of Winnipeg, and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Manitoba.
- Sittings.** SEC. 55. The board shall sit at least once in each week, and at such other times as may be necessary, and shall conduct its proceedings in such manner as it may deem most convenient for the proper discharge or speedy dispatch of business.
- Appointment of officers.** SEC. 56. (1) The board shall appoint a secretary and a chief medical officer, and may appoint such auditors, actuaries, accountants, inspectors, medical referees, and other officers, clerks, and servants as the board may deem necessary for carrying out the provisions of this part, and may prescribe their duties, and, subject to the approval of the lieutenant governor in council, may fix their salaries.
(2) Every person so appointed shall hold office during the pleasure of the board.
- Jurisdiction of board.** SEC. 57. (1) The board shall have exclusive jurisdiction to examine into, hear, and determine all matters and questions arising under this part, and as to any matter or thing in respect of which any power, authority, or discretion is conferred upon the board, and the action or decision of the board thereon shall be final and conclusive, and shall not be open to question or review in any court and no proceedings by or before the board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court.
(2) Without hereby limiting the generality of the provisions of subsection (1), it is declared that the exclusive jurisdiction of the board shall extend to determining—
(a) The existence and degree of disability by reason of any injury.
(b) The permanence of disability by reason of any injury.

(c) The degree of diminution of earning capacity by reason of any injury.

(d) The amount of average earnings.

(e) The existence, for the purpose of this part, of the relationship of any member of the family of a workman as defined by this act.

(f) The existence of dependency.

(g) Whether or not any industry or any part, branch or department of any industry is within the scope of this part, and the class to which any industry or any part, branch, or department of any industry within the scope of this part should be assigned.

(h) Whether or not any workman in any industry is within the scope of this part and entitled to compensation thereunder.

The whole of this subsection [as amended 1919] shall be retroactive, and shall be held to have been in force since the commencement of the said act.

(3) Nothing in subsection (1) shall prevent the board from reconsidering any matter which has been dealt with by it or from rescinding, altering, or amending any decision or order previously made, all of which the board shall have authority to do.

SEC. 58. The board may award such sum as it may deem reasonable to the successful party to a contested claim for compensation or to any other contested matter as compensation for the expenses he has been put to by reason of or incidental to the contest, and an order of the board for the payment by an employer of any sum so awarded, when filed in the manner provided by section 60, shall become a judgment of the court in which it is filed and may be enforced accordingly.

Costs.

SEC. 59. (1) The board may act upon the report of any of its officers, and any inquiry which it shall be deemed necessary to make may be made by any one of the officers of the board, or by the commissioner or some other person appointed to make the inquiry, and the board may act upon his report as to the result of the inquiry.

Acts of officers.

(2) The person appointed to make the inquiry shall for the purposes of the inquiry have all the powers conferred upon the board by section 52.

SEC. 60. An order of the board for the payment of compensation by an employer or insurance company or underwriter, who is liable to pay the compensation and any other order of the board for the payment of money made under the authority of this part or a copy of any such order certified by the secretary to be a true copy may, upon payment of a fee of one dollar, be filed in the court of king's bench for Manitoba, and when so filed shall become a judgment of that court and may be enforced accordingly.

Orders as judgments.

SEC. 61. (1) The board may make such regulations as may be deemed expedient for carrying out the provisions of this part and to meet cases not specially provided for by this part and a certified copy of every regulation so made shall be transmitted forthwith to the provincial secretary, but any such regulation may within one month after it has been received by the provincial secretary, be disallowed by the lieutenant governor in council.

Regulations.

(2) Every regulation which is approved by the lieutenant governor in council shall immediately after approval or on the day named by him for that purpose become effective, and after the period for disallowance has expired every regulation which has not been disallowed shall become effective and every regulation which has become effective shall be forthwith published in *The Manitoba Gazette*.

(3) Every person who contravenes any such regulation after it has become effective shall for every contravention incur a penalty not exceeding \$50.

(4) Where an action in respect of an injury is brought against an employer by a workman or a dependent the board shall have jurisdiction upon the application of the employer to determine whether the workman or dependent is entitled to maintain the action or only to compensation under this part and, if the board determines that the only right of the workman or dependent is to such compensation, the action shall be forever stayed.

Suits.

- (5) In addition to all other rules and regulations which may be made under the provisions of this part, the board may make such regulations as may be deemed requisite for the due administration and carrying out of the provisions of this part, and may likewise prescribe the use of such proper pay rolls, records, reports, certificates, declarations, and documents as may be requisite.
- Audits.** Sec. 62. The accounts of the board shall be audited by the controller general or by an auditor appointed by the lieutenant governor in council for that purpose, and the salary or remuneration of the last-mentioned auditor shall be paid by the board.
- Reports.** Sec. 63. (1) The board shall on or before the 15th day of January in each year make a report to the lieutenant governor in council of its transactions during the last preceding calendar year, and such report shall contain a statement of the accounts required to be kept under section 69g of this act if and when the same shall come into force and such particulars as the lieutenant governor in council may prescribe.
- (2) Every such report shall be forthwith laid before the assembly if the assembly is then in session, and if it is not then in session within fifteen days after the opening of the next session.
- Duty of provincial treasurer.** Sec. 64. The provincial treasurer, or an officer of his department named by him for that purpose, shall once in each year and oftener if so required by the lieutenant governor in council examine into the affairs and business of the board for the purpose of determining as to the sufficiency of the provisions of the board to insure the payment of compensation promptly as awarded under this part.
- Cost of administration.** Sec. 65. To assist in defraying the expenses incurred in the administration of this part there shall be paid to the board out of the consolidated revenue fund such annual sum as the lieutenant governor in council may direct.
- Accident fund.** Sec. 66. For the purpose of assessment in order to create and maintain a fund, to be called the "accident fund," for the payment of the compensation, outlays, and expenses under this part, all industries within the scope of this part shall be divided into classes as set out in schedule I.
- New classifications, etc.** Sec. 67. (1) The board may, by regulations—
- (a) Create new classes in addition to those mentioned in Schedule I to this act.
- (b) Consolidate or rearrange from time to time any of the existing classes; and
- (c) Withdraw from a class any industry included therein, and transfer it wholly or in part to any other class, or form it into a separate class.
- (2) In case of any rearrangement of the classes, or the withdrawal of an industry from any class, the board may make such adjustment and disposition of the funds, reserves, and accounts of the classes affected as may be deemed just and expedient.
- Industries to be assigned.** Sec. 68. The board shall assign every industry within the scope of this part to its proper class, and where any industry includes several departments assignable to different classes, the board may either assign such industry to the class of its principal or chief department, or may, for the purpose of this part, divide such industry into two or more departments, assigning each of such departments to its proper class.
- Pay rolls.** Sec. 69. (1) Every employer shall, on or before the twentieth day of January in each year, or whenever thereafter he becomes an employer within the meaning of this part, and at such other times as may be required by the regulations or by the board, cause to be furnished to the board an estimate of the probable amount of the pay roll of each of his industries within the scope of this part for the current year, together with such further and other information as may be required by the board for the purpose of assigning each industry to the proper class, and making the assessments hereunder; and every employer shall, at or within twenty days after the close of each calendar year, and at such other times as may be required by the board, furnish certified copies or reports of his pay rolls, for the preceding year, verified by statutory declaration.
- (2) In computing the amount of the pay roll of any industry for the purpose of assessment, regard shall be had only to such portion of the pay roll as represents workmen and employment within the scope

of this part; and where the wages of any workman exceed the rate of two thousand dollars per year a deduction shall be made in respect of the excess.

(3) If an employer does not comply with the provisions of subsection (1), or if any statement made in pursuance of its provisions is not a true and accurate statement of any of the matters required to be set forth in it, the employer for every such noncompliance, and for every such inaccurate statement, shall be guilty of an offense against this part.

SEC. 69a. (1) For the purpose of creating and maintaining the adequate accident fund the board shall every year assess and levy upon and collect from the employers in each class by an assessment or by assessments made from time to time rated upon the pay roll, or in such other manner as the board may deem proper, sufficient funds, according to an estimate to be made by the board—

Assessments;

(a) To meet all amounts, including medical aid, payable from the accident fund under this part during the year.

(b) To provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents which occur during the year; and

(c) To provide a reserve fund to be used to meet the losses arising from any disaster or other circumstance.

(2) Assessments may be made in such manner and form and by such procedure as the board may deem adequate and expedient, and may be general as applicable to any class or subclass, or special as applicable to any industry or part or department of an industry.

(3) Assessments may, wherever it is deemed expedient, be collected in half-yearly, quarterly, or monthly installments, or otherwise; and, where it appears that the funds are sufficient for the time being, any installment may be abated, or its collection deferred.

(4) In case the estimated assessments prove insufficient, the board may make such further assessments and levies as may be necessary, or the board may temporarily advance the amount of any deficiency out of any reserve provided for that purpose, and add such amount to any subsequent assessments.

(5) The board shall give notice to each employer of the amount of each assessment due from time to time in respect of his industry, and the time when the same is payable. The notice may be sent by post to the employer, and shall be deemed to be given to him on the day on which the notice is posted.

SEC. 69b. To assist in defraying the expenses incurred in the administration of this part, such annual sum as the lieutenant governor in council may direct shall be paid out of the consolidated revenue fund to the board to form part of the accident fund.

Costs of administration.

SEC. 69c. The board shall establish such subclassifications, differentials, and proportions in the rates as between the different kinds of employment in the same class as may be deemed just; and, where in the opinion of the board any particular industry is shown to be so circumstanced or conducted that the hazard differs from the average of the class or subclass to which the industry is assigned, the board shall confer or impose upon such industry a special rate, differential, or assessment to correspond with the relative hazard of that industry; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of the individual plant or undertaking of each employer.

Special ratings.

SEC. 69d. (1) Where an employer engages in any of the industries within the scope of this part, and has not been assessed in respect of it, the board, if it is of opinion that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the board of a sum sufficient to pay the assessment for which the employer would be liable if the industry had been in existence when the last preceding assessment was made.

Temporary industries.

(2) Every employer who makes default in complying with any requirement of the board under subsection (1) shall be guilty of an offence against this part.

SEC. 69e. (1) If any assessment or part thereof is not duly paid in accordance with the terms of the assessment and levy, the board shall

Default in assessments.

have a right of action against the defaulting employer in respect of the amount unpaid, together with costs of such action.

(2) Where default is made in the payment of any assessment, or any part of it, the board may issue a certificate stating that the assessment was made, the amount remaining unpaid on account of it, and the person by whom it was payable, and such certificate, or a copy of it, certified by the secretary under the seal of the board to be a true copy, may on payment of a fee of fifty cents be filed with the clerk of the county court of the judicial division or with the proper officer of the court of king's bench in the judicial district in which such person resides or carries on business, and when so filed shall become an order of that court, and may be enforced as a judgment of the court against such person for the amount mentioned in the certificate.

Penalty.

Sec. 69f. (1) If any assessment levied under any provision of this part is not paid at the time when it becomes payable, the defaulting employer shall be liable to pay and shall pay as a penalty for his default such a percentage upon the amount unpaid as may be prescribed by the regulations.

(2) Any employer who refuses or neglects to make or transmit any pay roll, return, or other statement required to be furnished by him under the provisions of subsection (1) of section 69, or who refuses or neglects to pay any assessment, or the provisional amount of any assessment, or any installment or part thereof, shall, in addition to any penalty or other liability to which he may be subject, pay to the board the full amount or capitalized value, as determined by the board, of the compensation payable in respect of any accident to a workman in his employ, which happens during the period of such default, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

(3) The board, if satisfied that such default was excusable, may relieve such employer in whole or in part from liability under this section.

Separate ac-
counts.

Sec. 69g. Separate accounts shall be kept of the amounts collected and expended in respect of every class, and of every fund set aside by way of reserve, or as a special fund for any purpose; but, for the purpose of paying compensation, the accident fund shall, nevertheless, be deemed one and indivisible.

Annual adjust-
ments.

Sec. 69h. (1) On or before the first day of March in each year the amount of the assessment for the preceding calendar year shall be adjusted upon the correctly ascertained pay roll of each industry, and the employer shall forthwith make up and pay to the board any deficiency, or the board shall refund to the employer any surplus, or credit the same upon the succeeding assessment as the case may require.

(2) Where in any industry a change of ownership or employership has occurred, the board may levy any part of such deficiency on either or any of the successive owners or employers, or pay or credit to any one or more of such owners or employers such surplus as the case may require.

Municipalities.

Sec. 69i. Where any work within the scope of this part is performed under contract for any municipal corporation, or for any board or commission having the management of any work or service operated for a municipal corporation, any assessment in respect of such work may be paid by such corporation, board, or commission, as the case may be, and the amount of such assessment deducted from any moneys due the contractor in respect of such work.

Contractors and
principals.

Sec. 69j (1) Where any work within the scope of this part is undertaken for any person by a contractor, both the contractor and the person for whom such work is undertaken shall be liable for the amount of any assessment made under this act, in respect thereof, and such assessment may be levied and collected from either of them, or partly from one and partly from the other: *Provided*, That in the absence of any term in the contract to the contrary, the contractor shall, as between himself and the person for whom the work is performed, be primarily liable for the amount of such assessment.

(2) Where any work within the scope of this part is performed under subcontract, both the contractor and the subcontractor shall be liable

for the amount of any assessment made under this act in respect of such work; any such assessment may be levied and collected from either, or partly from one and partly from the other: *Provided*, That in the absence of any term in the subcontract to the contrary, the subcontractor shall, as between himself and the contractor, be primarily liable for the amount of such assessment.

SEC. 70. (1) The board shall have jurisdiction and authority by regulation to add to the industries mentioned in Schedule I of this act any industry not included in such schedule and to withdraw or exclude from the operation of Part I any industry mentioned in the said schedule, or any industry mentioned therein, in which not more than a stated number of workmen are usually employed.

Power of board as to classification.

(2) A regulation made by the board under the authority of subsection (1) shall not have any force or effect unless approved by the lieutenant governor in council, and when so approved it shall be published in the Manitoba Gazette, and shall take effect on the expiration of one month from the first publication of it in the Manitoba Gazette.

Regulations to be approved.

SEC. 71. (1) Subject to the regulations of the board every employer shall, not later than three months before the day named by proclamation as mentioned in section 3, and yearly thereafter on or before such date as shall be prescribed by the board, prepare and transmit to the board a statement of the amount of the wages earned by all his employees during the year then last past and an estimate of the amount which will be expended for wages during the then current year, and such additional information as the board may require, both verified by the statutory declaration of the employer or the manager of the business, or where the employer is a corporation by an officer of the corporation having a personal knowledge of the matters to which the declaration relates.

Wage reports.

(2) At the time of filing the said statements and declaration every employer shall file with the board a policy of insurance in form satisfactory to the board, issued by a company or underwriter approved by the board, providing for payment to the board of the compensation which may become payable by the employer under this part during the period covered by such statement and policy: *Provided always*, That the board may with the approval of the lieutenant governor in council permit an employer to carry his or their own insurance against liability to pay compensation under this part, in which case such employer shall not be required to file a policy as above provided.

Insurance.

(3) Where the business of the employer embraces more than one branch of business or class of industry the board may require separate statements to be made as to each branch or class of industry, and such statements shall be made, verified, and transmitted as provided by subsection (1).

Separate statements.

(4) If an employer does not comply with the provisions of subsections (1), (2), or (3) he shall incur a penalty not exceeding two hundred dollars a day for every day during which such noncompliance continues, and if any statement made in pursuance of their provisions is not a true and accurate statement of any of the matters required to be set forth in it, the employer for every such untrue statement shall incur a penalty not exceeding \$500.

(5) Where an employer engages in any industry within the scope of this part and the board is of the opinion that the industry is to be carried on only temporarily, it may permit the employer to file a policy or to give security sufficient to provide for the liability of the employer under this part for such limited period as the board may provide.

Temporary business.

(6) The board shall have the power to fix or vary rates of premium to be charged by insurance companies or underwriters by order in writing after notice to and hearing employers whose industries may be affected by the rates under consideration, and insurance companies and underwriters filing policies with the board under this part.

Premium rates.

(7) No insurance company or underwriters shall be entitled to charge or pay for acquisition expenses of procuring any policy filed under this part, or making adjustments of claims or other services in respect of such policy, more than such percentage of the premium paid in respect of such policy as the board may from time to time fix and allow. No such acquisition expenses shall be paid to any agent of the insurance

Insurance costs.

- company or underwriter unless such agent is resident and carries on business in Manitoba.
- Agents.** Sec. 71a. Every insurance company or underwriter filing policies under this act shall appoint an agent or attorney resident in Manitoba, whose name shall be registered with the board, who shall be the official representative of the insurance company or underwriter, and to whom all communications in connection with matters pertaining to the administration of this act shall be addressed. Notice to such agent or attorney shall be deemed in all cases to be notice to the insurance company or underwriter.
- New industries.** Sec. 72. (1) Where an industry coming within this part is established or commenced after the date prescribed by the board pursuant to section 71 of this part, it shall be the duty of the employer forthwith to notify the board of the fact and to furnish to the board an estimate of the probable amount of his pay roll for the remainder of the year, verified by statutory declaration and to file a policy of insurance as provided in said section unless the board permits such employer to insure his own workmen.
- (2) For defaults in complying with the provisions of subsection (1) the employer shall incur the like penalty as is provided with respect to defaults by section 71.
- Access to books.** Sec. 73. (1) The board, and any officer or person authorized by it for that purpose, shall have the right to examine the books and accounts of the employer and to make such other inquiry as the board may deem necessary for the purpose of ascertaining whether any statement furnished to the board under the provisions of sections 71 and 72 is an accurate statement of the matters which are required to be stated therein or of ascertaining the amount of the pay roll of any employer or of ascertaining whether any industry or person is under the operation of this part, and for the purpose of any such examination and inquiry the board and the person so appointed shall have all the powers which may be conferred on a commissioner under "An act respecting commissioners to make inquiries concerning public matters," Revised Statutes of Manitoba, 1913, c. 34, and amendments thereto.
- (2) Any employer and every other person who obstructs or hinders the making of the examination and inquiry mentioned in subsection (1), or refuses to permit it to be made, shall incur a penalty not exceeding \$500.
- Administering oaths, etc.** (3) The board and every officer or person authorized by it to make examination or inquiry under this section shall have power and authority to require and take affidavits, affirmations, or declarations as to any matter of such examination or inquiry and to take statutory declarations required under this part and in all such cases to administer oaths, affirmations, and declarations and certify to the same having been made.
- Inspection of plant.** Sec. 74. (1) The board and any officer or person authorized by it for that purpose shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to pay compensation under this part and the premises connected with it and every part of them, for any purpose which the board may deem necessary.
- (2) Any employer and every other person who obstructs or hinders the making of any inspection under the authority of subsection (1), or refuses to permit it to be made shall incur a penalty not exceeding \$500.
- Information confidential.** Sec. 75. (1) No officer of the board and no person authorized to make an inquiry under this part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the board any information obtained by him or which has come to his knowledge in making or in connection with an inspection or inquiry under this part.
- (2) Every person who contravenes any of the provisions of subsection (1) shall incur a penalty not exceeding \$500.
- Recovery of penalties.** Sec. 76. The penalties imposed by or under the authority of this part shall be recoverable under "the Manitoba summary convictions act," and when collected shall be paid over to the board and shall form part of the administration fund.
- Administration fund.** Sec. 77. (1) Each employer carrying his own insurance and each insurance company or underwriter approved by the board and insuring

against liability under this part shall pay to the board, when required so to do by order of the board, on account of the expenses of administering this part, a sum not to exceed seven and one-half per cent of the premiums charged by such insurance company or underwriter or which such employer would have been charged had he insured against his liability to pay compensation, under this part and such payments shall constitute a fund to be called the administration fund.

(2) Every such insurance company or underwriter shall furnish to the board, whenever required so to do by the board, statements of all sums charged for premiums in respect of policies filed with the board as required by this act verified by statutory declaration.

(3) The board shall be the judge of what premiums would have been charged employers carrying their own insurance and shall fix the amount payable by such employers under subsection (1).

(4) An order of the board under subsection (1) shall, when filed as provided in section 60, become a judgment of the court in favor of the board and may be enforced as in said section 60 provided.

SEC. 78. (1) Every insurance company or underwriter issuing any policy to be filed pursuant to section 71, and every employer carrying his own insurance pursuant to said section shall, before the filing of any such policy and before the board shall approve of any such insurance company or underwriter or permit any such employer to carry his own insurance, pay to the board such sum in cash as the board may determine, to be available immediately for payment on account of the compensation for which such insurance company or underwriter or employer carrying his own insurance shall become liable under this part.

Payment of compensation.

(2) The board shall, before paying compensation under this part, except as hereinbefore provided, make an order fixing the amount of such compensation and designating the person or persons to whom such compensation is to be paid, and requiring the insurance companies, underwriters, and employers liable to pay the same to pay the amount so fixed to the board, and the same shall be payable accordingly: and any such order when filed as provided in section 60 shall become a judgment of the court in favor of the board against such insurance company, underwriter, or employer carrying his own insurance, and may be enforced as in said section 60 provided.

(3) Pending the receipt of the amount to be paid as provided in subsection (2), the board may advance compensation out of the sum paid as provided in subsection (1).

(4) When any such insurance company, underwriter, or employer carrying his own insurance withdraws from the business and is no longer liable under this part or under any order of the board, the sum paid as provided in subsection (1) shall be repaid.

SEC. 79. In the case of a work or service performed by an employer in any of the industries for the time being included under this part for which the employer would be entitled to a lien under "the mechanics' and wage earners' lien act," it shall be the duty of the owner as defined by that act to see that a policy of insurance is filed by such employer as required by section 71 or 72 of this part unless such employer has been permitted to carry his own insurance, and if any such owner fails to do so he shall be personally liable to the penalties provided by section 71.

Failure to file policy.

SEC. 79A. (1) There shall be included among the debts which, under "the assignments act," "the Manitoba trustee act," and "the companies winding-up act," are, in the distribution of the property, in the case of an assignment or death, or in the distribution of the assets of a company being wound up, under the said acts, respectively, to be paid in priority to all other debts, the amount of any compensation the liability for which accrued before the date of the assignment or death or before the date of the commencement of the winding up, and the said acts shall have effect accordingly.

Preference of benefits.

(2) When the compensation is a periodical payment the liability in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum, to be determined by the board, for which the periodical payments may be commuted.

Measure of liability.

(3) Such priority in respect of any individual claim for compensation shall not exceed \$500.

Reports of acci-
dents.

SEC. 80. (1) Every employer shall, within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages, notify the board by registered post of the (a) happening of the accident and nature of it; (b) date and time of its occurrence; (c) name and address of the workman; (d) place where the accident happened; (e) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury. And shall in every case file with or mail to the board within two additional days the information as to an accident, and the result thereof, required by the board, and he shall also at any time, when requested so to do by the board, or any officer or member thereof, furnish such further details and particulars respecting any accident or claim to compensation as may be so required.

(2) For every contravention of subsection (1) the employer shall incur a penalty not exceeding \$50.

Industrial dis-
eases.

SEC. 80a. (1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed, or his death is caused by an industrial disease, and the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments, the workman or his dependents shall be entitled to compensation as if the disease were a personal injury by accident and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned, unless at the time of entering into the employment he had willfully and falsely represented himself in writing as not having previously suffered from the disease.

(2) The compensation shall be payable by the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due.

(3) The workman or his dependents, if so required, shall furnish the employer mentioned in the next preceding subsection with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due during such twelve months as such workman or his dependents may possess, and if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in subsection 4 that employer upon proving that the disease was not contracted while the workman was in his employment shall not be liable to pay compensation.

(4) If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer he may bring such employer before the board, and if the allegation is proved that other employer shall be the employer by whom the compensation shall be paid.

(5) If the disease is of such a nature as to be contracted by a gradual process any other employers who during such twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer by whom the compensation is payable such contributions as the board may determine to be just.

(6) The amount of the compensation shall be fixed with reference to the earnings of the workman under the employer by whom the compensation is payable and the notice provided for by section 18 shall be given to the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the workman has voluntarily left the employment.

(7) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of Schedule II and the disease contracted is the disease in the first column of the said schedule set opposite to the description of the process the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

(8) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is the result of an injury in respect of which he is entitled to compensation under this part.

(9) Except where the board is satisfied that the disease if not due to any other cause than his employment in Manitoba, no compensation shall be payable under this section unless the workman has been a resident of Manitoba for the three years next preceding his first disablement.

SEC. 81. (1) This part shall apply only to the industries mentioned in Schedule I hereto and to such industries as shall be added to them under the authority of this part and to employment in such industries.

(2) The following industries, when carried on by retail only, shall be deemed not to be included in Schedule I and are excluded from the operation of this part: Watch, clock, and jewelry making and repairing; boot and shoe making and repairing; harness making and repairing; the making and repairing of clothing; the manufacture of confectionery; the repair of typewriters, cash registers, adding machines, gramophones, umbrellas, and bicycles; sausage making; upholstering and furniture repairing; picture framing; the cleaning and pressing of clothing.

SEC. 81a. No action for damages shall be brought in any court of law against the board, or any of its members, in respect of anything done by it or them beyond their jurisdiction, or conferred by this act, if the same was done in the bona fide belief that it was within their jurisdiction. Board not liable.

SEC. 81b. No compensation shall be paid under this part to or for the benefit of any dependent resident in any of the countries that were enemy countries during the present war, at the date of the death in respect of which compensation would otherwise be payable under this part. This provision [added 1919] shall be retroactive, and shall be deemed to have been in force from the commencement of this act. Alien enemies.

SEC. 81c. An employer of labor in an industry under part two of the act may elect and on approval by the board may be brought within the purview of part one of the act.

PART II.

[This part (sec. 83 to 85) is an employers' liability statute for industries, etc., not covered by PART I.]

SEC. 86. This act shall not apply to farm laborers or domestic or menial servants or to their employers. Exemptions.

SEC. 88. "The workmen's compensation act." Revised Statutes of Manitoba, 1913, chapter 209, is hereby repealed. Repealer.

SEC. 89. Part I of this act shall come into force on proclamation of the lieutenant governor in council, and Part II, namely, sections 82 to 88, inclusive, shall come into force on the day to be appointed by the lieutenant governor in council, under the provisions of section 3 of this act. Act in effect.

SCHEDULE I.—(SECTION 81.)

INDUSTRIES THE EMPLOYERS IN WHICH ARE LIABLE TO PROVIDE COMPENSATION.

Class 1. Lumbering; logging, river-driving, rafting, booming, saw-mills, shingle mills, lath mills; manufacture of veneer, excelsior, staves, spokes, or headings; lumber yards (including the delivery of lumber) carried on in connection with sawmills; the creosoting of timbers. Industries covered.

Class 2. Pulp and paper mills.

Class 3. Manufacture of furniture, interior woodwork, organs, piano actions, pianos, canoes, small boats, coffins, wicker and rattan ware, mattresses, bed springs, artificial limbs, cork articles, cork carpets or linoleum, upholstering, picture framing, and cabinetwork.

Class 4. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, articles and wares or baskets, matches, or shade rollers; lumber yards (including the delivery of lumber) carried on in connection with planing mills or sash and door factories; cooperage, not including the making of staves or headings.

Class 5. Mining; reduction of ores and smelting; preparation of metals or minerals; boring and drilling, including sinking of artesian wells

(except when done by an employer coming under class 13); manufacture of calcium carbide, carborundum, or alundum.

Class 6. Sand, shale, clay, or gravel pits; marble works, stone cutting or dressing; manufacture of brick, tile, terra cotta, fire-proofing, paving blocks, sewer pipe, roof tile, plaster blocks, plaster board, slate, or artificial stone.

Subclass A of class 6. Quarries, stone crushing, lime kilns; manufacture of cement.

Class 7. Manufacture of glass, glass products, glassware, porcelain or pottery.

Class 8. Iron, steel, or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, shot, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal.

Class 10. Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, screens, bolts, metal beds, sanitary, water, gas, or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, sheet metal products, buttons of metal, ivory, pearl, or horn, dry batteries, cameras, sporting goods, firearms, windmills, ivory articles, rubber stamps, pads or stencils, machine shops, not elsewhere included in Schedule I, the industry of carrying on a blacksmith shop.

Class 11. Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs or baby carriages; car shops.

Class 12. Manufacture of gold or silverware, plate ware, watches, watchcases, clocks, jewelry, or musical instruments.

Class 13. Manufacture of chemicals, corrosive acids, or salts ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, including the handling and delivery thereof; wood alcohol, celluloid articles: the manufacture, transmission, and distribution of natural or artificial gas and operations connected therewith: the cutting, storing, handling, and delivery of natural ice.

Subclass A of class 13. The manufacture of fireworks, gunpowder, ammunition, nitroglycerine, dynamite, guncotton, or other high explosives.

Class 14. Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers, tar, tarred, pitched or asphalted paper.

Class 15. Distilleries, breweries; manufacture of spirituous or malt liquors, malt, alcohol, wine, vinegar, cider, mineral water, soda waters, or methylated spirits.

Class 16. Manufacture of nonhazardous chemicals, drugs, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, noncorrosive acids or chemical preparations: shoe blacking or polish, yeast, baking powder, or mucilage.

Class 17. Milling; manufacture of cereals or cattle foods, warehousing or handling of grain or operation of grain elevators.

Class 18. Manufacture or preparation and distribution of meats or meat products or glue.

Subclass A of class 18. Packing houses, abattoirs, manufacture of fertilizers and all work incidental thereto (not incidental to any other industry), and the operation of stock yards, with railway entry.

Class 19. Tanneries.

Class 20. Manufacture of leather goods and products, belting, whips, saddlery, harness, trunks, valises, trusses, imitation leather, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires, or hose.

Class 22. Sugar refineries; manufacture of dairy products, butter, cheese, condensed milk or cream, biscuits, confectionery, spices, condiments, salt or any kind of starch; bakeries.

Subclass A of class 22. Canning or preparation of fruit, vegetables, fish or foodstuffs; pickle factories.

Class 24. Manufacture of tobacco, cigars, cigarettes, or tobacco products.

Class 26. Flax mills, manufacture of textiles or fabrics, spinning, weaving, and knitting manufactories; manufacture of yarn, thread,

hosiery, cloth, blankets, carpets, canvas, bags, shoddy, felt, cordage, ropes, fiber, brooms or brushes; asbestos goods, hair cloth and other hair goods; work in manila or hemp; tents, awnings, and articles not otherwise specified made from fabrics or cordage; the erection of awnings by the manufacturer.

Class 27. Manufacture of men's or women's clothing, whitewear, shirts, collars, corsets, hats, caps, furs, robes, feathers, or artificial flowers.

Class 28. Power laundries, dyeing, cleaning, or bleaching.

Class 29. Printing, photo-engraving, engraving, lithographing, book-binding, embossing, manufacture of stationery, paper, cardboard boxes, bags, wall paper, or papier-mâché.

Class 30. Heavy teaming or cartage; safe moving or moving of boilers heavy machinery, building stone and the like; warehousing, storage teaming, and cartage, including the hauling for hire by means of any vehicle, howsoever drawn or propelled, of any commodity or material, scavenging, street cleaning or removal of snow or ice.

Class 31. The operation of coaling plants and stations.

Class 32. Steel building and bridge construction; installation of elevators, fire escapes, boilers, engines, or heavy machinery; bridge building, not included elsewhere in Schedule I, erection of windmills.

Class 33. Bricklaying, mason work, stone setting, concrete work, plastering; manufacture of concrete blocks; structural carpentry, lathing, the installation of pipe organs; house wrecking or house moving.

Class 35. Painting, decorating, or renovating; sheet-metal work and roofing.

Class 36. Plumbing, sanitary or heating engineering, gas and steam fitting; operation of theater stage or moving pictures; operation of passenger or freight elevators, where workmen are specially employed therefor and which are not operated in connection with an industry included in another class, including the operation of elevators used in connection with an industry to which this schedule does not apply or in connection with a warehouse or shop or an office or other building or premises.

Class 37. Sewer construction, tunnelling, shaft sinking, and well digging, the maintenance and operation of a waterworks system; excavation work for cellars, foundations, and canals; trenching less than six feet deep, for gas pipes, water pipes or wire conduits; and all excavation work where the depth is more than six feet and the width is less than half the depth.

Class 38. Construction, installation, or operation of electric power lines or appliances and power transmission lines, electric wiring of buildings and installation of lighting fixtures; construction or operation of an electric light system; construction or operation of an electric light works not included elsewhere in Schedule I; construction or operation of telegraph or telephone lines; construction or operation of telephone lines and works for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company, except where such telephone lines or works are within the legislative authority of the Parliament of Canada.

Class 41. Construction or operation of railways, road making or repair of roads with machinery; making and repairing of roads of all kinds not included elsewhere in Schedule I, manufacture of asphalt material and paving material. This class shall not include the making and repairing of roads in rural municipalities unless the work is done through a contractor.

Class 43. Shipbuilding, dredging, subaqueous construction or pile driving, fishing, stevedoring, operation of and work upon wharves, operation of dry docks, not included elsewhere in Schedule I.

Class 44. If not included elsewhere any trade or business connected with the industries of—

Lumbering, mining, quarrying, fishing, manufacturing, building construction, engineering, transportation, operation of electric power lines, waterworks, and other public utilities, navigation, operation of boats, ships, tugs, and dredges, operation of grain elevators and ware-

houses, teaming, scavenging, and street cleaning, painting, decorating, and renovating, dyeing and cleaning, or any occupation incidental thereto or immediately connected therewith.

Class 45. The trade or business as defined by subsection (2) of section 2 of a municipal corporation, a public utilities commission, any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation, a board of trustees, of a police village, and a school board.

Class 46. The construction or operation of railways operated by steam, electric, or other motive power; street railways and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway.

Class 47. The construction or operation of car shops, machine shops, steam and power plants, and other works for the purposes of any such railway or used or to be used in connection with it when constructed or operated by the company which owns or operates the railway.

Class 48. The construction or operation of telephone lines and works within the legislative authority of the Parliament of Canada, for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company.

Class 49. The construction or operation of telegraph lines and works for the purposes of the business of a telegraph company or used or to be used in connection with its business when constructed or operated by the company.

Class 50. The construction or operation of steam vessels and works for the purpose of the business of a navigation company or used or to be used in conjunction with its business when constructed or operated by the company, and all other navigation, towing, operation of vessels, and marine wrecking.

Class 51. The operation of the business of an express company which operates on or in connection with a railway, or of sleeping, parlor, or dining cars, whether operated by the railway company or by an express, sleeping, parlor, or dining car company.

Class 52. The operation otherwise than on tracks, on streets, highways, or elsewhere of cars, trucks, wagons, or other vehicles, and rollers and engines propelled by steam, gas, gasoline, electric, mechanical, or other power or drawn by horses or mules.

SCHEDULE II.—(SECTION 80A.)

| | Description of disease. | Description of process. |
|------------------------|--------------------------------------|---|
| Occupational diseases. | Anthrax..... | Handling of wool, hair, bristles, hides, and skins. |
| | Lead poisoning or its sequelæ. | Any process involving the use of lead or its preparations or compounds. |
| | Mercury poisoning or its sequelæ. | Any process involving the use of mercury or its preparations or compounds. |
| | Phosphorus poisoning or its sequelæ. | Any process involving the use of phosphorus or its preparations or compounds. |
| | Arsenic poisoning or its sequelæ. | Any process involving the use of arsenic or its preparations or compounds. |
| | Ankylostomiasis..... | Mining. |

Assented to March 10, 1916.

NEW BRUNSWICK.

ACTS OF 1918.

(8 George V.)

CHAPTER 37.—*Compensation of workmen for injuries.*¹³

SECTION 1. This act may be cited as the workmen's compensation act, 1918.

SEC. 2. In this part, unless inconsistent with the context—

(a) "Accident fund" shall mean the fund provided for the payment of compensation under Part I of this act.

(b) "Association" shall mean any association or body of employers whose constitution shall have been approved by the board as entitling such association to represent any of the classes provided for in this act or any subdivision or group of employers in such class.

(c) "Average earnings" and "earning capacity," when used in reference to the time of or before the injury, shall be calculated upon the daily, weekly, monthly, or other regular remuneration which the workman was receiving at the time of the injury or had received previously, as may appear to the board best to represent the actual loss of earnings suffered by the workman by reason of the injury.

(d) "Board" shall mean workmen's compensation board.

(e) "Construction" shall include reconstruction, repair, alteration, renovating, painting, and decorating.

(f) "Dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death, or who but for the incapacity due to the accident would have been so dependent.

(g) "Employer" shall mean any person, firm, association or body having in service any workman in any industry within the scope of this part, and shall in respect of any such industry include municipal corporations and may include the Crown as represented by the Province of New Brunswick and the Dominion of Canada in so far as they or either of them may, in their capacity as employers, submit to the operation of this act.

(h) "Industrial disease" shall mean any disease which by the regulations is declared to be an industrial disease.

(i) "Industry" shall mean and refer to the whole or any part of any industry, operation, undertaking, or employment within the scope of this part; and in the case of any industry, operation, undertaking, or employment not as a whole within the scope of this part, shall mean any department or part of such industry, operation, undertaking or employment as would, if carried on by itself, be within the scope of this part.

(j) "Invalid" shall mean physically or mentally incapable of earning.

(k) "Manufacturing" shall include making, preparing, altering, repairing, renovating, dyeing, cleaning, ornamenting, printing, finishing, assembling, packing, and adapting for use or sale any raw material, goods, article, or commodity.

(l) "Member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, and half sister, and a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child, shall include his parents and grandparents.

(m) "Mining" shall include mine rescue work;

(n) "Navigation" shall mean the operation of any ship, boat, tug, dredge, or other vessel owned in New Brunswick, while such vessel is within the limits of the said Province.

Title.

Definitions.

¹³ As amended, 1919.

(o) "Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for use or sale, in his own home or in other premises not under the control or management of the person who gave out the articles or materials.

(p) "Person" shall include any person, whether male or female, or any corporation, and the heirs, executors, administrators, or legal representatives of such person, or the successors of such corporation.

(q) "Quarrying" shall include excavation for any purpose, drilling, and the removal or transportation of any rock, shale, gravel, sand, earth, or other material.

(r) "Regulations" shall mean regulations made by the board under the authority of this part.

(s) "Stevedoring" shall mean the loading or unloading of vessels and railway cars and the handling of goods, articles, and commodities on or about any dock, wharf, or quay.

(t) "Teaming" shall include all kinds of work done by workmen with teams, carts (including handcarts), drays, trucks, cabs, carriages, automobiles, and other vehicles.

(u) "Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, and whether by way of manual labor or otherwise, in any industry within the scope of this part.

PART I.

Application.

SECTION 3. This part shall apply to employers and workmen in or about the industries of lumbering, mining, quarrying, manufacturing, building, construction, engineering; operation of any railway, tramway, telegraph, telephone, cable or electric light or power line or system; operation of any waterworks, gas works or sewerage plant or system or other public utility; operation of any refrigeration, storage or terminal warehouse, elevator or plant; operation of any passenger or freight elevator; operation of any theater or place of public amusement; scavenging and street cleaning; horseshoeing; operation of any lumber yard, or fuel yard; stevedoring; or navigation; and any employment incidental thereto or immediately connected therewith: *Provided*, That, subject to sections 4 and 5 this part shall not apply to the following:

Exemptions.

- (a) Persons engaged as traveling salesmen or in office or other clerical work, and not exposed to the hazards incident to the nature of the work carried on in the industry.
- (b) Persons whose employment is of a casual nature, and who are employed otherwise than for the purposes of the industry.
- (c) Outworkers.
- (d) Persons employed by a city, town, or municipal corporation as members of a police force or fire department.
- (e) Members of the family of the employer residing with the employer.
- (f) Persons employed as farm laborers or domestic or menial servants.
- (g) Persons employed in the woods in logging, cutting of timber, pulpwood, firewood, railroad ties or sleepers, or river driving, rafting, booming or the transportation of logs, timber, pulpwood, firewood, railroad ties or sleepers. [Included by order in council.]

Extension of scope.

SEC. 4. Where it shall appear to the board that any kind of industry not within the scope of this part may properly be brought within the scope of this part, the board may so report to the lieutenant governor in council, who may thereupon, by order in council, declare such industry to be within the scope of this part, and from and after the date of such order in council, or such date as may be named therein, such industry shall be deemed to be within the scope of this part.

Employers and workmen may apply.

SEC. 5. (1) Any industry or workman not within the scope of this part by virtue of section 3 may, on the application of the employer, be admitted by the board as being within the scope of this part on such terms and conditions, and for such period, and from time to time, as the board may prescribe, and from and after such admission, and during the period of such admission, such industry or workman shall be deemed to be within the scope of this part.

(2) Any employer in any industry within the scope of this part may be admitted, on such terms and conditions, and for such period, and from time to time, as the board may prescribe, as being entitled, for himself or his dependents, as the case may be, to the same compensation as if such employer were a workman within the scope of this part.

(3) Such admission may be made in such manner and form as the board may deem adequate and proper.

SEC. 6. The board may by regulation exclude from the scope of this part any industry or industries in which not more than a stated number (fixed by such regulation) of workmen are usually employed, and the board may from time to time revoke, alter, or modify any such regulation: *Provided*, That any industry so excluded may be readmitted by the board as being within the scope of this part.

Exclusion by board.

SEC. 7. Where personal injury or death is caused to a workman by accident arising out of and in the course of his employment in any industry within the scope of this part, compensation shall be paid to such workman or his dependents, as the case may be, as hereinafter provided unless such injury was, in the opinion of the board, intentionally caused by such workman, or was wholly or principally due to intoxication or serious and willful misconduct on the part of the workman, or to a fortuitous event unconnected with the industry in which the workman was employed.

Compensation payable.

SEC. 8. Where it appears that by the laws of any other Province, State, or country, a workman or his dependents, if resident in New Brunswick, would be entitled in respect of death or injury in such Province, country, or jurisdiction to compensation corresponding or similar to that provided in this part, and an order in council to that effect is passed by the lieutenant governor in council, the board may order that payments of compensation under this part may be made to persons resident in such Province, country, or jurisdiction in respect of any workman killed or injured in New Brunswick; but save as in this section provided nothing in this part shall entitle any person not resident in New Brunswick to compensation payments: *Provided*, That the board may upon application grant leave from time to time to any workman or dependent resident in New Brunswick at the time of the accident to reside out of New Brunswick without thereby forfeiting the right to compensation payments under this part.

Comity.

SEC. 9. Where an accident occurs to a workman in the course of his employment in such circumstances as to entitle him or his dependents to any claim or right of action against his employer under, or in virtue of, any statute of the Parliament of Canada, or of the United Kingdom of Great Britain and Ireland, such workman or dependents shall be entitled to compensation under this part to the extent to which the compensation under this part would exceed in amount or value the amount or value of such claim or right of action: *Provided*, That if such workman or dependents shall execute and give a full and effectual release of the employer from any such claim or right of action the board may pay to such workman or dependents the full amount of the compensation provided by this part.

Supplemental benefits.

SEC. 10. (1) Where an accident occurs to a workman in the course of his employment in such circumstances as to entitle him or his dependents to an action against some person other than his employer the workman or his dependents if entitled to compensation under this part may claim such compensation or may bring such action.

Third parties.

(2) If such workman or his dependents bring such action, and less is recovered and collected than the amount of the compensation to which such workman or dependents would be entitled under this part, such workman or dependents shall be entitled to compensation under this part to the extent of the amount or amounts of such difference.

(3) If such workmen or dependents, or any of them, have claimed compensation under this part, the board shall be subrogated to the position of such workman or dependent as against such other person for the whole of any outstanding part of the claim of such workman or dependent against such other person.

SEC. 11. Nothing in section 10 shall give any right to an employer or to a workman within the scope of this part to bring an action against

Who to be responsible.

- any employer within the scope of this part; but in any case where it appears to the satisfaction of the board that a workman of an employer in any class was injured or killed owing to the negligence of an employer or the workman of an employer in another class, the board may direct that the compensation awarded in any such case shall be charged against the class to which such last-mentioned employer belongs.
- Effect of recovery.** SEC. 12. Except as provided by section 61 the provisions of this part shall be in lieu of all claims and rights of action, statutory or otherwise, to which a workman or his dependents are or may be entitled against the employer of such workman for or by reason of any accident in respect of which compensation is payable under this part.
- Waivers.** SEC. 13. It shall not be competent for a workman to agree with his employer to waive or forego any of the benefits to which he or his dependents are or may become entitled under this part, and every agreement to that end shall be absolutely void.
- Deductions from wages.** SEC. 14. It shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of any of the workmen any part of any sum which the employer is or may become liable to pay into the accident fund or otherwise under this part, or to require or to permit any of his workmen to contribute in any manner toward indemnifying the employer against any liability which he has incurred or may incur under this part.
- Assignments, etc.** SEC. 15. Unless with the approval of the board, no sum payable as compensation or by way of commutation of any periodical payment in respect of it shall be capable of being assigned, charged, or attached, nor shall it pass by operation of law except to a personal representative.
- Claim in one year.** SEC. 16. No compensation shall be payable under this part in respect of any injury unless application for such compensation is made within one year after the occurrence of the injury.
- Board created.** SEC. 17. There is hereby constituted a commission for the administration of this part, to be called the "workmen's compensation board," which shall be a body corporate, and shall have a seal which shall be judicially noticed.
- Members.** SEC. 18. (1) The board shall consist of three members, to be appointed by the lieutenant governor in council.
- Term.** (2) Each commissioner shall hold office during good behavior, but may be removed at any time for cause.
- (3) Unless otherwise directed by the lieutenant governor in council, a commissioner shall cease to hold office when he attains the age of seventy-five years.
- Members pro tempore.** SEC. 19. In case of the death, illness, or absence from New Brunswick of any commissioner, or of his inability to act from any cause, the lieutenant governor in council may appoint some other person to act pro tempore in his stead.
- Organization.** SEC. 20. (1) One of the commissioners shall be appointed by the lieutenant governor in council to be chairman of the board, and another of the commissioners shall be appointed by the lieutenant governor in council to be vice chairman of the board.
- (2) In case of the absence of the chairman or of his inability to act or of a vacancy in the office, the vice chairman may act as and shall have all the powers of the chairman.
- (3) Where the vice chairman appears to have acted for or instead of the chairman, it shall be presumed that he so acted for one of the reasons mentioned in the preceding subsection.
- Quorum.** SEC. 21. The presence of two commissioners shall be necessary to constitute a quorum of the board.
- Same.** SEC. 22. A vacancy in the board shall not, if there remain two members of it, impair the authority of such two members to act.
- Offices.** SEC. 23. The offices of the board shall be situated at the city of St. John or at such other place as the lieutenant governor in council shall designate, and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, in which case sittings may be held in any part of New Brunswick.
- Sessions.** SEC. 24. The commissioners shall sit at such times and conduct their proceedings in such manner as they may deem most convenient for the proper discharge and dispatch of business: *Provided*, That in respect of any matter coming before the board for decision, any em-

ployer, association, workman, or dependent interested in such decision shall be entitled upon application to a public hearing before such decision is made by the board.

SEC. 25. The board shall appoint a secretary and a chief medical officer, and may appoint such auditors, actuaries, accountants, inspectors, officers, clerks, and servants as the board may deem necessary for carrying out the provisions of this part, and may prescribe their duties, and every person so appointed shall hold office during the pleasure of the board.

SEC. 26. It shall be the duty of the secretary to cause proper reports or minutes to be made of all meetings or sittings of the board; to cause all decisions and findings of the board to be duly recorded; and to cause all claims and communications to be brought before the board or its proper officers; and to prepare and make such reports and communications as are required by law or may be required from time to time by the board.

SEC. 27. The salaries of the commissioners, and of the secretary, chief medical officer, auditors, medical inspectors, officers, clerks, and servants, together with the necessary expenses of administration of this part, shall be paid out of the revenue of this Province: *Provided*, That the lieutenant governor in council may in any year order the payment of any portion of such salaries or expenses out of the accident fund.

SEC. 28. (1) The accounts of the board shall be audited by a chartered accountant to be appointed by the lieutenant governor in council for that purpose.

(2) Any association may appoint an auditor to act in conjunction with such chartered accountant or to make an independent audit of the funds of any class or subclass represented by such association.

SEC. 29. (1) The board shall on or before the 1st day of April in each year make a report to the provincial secretary of its transactions during the last preceding calendar year, and such report shall contain a statement of the receipt and disposition of funds for the said year in each of the classes and subclasses established in sections 45 and 52, together with such other particulars as the lieutenant governor in council may prescribe.

(2) Any association applying therefor shall be entitled to receive from the board, on or before the first day of April in each year, a detailed statement of the receipts and disbursements during the preceding calendar year on account of each employer in the class or subclass represented by such association.

SEC. 30. (1) The board shall have jurisdiction to inquire into, hear, and determine all matters and questions of fact and law necessary to be determined in connection with compensation payments under this part and the administration thereof, and the collection and management of the funds therefor: *Provided*, That no decision or ruling of the board shall be binding upon it as a precedent for any other decision or ruling, the intent of this proviso being that each case shall be decided upon its own merits.

SEC. 31. The board shall have the like powers as the supreme court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents, and things.

SEC. 32. (1) The board may act upon the report of any of its officers, and any inquiry which it shall be deemed necessary to make may be made by any one of the commissioners or by an officer of the board or any other person appointed to make the inquiry, and the board may act upon his report as to the result of the inquiry, and any person so appointed to make the inquiry shall for the purposes of the inquiry have all the powers conferred upon the board by section 31.

SEC. 33. (1) Except as provided in sections 35 and 66 the decisions and findings of the board upon all questions of law and fact shall be final and conclusive and in particular, but not so as to restrict the generality of the powers of the board hereunder, the following shall be deemed to be questions of fact:

(a) The question whether an inquiry has arisen out of or in the course of an employment within the scope of this act.

Officers.

Records.

Salaries.

Audits.

Reports.

Jurisdiction of board.

Powers.

Acts of officers.

Decisions.

- (b) The existence of and degree of disability by reason of any injury.
- (c) The permanence of disability by reason of any injury.
- (d) The amount of average earnings.
- (e) The degree of diminution of earning capacity by reason of any injury.
- (f) The existence of the relationship of member of the family.
- (g) The existence of dependency.
- (h) The character, for the purpose of this act, of any industry, and the class to which such industry should be assigned.

Certificates.

SEC. 34. The board may in any case where it is deemed necessary, and shall on the application of any employer, association, or workman interested in any order, ruling, or decision of the board, issue a certificate under the seal of the board, embodying the substance of any such order, ruling, or decision.

Appeals.

SEC. 35. (1) An appeal shall lie to the supreme court, appeal division, from any final decision of the board upon any question as to its jurisdiction or upon any question of law, but such appeal shall be taken only by permission of a judge of the supreme court, given upon a petition presented to him within fifteen days after the rendering of the decision and upon such terms as said judge may determine. Notice of such petition shall be given to the board at least two clear days before the presentation of such petition.

(2) Where an appeal has been granted, the appeal shall be brought by notice served on the chairman or vice chairman of the board, within ten days after the permission to appeal has been granted. The notice shall contain the names of the parties and the date of the order appealed from and such other particulars as the judge granting the appeal may require.

(3) The board may of its own motion state a case in writing for the opinion of the supreme court, appeal division, upon any question which in the opinion of the board is a question of law.

(4) On the hearing of such appeal or stated case any association representing a class interested in the result of the case shall be entitled to appear and be heard.

(5) The supreme court, appeal division, shall hear and determine the question or questions of law arising thereon and remit the matter to the board with the decision of the court thereon, and such decision shall be binding upon the board.

(6) No costs shall be awarded in any appeal or case stated under this section.

Compensation for—

SEC. 36. (1) The compensation payable under this part to an injured workman or to the dependents of a deceased workman shall be as follows:

Temporary partial disability;

(a) In case of temporary partial disability continuing for more than seven days after the accident and diminishing the earning capacity of the workman by more than ten per cent, a payment or payments, at a rate equal to 55 per cent of such diminution of earning capacity, calculated on a basis not exceeding \$125 per month.

Total disability;

(b) In case of total disability, continuing for more than seven days after the accident, a payment or payments, equal to 55 per cent of the average earnings of the workman, but not less than 55 per cent of \$6 per week or more than \$125 per month, such payments to be continued during the life of the workman or the duration of such disability.

Permanent partial disability;

(c) In case of permanent partial disability, payments on a scale to be established by the board and proportioned upon the diminution of earning capacity and the degree of disfigurement, but not exceeding in any case \$1,500.

Death.

(d) In case of death of the workman as a result of the injury, in addition to any payments under (a) or (b)—

(I) Necessary and proper expenses of burial, not exceeding \$75.

(II) Where the sole dependent is a widow or invalid widower, payments during the life of such widow or widower at the rate of \$20 per month.

(III) Where the dependents are a widow or invalid widower and one or more children under the age of sixteen years, payments at the rate of \$20 per month, with an addition of \$5 per month for each of such children.

(IV) Where the dependents are persons other than those mentioned in the foregoing clauses, payments at a rate reasonable and proportionate to the pecuniary loss to such dependents, on a scale to be determined by the board, having in view the scale of payments laid down in clauses (II) and (III).

(2) In the case provided in item (IV) of clause (d) of subsection (1), the payments shall continue only so long as in the opinion of the board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependents.

(3) Where there are both total and partial dependents the compensation may be allotted partly to the total and partly to the partial dependents.

(4) Exclusive of the expenses of burial, the compensation payable as provided by subsection (1) shall not in any case exceed 55 per cent of the average earnings of the workman, and if the compensation payable under that subsection would in any case exceed that percentage it shall be reduced accordingly, and where several persons are entitled to monthly payments shall be reduced proportionately.

(5) If a dependent widow marries, the monthly payments to her shall cease; but she shall be entitled in lieu of them to a sum equal to the payments for two years: *Provided*, This subsection shall not apply to payments to a widow in respect of a child.

(6) Payments in respect of a child shall cease when the child attains the age of sixteen years or dies.

(7) The total aggregate amount of compensation paid under this section shall not in the case of any workman or his dependents exceed in the aggregate the sum of \$3,500.

Sec. 37. (1) In fixing the amount of any payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from his employer during the period of his disability, including any pension gratuity or other allowance provided at the expense of the employer.

(2) Where the compensation is payable, any sum deducted from the compensation under subsection (1) may be paid to the employer out of the accident fund.

Sec. 38. The board may in its discretion—

(a) Commute the whole or any part of the payments due or payable to any workman or dependent for a lump sum; or

(b) Substitute for such payments any other scheme of periodical payments; or

(c) Substitute for any lump sum or sums any scheme of periodical payments, as may be deemed most expedient in the interest of such workman or dependent.

(2) Where in any case, in the opinion of the board, it will conserve the accident fund to provide a special surgical operation or other special medical treatment for a workman, the expense of such operation or treatment may be paid out of the accident fund.

Sec. 39. The board may in its discretion, by regulation, provide for the payment of the cost of first aid to workmen in case of injury, and should such workman require hospital care, to pay cost of such care; but no such regulation shall come into force until three months after proclamation thereof by the lieutenant governor in council.

Sec. 40. (1) When any workman or dependent is entitled to compensation under this part he shall file with the board an application for such compensation, together with the certificate of the attending physician, if any, and such further or other proofs of his claim as may be required by the board.

(2) It shall be the duty of every physician or surgeon attending, or consulted upon, any case of injury to any workman to furnish or cause to be furnished from time to time, such reports, and in such form, as may be required by the board, in respect of such injury and the resulting condition of the workman.

(3) It shall also be the duty of every physician in attendance upon any injured workman to give all reasonable and necessary information, advice, and assistance to enable such workman or his dependents, as the case may be, to make application for compensation, and to furnish such proofs as may be required by the board.

Remarriage of widow.

Children

Maximum.

Other benefits.

Forms of payment.

Special surgical, etc., treatment.

Advance of costs.

Claim to be filed.

Physicians' reports.

- Reports of accidents. (4) It shall be the duty of every employer, within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages, to notify the board in writing of the (a) happening of the accident and nature of it; (b) time of its occurrence; (c) name and address of the workman; (d) place where the accident happened; (e) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury; (f) any other particulars required by regulation of the board.
- (5) It shall be the duty of the employer to make such further and other reports respecting such accident and workman as may be required by the board.
- Employees' reports. (6) It shall also be the duty of every employee within fourteen days after any accident entitling him to compensation, or so soon thereafter as his claim to compensation shall have accrued, to make due application under subsection (1) or to notify the board of such accident.
- Form of payments. SEC. 41. Payments of compensation shall be made in such manner and in such form as may appear to the board to be most convenient; and in the case of minors or persons of unsound mind, payments may be made to such persons as, in the opinion of the board, are best qualified in all the circumstances to administer such payments, whether or not the person to whom the payment is made is the legal guardian of such minor or person of unsound mind.
- Review. SEC. 42. The board may reopen, rehear, redetermine, review, or readjust any claim, decision, or adjustment, either because an injury has proven more serious than it was deemed to be, or because a change has occurred in the condition of a workman or in the number, circumstances, or condition of dependents or otherwise.
- Reports of dependents. SEC. 43. The board may require such proof from time to time of the existence and condition of any dependents in receipt of compensation payments as may be deemed by the board necessary, and may from time to time require any workman applying for or receiving compensation payments to submit to medical examination by the board or its duly appointed officers, and in default of such requirement being complied with, may withhold such compensation payments.
- Accident fund. SEC. 44. Subject to section 61, the compensation provided for in this part shall be paid out of a fund to be called "the accident fund."
- Classes of industries. SEC. 45. For the purpose of creating and maintaining the accident fund, all industries within the scope of this part shall be divided by the board into classes in the discretion of the board.
- (2) The board may by regulation rearrange such classes or withdraw from any class any industry or group of industries included therein, and transfer such industry or group of industries to any other class, or form it into a separate class.
- Board to assign. SEC. 46. The board shall assign every industry within the scope of this part to its proper class; and where any industry includes several departments assignable to different classes, the board may either assign such industry to the class of its principal or chief department, or may, for the purpose of this part, divide such industry into two or more departments, assigning each of such departments to its proper class.
- Assessments. SEC. 47. The board shall on or before the first day of January of each year make an estimate of the assessments necessary to provide funds in each of the classes sufficient to meet all claims for compensation payable during the succeeding year.
- Pay rolls. SEC. 48. (1) Every employer shall, on or before a date to be fixed by the lieutenant governor in council, and thereafter on or before the first day of January in each year, or whenever he shall have become an employer within the meaning of this part, or whenever required from time to time by the board so to do, cause to be furnished to the board an estimate or estimates of the probable amount of the pay roll of each of his industries within the scope of this part, together with such further and other information as may be required by the board for the purpose of assigning such industry to the proper class or classes, and of making the assessments hereunder: *Provided*, That the board may also require any employer not within the scope of this part to furnish from time to time such information as may enable the board to determine whether such employer is or is not within the scope of this part.

(2) Every employer willfully neglecting or refusing to furnish such estimates or information shall be liable to a penalty of \$20 per day for each day of such default.

(3) Every assessor appointed under chapter 21 of the acts of 1913, or any other act respecting assessments for taxation, shall yearly, within ten days after the completion of the assessment roll, make a return to the board upon forms provided by the board, for the purpose of showing the names, addresses, nature of business, and usual number of employees, if known, of all employers of labor carrying on any industry or business, other than farming or mercantile business, within the district of such assessor, together with such other information as the board may require. Assessors' reports.

(4) Within three days after the granting of any building permit in any city, town, or parish, notice thereof, together with such particulars as the board may require, shall be given to the board by the person whose duty it is to keep a record of such permits. Building permits.

(5) Every steam engineer employed in connection with the operation of any portable sawmill shall, before such operation is begun in any particular locality or place, or within three days after such operation is begun, report to the board that such operation will be or has begun; and shall likewise from time to time report to the board upon the cessation of such operation, and furnish to the board such further and other information with respect to such operations as the board may by regulation require. Portable sawmills.

SEC. 49. The board shall every year assess and levy upon and collect from the employers in each class, by an assessment rated upon the pay roll, or otherwise as the board may deem proper, sufficient funds to meet all claims payable during the year. Annual assessments.

SEC. 50. Separate accounts shall be kept of the amounts collected and expended in respect of every class and of every fund set aside by way of reserve, but for the purpose of paying compensation the accident fund shall, nevertheless, be deemed one and indivisible. Separate accounts.

SEC. 51. (1) The board may, in addition to the amount actually required in each class for the year, assess and levy upon and collect from any class or classes a surcharge or surcharges to be set aside as a reserve or reserves, (a) by way of providing a contingent fund in aid of industries or classes which may become depleted or extinguished; or (b) by way of providing a sinking fund for the capitalization of periodical compensation payments payable in future years; or (c) by setting up a reserve fund for the equalizing of assessments. Reserves.

(2) The board may, in respect of any industry or class where it is deemed expedient, assess, levy, and collect in each year a sufficient amount to provide capitalized reserves which shall be deemed sufficient to meet the periodical payments accruing in future years in respect of all accidents during such year.

(3) Upon any such change being made as provided for in subsection (2) of section 45 the board may make such adjustment and disposition of the funds, reserves, and accounts of the classes affected as may be deemed just and expedient.

SEC. 52. The board may establish such subclassifications, differentials, and proportions in the rates as between the different kinds of employment in the same class as may be deemed just; and where any particular industry is shown to be so circumstanced or conducted that the hazard is greater than the average of the class or subclass to which such industry is assigned, the board may impose upon such industry a special rate, differential, or assessment to correspond with the excessive hazard of such industry. Subclasses, etc.

SEC. 53. If authorized by the lieutenant governor in council the board may make or sanction any arrangement for the insurance or reinsurance, with an underwriter or underwriters, of any employer or class under this part, subject to such terms and conditions as the board may prescribe; and may make any necessary or equitable adjustment of the assessment of such employer or class, having in view any premium paid on such insurance or reinsurance: *Provided*, That all claims for compensation shall be adjusted and paid by the board. Reinsurance.

Form of assessments. SEC. 54. Assessments shall be made under seal, and may be general as applicable to any class or subclass, or special as applicable to any industry or part or department of an industry.

(2) Any general assessment may be made in the manner and form set forth in schedule A.

(3) Notice of any general assessment may be in the form set forth in schedule B, and shall be published in the Royal Gazette and in such other newspapers and in such other manner as the board may deem adequate or expedient.

Notice to employers. SEC. 55. The board shall give notice to each employer, in such manner as may be deemed by the board adequate and proper, of the amount of the assessments due from time to time in respect of his industry or industries, and the time or times when such assessments are due and payable.

Duty of employers. SEC. 56. (1) Notwithstanding any provisions of this part respecting estimates or pay rolls and notice to employers, it shall be the duty of every employer, without demand from the board, to cause to be paid to the board the full amount of every assessment assessed or levied in accordance with this part in respect to workmen in his employ who are entitled to compensation hereunder, and every such assessment, whether the employer have notice thereof or otherwise, shall be a debt unliquidated until the amount thereof shall have been ascertained by adjustment as provided by this act, and payable by the employer to the board.

(2) The board shall have a right of action against the employer in respect of any amount unpaid, with costs of such action.

Provisional levy. SEC. 57. (1) At or before the 1st of January of each year, or as soon thereafter as any industry shall have begun operation, the board may levy upon each employer a provisional amount based upon the estimates and information furnished by such employer or upon such further or other information as the board may obtain, and such provisional amount shall be presumed to be the amount due by any such employer and may be collected from such employer as hereinafter provided.

(2) In case of the refusal or neglect of any employer to furnish any estimate or information as required under section 48, the board may make its own estimates of the amount due by such employer and may levy and collect such amount.

(3) Such provisional levies may, wherever it is deemed expedient, be collected in half-yearly, quarterly, or monthly installments, or otherwise; and where it appears that the funds in any class are sufficient for the time being, any installment may be abated or its collection deferred.

Further assessments. SEC. 58. If in any class the estimated assessments shall prove insufficient the board may make such further assessments and levies as may be necessary, or may temporarily advance the amount of any deficiency out of any reserve provided for such purpose, and may add such amount to any subsequent assessment or assessments.

Temporary industry. SEC. 59. In the case of any industry which, in the opinion of the board, is to be carried on only temporarily, the board may, instead of collecting a provisional amount, require or take from the employer security in such form and amount as the board may deem adequate, until the cessation of the industry and final report and audit of the pay roll therefor.

Failure to pay levy. SEC. 60. If any assessment is not paid at the time when it becomes payable, a percentage, prescribed by regulation of the board, and not exceeding in the whole twelve per cent per year, may be added to such assessment, by way of penalty, and collected and enforced as part of such assessment.

Failure to give information, etc. SEC. 61. (1) Any industry in respect of which the employer neglects or refuses to furnish any estimate or information as required by section 48 shall, during the continuance of such default, be deemed to be an industry within Part II and such employer shall be liable for damages as provided in Part II; and except as provided in subsection (3) no compensation shall be payable under Part I during the continuance of such default.

(2) Notwithstanding subsection (1) such employer shall be liable to pay to the board the full amount or capital value of any compensation

payments to which any workman would be entitled under Part I by reason of any accident occurring during the continuance of such default, and such amount or capital value may be assessed against, and collected from, such employer by like process and means as in the case of other assessments under Part I.

(3) If, and to the extent that, such employer shall pay to the board such amount or capital value he shall cease to be liable under subsection (1), and such workman shall be entitled to compensation under Part I.

(4) If satisfied that such default was excusable, the board may relieve such employer in whole or in part from liability under subsection (1) or subsection (2), or both, on such terms as the board may deem just.

Sec. 62. Where any work within the scope of this part is performed under contract for any municipal corporation or public service commission, any assessment in respect of such work may be paid by such corporation or commission, as the case may be, and the amount of such assessment may be deducted from any moneys due the contractor in respect of such work.

Municipalities, etc., may advance.

Sec. 63. (1) Where any work within the scope of this part is undertaken for any person by a contractor, both the contractor and the person for whom such work is undertaken shall be liable for the amount of any assessment in respect thereof, and such assessment may be levied upon and collected from either of them or partly from one and partly from the other: *Provided*, That in the absence of any term in the contract to the contrary the contractor shall, as between himself and the person for whom such work is performed, be primarily liable for the amount of such assessment.

Contractors and principals.

(2) Where any work within the scope of this part is performed under subcontract, both the contractor and the subcontractor shall be liable for the amount of any assessments in respect of such work; and such assessments may be levied upon and collected from either, or partly from one and partly from the other: *Provided*, That in the absence of any term in the subcontract to the contrary the subcontractor shall as between himself and the contractor be primarily liable for such assessments.

Sec. 64. In the case of any work or service performed by an employer in any of the industries within the scope of this part, for which the employer would be entitled to a lien under the mechanics' lien act, it shall be the duty of the owner as defined by that act, to see that the amount of any assessment in respect of such work or service is paid, and if any such owner fails to do so he shall be personally liable to pay it to the board, and the board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

Mechanics' liens.

Sec. 65. There shall be included among the debts which, under the act respecting assignments and preferences by insolvent persons, "the companies' winding up act," and "the trustee act," are, in the distribution of the property in the case of an assignment or death or in the distribution of the assets of a company being wound up under the said acts, respectively, to be paid in priority to all other debts, the amount of any assessment the liability whereof accrued before the date of the assignment or death or before the date of the commencement of the winding up, and the said acts shall have effect accordingly.

Preference of assessments.

Sec. 66. Where default is made by any employer in the payment of any levy the board may, after ten days' notice to such employer of its intention so to do, issue its certificate specifying the amount of such levy and the person by whom it is payable, and such certificate, or a copy thereof under the seal of the board, may be filed with the clerk of any county court or with the registrar or assistant registrar of the supreme court, and such clerk, registrar or assistant registrar shall thereupon issue a judgment of such court against such person for such amount and such judgment shall be enforceable in the same manner as other judgments of such court, subject to such appeal as in the case of other judgments of such court.

Default of payment.

Sec. 67. On or before the first day of April in each year the amount of the assessment for the preceding calendar year shall be adjusted upon

Adjustment of assessments.

- the actual requirements of the class and upon the correctly ascertained pay roll of each industry, or otherwise as the case may require, and the employer shall forthwith make up and pay to the board any deficiency, or the board shall refund to the employer any surplus, or credit the same upon the succeeding assessment as the case may require.
- Pay rolls.** SEC. 68. (1) Every employer shall, at or after the close of each calendar year, or at such other times as may be required by the board, furnish verified copies or reports of his pay roll or pay rolls, together with such other information as the board may require, verified by statutory declaration, for the purpose of enabling the board to adjust and compute the amount of the assessment as provided in section 67.
- (2) In computing and adjusting the amount of the pay roll of any industry, regard shall be had only to such portion of the pay roll as represents workmen and work within the scope of this part, and where the wages of any workman exceeds the rate of \$125 per month, due and proper deduction may be made in respect of any such excess.
- Change of ownership.** SEC. 69. Where in any industry a change of ownership or employer-ship has occurred, the board may levy any part of such deficiency on either or any of such successive owners or employers, or pay or credit to any one or more of such owners or employers such surplus as the case may require; but as between or amongst such successive owners or employers the assessment in respect of such industry shall, in the absence of an agreement between the respective owners or employers determining the same, be apportionable, as nearly as may be, in accordance with the proportions of the pay rolls of the respective periods of ownership or employment.
- Access to books.** SEC. 70. (1) The board and any member of it, and any officer of the board or person authorized by it for that purpose, shall have the right to examine the books and accounts of any employer and to make such other inquiry as the board may deem necessary for the purpose of ascertaining whether any statement furnished to the board under the provisions of section 68 is an accurate statement of the matters which are required to be stated therein or of ascertaining the amount of the pay roll of any employer, or of ascertaining whether any industry or person is within the scope of this part.
- Affidavits, etc.** (2) Every member of the board and every officer or person authorized by it to make examination or inquiry under this section shall have power and authority to require and to take affidavits, affirmations, or declarations as to any matter of such examination or inquiry, and to take statutory declarations required under section 68; and in all such cases to administer oaths, affirmations, and declarations and certify to the same having been made.
- Inspection of plants.** SEC. 71. The board and any member of it and any officer or person authorized by it for that purpose shall have the right at all reasonable hours to enter into the establishment of any employer and the premises connected with it, and every part of them, for the purpose of ascertaining whether the ways, works, machinery, or appliances therein are safe adequate, and sufficient, and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises, and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the board may deem necessary for the purpose of determining the amount of the assessment of such employer.
- Information confidential.** SEC. 72. No officer of the board and no person authorized to make an inquiry under this part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the board, any information which has been obtained by him or which has come to his knowledge in making, or in connection with, an inspection or inquiry under this part.
- Investment of funds.** SEC. 73. (1) The board may in its discretion invest any part of the accident fund, and under its control in any securities which are under the "trustee act" a proper investment for trust funds, except mortgage on real estate.
- (2) No part of the accident fund, whether so invested or not, shall be subject to any municipal or other tax.
- Regulations.** SEC. 74. (1) The board may make such regulations, approved by the lieutenant governor in council, as may be deemed requisite for the

due administration and carrying out of the provisions of this part, and may likewise prescribe the form and use of such pay rolls, records, reports, certificates, declarations, and documents as may be requisite.

(2) Such regulations, when so approved, shall forthwith be published in the Royal Gazette.

(3) Any such regulation may at any time be revoked or amended by the lieutenant governor in council.

SEC. 75. The board may, by regulation, prescribe penalties for the violation of any of the provisions of this part, or for the breach of any rules, regulations, or orders made under the authority of this act: *Provided*, That such penalties shall be approved by the lieutenant governor in council.

Penalties.

SEC. 76. The penalties imposed by or under the authority of this part shall be recoverable under the summary convictions act or by an action brought by the board in any court of competent jurisdiction, and such penalties when collected shall be paid over to the board, and shall form part of the accident fund.

Recovery.

SEC. 77. (1) Where any association shall make rules for the prevention of accidents in the industry or industries represented by such association, such rules shall, if approved by the board, be binding on all the employers included in the class, subclass, or group represented by such association, whether or not such employers are members of such association.

Rules of associations.

(2) Where an association, under the authority of its rules, appoints one or more inspectors, engineers, or experts for the purpose of accident prevention, the board may pay the salary and necessary expenses of any such inspector, engineer, or expert out of the accident fund and charge the same to the account of the proper class, subclass, or group.

(3) The board may on the application of any association make an allowance to such association to meet any expenses of such association and pay such allowance out of the accident fund and charge the same to the account of the class, subclass, or group represented by such association.

SEC. 78. (1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed, or his death is caused by an industrial disease, and the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments, the workman or his dependents shall be entitled to compensation as if the disease were a personal injury by accident, and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned, unless at the time of entering into the employment he had willfully and falsely represented himself as not having previously suffered from the disease.

Industrial diseases.

(2) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply, if the disease is the result of an injury in respect of which he is entitled to compensation under this part.

SEC. 79. The provisions of this part relating to the organization of the board, the classification of industries, and levying and collecting of assessments, or any of them, shall become effective from and after a day to be named in a proclamation by the lieutenant governor in council; the provisions of this part respecting the payment of compensation and the right of the workmen thereto shall become effective from and after a day to be named in any subsequent proclamation by the lieutenant governor in council; and compensation shall be payable in respect of injuries occurring on and after the day named in such last-mentioned proclamation, on which day also the workmen's compensation for injuries act, being chapter 34 of the acts of the legislative assembly, passed in the fourth year of his present Majesty's reign, and amendments thereto shall stand repealed: *Provided, however*, That an action or proceeding to recover compensation for an injury sustained prior to the date of the last-mentioned proclamation may, before or after such date, be instituted, proceeded with, and maintained under said chapter 34, in the same manner and to the same extent as if said chapter 34 had not been repealed: *Provided also*, The board may

Act in effect.

in its discretion pay compensation to the dependents of any deceased workman who shall have died since the repeal of said chapter 34 in consequence of injuries sustained prior to such repeal if the board shall be satisfied that such dependents have no legal claim against any person or corporation.

PART II.

[This is an employers' liability law for industries, etc., to which part I does not apply.]

Passed April 26, 1918.

ORDERS IN COUNCIL.

Feb'y. 5th, 1919.

Nonresident beneficiaries. An order in council was passed authorizing the board to pay compensation out of the accident fund of the workmen's compensation act, 1918," to a workman or his dependents residing outside of New Brunswick when entitled thereto in case of death or injury within the Province when the laws of such Province, State, or country in which such workman or dependents reside, provide in case of death or injury for payment of compensation corresponding or similar to that provided by Part I of the workmen's compensation act of this Province to a workman or his dependents resident in this Province.

April 17th, 1919.

Added industries. An order in council was passed providing that the following industries be declared to be within the scope of Part I of the act on and after the first day of August, A. D. 1919, viz: "Persons employed in the woods in logging, cutting of timber, pulpwood, firewood, railroad ties or sleepers, or river driving, rafting, booming- or the transportation of logs, timber, pulpwood, firewood, railroad ties or sleepers.

Nov. 5th, 1919.

Added industries. An order in council was passed providing that the following industries be declared to be within the scope of Part I of the act, viz: Teaming, shipbuilding, printing, laundries, wholesale and retail stores (except as provided in subsection (a) of sec. 3 of the act), fishing, canning, plumbing and road making, transportation, handling of hides, coal and wood merchants, hospitals, hotels, and window cleaning.

NOVA SCOTIA.

ACTS OF 1915.

CHAPTER 1.—*Compensation of workmen for injuries.*¹⁴

SECTION 1. This act may be cited as the workmen's compensation act. Title.

SEC. 2. In this act—

(a) "Accident fund" shall mean the fund provided for the payment of compensation, medical aid, outlays, and expenses under Part I of this act. Definitions.

(b) "Association" shall mean any association or body of employers whose constitution shall have been approved by the board as entitling it to represent any of the classes provided for in this act or any subdivision or group of employers in such class.

(c) "Board" shall mean workmen's compensation board.

(d) "Construction" shall include reconstruction, repair, alteration, and demolition.

(e) "Dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death, or who but for the incapacity due to the accident would have been so dependent; but shall not include persons who become dependents by reason of the marriage of the injured workman between the date of the accident and the death of the workman resulting from such accident.

(f) "Employer" includes every person having in his service, under a contract of hiring or apprenticeship, written or oral, expressed or implied, any person engaged in any work in or about an industry within the scope of this act and in respect of any such industry includes municipal corporations, and the Crown as represented by the Province, and may include the Crown as represented by the Dominion of Canada in so far as it may in its capacity of employer submit to the operation of this act.

(g) "Employment" means and refers to the whole or any part of any establishment, undertaking, work, operation, trade or business within the scope of this act, and in the case of any industry not as a whole within the scope of this act includes any department or part of such industry as would if carried on separately be within the scope of this act.

(h) "Industrial disease" shall mean any of the diseases mentioned in the schedule and any other disease which by the regulations is declared to be an industrial disease.

(i) "Industry" shall include establishment, undertaking, work, operation, trade, and business.

(j) "Invalid" shall mean physically or mentally incapable of earning.

(k) "Member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, and half sister, and a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related; and where the workman is the parent or grandparent of an illegitimate child shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents.

(l) "Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials.

¹⁴ With amendments to May 17, 1919.

(m) "Regulations" shall mean regulations made by the board under the authority of this act.

(n) "Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, expressed or implied, whether by way of manual labor or otherwise; and in respect of the industry of mining, shall include a person while he is actually engaged in taking or attending a course of training or instruction in mine-rescue work under the direction or with the approval, expressed or implied, of an employer in whose employment the person is employed as a workman in that industry; and in respect to any industry shall include a person while he is actually engaged in rescuing or protecting or attempting to rescue or protect life or property in the case of an explosion, a fire, or an accident, which endangers either life or property in or about the industry in which such person is employed, and should such person meet with an accident while so engaged, such accident shall be deemed to arise out of and in the course of such person's employment.

(o) [Repealed.]

(p) "Teaming" shall include all kinds of work done by workmen with teams, carts (including handcarts), drays, trucks, cabs, carriages, automobiles, and other vehicles.

(q) "Stevedoring" shall mean the loading or unloading of vessels or railway cars.

PART I.

Industries covered.

SEC. 3. This part shall apply to employers and workmen in or about any operations carried on in a factory, and also to employers and workmen in or about the industries of manufacturing, lumbering, river driving, mining, quarrying, excavation, drilling with diamond drills, fishing, canning, printing, building, construction, engineering, transportation, navigation, stevedoring, rafting of lumber, teaming, horseshoeing, scavenging, street cleaning, handling of hides, painting, decorating, renovating, dyeing and cleaning, the operation of any railway, tramway, telegraph, cable, or telephone system, electric light or power plant or system, gas works, waterworks, sewers, laundries, theaters, packing houses, lumber yards, coal yards, refrigerating or cold-storage plant, warehouses, elevators, boats, ships, tugs, ferries, dredges, and any public utility, and any occupation incidental to or immediately connected with any of the industries or operations mentioned in this section: *Provided*, That subject to sections 5 and 6, this part shall not apply to the following:

Exemptions.

(a) Persons engaged as traveling salesmen.

(b) Persons whose employment is of a casual nature, and who are employed otherwise than for the purposes of the employer's trade or business.

(c) Outworkers.

(d) Persons employed by a city, town, or municipal corporation, as members of a police force or of a fire department.

(e) Members of the family of the employer who reside with the employer.

SEC. 4. [Repealed.]

Admission of other industries.

SEC. 5. (1) Any industry or workman not within the scope of this part by virtue of section 3 may, on the application of the employer, be admitted by the board as being within the scope of this part on such terms and conditions and for such period and from time to time as the board may prescribe, and from and after such admission and during the period of such admission such industry or workman shall be deemed to be within the scope of this part.

(2) Any employer in any industry within the scope of this part may be admitted on such terms and conditions as for such period and from time to time as the board may prescribe, and being entitled, for himself or his dependents as the case may be, to the same compensation as if such employer were a workman within the scope of this part.

(3) Such admission may be made in such manner and form as the board may deem adequate and proper.

Exclusions authorized.

SEC. 6. The board may by regulation exclude from the scope of this part any industry or industries in which not more than a stated num-

ber (fixed by regulation) of workmen, or workmen other than temporary workmen are employed, and may define the meaning of "temporary workmen." The board may from time to time revoke, alter, or modify any such regulation: *Provided*, That any industry so excluded may be readmitted by the board as being within the scope of this part. The board may likewise exclude the mayor, warden, clerk, treasurer, controllers, councillors, and aldermen and other officers of a city, town or municipality, and the president, vice president, directors, and other officers of any company without excluding the other persons in any industry.

SEC. 7. (1) Where, in any industry within the scope of this part, personal injury by accident arising out of and in the course of employment is caused to a workman, compensation as hereinafter provided shall be paid to such workman, or his dependents, as the case may be, except where the injury (a) does not disable the workman for the period of at least seven days from earning full wages at the work at which he was employed; or (b) is attributable solely to the serious and willful misconduct of the workman, unless the injury results in death or serious and permanent disablement.

Compensation to be paid.

Short time disabilities.

Willful misconduct.

(2) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

Presumption.

(3) Where compensation for disability is payable it shall be computed and be payable from the date of the disability.

Payments begin, when.

SEC. 8. (1) Every contract entered into in Nova Scotia whereby the relationship of employer and workman as defined by this act arises in an industry which if carried on in Nova Scotia would be within the scope of Part I, having regard to any regulations made by the board for the exclusion or inclusion of any industry or industries, shall, unless there be an expressed agreement in writing to the contrary signed by the workman, be subject to and be deemed to include the following covenant on the part of the workman with his employer, which covenant shall bind the workman, his heirs, executors, administrators, and assigns as effectually as if made in writing and under seal, viz:

Agreement implied.

WORKMAN'S COVENANT WITH EMPLOYER.

The workman, for valuable consideration and as a condition of his being employed, covenants with the employer that, in the event of an accident happening to such workman while employed elsewhere than in Nova Scotia and while the workman and the industry carried on out of Nova Scotia in which he is so employed are within the scope of part one of the workman's compensation act of Nova Scotia, he will accept the provisions of part one of said act in lieu of all rights and rights of action, statutory or otherwise, which he may have or to which he may become entitled against his employer, and that he will not commence or prosecute any action or other proceeding against his employer, by reason of such accident or any injury resulting therefrom, and that this covenant and section 8 of the workmen's compensation act may be pleaded as a bar to or otherwise made use of to defeat or stay any action or proceeding that the workman may commence against the employer within or without Nova Scotia.

(2) (a) Every contract, entered into in Nova Scotia, whereby the relationship of employer and workman as defined by this act arises, in an industry to which this subsection is made to apply by virtue of subsection (b) hereof, and whereby the workman agrees to perform or by virtue of which he does perform any work or services out of Nova Scotia, shall, unless there be an agreement to the contrary in writing signed by the workman, be deemed to include and be subject to the following covenant on the part of the employer with the workman, which shall bind the employer, his heirs, executors, administrators, successors, and assigns as fully and as effectually as if executed in writing by the employer and under seal, viz:

Same.

EMPLOYER'S COVENANT WITH WORKMAN.

Subject to the provisions of section 8 of the workmen's compensation act the employer, for valuable consideration and as a condition of the workman's consent to perform or of his performing work or services out of Nova Scotia, covenants with the workman that before the workman shall be required or permitted by the employer to perform any work or services out of Nova Scotia in the industries set forth in subsection (b) hereof, he (the employer) shall apply to the workmen's compensation board of Nova Scotia to have the industry in which such workman is employed, admitted as being within the scope of part one of the workmen's compensation act—if the same be not then within the scope of said part—and that the employer shall furnish all information and pay such assessments as may be required to obtain a certificate of admission from the board, and if such industry be so admitted or is at the time within the scope of said part that the employer shall pay all assessments and furnish information required by the board to keep such industry within the scope of said part during the whole period of the workman's employment in such industry, and that if the employer refuses, neglects, or fails to perform any of the foregoing covenants, the workman, and in case of his death his dependents, shall in the event of any accident happening to such workman while employed in such industry, out of Nova Scotia, be entitled to recover in an action from the employer an amount equal to the compensation or the capitalized amount of compensation that would be payable under said act if the industry were within the scope of part one of said act at the time of the accident.

Navigation and fishing.

(b) The foregoing subsection (a) hereof shall apply to the industries of "navigation" and "fishing," and then only to the work or services performed or to be performed by a workman, as an officer or member of the crew of a ship registered in Nova Scotia or operated by an employer residing or having a place of business in Nova Scotia, and for the period that the operations of the ship are confined to the making of voyages or trips between places in Nova Scotia and places in New Brunswick, or Prince Edward Island, or Newfoundland, or to the making of fishing trips or voyages from ports or places in Nova Scotia.

Work outside of Nova Scotia.

(3) An industry carried on out of Nova Scotia shall be within the scope of this part when the board has upon application of the employer, admitted such industry so carried on out of Nova Scotia as being within the scope of this part, and has issued a certificate to that effect, and then only during the period of and subject to the terms stated in such certificate. The admission of such industry and the granting of such certificate shall be in the discretion of the board.

Same.

(4) (a) Where an accident happens while the workman is employed elsewhere than in Nova Scotia, which would entitle him or his dependents to compensation under this part if it had happened in Nova Scotia, the workman or his dependents, as the case may be, shall be entitled to compensation under this part if the industry carried on out of Nova Scotia at the time of the accident is within the scope of this part by virtue of subsection (3) of this section.

Actions at law forbidden.

(b) Section 11 of this act shall apply to the dependents of such workman whose death results from such accident, and the workman or his dependents so far as they are within the jurisdiction of the supreme court of Nova Scotia may be restrained or enjoined from commencing or prosecuting any action or proceeding within or without Nova Scotia, and the production of a certificate from the board that the workman and the industry, in which such workman was employed at the time of the accident, were within the scope of Part I shall be sufficient proof of that fact.

Employer liable, when.

(5) A workman or his dependents, as the case may be, who would be entitled to compensation under this part but for the refusal, neglect, or failure of an employer within the provisions of this section to perform the statutory covenant set forth in said section, shall be entitled to recover compensation from such employer, and such employer shall be personally liable for the payment of compensation to such workman or his dependents as provided by said statutory covenant of the employer and the provisions of this part.

(6) This section shall not apply to such part of an industry as is carried on out of Nova Scotia, nor to a workman engaged therein for the period that such industry and such workman are within the scope and operation of a workmen's compensation act in force in the jurisdiction out of Nova Scotia in which such industry is carried on, and under which the workman, if injured, is required to accept the provisions of that act in lieu of any action against the employer and under which the employer has been or may be compulsorily assessed with respect to such industry. Section not applicable, when.

(7) (a) If, notwithstanding the provisions of this section, the workman or his dependents are, by the law of the country or place in which the accident happens, entitled to proceed by action or other proceedings in any court against the employer personally to recover damages or compensation against the employer in respect of such accident; or (b) if in the opinion of the board the law of such country or place is doubtful in that respect; or (c) if any demand for damages had been made upon or any notice of action has been given to the employer with respect to any accident in respect of which compensation is payable under this part; or (d) if an action or other proceedings in any country or place outside of Nova Scotia has been commenced, no compensation shall be payable under this part in the cases mentioned in (a) and (b) of this subsection, unless an election be first made to claim compensation under the provisions of this part in lieu of all claims and rights under the law of such other country or place, and unless such undertaking be given as the board may require that no action or other proceedings will be commenced against the employer for damages, or to attach or levy upon any property, of the employer in such country or place; and in the cases mentioned in (c) and (d) hereof any compensation that the person making such demand or commencing such action or proceeding would otherwise be entitled to under this part, may be forfeited in whole or in part by the board in its discretion, and the board may pay to the employer such amount, not to exceed the amount forfeited, as was actually paid out by the employer by reason of such action or proceeding. Law of place of injury.

(8) Except as provided by this section, no compensation shall be payable under this part where the accident to the workman happens elsewhere than in Nova Scotia, and the amount of compensation payable under this section to any person residing out of the Province at the time of the accident shall not exceed the amount that would be payable to such person under the laws of the country or place in which the accident happens. Statute limited.

(9) In the case of a nonfatal accident happening to a workman employed on board of any vessel, compensation shall not be payable under this part, for the period that the owner of the vessel is, under the Merchants Shipping Act and amendments thereto or otherwise, liable to defray the expenses of maintenance of the injured workman, and in the case of a fatal accident where the owner of the vessel is liable to pay the expenses of burial, such expenses shall not be payable out of the accident fund. Accidents on vessels.

Sec. 8a. (a) In respect to the industry of fishing, a person who becomes a member of the crew of a ship registered in Nova Scotia under an agreement to prosecute a fishing voyage or voyages in the capacity of a sharesman, or who is described in the shipping article as a sharesman, or who agrees to accept in payment of his services any share or proportion of the proceeds or profits of the venture, with or without other remuneration, shall be considered and deemed to be a workman within the meaning of this part. Fishing.

(b) The owners of or persons operating the ship referred to in (a) hereof shall be deemed to be employers within the meaning of this part.

(c) Members of the crew of such ship who are remunerated for their services in the manner mentioned in (a) hereof shall, for the purposes of assessments under this part, be deemed to earn wages at the rate of \$1.200 a year, and in case of accident where the compensation payable depends upon the earnings or average earnings of such workman, he shall be deemed to earn at the rate of \$1.200 a year.

(d) Assessments paid or payable in respect of such industry shall be borne wholly by the employers.

- Comity.** SEC. 8b. Where it appears that by the laws of any other Province, country, or jurisdiction a workman or his dependents, if resident in Nova Scotia, would be entitled in respect of death or injury in such Province, country, or jurisdiction to compensation (as distinguished from damages) the board may order that payments of compensation under this act may be made to persons resident of such Province, country, or jurisdiction in respect of any workman killed or injured in Nova Scotia: *Provided, however,* That if the compensation payable under the laws of such other Province, country, or jurisdiction be less than the compensation payable under this part, the board may reduce the amount of compensation accordingly: *Provided,* That the board may upon application grant leave from time to time to any workman, or dependent resident in Nova Scotia at the time of the accident, to reside out of Nova Scotia without thereby forfeiting the right to compensation payments under this act. Except as in this section provided, nothing in this act shall entitle any person not resident in Nova Scotia to compensation payments under this part with respect to an accident happening within Nova Scotia.
- Third parties.** SEC. 9. (1) Where an accident happens to a workman in the course of his employment in such circumstances as entitle him or his dependents to an action against some person other than his employer, the workman or his dependents if entitled to compensation under this part may claim such compensation or may bring such action.
 (2) If such workman or his dependents bring such action and less is recovered and collected than the amount of the compensation to which such workman or dependents would be entitled under this act, such workman or dependents shall be entitled to compensation under this part to the extent of the amount or amounts of such difference.
 (3) If such workmen or dependents, or any of them, have claimed compensation under this part, the board shall be subrogated to the position of such workman or dependent as against such other person for the whole or any outstanding part of the claim of such workman or dependent against such other person.
- No action when.** SEC. 10. In any case within the provisions of section 9, subsection (1), neither the workman nor his dependents, nor the employer of such workman, shall have any right of action in respect of such accident against an employer in any industry within the scope of this part; and in any such case where it appears to the satisfaction of the board that a workman of an employer in any class is injured or killed owing to the negligence of an employer or of a workman of an employer in another class within the scope of this part, the board may direct that the compensation awarded in such case shall be charged against the last-mentioned class.
- Remedy exclusive.** SEC. 11. The provisions of this part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependents are or may be entitled against the employer of such workman in or by reason of any accident in respect of which compensation is payable hereunder, and no action in respect to such accident shall lie.
- Waivers.** SEC. 12. It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependents are or may become entitled under this part, and every agreement to that end shall be absolutely void.
- Deductions from wages.** SEC. 13. It shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of any of his workmen any part of any sum which the employer is or may become liable to pay into the accident fund or otherwise under this part, or to require or to permit any of his workmen to contribute in any manner toward indemnifying the employer against any liability which he has incurred or may incur under this part.
- Assignments, etc.** SEC. 14. Unless with the approval of the board, no sum payable as compensation or by way of commutation of any periodical payment in respect of it shall be capable of being assigned, charged, or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it.
- Claim in one year.** SEC. 15. (1) No compensation shall be payable under this part in respect of any injury unless application for such compensation is made within one year after the occurrence of the injury.

(2) Unless a person applying for compensation establish his right thereto to the satisfaction of the board within 15 months from the date of the accident no compensation shall be payable to him under this part with respect to such accident. Proof in 15 months.

SEC. 15a. (1) Every workman entitled to compensation under this part, or who would have been so entitled had he been disabled for seven days, shall be entitled during the period of thirty days from the date of the disability, to such medical and surgical aid and hospital and skilled nursing services as may be necessary as a result of the injury. Medical aid.

(2) In this act "medical aid" shall mean the medical and surgical aid and hospital and skilled nursing services above mentioned.

(3) Such medical aid shall be furnished or arranged for by the board or as it may direct or approve, and shall at all times be subject to the supervision and control of the board, and shall be paid for by the board out of the accident fund or as herein otherwise provided, and such amount as the board may consider necessary shall be included in the assessment levied upon the employers.

(4) All questions as to the necessity, character, and sufficiency of any medical aid furnished or to be furnished shall be determined by the board.

(5) The fees or charges for such medical aid shall be fixed and determined by the board, and no action for any amount larger than that fixed by the board shall lie in respect of any medical aid herein provided for.

(6) It shall not be lawful for any employer, directly or indirectly, to collect or receive or retain from any workman any contribution toward the expense of medical aid, and every person contravening this provision shall, for every such contravention, be liable to a penalty not exceeding \$50 and shall also be liable, upon the order of the board, to reimburse the workman treble the amount of any sum so collected, received, or retained: *Provided*, That it shall not be considered a contravention of this section for the employer to receive or collect a contribution from a workman under any arrangement approved by the board.

(7) Where any employer has now established or hereafter establishes in connection with any industry carried on by him an arrangement for furnishing medical aid to his workmen which in the opinion of the board is at least as favorable to the workmen as that herein provided for, the board, after investigating the facts and considering the wishes of both the workmen and employer, may approve such arrangement, and, pending such investigation, the board may provisionally approve such arrangement, and as long as such approval remains unrevoked such arrangement may be continued in lieu of the medical aid herein provided for, and the employer shall be entitled to such reduction in his rate of assessment as the board shall deem just.

(8) Nothing in this act shall affect any obligation upon the employer under any other statute or any regulation made thereunder.

(9) Employers in any industries in which it is deemed proper may be required by the board to maintain as may be directed by the board such first-aid appliances and services, and such transportation for an injured workman, as the board may direct, and the board may make such order or regulation respecting the same and how the expense thereof shall be borne as may be deemed just.

(10) Where in conjunction with or apart from the medical aid to which workmen are to be entitled free of charge, further or other service or benefit is, or is proposed to be, given or arranged for, any question arising as to whether or to what extent any contribution from workmen is, or would be one prohibited by this act shall be determined by the board.

(11) Every physician, surgeon, and hospital official attending, consulted respecting, or having the care of any workman, shall furnish to the board from time to time, without additional charge, such reports as may be required by the board in respect of such workman.

(12) In the case of any workman employed as a master, mate, engineer, seaman, sailor, steward, fireman, or in any other capacity on board of any vessel on which duty has been paid or is payable for the purpose of the sick mariner's fund under Part V of the "Canada shipping act" being chapter 113 of the Revised Statutes of Canada, 1906, the provisions of subsections (1) to (5) shall not apply to such workman during the period in respect of which such duty has been paid or is payable, or during which the workman is entitled to medical and surgical attendance and other treatment under said act.

(13) It shall not be lawful for a physician, surgeon, or other person, entitled to be paid by the board under this part for any services performed or for any medicines or materials supplied, to make any charge or claim against the injured workman, the employer, or any person, other than the board, for such services, medicines, or materials.

Board created. SEC. 16. There is hereby constituted a commission for the administration of this part to be called "the workmen's compensation board," which shall consist of three members to be appointed by the governor in council, and shall be a body corporate.

Chairman. SEC. 17. (1) One of the commissioners shall be appointed by the governor in council to be the chairman of the board, and he shall hold that office while he remains a member of the board, and another of the commissioners shall be appointed by the governor in council vice chairman of the board.

(2) In the absence of the chairman, or in case of his inability to act, or if there is a vacancy in the office, the vice chairman may act as and shall have all the powers of the chairman.

Appointments pro tempore. SEC. 18. (1) In the case of the death, illness, or absence from Nova Scotia of a commissioner or of his inability to act from any cause, the governor in council may appoint some person to act *pro tempore* in his stead, and the person so appointed shall have all the powers and perform all the duties of a commissioner.

(2) Subsection (1) shall apply in the case of the chairman of the board as well as in the case of any other member of it.

Acts of vice chairman. SEC. 19. Where the vice chairman appears to have acted for or instead of the chairman, it shall be conclusively presumed that he so acted for one of the reasons mentioned in the next preceding subsection.

Term. SEC. 20. Each commissioner shall, subject to section 21, hold office during good behavior, but may be removed at any time for cause.

Retirement age. SEC. 21. Unless otherwise directed by the governor in council, a commissioner shall cease to hold office when he attains the age of 75 years.

Salaries. SEC. 22. The salary of the chairman, of the vice chairman, and of the other commissioner shall be determined by the governor in council, and such salaries shall be payable out of the provincial revenue.

Quorum. SEC. 23. The presence of two commissioners shall be necessary to constitute a quorum of the board.

Same. SEC. 24. A vacancy in the board shall not, if there remain two members of it, impair the authority of such two members to act.

Powers. SEC. 25. The board shall have the like powers as the supreme court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents, and things.

Officers. SEC. 26. The offices of the board shall be situated in the city of Halifax, and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Nova Scotia.

Sittings. SEC. 27. The commissioners shall sit at such times and conduct their proceedings in such manner as they may deem most convenient for the proper discharge and speedy dispatch of business.

Officers. SEC. 28. (1) The board shall appoint a secretary and a chief medical officer, and may appoint such auditors, actuaries, accountants, inspectors, officers, clerks, and servants as the board may deem necessary for carrying out the provisions of this part, and may prescribe their duties, and, subject to the approval of the governor in council, may fix their salaries and pay the same out of the accident fund.

(2) Every person so appointed shall hold office during the pleasure of the board.

SEC. 29. (1) The board may act upon the report of any of its officers, and any inquiry which it shall be deemed necessary to make may be made by any one of the commissioners or by an officer of the board or some other person appointed to make the inquiry, and the board may act upon his report as to the result of the inquiry. Acts of officers.

(2) The person appointed to make the inquiry shall for the purposes of the inquiry have all the powers conferred upon the board by section 25.

SEC. 30. (1) The board shall have jurisdiction to inquire into, hear, and determine all matters and questions of fact and law necessary to be determined in connection with compensation payments and the administration thereof, and the collection and management of the funds therefor. Jurisdiction.

(2) The board may in its discretion invest any funds arising under any provisions of this part, and under its control, in any securities which are under the "trustee act" a proper investment for trust funds.

(3) The funds, investments, and income of the board shall be free every form of taxation.

SEC. 31. (1) Except as stated in subsections (2) and (5) of this section, the decisions and findings of the board upon all questions of law and fact shall be final and conclusive, and in particular, but not so as to restrict the generality of the powers of the board hereunder, the following shall be deemed to be questions of fact: Effect of decisions.

(a) The question whether an injury has arisen out of or in the course of an employment within the scope of this act.

(b) The existence and degree of disability by reason of any injury.

(c) The permanence of disability by reason of any injury.

(d) The degree of diminution of earning capacity by reason of any injury.

(e) The amount of average earnings.

(f) The existence of the relationship of a member of the family as defined by this act.

(g) The existence of dependency.

(h) The character, for the purpose of this act, of any employment, establishment, or department and the class to which such employment, establishment, or department should be assigned.

(i) Whether or not any employee in any industry within the scope of this part is within the scope of this part and entitled to compensation thereunder.

(2) An appeal shall lie to the supreme court in banco from any final decision of the board upon any question as to its jurisdiction or upon any questions of law, but such appeal can be taken only by permission of a judge of the said court, given upon a petition presented to him within fifteen days after the rendering of the decision, and upon such terms as said judge may determine. Notice of such petition shall be given to the board at least two clear days before the presentation of such petition. Appeals.

(3) Where an appeal has been granted, the appeal shall be brought by notice served on the chairman or vice chairman of the board within ten days after the permission to appeal has been granted. The notice shall contain the names of the parties and the date of the order appealed from, and such other particulars as the judge granting the appeal may require.

(4) On the hearing of such appeal any association representing a class interested in the result of the case shall be entitled to appear and be heard.

(5) The board may of its own motion state a case in writing for the opinion of the supreme court in banco upon any question which in the opinion of the board is a question of law.

(6) The supreme court shall hear and determine the question or questions of law arising thereon and remit the matter to the board, with the opinion of the court thereon.

(7) No costs shall be awarded in any appeal or case stated under this section.

SEC. 32. The accounts of the board shall be audited by an auditor appointed by the governor in council for that purpose, and the salary Audits.

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| | or remuneration of such auditor shall be fixed by the governor in council and paid by the board. |
| Reports. | SEC. 33. The board shall on or before the 1st day of March in each year make a report to the provincial secretary of its transactions during the next preceding calendar year, and such report shall contain such particulars as the governor in council may prescribe. |
| Expenses. | SEC. 34. (1) All expenses incurred in the administration of this part shall be paid out of the accident fund. (2) To assist in defraying the expenses incurred in the administration of this part there shall be paid to the accident fund out of the provincial treasury such annual sum, not exceeding \$25,000, as the governor in council may direct. |
| Compensation for death. | SEC. 35. (1) Where death results from an injury the amount of compensation shall be— (a) The necessary expenses of the burial of the workman, not exceeding \$75. (b) Where the widow or an invalid widower is the sole dependent, a monthly payment of \$20. (c) Where the dependents are a widow or an invalid widower and one or more children, a monthly payment of \$20, with an additional monthly payment of \$5 for each child under the age of 16 years, not exceeding in the whole \$40. (d) Where the dependents are children, a monthly payment of \$10 to each child under the age of 16 years, not exceeding in the whole \$40. (e) Where the dependents are persons other than those mentioned in the foregoing clauses, a sum, reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the board, but not exceeding \$20 per month to a parent or parents, and not exceeding in the whole \$30 per month. (f) Where compensation is payable to or for a child under (c) or (d) or under section 37 (2), no additional compensation shall be payable with respect to such child by reason of the subsequent death of a parent, step-parent, or other person standing in loco parentis to such child. (2) In the case provided for in clause (e) of subsection 1, the payments shall continue only so long as in the opinion of the board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependents. (3) Where there are both total and partial dependents the compensation may be allotted partly to the total and partly to the partial dependents. (4) Exclusive of the expenses of burial, the compensation payable as provided by subsection 1 shall not in any case exceed 55 per cent of the average earnings of the workman, and if the compensation payable under that subsection would in any case exceed that percentage it shall be reduced accordingly, and where several persons are entitled to monthly payments the payments shall be reduced proportionately. This subsection shall not apply to compensation payable under clause (c) of subsection (1). (5) Where death results from an injury, any compensation payable with respect to any portion of the period between the date of the injury and the date of the death may be paid by the board to the widow or to such of the dependents of the deceased workman as the board may deem advisable, and in case of minors or persons of unsound mind, payment may be made as provided in section 44. (6) Any compensation payable to a dependent who dies before such compensation is paid may be paid to such member or members of the family of the deceased dependent, or to such person or persons caring or providing for the deceased dependent prior to his or her decease, as the board may deem advisable. |
| Limit of 55 per cent. | SEC. 36. (1) If a dependent widow marries she shall be entitled to have the monthly payments to her continued for a period of two years from the date of the marriage, or in the discretion of the board, to a lump sum equal to such payments, and upon the payment of same all payments of compensation to her shall cease. |
| To whom payments made. | (2) Subsection 1 shall not apply to payments to a widow in respect of a child. |
| Same. | SEC. 37. (1) Payments in respect of a child shall cease when the child attains the age of 16 years or dies. Compensation shall be payable |
| Remarriage of widow. | |
| Exception. | |
| Payments to child. | |

to an invalid child without regard to the age of such child, and payments to such child shall continue so long as in the opinion of the board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of such child.

(2) Where a payment to any one of a number of dependents ceases, the remaining dependents shall be entitled to receive the same compensation as though they had been the only dependents at the time of the death of the workman. This subsection shall not apply where a payment ceases by reason of the remarriage of a widow.

Readjustments.

SEC. 38. Where permanent total disability results from the injury the amount of the compensation shall be a periodical payment during the life of the workman equal to 55 per cent of his average earnings.

Permanent total disability.

(2) The compensation awarded under this section shall not be less than an amount equal to five dollars per week, unless the workman's average earnings are less than five dollars per week, in which case he shall receive compensation in an amount equal to his average earnings.

SEC. 39. (1) Where permanent partial disability results from the injury, the compensation shall be a periodical payment of such amount as the board considers represents 55 per cent of the difference in the earning capacity of the workman before the accident and his earning capacity after the accident, having regard to the degree of disability, the age of the workman, and his average earnings at the time of the accident, and shall be payable during the lifetime of the workman.

Permanent partial disability.

(2) Notwithstanding the provisions of subsection (1), where in the circumstances the amount which the workman is able to earn after the accident has not been diminished, the board may, nevertheless, recognize an impairment of earning capacity.

SEC. 40. (1) Where temporary total disability results from the injury, the compensation shall be the same as that prescribed by section 38, but shall be payable only so long as the disability lasts.

Temporary total disability.

(2) Where temporary partial disability results from the injury, the compensation shall be a periodical payment of 55 per cent of the difference between the average earnings of the workman 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 and shall be payable so long as the disability lasts.

Temporary partial disability.

SEC. 41. "Average earnings" and "earning capacity" shall mean and refer to the average earnings or earning capacity at the time of the injury, and may be calculated upon the daily, weekly, or monthly wages or other regular remuneration which the workman was receiving at the time of the injury, or upon the average yearly earnings of the workman for three years prior to the injury, or upon the probable yearly earning capacity of the workman at the time of the injury as may appear to the board best to represent the actual loss of earnings suffered by the workman by reason of the injury, but not so as in any case to exceed the rate of \$1,200 per year.

Earnings computed, how.

SEC. 42. (1) In fixing the amount of a weekly or monthly payment regard shall be had to any payment, allowance, or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity, or other allowance provided wholly at the expense of the employer.

Other benefits,

(2) Where compensation is payable, any sum deducted from the compensation under subsection (1) may be paid to the employer out of the accident fund.

SEC. 43. (1) Where any workman or dependent is entitled to compensation under this part, he shall file with the board an application for such compensation, together with the certificate of the attending physician, if any, and such further or other proofs of his claim as may be required by the board.

Claims.

(2) It shall also be the duty of every physician or surgeon attending or consulted upon any case of injury to any workman to furnish or cause to be furnished from time to time such reports and in such form as may be required by the board in respect of such injury.

Duty of physician.

(3) It shall be the duty of every physician in attendance upon any injured workman to give all reasonable and necessary information, advice, and assistance to enable such workman or his dependents, as the

Same.

- case may be, to make application for compensation and to furnish such proofs as may be required by the board.
- Accidents to be reported. (4) It shall be the duty of every employer, within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages, to notify the board in writing of the (a) happening of the accident and nature of it; (b) time of its occurrence; (c) name and address of the workman; (d) place where the accident happened; (e) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury; (f) any other particulars required by the board.
- (5) It shall be the duty of the employer to make such further and other reports respecting such accident and workman as may be required by the board.
- Mode, etc., of payments. Sec. 44. (1) Payments of compensation shall be made in such manner and in such form as may appear to the board to be most convenient, and in the case of minors or persons of unsound mind, payments may be made to such persons as, in the opinion of the board, are best qualified in all the circumstances to administer such payment, whether or not the person to whom the payment is made is the legal guardian of such minor or person of unsound mind.
- (2) If a person entitled to compensation is committed to an insane asylum or to any jail or prison, compensation shall not be payable for the period of confinement therein: *Provided*, That the board may pay the whole or any part of the compensation so withheld to any dependent or dependents of the person so confined: *And provided*, That in the case of a person committed to prison for an indictable offence compensation may at the discretion of the board be entirely forfeited.
- Lump sums. Sec. 45. (1) The board may, in its discretion, commute the whole or any part of the payments due or payable to the workman or any beneficiaries for a lump sum in lieu of such payments to be applied as directed by the board.
- (2) The board may, in its discretion, instead of paying any compensation payable in a lump sum, divide the compensation into periodical payments.
- Special medical treatment. (3) Where in any case, in the opinion of the board, it will conserve the accident fund to provide a special surgical operation or other special medical treatment for a workman, and the furnishing of the same by the board is, in the opinion of the board, the only means of avoiding heavy payment for disability, the expense of such operation or treatment may be paid out of the accident fund.
- Review. Sec. 46. (1) The board may reopen, rehear, redetermine, review, or readjust any claim, decision, or adjustment either because an injury has proven more serious or less serious than it was deemed to be, or because a change has occurred in the condition of a workman or in the number, circumstances or condition of dependents or otherwise. And in any case where the board is of opinion that any person entitled to compensation under this part is leading an immoral or improper life, the board shall have power, after due investigation, to withhold or suspend compensation for such period as the board deems proper. Where compensation is so withheld or suspended, it shall be paid to the other dependents, if any, or to such of the other dependents as the board deems advisable.
- Children unlawfully employed. (2) The board may withhold compensation payable to a parent with respect to the death of any child under the age of 14 years where the employment of such child was unlawful by virtue of any statute.
- Minors. Sec. 47. Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six months after the accident, the amount of a periodical payment may be increased to the sum to which he would have been entitled if his average earnings had at the date of the accident been equal to what, if he had not been injured, he would probably have been earning at the date of the review.
- Medical examinations. Sec. 48. (1) The board may from time to time require that any workman applying for or receiving compensation payments shall submit to medical examination by the board or its duly appointed officers;

and in default of such requirement being complied with, may withhold such compensation payments.

(2) The board may require such proof from time to time of the existence and condition of any dependents in receipt of compensation payments as may be deemed by the board necessary.

SEC. 49. The compensation provided for in this act shall be paid out of a fund to be called "the accident fund." Accident fund.

SEC. 50. For the purpose of creating and maintaining the accident fund, all industries within the scope of this part shall, subject to sections 51 and 52, be divided into the following classes: Classes of industries.

Class 1. Lumbering, logging, sawmills, manufacture of pulp or paper.

Class 2. Woodworking, planing mills, furniture factories, piano or organ factories, cooperage.

Class 3. Coal mining.

Class 4. Mining (other than coal), reduction of ores and smelting, quarrying, manufacture of brick or lime.

Class 5. Manufacture of iron and steel, and iron and steel products.

Class 6. Car shops, manufacture of vehicles.

Class 7. Manufacture of compounds, paints, chemicals, liquors, or beverages.

Class 8. Manufacture of leather, leather goods, rubber or rubber goods.

Class 9. Flour milling and handling of grain, canning, pork packing, manufacture of food products, tobacco, and tobacco products.

Class 10. Manufacture of cloth, textiles, and clothing.

Class 11. Printing, lithographing, engraving; manufacture of stationery.

Class 12. Teaming, cartage, warehousing, and storage.

Class 13. Construction of buildings and wooden ships; mason work, structural carpentry, plumbing, and painting.

Class 14. Steel erection, steel bridge building, steel shipbuilding.

Class 15. Road making, sewer construction, excavation.

Class 16. Subaqueous construction, dredging, pile driving.

Class 17. Construction and operation of electric railways, electric power lines, and appliances.

Class 18. Construction and operation of telegraphs and telephones.

Class 19. Construction and operation of steam railways.

Class 20. Navigation and stevedoring.

SEC. 51. The board may by regulation rearrange any of the classes mentioned in section 50 or withdraw from any class, any industry or group of industries included therein, and transfer such industry or group of industries to any other class, or form it into a separate class or may make new classes, or exclude any industry from the operation of Part I, or add any industry to those mentioned in section 3. Adjustment of classes.

SEC. 52. The board shall assign every industry within the scope of this part to its proper class; and where any industry includes several departments assignable to different classes, the board may either assign such industry to the class of its principal or chief department, or may, for the purpose of this act, divide such industry into two or more departments, assigning each of such departments to its proper class. Duty of board.

SEC. 53. [Repealed.]

SEC. 54. (1) The board shall every year assess and levy upon and collect from the employers in each class by an assessment rated upon the pay roll, or otherwise as the board may deem proper, sufficient funds to meet all claims payable during the year; and in case of refusal or neglect to furnish a pay roll, statement, or estimate, the board shall have power to make its own estimate of the amount of the pay roll of such employer for the purpose of making a provisional assessment. Assessments.

(2) The board may fix an amount not to exceed \$5 as the minimum amount of any assessment made under this part upon any employer with respect to any industry carried on by him during any calendar year.

SEC. 55. Separate accounts shall be kept of the amounts collected and expended in respect of every class and of every fund set aside by way of reserve, but for the purpose of paying compensation the accident fund shall, nevertheless, be deemed one and indivisible. Separate accounts.

- Reserves.** SEC. 56. (1) The board may, in addition to the amount actually required in each class for the year, assess, levy, and collect from any class or classes a surcharge or surcharges to be set aside as a reserve or reserves; (a) by way of providing a contingent fund in aid of industries or classes which may become depleted or extinguished; or (b) by way of providing a sinking fund for the capitalization of periodical compensation payments payable in future years; or (c) by way of setting up a reserve fund for the equalizing of assessments; or (d) for the purpose of raising a special fund to be used to meet the loss arising from any disaster or other circumstance which in the opinion of the board would unfairly burden the employers in any class.
- (2) The board may, in respect of any industry or class where it is deemed expedient, assess, levy, and collect in each year a sufficient amount to provide capitalized reserves which shall be deemed sufficient to meet the periodical payments accruing in future years in respect of all accidents during such year.
- (3) Upon any such change being made as provided in section 52, the board may make such adjustment and disposition of the funds, reserves, and accounts of the classes affected as may be deemed just and expedient.
- Employers to pay.** SEC. 57. (1) Every employer shall pay into the accident fund such assessments as may be levied by the board, and if any assessment or any part thereof is not duly paid in accordance with the terms of the levy, the board shall have a right of action against the employer in respect of any amount unpaid, together with costs of such action.
- Form, etc., of assessments.** (2) Assessments may be made in such manner and form, and at such times and by such procedure as the board may deem adequate and expedient, and may be general as applicable to any class or subclass, or special as applicable to any industry or part or department of an industry.
- Temporary industries.** (3) Where an employer engages in any industry within the scope of this part, the board, if of opinion that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the board of a sum, which in the opinion of the board will be sufficient to pay all assessments that the board may make with respect to such industry, and the payment of such amount may be enforced as provided by section 68.
- Defaults.** (4) In any case where an employer makes default in the payment of an assessment, and an execution issued upon a judgment, entered with respect to such assessment, is returned with a certificate from a sheriff or his deputy that he was unable to wholly satisfy the same, and the judgment debtor continues to carry on an industry within the scope of this part in which workmen are employed, any judge of the supreme court, upon an application made on behalf of the board by chambers summons, without the issue of any writ or the commencement of any action, may restrain such judgment debtor from carrying on any industry, within the scope of this part, until the amount due on such execution and all assessments made by the board and the costs of the application be paid.
- Notice of assessments.** SEC. 58. The board shall give notice to each employer, in such manner as may be deemed by the board proper and sufficient, of the amount of the assessments due from time to time in respect of his industry or industries, and the time or times when such assessments are due and payable.
- Employers to pay.** SEC. 59. Notwithstanding any provision of this part respecting estimates of pay rolls and notice to employers, it shall be the duty of every employer, without demand from the board, to cause to be paid to the board the full amount of every assessment assessed or levied in accordance with this part, in respect to workmen in his employ within the scope of this part.
- Subclasses, etc.** SEC. 60. The board may establish such subclassifications, differentials, and proportions in the rates as between the different kinds of employment in the same class as may be deemed just; and where any particular industry is shown to be so circumstanced or conducted that the hazard is greater than the average of the class to which such industry is assigned, the board may impose upon such industry a special rate, differential, or assessment to correspond with the excessive hazard of such industry.

SEC. 61. If in any class the estimated assessment shall prove insufficient, the board may make such further assessments and levies as may be necessary, or may temporarily advance the amount of any deficiency out of any reserve, and may add such amount to any subsequent assessment or assessments.

Added assessments.

SEC. 62. Assessments may, wherever it is deemed expedient, be collected in half-yearly, quarterly, or monthly installments, or otherwise; and where it appears that the funds in any class are sufficient for the time being, any installment may be abated or its collection deferred.

Installments.

SEC. 63. In each year, as soon as the necessary information is obtained, the amount of the assessment for the preceding calendar year shall be adjusted upon the actual requirements of the class and upon the correctly ascertained pay roll of each industry, and the employer shall upon demand of the board forthwith make up and pay to the board any deficiency, or the board shall refund to the employer any surplus, or credit the same upon the succeeding assessment as the case may require.

Adjustments.

SEC. 64. Where in any industry a change of ownership or employer-ship has occurred, the board may levy any part of such deficiency or the amount due upon any assessment on either or any of such successive owners or employers, or pay or credit to any one or more of such owners or employers such surplus as the case may require, but as between or amongst such successive owners or employers the assessment in respect of such employment shall in the absence of an agreement between the respective owners or employers determining the same, be apportionable, as nearly as may be, in accordance with the proportions of the pay rolls of the respective periods of ownership or employment.

Change of ownership.

SEC. 65. In computing and adjusting the amount of the pay roll of any industry, regard shall be had only to such portion of the pay roll as represents workmen and work within the scope of this part, but the board may by regulation exclude the salary or wages of any officer in excess of an amount to be stated in such regulation.

Computing pay roll.

SEC. 66. (1) Every employer shall, on or before a date to be fixed by the governor in council, or whenever thereafter he shall have become an employer within the meaning of this act, or whenever required from time to time by the board so to do, cause to be furnished to the board an estimate or estimates of the probable amount of the pay roll of each of his industries within the scope of this part, together with such further and other information as may be required by the board for the purpose of assigning such industry to the proper class or classes, and of making the assessments hereunder, and shall likewise at or after the close of each calendar year, or at such other times as may be required by the board, furnish certified copies or reports of his pay roll or pay rolls, verified by statutory declaration, for the purpose of enabling the board to adjust and compute the amount of the assessment as provided in section 65.

Estimates to be furnished.

(2) The assessors appointed under the assessment act and the board of assessors for every city shall yearly within ten days after the completion of the assessment roll make a return to the board upon forms provided by the board for the purpose, showing the names, addresses, nature of business, and usual number of employees, if known, of all employers of labor carrying on any industry or business, other than a farming or mercantile business within the district of such assessor, and any other information the board may require.

Duty of assessors.

(3) Within three days after the granting of any building permit in any municipality, city, or town, written notice thereof shall be given to the board by the person whose duty it is to keep a record of such permits.

Public works.

(4) Every employer shall keep in such form and with such detail as may be required for the purposes of this act a careful and accurate account of all wages paid to his employees. And such account shall be kept within the Province and shall be produced to the board or its officers when required.

Wage accounts.

(5) Upon the refusal, neglect, or failure of an employer to furnish verified copies or reports of his pay roll as required by this section, or such statements as the board may require of the actual amount of wages paid and other allowances made to workmen, verified by statutory declaration, or if the employer refuses, neglects or fails to keep or to produce for inspection or for the purpose of being audited, proper and

Violations.

sufficient accounts of all wages paid and other allowances made to workmen, the board, in addition to any penalty for which the employer may be liable may of its own motion make an estimate of the amount of such wages and other allowances, and such estimate of the board shall, except in so far as the board may revise or change same, be final and conclusive for the purpose of making any assessment or of adjusting the amount that such employer should pay.

Who to make reports. (6) Every person, though not an employer, or not an employer carrying on an industry within the scope of this part, shall, whenever required, make a return to the board stating whether he has or has not employed workmen during any period, since January 1st, 1917, that the board may designate, and if he has employed workmen he shall state in such return the nature of the industry in which they were employed, and furnish such other information as the board may require.

Default in assessments. SEC. 67. (1) If an assessment or a special assessment is not paid at the time when it becomes payable the defaulting employer shall be liable to pay and shall pay as a penalty for his default such a percentage upon the amount unpaid, as may be prescribed by the regulations or may be determined by the board, and such percentage may be added to the amount of the assessment and payment enforced as provided by section 68.

Refusing to make statements, etc. (2) Any employer who refuses or neglects to make or transmit any pay roll return or other statement required to be furnished by him under the provisions of section 66, or who refuses or neglects to pay any assessment, special or supplementary assessment, or the provisional amount of any assessment, or any installment or part thereof, shall, in addition to any penalty or other liability to which he may be subject, pay to the board the full amount or capitalized value, as determined by the board, of the compensation payable in respect of any accident to a workman in his employ which happens during the period of such default, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

(3) The board, if satisfied that such default was excusable, may in any case relieve such employer in whole or in part from liability under this section.

Collection of assessments. SEC. 68. Where default is made in the payment of any assessment or any part thereof, or where it is provided by any other section of this part that an amount or payment may be recovered or enforced in the same manner as an assessment or as provided by section 68, the board may issue its certificate, stating that the assessment was made, or the matter with respect to which the amount is due or payable, the amount remaining unpaid on account thereof, and the person by whom it was payable, and such certificate, or a copy of it certified by the secretary of the board to be a true copy, may be filed with a clerk of any county court, or with any prothonotary of the supreme court, and when so filed and sealed with the seal of such court shall become an order of that court, upon which judgment may be entered against such person for the amount mentioned in the certificate, together with the fees of the clerk or prothonotary allowable in the case of a default judgment, and such judgment may be enforced by execution or otherwise as any other judgment of the court, and such courts shall have jurisdiction with respect to the amount mentioned in such certificate whatever it may be.

Access to books. SEC. 69. The board and any member of it, and any officer of the board or person authorized by it for that purpose, shall have the right to examine the books and accounts of the employer and to make such other inquiry as the board may deem necessary for the purpose of ascertaining whether any statement furnished to the board under the provisions of section 66 is an accurate statement of the matters which are required to be stated therein or of ascertaining the amount of the pay roll of any employer, or of ascertaining whether any industry or person is under the operation of this part.

Powers as to oaths, etc. SEC. 70. Every member of the board and every officer or person authorized by it to make any examination or inquiry under this act shall have power and authority to require and to take affidavits, affirmations, or declarations as to any matter of such examination or inquiry, and to take statutory declarations required under section 66; and in all such cases to administer oaths, affirmations, and declarations and certify to the same having been made.

SEC. 71. The board and any member of it and any officer or person authorized by it for that purpose shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund and the premises connected with it, and every part of them, for the purpose of ascertaining whether the ways, works, machinery, or appliances therein are safe, adequate, and sufficient, and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises, and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the board may deem necessary for the purpose of determining the proportion in which such employer should contribute to the accident fund.

Inspection of
premises.

SEC. 72. No officer of the board and no person authorized to make an inquiry under this part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the board, any information obtained by him or which has come to his knowledge in making or in connection with an inspection or inquiry under this part.

Information
confidential.

SEC. 73. Where any work within the scope of this part is performed under contract for any municipal corporation or public service commission, any assessment in respect of such work may be paid by such corporation or commission as the case may be, and the amount of such assessment may be deducted from any moneys due the contractor in respect of such work.

Public works.

SEC. 74. (1) Where any work within the scope of this part is undertaken for any person by a contractor, both the contractor and the person for whom such work is undertaken shall be liable for the amount of any assessment in respect thereof, and such assessment may be levied upon and collected from either of them or partly from one and partly from the other: *Provided*, That in the absence of any term in the contract to the contrary the contractor shall, as between himself and the person for whom the work is performed, be primarily liable for the amount of such assessment.

Contractors.

(2) Where any work within the scope of this part is performed under subcontract, both the contractor and the subcontractor shall be liable for the amount of the assessments in respect of such work; and such assessments may be levied upon and collected from either, or partly from one and partly from the other; *Provided*, That in the absence of any term in the subcontract to the contrary, the subcontractor shall be primarily liable for such assessments.

(3) Any contractor or subcontractor who is not assessed with respect to the work carried on by him as such contractor or subcontractor, and the workmen of such contractor or subcontractor may be considered workmen of the principal with respect to any industry within the scope of this part.

SEC. 75. In the case of a work or service performed by an employer in any of the industries within the scope of this part for which the employer would be entitled to a lien under the mechanics' lien act, it shall be the duty of the owner as defined by that act to see that any sum which the employer is liable to contribute to the accident fund is paid, and if any such owner fails to do so he shall be personally liable to pay it to the board, and the board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

Mechanics'
liens.

SEC. 76. (1) There shall be included among the debts which under "the assignments act," "the companies' winding-up act," and "the trustee act," are, in the distribution of the property in the case of an assignment or death or in the distribution of the assets of a company being wound up under the said acts, respectively, to be paid in priority to all other debts, the amount of any assessment the liability whereof accrued before the date of the assignment or death or before the date of the commencement of the winding up, and the said acts shall have effect accordingly.

Preference
assessments.

(2) The amount of any assessment and any judgment with respect to same shall be a first lien upon all the property, real, personal, or mixed, used in or in connection with the industry with respect to which the employer is assessed, subject only to municipal taxes, and

the amount levied under execution upon any such judgment to the extent of the amount due upon such execution shall forthwith be paid by the sheriff or his deputy to the workmen's compensation board. This subsection shall apply to all assessments made or payable after January 1st, 1917.

(3) The words "amount of any assessment and any judgment with respect to same," in the first and second lines of the foregoing subsection (2), shall include any percentage payable under the authority of section 67, subsection (1) of chapter 1 of the Acts of 1915, as amended by section 17 of chapter 45 of the Acts of 1918, and the amount due upon any judgment entered in the manner provided by section 68 of chapter 1 of the Acts of 1915 as amended by section 18 of chapter 45 of the acts of 1918.

Regulations.

SEC. 77. The board may make such regulations as may be deemed requisite for the due administration and carrying out of the provisions of this part, and may prescribe the form and use of such pay rolls, records, reports, certificates, declarations, and documents as may be requisite.

Penalties.

SEC. 78. The board may prescribe penalties for the violation of any of the provisions of this act, or for the breach of any rules, regulations, or orders made under the authority of this act, provided that such penalties shall be approved by the governor in council.

Recovery.

SEC. 79. The penalties imposed by or under the authority of this part shall be recoverable under the summary convictions act, or by an action brought by the board, in any court of competent jurisdiction, and such penalties when collected shall be paid over to the board, and shall form part of the accident fund.

Rules of associations.

SEC. 80. (1) Where any association shall make rules for the prevention of accidents in the industry or industries represented by such association, such rules shall, if approved by the board, be binding on all the employers included in the class, subclass, or group represented by such association, whether or not such employers are members of such association.

(2) Where an association under the authority of its rules, appoints one or more inspectors, engineers, or experts for the purpose of accident prevention, the board may pay the salary and necessary expenses of any such inspector, engineer, or expert out of the accident fund and charge the same to the account of the proper class, subclass, or group.

(3) The board may on the application of any association make an allowance to such association to meet any expenses of such association and pay such allowance out of the accident fund and charge the same to the account of the class, subclass, or group represented by such association.

Industrial diseases.

SEC. 81. (1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed, or his death is caused by an industrial disease, and the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments, the workman or his dependents shall be entitled to compensation as if the disease were a personal injury by accident and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned, unless at the time of entering into the employment he had willfully and falsely represented himself as not having previously suffered from the disease.

(2) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of the schedule hereto, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

(3) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply, if the disease is the result of an injury in respect of which he is entitled to compensation under this part.

Act in effect.

SEC. 82. The provisions of this part relating to the organization of the board, the classification of industries, and levying and collecting of assessments, or any of them, shall become effective from and after

a day to be named in a proclamation by the governor in council: The provisions of this part respecting the payment of compensation and the right of the workman thereto shall become effective from and after a day to be named in any subsequent proclamation by the governor in council, and compensation shall be payable in respect of injuries occurring on and after the day named in such last-mentioned proclamation, on which day also the workmen's compensation act, chapter 3 of the Acts of 1910, and amendments thereto, shall stand repealed.

Sec. 83. This part shall not apply to farm laborers, or domestic or menial servants, or their employers. Exemptions.

PART II.

[This is a liability statute for industries not under PART I.]

SCHEDULE OF INDUSTRIAL DISEASES.

| Description of diseases. | Description of process. |
|---|---|
| Anthrax | Handling of wool, hair, bristles, hides, and skins. |
| Lead poisoning or its sequelæ. | Any process involving the use of lead or its preparations or compounds. |
| Mercury poisoning or its sequelæ. | Any process involving the use of mercury or its preparations or compounds. |
| Phosphorus poisoning or its sequelæ. | Any process involving the use of phosphorus or its preparations or compounds. |
| Arsenic poisoning or its sequelæ. | Any process involving the use of arsenic or its preparations or compounds. |
| Ankylostomiasis | Mining. |
| Subcutaneous cellulitis of the hand (beat hand) | Mining. |
| Subcutaneous cellulitis over the patella (miners' beat knee). | Mining. |
| Acute bursitis over the elbow (miners' beat elbow). | Mining. |

Passed April 23, 1915.

ONTARIO.
ACTS OF 1914.

(4 George V.)

CHAPTER 25.—*Compensation of workmen for injuries.*¹⁵

| | |
|--------------|--|
| Title. | SECTION 1. This act may be cited as the workmen's compensation act. |
| Definitions. | SEC. 2. (1) In this act— (a) "Accident" shall include a willful and an intentional act, not being the act of the workman and a fortuitous event occasioned by a physical or natural cause. (b) "Accident fund" shall mean the fund provided for the payment of compensation, outlays and expenses under this act in respect of schedule 1. (c) "Board" shall mean workmen's compensation board. (d) "Construction" shall include reconstruction, repair, alteration, and demolition. (e) "Dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who but for the incapacity due to the accident would have been so dependent. (f) "Employer" shall include every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry, and where the services of a workman are temporarily let or hired to another person by the person with whom the workman has entered into such a contract the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person. (g) "Employment" shall include employment in an industry or any part, branch, or department of an industry. (h) "Industrial disease" shall mean any of the diseases mentioned in schedule 3, and any other disease which by the regulations is declared to be an industrial disease. (i) "Industry" shall include establishment, undertaking, trade, and business. (j) "Invalid" shall mean physically or mentally incapable of earning. (k) "Manufacturing" shall include making, preparing, altering, repairing, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any article or commodity. (l) "Medical referee" shall mean medical referee appointed by the board. (m) "Member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother and half sister, and a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents. (n) "Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials. (o) "Regulations" shall mean regulations made by the board under the authority of this act. |

¹⁵ With amendments to 1919, inclusive.

(p) "Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labor, or otherwise, but when used in Part I shall not include an outworker, or an executive officer of a corporation.

(2) The exercise and performance of the powers and duties of (a) a municipal corporation; (b) a public utilities commission; (c) any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation; (d) the board of trustees of a police village; and (e) a school board, shall for the purposes of Part I be deemed the trade or business of the corporation, commission, board of trustees, or school board, but the obligation to pay compensation under Part I shall apply only to such part of the trade or business as, if it were carried on by a company or an individual, would be an industry for the time being included in schedule 1 or schedule 2, and to workmen employed in or in connection therewith.

PART I.

Sec. 3. (1) Where in any employment to which this part applies personal injury by accident arising out of and in the course of the employment is after a day to be named by proclamation of the lieutenant governor in council caused to a workman his employer shall be liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned except where the injury (a) does not disable the workman for the period of at least seven days from earning full wages at the work at which he was employed; or (b) is attributable solely to the serious and willful misconduct of the workman unless the injury results in death or serious disablement.

(2) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

(3) Where compensation for disability is payable it shall be computed and be payable from the date of the disability.

(4) This section shall not apply to a person whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business.

Sec. 4. Employers in the industries for the time being included in schedule 2 shall be liable individually to pay the compensation.

Sec. 5. Employers in the industries for the time being included in schedule 1 shall be liable to contribute to the accident fund as hereinafter provided, but shall not be liable individually to pay the compensation.

Sec. 6. (1) Where an accident happens while the workman is employed elsewhere than in Ontario, which would entitle him or his dependents to compensation under this part if it had happened in Ontario, the workman or his dependents shall be entitled to compensation under this part (a) if the place or chief place of business of the employer is situate in Ontario, and the residence and the usual place of employment of the workman are in Ontario, and his employment out of Ontario has lasted less than six months; or (b) if the accident happens on a steamboat, ship or vessel, or on a railway, and the workman is a resident of Ontario and the nature of the employment is such that in the course of the work or service which the workman performs it is required to be performed both within and without Ontario.

(2) Except as provided by subsection 1, no compensation shall be payable under this part where the accident to the workman happens while his place of employment is elsewhere than in Ontario.

(3) Compensation payable in respect of an accident happening elsewhere than in Ontario shall, except where the employer has fully contributed to the accident fund in respect of all the wages of workmen in his employ who are engaged in the business or work in which the accident happens, be paid by the employer individually, and the business or work carried on elsewhere than in Ontario by an employer who has not so contributed to the accident fund shall be deemed to be in schedule 2.

Public employ-
ments.

Compensation.

Short time in-
juries.
Willful miscon-
duct.

Presumptions.

Payment for
full time.

Casual employ-
ment.

Employers lia-
ble.

Payments to
fund.

Accidents out-
side Province.

- Employee elect.** to **SEC. 7.** (1) Where by the law of the country or place in which the accident happens the workman or his dependents are entitled to compensation in respect of it they shall be bound to elect whether they will claim compensation under the law of such country or place or under this part and to give notice of such election, and if such election is not made and notice given it shall be presumed that they have elected not to claim compensation under this part.
- (2) Notice of the election, where the compensation under this part is payable by the employer individually, shall be given to the employer, and where the compensation is payable out of the accident fund to the board and shall be given in both cases within three months after the happening of the accident, or in case it results in death, within three months after the death or within such longer period as either before or after the expiration of such three months the board may allow.
- Nonresident beneficiaries.** **SEC. 8.** (1) Where a dependent is not a resident of Ontario he shall not be entitled to compensation unless by the law of the place or country in which he resides the dependents of a workman to whom an accident happens in such place or country if resident in Ontario would be entitled to compensation, and where such dependents would be entitled to compensation under such law the compensation to which the non-resident dependent shall be entitled under this part shall not be greater than the compensation payable in the like case under that law.
- Exception.** (2) Notwithstanding the provisions of subsection 1 the board may award such compensation or sum in lieu of compensation to any such nonresident dependent as may be deemed proper, and may pay the same out of the accident fund, or order it to be paid by the employer, as the case may be.
- Alien enemies.** (3) No resident of an enemy country, or of a country voluntarily withdrawn from alliance with the British Empire during the great war, or of a country in default of establishing peaceful and harmonious relations with the British Empire, shall be entitled to compensation under this act.
- Third persons.** **SEC. 9.** (1) Where an accident happens to a workman in the course of his employment under such circumstances as entitle him or his dependents to an action against some person other than his employer the workman or his dependents if entitled to compensation under this part may claim such compensation or may bring such action.
- (2) If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependents are entitled under this part the difference between the amount recovered and collected and the amount of such compensation shall be payable as compensation to such workman or his dependents.
- (3) If the workman or his dependents elect to claim compensation under this part the employer, if he is individually liable to pay it, and the board if the compensation is payable out of the accident fund shall be subrogated to the rights of the workman or his dependents and may maintain an action in his or their names against the person against whom the action lies and any sum recovered from him by the board shall form part of the accident fund.
- (4) The election shall be made and notice of it shall be given within the time and in the manner provided by section 7.
- Third person under act.** (5) No employer in schedule 1 and no workman of an employer in schedule 1 or dependent of such workman shall have a right of action against any employer in schedule 1 in any case within the provisions of subsection 1, but in any case where it appears to the satisfaction of the board that a workman of an employer in any class in schedule 1 is injured or killed owing to the negligence of an employer or the workman of an employer in another class in schedule 1, the board may direct that the compensation awarded in any such case shall be charged against the class to which such last-mentioned employer belongs.
- Contractors.** **SEC. 10.** (1) The workman of a contractor or subcontractor executing any work in or for the purposes of an industry under Part I of this act, carried on by another person, in this section referred to as the principal, shall be deemed to be the workman of the principal unless and until such contractor or subcontractor is, in respect of such work, assessed, or added and assessed, as the case may be, as an employer in schedule 1, or, in cases where such contractor or subcontractor is, in respect of such work, individually liable for payment of compensation, unless and until

the board finds and declares that the responsibility of such contractor or subcontractor is sufficient protection to his workmen for the benefits provided for by the act.

(2) Where a principal has made payment of assessment or compensation or furnished medical aid which but for subsection 1 he would not have been liable to pay or furnish, he shall be entitled to reimbursement from the contractor or subcontractor to such extent as the board finds such contractor or subcontractor would have been liable.

(3) Where a person, whether carrying on an industry included in schedule 1 or not, in this section referred to as the principal, 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 any work for the principal, it shall be the duty of the principal to see that any sum which the contractor or any subcontractor is liable to contribute to the accident fund is paid, and if any such principal fails to do so he shall be personally liable to pay it to the board, and the board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

Principal liable.

(4) [Repealed.]

(5) Where the principal is liable to make payment to the board under subsection 3 he shall be entitled to be indemnified by any person who should have made such payment and shall be entitled to withhold out of any indebtedness due to such person a sufficient amount to answer the same, and all questions as to the right to and the amount of any such indemnity shall be determined by the board.

Recoupment.

(6) Nothing in this section shall prevent a workman claiming compensation or the board collecting contribution to the accident fund from the contractor or any subcontractor instead of the principal.

Rights of workmen.

SEC. 11. Where compensation is payable out of the accident fund, a member of the family of an employer, or the dependents of such member, shall not be entitled to compensation unless such member was at the time of the accident carried on the pay roll of the employer and his wages were included in the then last statement furnished to the board under section 78 nor for the purpose of determining the compensation shall his earnings be taken to be more than the amount of his wages, as shown by such pay roll and statement.

Members of employers' family.

SEC. 12. Where compensation is payable out of the accident fund and an employer carries himself on his pay roll or an executive officer of a corporation is carried on the pay roll of the corporation at a salary or wage which the board deems reasonable, but not exceeding the rate of \$2,000 per annum, and it is stated in the pay-roll statement furnished to the board under section 78 that it is desired that such employer or executive officer shall be included as a workman, and the amount of his salary or wages is shown in the said statement and included in the estimate for the year, such employer or executive officer shall be deemed to be a workman within the meaning of this act, and he or his dependents shall be entitled to compensation accordingly, but for the purpose of determining the compensation his earnings shall not be taken to be more than the amount of his salary or wages as shown by such pay roll and statement.

Insurance of employer.

SEC. 13. No action shall lie for the recovery of the compensation whether it is payable by the employer individually or out of the accident fund, but all claims for compensation shall be heard and determined by the board.

Suits forbidden.

SEC. 14. If a workman receiving a weekly or other periodical payment ceases to reside in Ontario he shall not thereafter be entitled to receive any such payment unless a medical referee certifies that the disability resulting from the injury is likely to be of a permanent nature and if a medical referee so certifies and the board so directs the workman shall be entitled quarterly to the amount of the weekly or other periodical payments accruing due if he proves in such manner as may be prescribed by the regulations his identity and the continuance of the disability in respect of which the same is payable.

Beneficiary leaving Province.

SEC. 15. (1) The provisions of this part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependents are or may be entitled against the employer of such workman for or by reason of any accident happening to him on or after the first day

Remedy exclusive.

of January, 1915, while in the employment of such employer, and no action in respect thereof shall lie.

(2) Any party to an action may apply to the board for adjudication and determination of the question of the plaintiff's right to compensation under this part, or as to whether the action is one the right to bring which is taken away by this part, and such adjudication and determination shall be final and conclusive.

Waivers.

SEC. 16. It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependents are or may become entitled under this part, and every agreement to that end shall be absolutely void.

Agreements to be approved.

SEC. 17. (1) Where the compensation is payable by an employer individually no agreement between a workman or dependent and the employer for fixing the amount of the compensation or by which the workman or dependent accepts or agrees to accept a stipulated sum in lieu or in satisfaction of it shall be binding on the workman or dependent unless it is approved by the board.

(2) Subsection 1 shall not apply to compensation for temporary disability lasting for less than four weeks, but in such cases the board may, on the application of the workman or dependent, or of its own motion, set aside the agreement on such terms as may be deemed just.

(3) Nothing in this section shall be deemed to authorize the making of any such agreement except with respect to an accident that has happened and the compensation to which the workman or dependent has become entitled because of it.

Deductions from wages.

SEC. 18. (1) It shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of any of his workmen any part of any sum which the employer is or may become liable to pay to the workman as compensation under this part or to require or to permit any of his workmen to contribute in any manner toward indemnifying the employer against any liability which he has incurred or may incur under this part.

Penalty.

(2) Every person who contravenes any of the provisions of subsection 1 shall for every such contravention incur a penalty not exceeding \$50, and shall also be liable to repay to the workman any sum which has been so deducted from his wages or which he has been required or permitted to pay in contravention of subsection 1.

Assignments, etc.

SEC. 19. Unless with the approval of the board no sum payable as compensation or by way of commutation of any weekly or other periodical payment in respect of it shall be capable of being assigned, charged, or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it.

Notice of accident.

SEC. 20. (1) Subject to subsection 5 compensation shall not be payable unless notice of the accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured and unless the claim for compensation is made within six months from the happening of the accident, or in case of death within six months from the time of death.

(2) The notice shall give the name and address of the workman, and shall be sufficient if it states in ordinary language the cause of the injury and where the accident happened.

(3) The notice may be served by delivering it at or sending it by registered post addressed to the place of business or the residence of the employer, or where the employer is a body of persons, corporate or unincorporate, by delivering it at or sending it by registered post addressed to the employer at the office, or if there are more offices than one, at any of the offices of such body of persons.

(4) Where the compensation is payable out of the accident fund the notice shall also be given to the board by delivering it to or at the office of the secretary or by sending it to him by registered post addressed to his office.

(5) Failure to give the prescribed notice or to make such claim or any defect or inaccuracy in a notice shall not bar the right to compensation if in the opinion of the board the employer was not prejudiced thereby or where the compensation is payable out of the accident fund if the board is of opinion that the claim for compensation is a just one and ought to be allowed.

Sec. 21. (1) A workman who claims compensation, or to whom compensation is payable under this part, shall, if so required by his employer, submit himself for examination by a duly qualified medical practitioner provided and paid for by the employer, and shall, if so required by the board, submit himself for examination by a medical referee. Medical examinations.

(2) A workman shall not be required at the request of his employer to submit himself for examination otherwise than in accordance with the regulations.

Sec. 22. (1) Where a workman has upon the request of his employer submitted himself for examination, or has been examined by a duly qualified medical practitioner selected by himself, and a copy of the report of the medical practitioner as to the workman's condition has been furnished in the former case by the employer to the workman and in the latter case by the workman to the employer, the board may, on the application of either of them, refer the matter to a medical referee. Referees.

(2) The medical referee to whom a reference is made under the next preceding subsection, or who has examined the workman by the direction of the board under subsection 1 of section 21, shall certify to the board as to the condition of the workman and his fitness for employment, specifying where necessary the kind of employment, and if unfit, the cause of such unfitness, and his certificate, unless the board otherwise directs, shall be conclusive as to the matters certified.

(3) If a workman does not submit himself for examination when required to do so as provided by subsection 1 of section 21, or on being required to do so does not submit himself for examination to a medical referee under that subsection or under subsection 1 of this section, or in any way obstructs any examination, his right to compensation, or if he is in receipt of a weekly or other periodical payment his right to it shall be suspended until such examination has taken place. Obstructing, etc., examination.

Sec. 22a. Where in any case, in the opinion of the board, it will be in the interest of the accident fund to provide a special surgical operation or other special medical treatment for a workman, and the furnishing of the same by the board is in the opinion of the board the only means of avoiding heavy payment for permanent disability, the expense of such operation or treatment may be paid out of the accident fund. Special medical treatment.

Sec. 23. Any weekly or other periodical payment to a workman may be reviewed at the request of the employer or of the workman, if the compensation is payable by the employer individually, or, if the compensation is payable out of the accident fund, of the board's own motion or at the request of the workman, and on such review the board may put an end to or diminish or may increase such payment to a sum not beyond the maximum hereinafter prescribed. Review.

Sec. 24. Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six months after the accident the amount of a weekly payment may be increased to the sum to which he would have been entitled if his average earnings had at the date of the accident been equal to what if he had not been injured he would probably have been earning at the date of the review. Minors.

Sec. 25. (1) Where the compensation is payable by an employer individually, the employer may, with the consent of the workman or dependent to whom it is payable and with the approval of the board, but not otherwise, and where it is payable out of the accident fund, the board may commute the weekly or other periodical payments payable to a workman or a dependent for a lump sum. Lump sums.

(2) Where the lump sum is payable by the employer individually it shall be paid to the board.

(3) The lump sum may be (a) applied in such manner as the workman or dependent may direct; (b) paid to the workman or dependent; (c) invested by the board and applied from time to time as the board may deem most for the advantage of the workman or dependent; (d) paid to trustees, to be used and employed upon and subject to such trusts and for the benefit of such persons as, in case it is payable by the employer individually, the workman or dependent directs and the board approves, or, if payable out of the accident fund, as may be

desired by the workman or dependent and approved by the board; (e) applied partly in one and partly in another or others of the modes mentioned in clauses (a), (b), (c), and (d), as the board may determine.

(4) Where the compensation is payable out of the accident fund the board may, in any case where in its opinion the interest or pressing need of the workman or dependent warrants it, advance or pay to or for the workman or dependent such lump sum as the circumstances warrant and as the board may determine.

Lump sums.

SEC. 26. (1) Where a weekly or other periodical payment is payable by the employer individually and has been continued for not less than six months, the board may on the application of the employer allow the liability therefor to be commuted by the payment of a lump sum of such an amount as, if the disability is permanent, would purchase an immediate annuity from a life insurance company approved by the board equal to seventy-five per cent of the annual value of the weekly or other periodical payments, and in other cases of such an amount as the board may deem reasonable.

(2) The sum for which a payment is commuted under subsection 1 shall be paid to the board and shall be dealt with in the manner provided by section 25.

Duty of insurance company.

SEC. 27. (1) Where an employer insured by a contract of insurance of an insurance company or any other underwriter is individually liable to make a weekly or other periodical payment to a workman or his dependents and the payment has continued for more than six months the liability shall, if the board so directs before the expiration of twelve months from the commencement of the disability of the workman or his death, if the accident resulted in death, be commuted by the payment of a lump sum in accordance with the next preceding section, and the company or underwriter shall pay the lump sum to the board and it shall be dealt with in the manner provided by section 25.

(2) This section shall not apply to a contract of insurance entered into before the passing of this act.

Deposits by employers.

SEC. 28. The board may require an employer who is individually liable to pay the compensation to pay to the board a sum sufficient to commute in accordance with section 26 any weekly or other periodical payments which are payable by the employer, and such sum shall be applied by the board in the payment of such weekly or other periodical payments as they from time to time become payable, but if the sum paid to the board is insufficient to meet the whole of such weekly or other periodical payments the employer shall nevertheless be liable to make such of them as fall due after the sum paid to the board is exhausted, and if the sum paid is more than sufficient for that purpose the excess shall be returned to the employer when the right to compensation comes to an end unless otherwise ordered by the board.

Insurance.

SEC. 29. The board may require an employer who is individually liable to pay the compensation to insure his workmen and keep them insured against accidents in respect of which he may become liable to pay compensation in a company approved by the board for such amount as the board may direct, and in default of his doing so the board may cause them to be so insured and may recover the expense incurred in so doing from the employer in the same way as payment of assessments may be enforced.

Payments to board.

SEC. 30. (1) Where an employer who is individually liable to pay the compensation is insured against his liability to pay compensation, the board may require the insurance company or other underwriter to pay the sum which under the contract of insurance such company or underwriter would be liable to pay to the employer in respect of an accident to a workman who becomes, or whose dependents become, entitled to compensation under this part directly to the board in discharge or in discharge pro tanto of the compensation to which such workman or his dependents are found to be entitled.

(2) In any case to which subsection 1 applies where a claim for compensation is made notice of the claim shall be given to the insurance company or other underwriter and to the employer, and the board shall determine not only the question of the right of the workman or dependent to compensation but also the question whether the whole or

any part of it should be paid directly by the insurance company or other underwriter as provided by subsection 1.

(3) Section 25 shall apply to the compensation payable to the board under subsection 1.

SEC. 31. (1) Where the accident causes permanent disability, either total or partial, or the death of the workman and the compensation is payable by the employer individually the board may require the employer to pay to the board such sum as in its opinion will be sufficient, with the interest thereon if invested so as to earn interest at the rate of 5 per cent per annum, to meet the future payments to be made to the workman or his dependents, and such sum when paid to the board shall be invested by it and shall form a fund to meet such future payments.

Capital sums.

(2) The board, instead of requiring the employer to make the payment provided for by subsection 1, may require him to give such security as the board may deem sufficient for the future payments.

Security.

SEC. 31a. The board may, where it deems it requisite for the prompt payment of claims, require any employer in schedule 2 to make deposits of money with the board from time to time, out of which the board may pay compensation for accidents to workmen of such employer as they occur.

Deposits.

SEC. 32. Where a right to compensation is suspended under the provisions of this part no compensation shall be payable in respect of the period of suspension.

Suspension.

SEC. 33. (1) Where death results from an injury, the amount of the compensation shall be—

Compensation for death.

(a) The necessary expenses of the burial of the workman, not exceeding \$75.

(b) Where the widow or an invalid husband is the sole dependent, a monthly payment of \$30.

(c) Where the dependents are a widow or an invalid husband and one or more children, a monthly payment of \$30, with an additional monthly payment of \$7.50, to be increased upon the death of the widow or invalid husband to \$10, for each child under the age of 16 years, not exceeding in the whole \$60.

(d) Where the dependents are children, a monthly payment of \$10 to each child under the age of 16 years, not exceeding in the whole \$60.

(e) Where the dependents are persons other than those mentioned in the foregoing clauses, a sum reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the board, but not exceeding to the parents or parent \$20 per month, and not exceeding in the whole \$30 per month.

(2) In the case provided for by clause (e) of subsection 1, the payments shall continue only so long as in the opinion of the board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependents, and in any case under the said clause compensation may be made wholly or partly in a lump sum or by such form of payment as the board in the circumstances deems most suitable.

(2a) A dependent to whom the workman stood in loco parentis or a dependent who stood in loco parentis to the workman shall be entitled, as the board may determine, to share in or receive compensation under clause (c), clause (d), or clause (e).

(2b) Compensation shall be payable to an invalid child without regard to the age of such child, and payments to such child shall continue so long as in the opinion of the board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of such child.

(3) Where there are both total and partial dependents the compensation may be allotted partly to the total and partly to the partial dependents.

(4) Where the board is of opinion that for any reason it is necessary or desirable that a payment in respect of a child should not be made directly to its parent, the board may direct that the payment be made to such person or be applied in such manner as the board may deem most for the advantage of the child.

(5) Exclusive of the expenses of burial of the workman, the compensation payable as provided by subsection 1 shall not in any case

Maximum of 55 per cent.

- exceed 55 per cent of the average monthly earnings of the workman mentioned in section 37, and if the compensation payable under that subsection would in any case exceed that percentage it shall be reduced accordingly, and where several persons are entitled to monthly payments the payments shall be reduced proportionately.
- Minimum monthly payments.** (6) Subsection 5 shall not reduce the monthly payment to a widow or invalid husband lower than \$20, nor, except so far as may be necessary to prevent the total monthly payment to all dependents from exceeding \$40, shall it reduce the monthly payment for a child, where there is also a dependent widow or invalid husband, lower than \$5, or the monthly payment to or for a child, where the sole dependents are children or where the dependent widow or invalid husband has died, lower than \$10.
- Remarriage of widow.** Sec. 34 (1) If a dependent widow marries the monthly payments to her shall cease, but she shall be entitled in lieu of them to a lump sum equal to the monthly payments for two years and such lump sum shall be payable within one month after the day of her marriage.
(2) Subsection 1 shall not apply to payments to a widow in respect of a child.
- Payments to children.** Sec. 35. Subject to the provisions of subsection 2b of section 33 a monthly payment in respect of a child shall cease when the child attains the age of 16 years or dies.
- No dependents.** Sec. 36. Where a workman leaves no dependents such sum as the board may deem reasonable for the expenses of his medical attendance, nursing, care, and maintenance, and of his burial shall be paid to the persons to whom such expenses are due.
- Permanent total disability.** Sec. 37. Where permanent total disability results from the injury the amount of the compensation shall be a weekly payment during the life of the workman equal to 55 per cent of his average weekly earnings during the previous twelve months if he has been so long employed, but if not then for any less period during which he has been in the employment of his employer.
- Permanent partial disability.** Sec. 38. (1) Where permanent partial disability results from the injury the compensation shall be a weekly payment of 55 per cent of the difference between the average weekly earnings of the workman 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, and the compensation shall be payable during the lifetime of the workman.
(2) Where the impairment of the earning capacity of the workman does not exceed 10 per cent of his earning capacity instead of such weekly payment the board shall, unless in the opinion of the board it would not be to the advantage of the workman to do so, direct that such lump sum as may be deemed to be the equivalent of it shall be paid to the workman.
(3) Where deemed just the impairment of earning capacity may be estimated from the nature of the injury, having always in view the workman's fitness to continue the employment in which he was injured or to adapt himself to some other suitable occupation.
- Temporary total disability.** Sec. 39. Where temporary total disability results from the injury the compensation shall be the same as that prescribed by section 37, but shall be payable only so long as the disability lasts.
- Temporary partial disability.** Sec. 40. Where temporary partial disability results from the injury the compensation shall be the same as that prescribed by section 38, but shall be payable only so long as the disability lasts and subsection 2 of that section shall apply.
- Computing earnings.** Sec. 41. (1) Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the workman was remunerated but not so as in any case to exceed the rate of \$2,000 per annum.
(2) Where owing to the shortness of the time during which the workman was in the employment of his employer, or the casual nature of his employment or the terms of it, it is impracticable to compute the rate of remuneration as of the date of the accident regard may be had to the average weekly or monthly amount which during the twelve months previous to the accident 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 then by a person in the same grade employed in the same class of employment and in the same locality.

(3) Where the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one of them and at another time for another of them his average earnings shall be computed on the basis of what he would probably have been earning if he had been employed solely in the employment of the employer for whom he was working at the time of the accident.

(4) Employment by the same employer shall mean employment by the same employer in the grade in which the workman was employed at the time of the accident uninterrupted by absence from work due to illness or any other unavoidable cause.

(5) Where the employer was accustomed to pay the workman a sum to cover any special expenses entailed on him by the nature of his employment that sum shall not be reckoned as part of his earnings.

(6) Where in any case it seems more equitable the board may award compensation, having regard to the earnings of the workman at the time of the accident.

Sec. 42. (1) In fixing the amount of a weekly or monthly payment regard shall be had to any payment, allowance, or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity, or other allowance provided wholly at the expense of the employer.

Other benefits.

(2) Where the compensation is payable out of the accident fund any sum deducted from the compensation under subsection 1 may be paid to the employer out of the accident fund.

Sec. 43. The board may wherever it is deemed advisable provide that the payments of compensation may be fortnightly or monthly instead of weekly, or where the workman or dependent is not a resident of Ontario or ceases to reside therein may otherwise fix the periods of payment or commute the compensation as the board may deem proper.

Time of payments.

Sec. 43a. The board, for the purpose of enabling the workman to obtain an artificial limb, or in any other case where it deems it proper, may at any time or times, make or direct partial commutation or lump-sum payment of his compensation, or otherwise alter the form of payment, as in the circumstances seems most for his advantage.

Lump sums.

Sec. 44. Where a workman or a dependent is an infant under the age of 21 years or under any other legal disability the compensation to which he is entitled may be paid to such person or be applied in such manner as the board may deem most for his advantage.

Minors.

Sec. 44a. (1) Every workman entitled to compensation under this part, or who would have been so entitled had he been disabled for seven days, shall be entitled to such medical and surgical aid and hospital and skilled nursing services as may be necessary as a result of the injury.

Medical aid.

(2) In this act "medical aid" shall mean the medical and surgical aid and hospital and skilled nursing services above mentioned.

(3) In the industries in schedule 1 such medical aid shall be furnished or arranged for by the board or as it may direct or approve, and shall be paid for by the board out of the accident fund, and the necessary amount shall be included in the assessments levied upon the employers.

(4) In the industries in schedule 2 such medical aid shall be furnished and paid for by the employers individually, but any employer failing to furnish satisfactory medical aid shall be liable, by the order of the board, to pay for such medical aid as may be procured by the workman or by anyone for him or as may be provided by the board.

(5) All questions as to the necessity, character, and sufficiency of any medical aid furnished or to be furnished shall be determined by the board.

(6) The fees or charges for such medical aid shall not be more than would be properly and reasonably charged to the workman if himself paying the bill, and, except in the case of an employer individually liable and himself furnishing the medical aid, the amount thereof shall be fixed and determined by the board, and no action for any amount larger than that fixed by the board shall lie in respect of any medical aid herein provided for.

(7) It shall not be lawful for any employer directly, or indirectly, to collect or receive or retain from any workman any contribution toward the expense of medical aid, and every person contravening this provision shall for every such contravention be liable to a penalty not exceeding \$50 and shall also be liable, upon the order of the board, to reimburse the workman treble the amount of any sum so collected, received, or retained.

(8) Where any employer has now or hereafter establishes in connection with any industry carried on by him an arrangement for furnishing medical aid to his workmen which in the opinion of the board is at least as favorable to the workmen as that herein provided for, the board after investigating the facts and considering the wishes of both workmen and employer, may approve such arrangement, and as long as such approval remains unrevoked such arrangement may be continued in lieu of the medical aid herein provided for, and if the industry is in schedule 1 the employer shall be entitled to such reimbursement out of the accident fund or to such reduction in his rate of assessment as the board shall deem just.

(9) Nothing in this act shall affect any obligation upon the employer under the public health act or any regulation made thereunder, but notwithstanding anything therein contained the employer shall not be entitled, directly or indirectly, to collect, receive, or retain from any workman any contribution toward the expense of medical aid.

(10) Employers in any industries in which it is deemed proper may be required by the board to maintain as may be directed by the board such first-aid appliances and service as the board may direct, and the board may make such order respecting the expense thereof as may be deemed just.

Transportation. (10a) Every employer shall at his own expense furnish to any workman injured in his employment, who is in need of it, immediate conveyance and transportation to a hospital, or to a physician, or to the workman's home, and any employer failing so to do shall be liable, by order of the board, to pay for such conveyance and transportation as may be procured by the workman or by anyone for him, or as may be provided by the board.

Other service. (11) Where in conjunction with or apart from the medical aid to which workmen are to be entitled free of charge further or other service or benefit is, or is proposed to be, given or arranged for, any question arising as to whether or to what extent any contribution from workmen is, or would be, one prohibited by this act shall be determined by the board.

Reports by physicians. **Sec. 44b.** Every physician, surgeon, and hospital official attending, consulted respecting, or having the care of any workman shall furnish to the board from time to time, without additional charge, such reports as may be required by the board in respect of such workman.

Board created. **Sec. 45.** There is hereby constituted a commission for the administration of this part to be called "The Workmen's Compensation Board," which shall consist of three members to be appointed by the lieutenant governor in council and shall be a body corporate.

Chairman. **Sec. 46.** (1) One of the commissioners shall be appointed by the lieutenant governor in council to be the chairman of the board, and he shall hold that office while he remains a member of the board, and another of the commissioners shall be appointed by the lieutenant governor in council vice chairman of the board.

(2) In the absence of the chairman, or in case of his inability to act, or if there is a vacancy in the office, the vice chairman may act as and shall have all the powers of the chairman.

Commissioner pro tempore. **Sec. 47.** (1) In the case of the death, illness, or absence from Ontario of a commissioner or of his inability to act from any cause the lieutenant governor in council may appoint some person to act pro tempore in his stead and the person so appointed shall have all the powers and perform all the duties of a commissioner.

(2) Subsection 1 shall apply in the case of the chairman of the board as well as in the case of any other member of it.

Acts of vice chairman. **Sec. 48.** Where the vice chairman appears to have acted for or instead of the chairman it shall be conclusively presumed that he so acted for one of the reasons mentioned in the next preceding subsection.

SEC. 49. Each commissioner shall, subject to section 50, hold office during good behavior, but may be removed at any time for cause. Term.

SEC. 50. Unless otherwise directed by the lieutenant governor in council a commissioner shall cease to hold office when he attains the age of 75 years. Retirement for age.

SEC. 51. Each of the commissioners shall devote the whole of his time to the performance of his duties under this part. To give whole time.

SEC. 52. The salary of the chairman shall be \$10,000 per annum, the salary of the vice chairman shall be \$8,500 per annum, and the salary of the other commissioner shall be \$7,500 per annum, and such salaries shall be payable out of the consolidated revenue fund. Salaries.

SEC. 53. The presence of two commissioners shall be necessary to constitute a quorum of the board. Quorum.

SEC. 54. A vacancy in the board shall not if there remain two members of it impair the authority of such two members to act. Same.

SEC. 55. The board shall have the like powers as the supreme court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents, and things. Powers.

SEC. 56. (1) A commissioner shall not directly or indirectly (a) have, purchase, take, or become interested in any industry, to which this part applies or any bond, debenture, or other security of the person owning or carrying it on; (b) be the holder of shares, bonds, debentures, or other securities of any company which carries on the business of employers' liability or accident insurance; (c) have any interest in any device, machine, appliance, patented process, or article which may be required or used for the prevention of accidents. Disqualifications.

(2) If any such industry, or interest therein, or any such share, bond, debenture, security, or thing comes to or becomes vested in a commissioner by will or by operation of law and he does not within three months thereafter sell and absolutely dispose of it he shall cease to hold office.

SEC. 57. The offices of the board shall be situated in the city of Toronto and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Ontario. Offices.

SEC. 58. The commissioners shall sit at such times and conduct their proceedings in such manner as they may deem most convenient for the proper discharge and speedy dispatch of business. Sittings.

SEC. 59. (1) The board shall appoint a secretary and a chief medical officer, and may appoint such auditors, actuaries, accountants, inspectors, medical referees, other officers, clerks, and servants as the board may deem necessary for carrying out the provisions of this part, and may prescribe their duties and, subject to the approval of the lieutenant governor in council, may fix their salaries. Officers.

(2) Every person so appointed shall hold office during the pleasure of the board.

SEC. 60. (1) The board shall have exclusive jurisdiction to examine into, hear, and determine all matters and questions arising under this part and as to any matter or thing in respect to which any power, authority, or discretion is conferred upon the board, and the action or decision of the board thereon shall be final and conclusive and shall not be open to question or review in any court, and no proceedings by or before the board shall be restrained by injunction, prohibition, or other process or proceeding in any court or be removable by certiorari or otherwise into any court. Jurisdiction.

(2) Without thereby limiting the generality of the provisions of subsection 1, it is declared that such exclusive jurisdiction shall extend to determining:

(a) Whether any industry or any part, branch, or department of any industry falls within any of the classes for the time being included in schedule 1, and if so which of them.

(b) Whether any industry or any part, branch, or department of any industry falls within any of the classes for the time being included in schedule 2, and if so which of them.

(c) Whether any part of any such industry constitutes a part, branch, or department of an industry within the meaning of Part I.

- (3) Nothing in subsection 1 shall prevent the board from reconsidering any matter which has been dealt with by it or from rescinding, altering, or amending any decision or order previously made, all which the board shall have authority to do.
- (4) The decisions of the board shall be upon the real merits and justice of the case, and it shall not be bound to follow strict legal precedent.
- Evidence.** Sec. 60a. Every copy of or extract from any entry in any book or record of the board, and of any document filed with the board, certified by the secretary of the board to be a true copy or extract, shall be received in any court as prima facie evidence of the matter so certified without proof of the secretary's appointment, authority, or signature.
- Costs.** Sec. 61. The board may award such sum as it may deem reasonable to the successful party to a contested claim for compensation or to any other contested matter as compensation for the expenses he has been put to by reason of or incidental to the contest, and an order of the board for the payment by an employer of any sum so awarded when filed in the manner provided by section 63 shall become a judgment of the court in which it is filed and may be enforced accordingly.
- Acts of officers.** Sec. 62. (1) The board may act upon the report of any of its officers and any inquiry which it shall be deemed necessary to make may be made by any one of the commissioners or by an officer of the board or some other person appointed to make the inquiry, and the board may act upon his report as to the result of the inquiry.
- (2) The person appointed to make the inquiry shall for the purposes of the inquiry have all the powers conferred upon the board by section 55.
- Enforcement of orders.** Sec. 63. An order of the board for the payment of compensation by an employer who is individually liable to pay the compensation or any other order of the board for the payment of money made under the authority of this part, or a copy of any such order certified by the secretary to be a true copy, may be filed with the clerk of any county or district court and when so filed shall become an order of that court and may be enforced as a judgment of the court.
- Fees.** Sec. 63a. For the duties performed by him in connection with the filing of an order or certificate of the board pursuant to section 63 or section 94 such clerk shall be entitled to a fee of \$1, and, notwithstanding any other provision or rule, any proceeding provided for by either of the said sections may be carried on by the board by post without the necessity of personal attendance at any office.
- Regulations.** Sec. 64. (1) The board may make such regulations as may be deemed expedient for carrying out the provisions of this part and to meet cases not specially provided for by this part; and a certified copy of every regulation so made shall be transmitted forthwith to the provincial secretary and any regulation may within one month after it has been received by the provincial secretary be disallowed by the lieutenant governor in council.
- (2) Every regulation which is approved by the lieutenant governor in council shall immediately after approval, or on the day named by him for that purpose, become effective, and after the period for disallowance has expired every other regulation which has not been disallowed shall become effective and every regulation which has become effective shall be forthwith published in the Ontario Gazette.
- (3) Every person who contravenes any such regulation after it has become effective, or any rule of an association formed as provided by section 101, which has been approved and ratified as provided by that section, shall for every contravention incur a penalty not exceeding \$50, but no prosecution for any such contravention shall be taken without leave of the board.
- Suits.** (4) Where an action in respect of an injury is brought against an employer by a workman or a dependent the board shall have jurisdiction upon the application of the employer to determine whether the workman or dependent is entitled to maintain the action or only to compensation under Part I, and if the board determines that the only right of the workman or dependent is to such compensation the action shall be forever stayed.
- Audits.** Sec. 65. The accounts of the board shall be audited by the provincial auditor or by an auditor appointed by the lieutenant governor in

council for that purpose and the salary or remuneration of the last-mentioned auditor shall be paid by the board.

SEC. 66. (1) The board shall on or before the 15th day of January in each year make a report to the lieutenant governor of its transactions during the next preceding calendar year and such report shall contain such particulars as the lieutenant governor in council may prescribe.

Reports.

(2) Every such report shall be forthwith laid before the assembly if the assembly is then in session and if it is not then in session within fifteen days after the opening of the next session.

SEC. 67. The superintendent of insurance or an officer of his department named by him for that purpose shall once in each year and oftener if so required by the lieutenant governor in council examine into the affairs and business of the board for the purpose of determining as to the sufficiency of the accident fund and shall report thereon to the lieutenant governor in council.

Examination.

SEC. 68. To assist in defraying the expenses incurred in the administration of this part there shall be paid to the board out of the consolidated revenue fund such annual sum not exceeding \$100,000 as the lieutenant governor in council may direct.

Contribution by the Province.

SEC. 69. (1) An accident fund shall be provided by contributions to be made in the manner hereinafter provided, by the employers in the classes or groups of industries, for the time being included in schedule 1, and compensation payable in respect of accidents which happen in any industry included in any of such classes or groups, shall be payable and shall be paid out of the accident fund.

Accident fund.

(2) Notwithstanding the generality of the description of the classes for the time being included in schedule 1 none of the industries included in schedule 2 shall form part of or be deemed to be included in any of such classes, unless it is added to schedule 1 by the board under the authority conferred by this part.

SEC. 70. Where at any time there is not money available for payment of the compensation which has become due, without resorting to the reserves the board may pay such compensation out of the reserves and shall make good the amount withdrawn from the reserves by making a special assessment upon the employers liable to provide the compensation or by including it in a subsequent annual assessment, or where it is for any reason deemed inexpedient to withdraw the amount required from the reserves the lieutenant governor in council may direct that the same be advanced out of the consolidated revenue fund, and in that case the amount advanced shall be collected by a special assessment, and when collected shall be paid over to the treasurer of Ontario.

Payments advanced.

SEC. 71. It shall be the duty of the board at all times to maintain the accident fund so that with the reserves, exclusive of the special reserve, it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable, and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened.

Fund to be maintained.

SEC. 72. (1) Subject to section 91 it shall not be obligatory upon the board to provide and maintain a reserve fund which shall at all times be equal to the capitalized value of the payments of compensation which will become due in future years unless the board shall be of opinion that it is necessary to do so in order to comply with the provisions of section 71.

Reserves.

(2) It shall not be necessary that the reserve fund shall be uniform as to all classes, but, subject to sections 71 and 91, it shall be discretionary with the board to provide for a larger reserve fund in one or more of the classes than in another or others of them.

SEC. 73. If any trade or business connected with the industries of lumbering, mining, quarrying, fishing, manufacturing, building, construction, engineering, transportation, operation of electric power lines, waterworks and other public utilities, navigation, operation of boats, ships, tugs, and dredges; operation of grain elevators and warehouses; teaming, scavenging and street cleaning; painting, decorating and renovating; dyeing and cleaning; or any occupation

Industries to be classified.

incidental thereto, or immediately connected therewith, not included in schedule 2, is not included in any of the classes mentioned in schedule 1, the board shall assign it to an appropriate class or form an additional class or classes embracing the trades or businesses not so included, and until that is done, except in so far as it may be otherwise wise provided by the regulations, such trades and businesses shall together constitute a separate group or class and shall be deemed to be included in schedule 1.

Jurisdiction of
board.

SEC. 74. (1) The board shall have jurisdiction and authority to (a) rearrange any of the classes for the time being included in schedule 1, and withdraw from any class any industry included in it and transfer it wholly or partly to any other class or form it into a separate class, or exclude it from the operation of Part I; (b) establish other classes including any of the industries which are for the time being included in schedule 2, or are not included in any of the classes in schedule 1; (c) add to any of the classes for the time being included in schedule 1, any industry which is not included in any of such classes.

(2) Where in the opinion of the board the hazard to workmen in any of the industries embraced in a class is less than that in another or others of such industries, or where for any other reason it is deemed proper to do so, the board may subdivide the class into subclasses; and if that is done the board shall fix the percentages or proportions of the contributions to the accident fund which are to be payable by the employers in each subclass.

(3) Separate accounts shall be kept of the amounts collected and expended in respect of every class and subclass, but for the purpose of paying compensation the accident fund shall, nevertheless, be deemed one and indivisible.

(4) Where a greater number of accidents has happened in any industry than in the opinion of the board ought to have happened if proper precautions had been taken for the prevention of accidents in it, or where in the opinion of the board the ways, works, machinery, or appliances in any industry are defective, inadequate, or insufficient the board may, so long as such condition in its opinion continues to exist, add to the amount of any contribution to the accident fund for which an employer is liable in respect of such industry such a percentage thereof as the board may deem just and may assess and levy the same upon such employer, or the board may exclude such industry from the class in which it is included, and if it is so excluded the employer shall be individually liable to pay the compensation to which any of his workmen or their dependents may thereafter become entitled and such industry shall be included in schedule 2.

(5) Any additional percentage levied and collected under the next preceding subsection shall be added to the accident fund or applied in reduction of the assessment upon the other employers in the class or subclass to which the employer from whom it is collected belongs as the board may determine.

Exclusion of in-
dustries.

SEC. 75. (1) The board may in the exercise of the powers conferred by the next preceding section withdraw or exclude from a class industries in which not more than a stated number of workmen are usually employed and may afterwards add them to the class or classes from which they have been withdrawn, and any industry so withdrawn or excluded shall not thereafter be deemed to be included in schedule 1, but no withdrawal or exclusion under the authority of this subsection shall have the effect of excluding any industry from schedule 2.

(2) Where industries are withdrawn or excluded from a class under the authority of subsection 1, an employer in any of them may, nevertheless, elect to become a member of the class to which but for the withdrawal or exclusion he would have belonged, and if he so elects he shall be a member of that class and as such liable to contribute to the accident fund, and his industry shall be deemed to be embraced in schedule 1.

(3) Notice of the election shall be given to the secretary of the board, and the election shall be deemed to have been made when the notice is received by him.

(4) Any workman in any industry excluded under the authority of subsection 1 may notify the secretary of the board that he desires such

industry to be included in schedule 1, and such notice upon receipt thereof by the secretary shall have the same effect as a notice of election from the employer.

Sec. 76. The powers conferred by the next preceding two sections may be exercised from time to time and as often as in the opinion of the board occasion may require. Powers discretionary.

Sec. 76a. (1) The board may, upon the application of an employer, add to schedule 1, for such time and upon such terms and conditions as the board may determine, any industry or part of an industry, or department of work or service, of such employer. Inclusions.

(2) The board may, upon the application of an employer, add to schedule 2, for such time and upon such terms and conditions as the board may determine, any industry or part of an industry, or department of work or service, of such employer not in schedule 1.

Sec. 77. A regulation or order made by the board under the authority of clause (a) or clause (b) of subsection 1 of section 74 shall not have any force or effect unless approved by the lieutenant governor in council, and when so approved it shall be published in the Ontario Gazette and shall take effect on the expiration of one month from the first publication of it in the Ontario Gazette. Regulations in effect.

Sec. 78. (1) Subject to the regulations every employer shall not later than three months before the day named by proclamation as mentioned in section 3 and yearly thereafter on or before such date as shall be prescribed by the board, and at such other time or times as it may by order or regulation of the board be required, prepare and transmit to the board a statement of the amount of the wages earned by all his employees during the year then last past, or any part thereof specified by the board, and of the amount which he estimates he will expend for wages during the then current year or any part thereof specified by the board, and such additional information as the board may require, both verified by the statutory declaration of the employer or the manager of the business, or where the employer is a corporation by an officer of the corporation having a personal knowledge of the matters to which the declaration relates. Employer's reports.

(1a) Every employer shall keep in such form and with such detail as may be required for the purposes of this act a careful and accurate account of all wages paid to his employees, and such account shall be kept within the Province and shall be produced to the board and its officers when so required. Wage accounts.

(2) Where the business of the employer embraces more than one branch of business or class of industry the board may require separate statements to be made as to each branch or class of industry, and such statements shall be made, verified, and transmitted as provided by subsection 1.

(3) If any employer does not make and transmit to the board the prescribed statement within the prescribed time the board may base any assessment or supplementary assessment thereafter made upon him on such sum as in its opinion is the probable amount of the pay roll of the employer and the employer shall be bound thereby; but if it is afterwards ascertained that such amount is less than the actual amount of the pay roll the employer shall be liable to pay to the board the difference between the amount for which he was assessed and the amount for which he would have been assessed on the basis of his pay roll. Failure to furnish statements.

(4) If an employer does not comply with the provisions of subsection 1, subsection 1a, or subsection 2, or if any statement made in pursuance of their provisions is not a true and accurate statement of any of the matters required to be set forth in it the employer, for every such noncompliance, and for every such statement, shall incur a penalty not exceeding \$500; and default or delay in furnishing any such statement or insufficiency of estimate of expenditure for wages shall also render the employer liable to pay an additional percentage of assessment or to pay interest, as fixed by the board.

Sec. 78a. (1) Every municipal assessor of a township, town or village, shall yearly, on or before the last day for completing his assessment roll, make a return to the board upon forms provided by the board for the purpose, showing the names, addresses, nature of business, and usual number of employees, of all employers of labor carry- Assessors' duties.

ing on in the municipality any industry or business other than farming or mercantile business.

(2) The board may make remuneration for such return out of the accident fund.

Access to books.

SEC. 79. (1) The board and any member of it, and any officer or person authorized by it for that purpose shall have the right to examine the books and accounts of the employer and to make such other inquiry as the board may deem necessary for the purpose of ascertaining whether any statement furnished to the board under the provisions of section 78 is an accurate statement of the matters which are required to be stated therein, or of ascertaining the amount of the pay roll of any employer, or of ascertaining whether any industry or person is under the operation of Part I, and whether in schedule 1 or schedule 2, and for the purpose of any such examination and inquiry the board and the person so appointed shall have all the powers which may be conferred on a commissioner appointed under the public inquiries act.

(2) An employer and every other person who obstructs or hinders the making of the examination and inquiry mentioned in subsection 1 or refuses to permit it to be made shall incur a penalty not exceeding \$500.

(3) Every member of the board and every officer or person authorized by it to make examination or inquiry under this section shall have power and authority to require and take affidavits, affirmations, or declarations as to any matter of such examination or inquiry and to take statutory declarations required under section 78, and in all such cases to administer oaths, affirmations and declarations and certify to the same having been made.

Adjustment of assessments.

SEC. 80. (1) If a statement is found to be inaccurate, the assessment shall be made on the true amount of the pay roll as ascertained by such examination and inquiry, or if an assessment has been made against the employer on the basis of his pay roll being as shown by the statement, the employer shall pay to the board the difference between the amount for which he was assessed and the amount for which he would have been assessed if the amount of the pay roll had been truly stated, and by way of penalty a sum equal to such difference.

(2) The board, if satisfied that the inaccuracy of the statement was not intentional and that the employer honestly desired to furnish an accurate statement, may relieve him from the payment of the penalty provided for by subsection 1 or any part of it.

Inspection of plant.

SEC. 81. (1) The board and any member of it and any officer or person authorized by it for that purpose shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund and the premises connected with it and every part of them for the purpose of ascertaining whether the ways, works, machinery, or appliances therein are safe, adequate, and sufficient, and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises, and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the board may deem necessary for the purpose of determining the proportion in which such employer should contribute to the accident fund.

(2) An employer and every other person who obstructs or hinders the making of any inspection made under the authority of subsection 1, or refuses to permit it to be made, shall incur a penalty not exceeding \$500.

Information confidential.

SEC. 82. (1) No officer of the board and no person authorized to make an inquiry under this part shall divulge or allow to be divulged except in the performance of his duties or under the authority of the board any information obtained by him or which has come to his knowledge in making or in connection with an inspection or inquiry under this part.

(2) Every person who contravenes any of the provisions of subsection 1 shall incur a penalty not exceeding \$50.

Recovery of penalties.

SEC. 83. The penalties imposed by or under the authority of this part shall be recoverable under the Ontario summary convictions act

and when collected shall be paid over to the board and shall form part of the accident fund.

Sec. 84. (1) The board shall before the day named by proclamation as mentioned in section 3 make a provisional assessment on the employers in each class of such sum as in the opinion of the board will be sufficient to meet the claims for compensation which will be payable by that class for the first year after the day so named and to meet the expenses of the board in the administration of this part for the year, and also to provide a reserve fund to pay the compensation payable in future years in respect of claims in that class for accidents happening in that year, of such an amount as the board may deem necessary to prevent the employers in future years from being unduly or unfairly burdened with payments which are to be made in those years in respect of accidents which have previously happened.

Assessments.

(2) The sums to be so assessed may be either a percentage of the pay rolls of the employers or a specific sum, as the board may determine.

(3) [Repealed.]

Sec. 85. (1) The board shall in every year thereafter assess and levy upon the employers in each of the classes such percentage of pay roll or such other rate or such specific sum as, allowing for any surplus or deficit in the class, it shall deem sufficient to pay the compensation during the current year in respect of injuries to workmen in the industries within the class, and to provide and pay the expenses of the board in the administration of this part for that year or so much thereof as may not be otherwise provided for, and also to provide a similar reserve fund to that mentioned in subsection 1 of section 84; and such assessments may, if the board sees fit, be levied provisionally upon the estimate of pay roll given by the employer or upon an estimate fixed by the board, and, after the actual pay roll has been ascertained, adjusted to the correct amount; and the payment of assessments may, if the board deems fit, be divided into installments.

Added assessments.

(2) Where the assessment is based on the pay roll of the employer and there is included in it the wages or salary of a workman who has been paid more than at the rate of \$2,000 per annum the excess shall be deducted from the amount of the pay roll and the assessment shall be based on the amount of it as so reduced.

Deductions from pay rolls.

(3) It shall not be necessary that the assessment upon the employers in a class or subclass shall be uniform, but they may be fixed or graded in relation to the hazard of each or of any of the industries included in the class or subclass.

Hazard.

(4) A system of merit rating may, if deemed proper, be adopted.

Merit rating. Board to fix rates.

Sec. 86. (1) The board shall determine and fix the percentage, rate, or sum for which each employer is assessed under the provisions of either of the next preceding two sections, or the provisional amount thereof, and such employer shall pay to the board the amount or provisional amount of his assessment within one month, or such other time as the board may fix, after notice of the assessment and of such amount has been given to him, or where payment is to be made by installments he shall pay the first installment within such time and the remaining installment or installments at the time or times specified in such notice.

Notice.

(2) The notice may be sent by post to the employer and shall be deemed to have been given to him on the day on which the notice was posted.

Revision.

(3) Wherever at any time it appears that a statement or estimate of pay roll upon which an assessment or provisional amount of assessment is based is too low the employer shall upon demand pay to the board such sum, to be fixed by the board, as shall be sufficient to bring the payment of assessment up to the proper amount; and the payment of any such sum may be enforced in the same manner as the payment of any assessment may be enforced.

Sec. 87. If the amount realized from any assessment is insufficient for the purpose for which the assessment was made, the board may make supplementary assessments to make up the deficiency, and section 86 shall apply to such assessments, but the board may defer assessing for such deficiency until the next annual assessment is made and then include it in such assessment.

Supplementary assessments.

- General assessment. Sec. 88. (1) Where any deficiency in the amount realized from any assessment in any class is caused by the failure of some of the employers in that class to pay their share of the assessment or by any disaster or other circumstance which, in the opinion of the board, would unfairly burden the employers in that class, the deficiency or loss shall be made up by supplementary assessments upon the employers in all the classes, and the provisions of section 86 shall apply to such assessments, but the board may defer assessing for such deficiency or loss until the next annual assessment is made and then include it in such assessment.
- Special funds. (2) The board may, where it deems proper, add to the assessment for any class or classes or for all the classes in schedule 1, a percentage or sum for the purpose of raising a special fund to be laid aside and used to meet the loss arising from any disaster or other circumstance which, in the opinion of the board, would unfairly burden the employers in any class.
- Adjustments. Sec. 89. (1) If and so far as any deficiency mentioned in the next preceding two sections is afterwards made good wholly or partly by the defaulting employer, the amount which shall have been made good shall be apportioned between the other employers in the proportions in which the deficiency was made up by them, by the payment of supplementary assessments upon them and shall be credited to them in making the next assessment.
- (2) If for any reason an employer liable to assessment is not assessed in any year he shall nevertheless be liable to pay to the board the amount for which he should have been assessed, and payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.
- (3) Any sum collected from an employer under subsection 2 shall be taken into account by the board in making an assessment in a subsequent year on the employers in the class or subclass to which such employer belonged.
- Unpaid sums. Sec. 90. Notwithstanding that the deficiency arising from a default in the payment of the whole or part of any assessment has been made up by a special assessment a defaulting employer shall continue liable to pay to the board the amount of every assessment made upon him or so much of it as remains unpaid.
- Powers of lieutenant governor. Sec. 91. Whenever the lieutenant governor in council is of opinion that the condition of the accident fund is such that with the reserves, exclusive of the special reserve, it is not sufficient to meet all the payments to be made in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have happened in previous years, he may require the board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund, and when such a requirement is made the board shall forthwith make such supplementary assessment, and it shall be made in like manner as is hereinbefore provided as to other special assessments, and all the provisions of this part as to special assessments shall apply to it.
- Reserves. Sec. 92. In order to maintain the accident fund as provided by section 71, the board may from time to time and as often as may be deemed necessary include in any sum to be assessed upon the employers, and may collect from them such sums as may be deemed necessary for that purpose, and the sums so collected shall form a reserve fund and shall be invested in securities in which a trustee may by law invest trust moneys.
- Default. Sec. 93. If an assessment or a special assessment is not paid at the time when it becomes payable, the defaulting employer shall be liable to pay and shall pay as a penalty for his default such a percentage upon the amount unpaid as may be prescribed by the regulations or may be determined by the board.
- Liability. Sec. 93a. (1) Any employer who refuses or neglects to make or transmit any pay-roll return or other statement required to be furnished by him under the provisions of sections 78 or 96, or who refuses or neglects to pay any assessment or special or supplementary assessment or the provisional amount of any assessment, or any installment or part

thereof, shall, in addition to any penalty or other liability to which he may be subject, pay to the board the full amount or capitalized value, as determined by the board, of the compensation payable in respect of any accident to a workman in his employ which happens during the period of such default, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

(2) The board, if satisfied that such default was excusable, may in any case relieve such employer in whole or in part from liability under this section.

SEC. 94. Where default is made in the payment of any assessment, or special assessment, or any part of it, the board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it and the person by whom it was payable, and such certificate or a copy of it certified by the secretary to be a true copy may be filed with the clerk of any county or district court, and when so filed shall become an order of that court, and may be enforced as a judgment of the court against such person for the amount mentioned in the certificate. Collection of assessments.

SEC. 95. (1) If an assessment or a special assessment or any part of it remains unpaid for 30 days after it has become payable, the board, in lieu of or in addition to proceeding as provided by the next preceding section, may issue its certificate stating the name and residence of the defaulting employer, the amount unpaid on the assessment, the establishment in respect of which it is payable, and upon the delivery of the certificate to the clerk of the municipality in which the establishment is situate he shall cause the amount so remaining unpaid as stated in the certificate to be entered upon the collector's roll as if it were taxes due by the defaulting employer in respect of such establishment, and it shall be collected in like manner as taxes are levied and collected and the amount when collected shall be paid over by the collector to the board. Same.

(2) The collector shall be entitled to add 5 per cent thereof to the amount to be collected and to retain such percentage for his services in making the collection.

SEC. 96. (1) Where an industry coming within any of the classes for the time being included in schedule 1 is established or commenced after an assessment has been made it shall be the duty of the employer forthwith to notify the board of the fact and to furnish to the board an estimate of the probable amount of his pay roll for the remainder of the year, verified by a statutory declaration, and to pay to the board a sum equal to that for which he would have been liable if his industry had been established or commenced before such assessment was made or so much thereof as the board may deem reasonable. New industries.

(2) The board shall have the like powers and be entitled to the like remedies for enforcing payment of the sum payable by the employer under subsection 1 as it possesses or is entitled to in respect of assessments.

(3) For default in complying with the provisions of subsection 1 the employer shall incur the like penalty and liability as are provided with respect to defaults by section 78.

SEC. 97. (1) Where an employer engages in any of the industries for the time being included in schedule 1, and has not been assessed in respect of it, the board, if it is of opinion that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the board of a sum sufficient to pay the assessment for which the employer would have been liable if the industry had been in existence when the next preceding assessment was made. Temporary industries.

(2) The board shall have the like powers and be entitled to the like remedies for enforcing payment of any such sum as it possesses or is entitled to in respect of assessments.

(3) An employer who makes default in complying with the provisions of subsection 1 shall incur a penalty not exceeding \$200, and an additional penalty not exceeding \$20 per day for every day on which the default continues.

SEC. 98. In the case of a work or service performed by an employer in any of the industries for the time being included in schedule 1 for Mechanics' liens.

which the employer would be entitled to a lien under the mechanics' and wage earners' lien act it shall be the duty of the owner as defined by that act to see that any sum which the employer is liable to contribute to the accident fund is paid and if any such owner fails to do so he shall be personally liable to pay it to the board, and the board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

Preference of assessments, etc.

SEC. 98a. (1) There shall be included among the debts which, under the assignments and preferences act, the trustee act, and the Ontario companies act, are, in the distribution of the property, in the case of an assignment or death or in the distribution of the assets of a company being wound up, under the said acts, respectively, to be paid in priority to all other debts, the amount of any assessment or compensation the liability whereof accrued before the date of the assignment or death or before the date of the commencement of the winding up, and the said acts shall have effect accordingly.

(2) When the compensation is a periodical payment the liability in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum, to be determined by the board, for which the periodical payments may be commuted.

(3) Priority in respect of any individual claim for compensation shall not exceed \$500.

Accidents to be reported.

SEC. 99. (1) Every employer shall within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages or which necessitates medical aid notify the board in writing of the (a) happening of the accident and nature of it; (b) time of its occurrence; (c) name and address of the workman; (d) place where the accident happened; (e) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury; and shall in any case furnish such further details and particulars respecting any accident or claim to compensation as the board may require.

(2) For every contravention of subsection 1 the employer shall incur a penalty not exceeding \$50.

(3) Every employer who makes default in reporting or furnishing particulars of any accident or claim shall in addition to any other penalty or liability pay to the board, if so ordered by the board, the amount of compensation awarded in respect of such accident or claim in accordance with the evidence or information otherwise obtained by the board.

Industrial diseases.

SEC. 100. (1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed or his death is caused by an industrial disease, and the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments, the workman or his dependents shall be entitled to compensation as if the disease were a personal injury by accident and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned, unless at the time of entering into the employment he had willfully and falsely represented himself in writing as not having previously suffered from the disease.

(2) Where the compensation is payable by an employer individually it shall be payable by the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due.

(3) The workman or his dependents if so required shall furnish the employer mentioned in the next preceding subsection with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due during such twelve months as such workman or his dependents may possess, and if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in subsection 4 that employer upon proving that the disease was not contracted while the workman was in his employment shall not be liable to pay compensation.

(4) If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer he

may bring such employer before the board, and if the allegation is proved that other employer shall be the employer by whom the compensation shall be paid.

(5) If the disease is of such a nature as to be contracted by a gradual process any other employers who during such twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer by whom the compensation is payable such contributions as the board may determine to be just.

(6) The amount of the compensation shall be fixed with reference to the earnings of the workman under the employer by whom the compensation is payable, and the notice provided for by section 20 shall be given to the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left the employment.

(6a) Where the compensation is payable out of the accident fund the board shall make such investigation as it deems necessary to ascertain the class or classes against which the compensation should be charged and shall charge or apportion the compensation accordingly.

(7) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of schedule 3, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved, but, except where the board is satisfied that the disease is not due to any other cause than his employment within Ontario, no compensation shall be payable under this section unless the workman has been a resident of Ontario for the three years next preceding his first disablement.

(8) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is the result of an injury in respect of which he is entitled to compensation under this part.

SEC. 101. (1) The employers in any of the classes for the time being included in schedule 1 may form themselves into an association for accident prevention and may make rules for that purpose.

Employer's associations.

(2) If the board is of opinion that an association so formed sufficiently represents the employers in the industries included in the class, the board may approve such rules, and when approved by the board and by the lieutenant governor in council they shall be binding on all the employers in industries included in the class.

(3) Where an association under the authority of its rules appoints an inspector or an expert for the purpose of accident prevention, the board may pay the whole or any part of the salary or remuneration of such inspector or expert out of the accident fund or out of that part of it which is at the credit of any one or more of the classes as the board may deem just.

(4) The board may in any case where it deems proper make a grant toward the expenses of any such association.

(5) Any moneys paid by the board under this section shall be charged against the class represented by such association and levied as part of the assessment against such class.

(6) The word "class" in this section shall include subclass or such part of a class or such number of classes or parts of classes in schedule 1 as may be approved by the board.

SEC. 102. (1) The employers in any of the classes for the time being included in schedule 1 may appoint a committee of themselves, consisting of not more than five employers, to watch over their interests in matters to which this part relates.

Committee.

(2) Where a claim is for compensation for an injury for which the employers in any such class would be liable, if the board is of the opinion that the committee sufficiently represents such employers, and the committee certifies to the board that it is satisfied that the claim should be allowed, the board may act on the certificate and may also act upon the certificate of the committee as to the proper sum to be awarded for compensation if the workman or dependent is satisfied with the sum named in the certificate.

- (3) The committee may be the medium of communication on the part of the class with the board.
- Contribution by employers in Schedule 2. SEC. 103. Employers in industries in schedule 2 shall pay to the board such proportion of the expenses of the board in the administration of this part as the board may deem just and determine, and the sum payable by them shall be apportioned between such employers and assessed and levied in like manner as in the case of assessments for contributions to the accident fund, and the provisions of this part as to making such assessments shall apply (*mutatis mutandis*) to assessments made under the authority of this section.
- Application of Part I. SEC. 104. This part shall apply only to the industries mentioned in schedules 1 and 2 and to such industries as shall be added to them under the authority of this part and to employments therein.

PART II.

- [This is an employers' liability law, and applies to industries not covered by Part I.]
- Exclusions. SEC. 109. This act shall not apply to the industry of farming or to domestic or menial servants or their employers.

SCHEDULE 1.

INDUSTRIES THE EMPLOYERS IN WHICH ARE LIABLE TO CONTRIBUTE TO THE ACCIDENT FUND.

(As altered and amended.)

- Industries covered. Class 1. Lumbering; logging, river driving, rafting, booming; rossing, bark peeling; sawmills, shingle mills, lath mills; manufacture of veneer, excelsior, staves, spokes, or headings; lumber yards (including the delivery of lumber) carried on in connection with sawmills; the creosoting of timbers.
- Class 2. Pulp and paper mills.
- Class 3. Manufacture of furniture, fixtures, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware, mattresses, bed springs, artificial limbs, cork articles, cork carpets or linoleum; upholstering, picture framing.
- Class 4. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, moldings, window and door screens, window shades, brooms or brushes, carpet sweepers, wooden toys, articles and wares or baskets, matches or shade rollers; lumber yards (including the delivery of lumber) carried on in connection with planing mills or sash and door factories; cooperage, not including the making of staves or headings; carpenter, joiner, or cabinet-maker in shop.
- Class 5. Mining; reduction of ores and smelting; preparation of metals or minerals; boring and drilling, including sinking of artesian wells (except when done by an employer coming under class 14); manufacture of calcium carbide, carborundum or alundum, abrasives or abrasive articles other than stone.
- Class 6. Sand, shale, clay or gravel pits; marble works, stone cutting or dressing; manufacture of brick, tile, terra cotta, fireproofing, sewer pipe, roof tile, plaster blocks, plaster board, slate or artificial stone; manufacture of brick, stone or artificial stone paving blocks, or cement or concrete blocks.
- Subclass A of class 6. Quarries, stone crushing, lime kilns; manufacture of cement.
- Class 7. Manufacture of glass, glass products, glassware, porcelain, or pottery.
- Class 8a. Rolling mills; manufacture of heavy forgings, including ship anchors.
- Class 8b. Foundries; gas or electric welding; manufacture of stoves, furnaces, cast hot water boilers, radiators, or metal sanitary ware, water fixtures, or bedsteads.
- Class 8c. Fabrication of structural steel, iron, or metal; shipbuilding or ship repairing; manufacture of boilers, engines, locomotives; riveted

pipes, tubing or tanks; safes, heavy machinery, cranes; or metal siding ceiling, roofing, shingles, window frames, or the like.

Class 10. Machine shops, metal stamping works, or blacksmith shops; manufacture of light forgings, carriage mountings, wires, cables, bolts, nuts, nails, screws, tools, cutlery, hardware; tin, sheet metal or sheet metal enameled wares or articles not otherwise specified; metal wares, instruments, utensils and articles; wire goods, screens, cold drawn shafting, cold drawn tubing, firearms, ammunition shells (without explosives), windmills, gas or electric light fixtures, light machinery, scales, cash registers, typewriters, adding machines, dry batteries, cameras, sporting goods, metal toys; buttons of metal, ivory, pearl, or horn; ivory articles, rubber stamps, pads, or stencils.

Class 11. Manufacture of agricultural implements, threshing machines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, motorcycles, bicycles, tricycles, toy wagons or sleighs, baby carriages, or aeroplanes; car shops.

Class 12. Manufacture of gold or silver ware, plated ware, watches, watch cases, clocks, jewelry, or musical instruments.

Class 13. The manufacture of fireworks, gunpowder, ammunition, nitroglycerine, dynamite, guncotton, or other high explosives, torpedoes, fuses, or cartridges.

Class 14. Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers; manufacture of chemicals, corrosive acids, or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, including the handling and delivery thereof; wood alcohol, celluloid articles; the manufacture, transmission, and distribution of natural or artificial gas and operations connected therewith; the cutting, storing, handling, and delivery of natural ice.

Class 15. Distilleries, breweries; manufacture of spirituous or malt liquors, malt, alcohol, wine, vinegar, cider, mineral water, soda waters, or methylated spirits.

Class 16. Manufacture of nonhazardous chemicals, drugs, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, noncorrosive acids or chemical preparations; shoe blacking or polish, yeast, baking powder, or mucilage; tar, or tarred, pitched or asphalted paper.

Class 17. Milling; manufacture of cereals or cattle foods; warehousing or handling of grain or operation of grain elevators, threshing machines, clover mills, or ensilage cutters.

Class 18. Manufacture or preparation of meats or meat products or glue.

Subclass A of class 18. Packing houses, abattoirs; manufacture of fertilizers not incidental to any other industry.

Class 19. Tanneries.

Class 20. Manufacture of leather goods and products, belting, whips, saddlery, harness, trunks, valises, trusses, imitation leather, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires, or hose.

Class 22. Sugar refineries; manufacture of dairy products, butter, cheese, condensed milk or cream, biscuits, confectionery, chewing gum, spices, condiments, salt, or any kind of starch; bakeries.

Subclass A of class 22. Canning or preparation of fruit, vegetables, fish, or foodstuffs; pickle factories.

Class 24. Manufacture of tobacco, cigars, cigarettes, or tobacco products.

Class 26. Flax mills; manufacture of textiles or fabrics, spinning, weaving, and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy, felt, felt hats, cordage, ropes, fiber, asbestos goods, haircloth and other hair goods; work in manila or hemp.

Class 27. Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats other than felt, caps, furs, robes, feathers or artificial flowers, quilts, clothing pads, tents, awnings, gloves, mittens, neckties, or other articles not otherwise specified made from fabrics; the erection of awnings.

Class 28. Power laundries; dyeing, cleaning, or bleaching.

Class 29. Printing, photoengraving, engraving, lithographing, book-binding, embossing; manufacture of stationery, paper, cardboard boxes, bags, wall paper, or papier-mâché.

Class 30. Heavy teaming or cartage; safe moving or moving of boilers, heavy machinery, building stone and the like; warehousing, storage; teaming and cartage, including the hauling for hire by means of any vehicle, howsoever drawn or propelled, of any commodity or material; scavenging, street cleaning, or removal of snow or ice.

Class 32. Steel building and bridge construction; installation of elevators, fire escapes, boilers, engines, or heavy machinery; the erection of windmills.

Class 33. Bricklaying, mason work, stone setting; plastering; concrete or cement work in or connected with buildings; excavation work for or connected with buildings; structural carpentry; lathing; installation of pipe organs; house wrecking or house moving; painting, decorating or renovating; glazing or installation of plate glass; the business of window cleaning; sheet-metal work; roofing; the erection of lightning rods; electric wiring of buildings or installation of lighting fixtures; plumbing, heating, or sanitary engineering; gas or steamfitting.

Class 37. Road or street making or repairing; bridge or culvert construction not otherwise classified; manufacture of asphalt material or paving material not otherwise classified; concrete or cement work not otherwise classified; sewer construction, tunneling, shaft sinking, well digging; construction or operation of a waterworks system; excavation work for foundations other than for or in connection with buildings; trenching less than six feet deep for gas pipes, water pipes, or wire conduits; excavation work not otherwise classified where the depth is more than six feet and the width is less than half the depth.

Class 38. Construction, installation, or operation of electric power lines or appliances and power transmission lines; construction or operation of an electric light system; construction and operation of power plants and electric light works, not included in Schedule 2; construction or operation of telegraph or telephone lines, construction or operation of telephone lines and works for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company, except where such telephone lines or works are within the legislative authority of the Parliament of Canada.

Class 41. Construction or operation of railways or canals; construction or operation of drydocks; construction of piers, wharves, breakwaters, or other harbor improvements; stevedoring; operation of and work upon wharves; dredging, subaqueous construction or pile driving; fishing.

Class 73. All industries, trades, businesses, and occupations mentioned in section 73 of the act, not otherwise classified and not included in Schedule 2.

SCHEDULE 2.

INDUSTRIES THE EMPLOYERS IN WHICH ARE INDIVIDUALLY LIABLE TO PAY THE COMPENSATION.

(As amended.)

1. The trade or business, as defined by subsection 2 of section 2, of a municipal corporation, a public utilities commission, any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation, a board of trustees of a police village and a school board.

2. The construction or operation of railways operated by steam, electric or other motive power, street railways and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway.

3. The construction or operation of car shops, machine shops, steam and power plants and other works for the purposes of any such railway or used or to be used in connection with it when constructed or operated by the company which owns or operates the railway.

4. The construction or operation of telephone lines and works within the legislative authority of the Parliament of Canada, for the purposes

of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company.

5. The construction or operation of telegraph lines and works for the purposes of the business of a telegraph company or used or to be used in connection with its business when constructed or operated by the company.

6. The construction or operation of steam vessels and works for the purposes of the business of a navigation company or used or to be used in connection with its business when constructed or operated by the company, and all other navigation, towing, operation of vessels, and marine wrecking.

7. The operation of the business of an express company which operates on or in conjunction with a railway, or of sleeping, parlor or dining cars, whether operated by the railway company, or by an express, sleeping, parlor, or dining car company.

8. The construction or operation of a bridge connecting the Province with an adjacent Province or State, but not its construction when constructed by any person or company other than the person or company owning or operating the bridge.

SCHEDULE 3.

| Description of disease. | Description of process. | Industrial diseases. |
|--------------------------------------|---|----------------------|
| Anthrax..... | Handling of wool, hair, bristles, hides, and skins. | |
| Lead poisoning or its sequelæ. | Any process involving the use of lead or its preparations or compounds. | |
| Mercury poisoning or its sequelæ. | Any process involving the use of mercury or its preparations or compounds. | |
| Miners' phthisis..... | Mining. (Added by s. 17 (3), c. 34, 1917.) | |
| Phosphorus poisoning or its sequelæ. | Any process involving the use of phosphorus or its preparations or compounds. | |
| Arsenic poisoning or its sequelæ. | Any process involving the use of arsenic or its preparations or compounds. | |
| Ankylostomiasis..... | Mining. | |

Assented to May 1, 1914.
In effect January 1, 1915.

QUEBEC.

REVISED STATUTES 1909.

*Compensation of workmen for injuries.*¹⁶

| | |
|-------------------------------|---|
| Employments, etc., covered. | ARTICLE 7321. Accidents happening by reason of or in the course of their work to workmen, apprentices and employees engaged in the work of building; or in factories, manufactories or workshops; or in stone, wood or coal yards; or in any transportation business by land or by water or in loading or unloading; or in any gas or electrical business; or in any business having for its object the building, repairing, or maintenance of railways or tramways, waterworks, drains, sewers, dams, wharves, elevators, or bridges; or in mines, or quarries; or in any industrial enterprise, in which explosives are manufactured or prepared, or in which machinery is used, moved by power other than that of men or of animals, shall entitle the person injured or his representatives to compensation ascertained in accordance with the following provisions. |
| Compensation to be paid. | This act may be cited under the name of "workmen's compensation act of the Province of Quebec," and it shall not apply to agricultural industries nor to navigation by means of sails. |
| Exceptions. | ART. 7322. 1. In cases to which article 7321 applies the person injured is entitled— |
| Permanent total disability. | (a) In case of absolute and permanent incapacity to a rent equal to fifty per cent of his yearly wages, reckoning from the day the accident took place, or from that upon which by agreement of the parties or by final judgment it is established that the incapacity has shown itself to be permanent. |
| Permanent partial disability. | (b) In case of permanent and partial incapacity, to a rent equal to half the sum by which his wages have been reduced in consequence of the accident. |
| Temporary disability. | (c) For temporary incapacity, to compensation equal to one-half the daily wages received at the time of the accident, if the inability to work has lasted more than seven days, and beginning on the eighth day, the said compensation not to be less than four dollars per week. |
| Maximum capital value. | 2. The capital of the rents shall not, however, in any case except in the case mentioned in article 7325, exceed two thousand five hundred dollars. |
| Second injuries. | 3. In case the person injured has already suffered partial and permanent incapacity by reason of a previous accident, the compensation to which he shall be entitled, if he sustains another accident, shall be calculated after deducting the incapacity previously suffered. |
| Death. | ART. 7323. When the accident causes death, the compensation shall consist of a sum equal to four times the average yearly wages of the deceased at the time of the accident, and shall in no case, except in the case mentioned in article 7325, be less than one thousand dollars or more than two thousand five hundred dollars. There shall further be paid a sum of not more than twenty-five dollars for medical and funeral expenses, unless the deceased was a member of an association bound to provide, and which does provide therefor. The compensation shall be payable as follows: (a) To the surviving consort not divorced nor separated from bed and board at the time of the death, provided the accident took place after the marriage. (b) To the legitimate children or to the illegitimate children acknowledged before the accident, to assist them to provide for themselves until they reach the full age of sixteen years, or more if they are invalids. (c) To ascendants of whom the deceased was the only support at the time of the accident. If the parties do not agree upon the apportionment of the compensation, it shall be apportioned by the proper court. |

¹⁶ Acts of 1909, chapter 66 as amended.

Nevertheless every sum paid under article 7322 in respect of the same accident, shall be deducted from the total compensation.

ART. 7324. A foreign workman or his representatives shall not be entitled to the compensation provided by this act unless at the time of the accident he or they reside in Canada, nor after he or they cease to reside there while the rent is being paid; but if he or they can not take advantage of this act, the common law remedy shall exist in his or their favor.

Aliens.

ART. 7325. No compensation shall be granted if the accident was brought about intentionally by the person injured.

Intention to cause accident.

The court may reduce the compensation if the accident was due to the inexcusable fault of the workman, or increase it if it is due to the inexcusable fault of the employer.

Increase or decrease.

ART. 7326. If the yearly remuneration of the workman exceeds eight hundred dollars, no more than this sum shall be taken into account. The surplus up to twelve hundred dollars shall give a right only to one-fourth of the compensation aforesaid.

Maximum basic wage.

This act does not apply in cases where the yearly remuneration exceeds twelve hundred dollars.

ART. 7327. Apprentices are assimilated to the workmen in the business who are paid the lowest wages.

Apprentices.

ART. 7328. The wages upon which the rent is based shall be, in the case of a workman engaged in the business during the twelve months next before the accident, the actual remuneration allowed him during such time, whether in money or in kind.

Computing wages.

In the case of workman employed less than twelve months before the accident, such wages shall be the actual remuneration which they have received since they were employed in the business, plus the average remuneration received by workmen of the same class during the time necessary to complete the twelve months.

If the work is not continuous, the year's wages shall be calculated both according to the remuneration received while the work went on, and according to the workman's earnings during the rest of the year.

ART. 7329. As soon as the permanent incapacity to work is ascertained, or in case of death of the person injured, within one month from the date of the agreement between the employer and the parties interested or, if there be no agreement, within one month from the date of the final judgment condemning him to pay the same, the employer shall pay the amount of the compensation to the person injured or his representatives or, as the case may be, and at the option of the person injured or of his representatives, shall pay the capital of the rent to an insurance company designated for that purpose by order in council.

Compensation payable, when.

The person injured or his representatives may, at their option, demand the payment to themselves of the amount of the compensation, or of the capital of the rent, which in no case of death, or incapacity, saving the case provided for in article 7325, shall amount to more than two thousand five hundred dollars.

Lump sum.

The rent itself, saving the above exception, may not be calculated upon a capital of more than two thousand five hundred dollars.

Maximum.

ART. 7330. The rents payable under this subsection shall be paid monthly. The compensation in case of temporary incapacity is payable at the same time as the wages of the other employees, and at intervals in no case to exceed sixteen days.

Times of payment.

ART. 7331. The lieutenant governor in council may prescribe the conditions upon which the insurance companies applying by petition to be authorized to pay the said rents in virtue of this subsection, shall be authorized to do so; but no company that has not made a deposit with the Government of Canada or of this Province, in conformity with the laws of Canada or of this Province, of an amount deemed sufficient to insure the performance of its obligations, shall be so authorized.

Payments by insurance companies.

ART. 7332. All compensation to which this act applies, shall be inalienable and exempt from seizure, but the employer may deduct from the amount of the indemnity any sum due to him by the workman.

Assignments, etc.

ART. 7333. The compensation prescribed by the preceding articles shall be entirely at the charge of the employer, and the employer shall not, for this purpose, deduct any part of the employee's wages, even with the consent of the latter.

Employer responsible.

- Third persons. ART. 7334. The person injured or his representatives shall continue to have, in addition to the recourse given by this act, the right to claim compensation under the common law from the persons responsible for the accident other than the employer, his servants or agents.
- The compensation so awarded to them shall, to the extent thereof, discharge the employer from his liability; and the action against third persons responsible for the accident may be taken by the employer at his own risk, in place of the person injured or his representatives, if he or they refuse to take such action after having been put in default so to do.
- Employer's liability. ART. 7335. In cases to which this act applies, the employer shall be liable to the person injured or to his representatives, mentioned in article 7323, for injuries resulting from accidents caused by or in the course of the work of such person, only for the compensation prescribed by this subsection.
- Payments by insurance companies. ART. 7336. All moneys paid by any insurance company or mutual benefit society shall be applied, to the extent thereof, on account of the sums and rents payable in virtue of this act, if the employer proves that he has assumed the assessments or premiums demanded therefor. But the employer's liability shall continue if the company or society neglects to pay or becomes unable to pay the compensation for which it is liable.
- Workmen usually working alone. ART. 7337. Workmen who usually work alone shall not be subject to this act from the fact of their casually working with one or more other workmen.
- Medical examinations. ART. 7338. The person injured shall be bound, if the employer requires him so to do, in writing, to submit to an examination by a practicing physician chosen and paid by the employer; and if he refuses to submit to such examination or opposes the same in any way, his right to compensation as well as any remedy to enforce the same shall be suspended until the examination takes place. The person injured shall, in such case, always be entitled to demand that the examination shall take place in the presence of a physician chosen by him.
- Waivers. ART. 7339. Every agreement contrary to the provisions of this act shall be absolutely null.
- Status of claims. ART. 7340. The claim of the person injured or of his representative for medical and funeral expenses, as well as for compensation allowed for temporary incapacity to work, shall be secured by privilege on the moveable and immoveable property of the employer, ranking concurrently with the claim mentioned in paragraph 9 of article 1994 of the Civil Code.
- Payment of compensation for permanent incapacity to work or in respect of an accident followed by death, shall so long as the compensation has not been paid, or so long as the sum necessary to procure the required rent has not been paid to an insurance company or otherwise paid in virtue of this act, be secured by a privilege of the same nature and rank upon moveable property and by a privilege upon immoveable property ranking after other privileges and after hypothecs.
- Disputes. ART. 7341. The superior court and the circuit court shall have jurisdiction of every action or contestation in virtue of this act in accordance with the jurisdiction given to them respectively by the Code of Civil Procedure.
- Appeals. ART. 7342. Review and appeal of or from judgments susceptible thereof, shall be taken within fifteen days from the rendering of such judgments and if not so taken the right thereto shall lapse. Such appeals shall have precedence.
- Provisional allowances. ART. 7343. The court or judge may, upon petition, at any stage of the case, whether before judgment or while an appeal is pending, grant a provisional daily allowance to the person injured or to his representatives.
- Proceedings to be summary. ART. 7344. There shall be no trial by jury in any action taken in virtue of this act, but the proceedings shall be summary, and shall be subject to the provisions of the Code of Civil Procedure respecting such matters.
- Action in one year. ART. 7345. The action to recover any compensation to which this act applies shall, as against all persons, be subject to a prescription of one year.

ART. 7346. An action to revise the amount of the compensation based on the alleged aggravation or diminution of the disability of the person injured, may be taken during the four years next after the date of the agreement of the parties as to such compensation, or next after that of the final judgment.

Review.

ART. 7347. Before having recourse to the provisions of this act, the workman must be authorized thereto by a judge of the superior court upon petition served upon the employer. The judge shall grant such petition without the hearing of evidence or the taking of affidavits, but may, before granting the same, use such means as he may think useful to bring about an understanding between the parties. If they agree, he may render judgment in accordance with such agreement upon the petition, and such judgment shall have the same effect as a final judgment of a competent court.

Right to sue.

ART. 7347a. Nothing contained in this act (article 7321 to 7347a), shall be interpreted as doing away with any of the common law right of action belonging to any persons who can not avail themselves of the said act.

Common - law rights.

Assented to May 29, 1909.
In effect January 1, 1910.

ACTS OF 1915.

(5 GEORGE V, CHAP. 71.)

CHAPTER 71 (*adding new articles to the Revised Statutes*)—*Retention of workmen's wages.*

ARTICLE 7436a. It is forbidden for any employer to make any retention of any part of the salary or wages of his workmen or employees for purposes of insurance against accidents or sickness happening by reason of or in the course of their work, even with the consent of such workmen or employees.

Retention of wages forbidden.

ART. 7436b. Any agreement under which such a retention is made or authorized shall be null and of no effect.

Agreement null.

ART. 7436c. In any case where such retention is made, the workman or employee, in the three months following the end of his contract of work, may recover, before any court of competent jurisdiction, the amount so irregularly withheld from his salary or wages.

Recovery.

2. This act shall not apply to any retentions which may have been legally made before its coming into force.

No retroactive effect.

3. This act shall not apply to railway employees who individually, and in good faith, take out policies of insurance, and give written orders to their employers to pay the premiums out of their wages or salaries.

Policies of rail-road employees.

Assented to March 5, 1915.

YUKON TERRITORY.

ORDINANCES OF 1917.

CHAPTER 1.—*Compensation of workmen for injuries.*

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|------------------------------|--|
| Title. | SECTION 1. This ordinance may be cited as "the workmen's compensation ordinance." |
| Definitions. | SEC. 2. (1) In this ordinance— (a) "Accident" shall include a willful and intentional act, not being the act of the workman and a fortuitous event occasioned by a physical or natural cause. (b) "Construction" shall include reconstruction, repair, alteration, and demolition. (c) "Dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death, or who, but for the incapacity due to the accident, would have been so dependent. (d) "Employer" shall include every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry, and where the services of a workman are temporarily let or hired to another person by the person with whom the workman has entered into such a contract the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person. (e) "Employment" shall include employment in an industry or any part, branch, or department of an industry. (f) "Industry" shall include establishment, undertaking, trade, and business. (g) "Judge" shall mean a judge of the territorial court. (h) "Member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-sister, half-brother, and a person who stood in loco parentis to the workman, or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child, shall include his parent and grandparents on the maternal side. (i) "Mine" includes properties to which the "coal mining regulations" and amendments thereto or the "quartz mining regulations" and amendments thereto or the Yukon placer mining act and amending acts apply. (j) "Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials. (k) "Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labor, or otherwise, but shall not include an outworker or person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business. |
| Public employ- ees. | (2) The exercise and performance of the powers and duties of (a) a municipal corporation; (b) the government of Yukon Territory in the building, repairing, and maintaining of roads, bridges, or other public works shall, for the purposes of this ordinance, be deemed the industry of the corporation or government. |
| Less than five employees. | SEC. 3. Where less than five workmen are employed in the same general employment the employer shall be relieved from all liability under this ordinance. |

Sec. 4. (1) When in any employment to which this ordinance applies personal injury by accident arising out of and in the course of the employment is caused to a workman his employer shall be liable to pay compensation in accordance with the first schedule to this ordinance, except where the injury (a) does not disable the workman for a period of at least 14 days from earning full wages at the work at which he was employed; or (b) is attributable solely to the serious and willful misconduct or intoxication of the workman.

Compensation payable, when.

Waiting time.

Willful misconduct.

Presumption.

(2) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

(3) Where compensation for disability is payable it shall be computed and be payable from the date of the disability.

Compensation from date of disability.

Suits.

Sec. 5. When the injury was caused by the personal negligence or willful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this ordinance shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this ordinance or independently thereof; but the employer shall not be liable to pay compensation for injury to a workman both independently of and also under this ordinance, and shall not be liable to any proceedings independently of this ordinance, except in the case of such personal negligence or willful act as aforesaid.

Sec. 6. If any question arises as to the liability to pay compensation under this ordinance, or as to the amount of compensation or duration of disability under this ordinance, or as to the person or persons that are entitled to compensation, or as to the division of the amount of compensation, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this ordinance, be determined and settled by a judge of the territorial court in accordance with the provisions of the second schedule to this ordinance.

Disputes.

Sec. 7. If within the time hereinafter in this ordinance limited for taking proceedings, an action is brought to recover damages independently of this ordinance for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this ordinance, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation under the provisions of this ordinance, and shall be at liberty to deduct from such compensation all the costs, which, in its judgment, have been caused by the plaintiff bringing such action instead of proceeding under this ordinance. In any proceedings under this section, when the court assesses the compensation it shall give a certificate of the amount of compensation it has awarded, and to whom payable, and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of a judgment or award under this ordinance.

Wrong remedy.

Force of certificate.

Sec. 8. (1) Proceedings for the recovery under this ordinance of compensation for an injury shall not be maintained unless notice of the accident has been given to the employer as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in the case of death, within six months from the time of death, and the action is commenced within nine months from the occurrence of the accident causing the injury, or the time of death, provided always that any defect or inaccuracy in such notice shall not relieve the employer from his liability for such compensation if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by such defect or inaccuracy, or that such defect or inaccuracy was occasioned by mistake or other reasonable cause, or when the facts and circumstances of such action are known to such employer, his agent or vice-principal in the enterprise.

Notice of accident.

(2) Notice in respect of an injury under this ordinance shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4) The notice may be served by post addressed to the person on whom it is to be served at his last known place of residence or place of business, with postage prepaid and registered, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post; and in proving the serving of such notice it shall be sufficient to prove that the notice was properly addressed, posted, and registered.

(5) Where the employer is a body of persons corporate or incorporate the notice may also be served by delivering the same or sending it by post in manner above provided in a registered letter addressed to the employer at the office, or if there be more than one office, any of the offices of such body.

Separate actions.

SEC. 9. Whenever two or more persons claiming to be beneficiaries of any deceased employee, whose beneficiaries are entitled to compensation under the provisions of this ordinance, bring separate actions to recover such compensation, such actions shall be consolidated and tried as one action upon the application of any party to either or any of such actions, or by direction of the judge.

Contractors.

SEC. 10. (1) Where a person, in this section referred to as the contractor, in the course of or for the purposes of his trade or business, contracts with any other person, in this section referred to as the subcontractor, for the execution by or under the subcontractor of the whole or any part of any work undertaken by the contractor, the contractor shall be liable to pay to any workman employed in the execution of the work the compensation which he would have been liable to pay if that workman had been immediately employed by him.

(2) Subsection (1) shall not apply where the accident happens elsewhere than on or in or about the premises upon which the contractor has undertaken to execute the work or which are otherwise under his control or management.

Award prior claim.

SEC. 11. Where any employer becomes liable under this ordinance to pay compensation in respect of any accident and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the territorial court may direct the insurers to pay such sum into any chartered bank of Canada in the name of the clerk of such court and order the same to be applied in accordance with the provisions of this ordinance.

Third parties.

SEC. 12. Where the injury for which compensation is payable under this ordinance was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed either at law against that person to recover damages or against his employer for compensation under this ordinance, but not against both, and if compensation be paid under this ordinance the employer shall be entitled to be indemnified by the said other person.

Contractors not employees.

SEC. 13. No contractor or subcontractor shall be entitled to receive compensation under this ordinance, but shall be deemed to be an employer.

Assignments, etc.

SEC. 14. No claim for compensation due under this ordinance shall be assignable, and all compensation due hereunder shall be exempt from execution, garnishee, and attachment.

Waivers.

SEC. 15. No agreement by a workman to waive his rights or the rights of his dependents to compensation under this ordinance shall be valid. Any such agreement existing at the date this ordinance comes in force shall on and after that date be null and void.

Defenses barred.

SEC. 16. It shall not be a defense to a claim under this ordinance that the workman assumed the risks of the employment or that the injury or death was approximately caused by the contributory negligence of the workman.

FIRST SCHEDULE.

SECTION 1. The amount of compensation under this ordinance shall be: Compensation for—

(a) In the event of the death of a workman resulting from injury his dependents shall be entitled to receive the sum of two thousand five hundred (\$2,500) dollars. Death.

(b) Where a workman leaves no dependents, such sum for the expenses of his burial, medical attendance, nursing, care, and maintenance shall be paid by the employer to the persons to whom such expenses are due, but not exceeding in all the sum of five hundred (\$500) dollars: *Provided*, That the burial expenses, not exceeding the sum of one hundred and fifty (\$150) dollars, shall be a first charge on the said amount.

SEC. 2. When a workman receives an injury arising out of and in the course of his employment, as the result of which he is totally and permanently disabled, he shall be entitled to receive as compensation the sum of three thousand (\$3,000) dollars. Total disability;

SEC. 3. When a workman receives an injury arising out of or in the course of his employment resulting in his partial disability, he shall be paid in accordance with the following schedule: Partial disability.

For the loss of a thumb, five hundred (\$500) dollars. Schedule.

For the loss of an index finger, three hundred (\$300) dollars.

For the loss of any finger other than the index finger or thumb, two hundred (\$200) dollars.

For the loss of a great toe, three hundred (\$300) dollars.

For the loss of any other toe than the great toe, one hundred and fifty (\$150) dollars.

The loss of the first phalange of the thumb or of any finger or toe shall be considered to be equal to the loss of one-half of such thumb, finger, or toe, and the compensation to be paid shall be one-half of the above amounts.

For the loss of a hand, one thousand five hundred (\$1,500) dollars.

For the loss of an arm, two thousand (\$2,000) dollars.

For the loss of a foot, one thousand five hundred (\$1,500) dollars.

For the loss of a leg, two thousand (\$2,000) dollars.

For the loss of an eye, one thousand five hundred (\$1,500) dollars.

For the loss of an ear, two hundred and fifty (\$250) dollars.

For the loss of the nose, six hundred (\$600) dollars.

SEC. 4. For other injuries causing temporary disability the employer shall pay to the workman weekly during the period of such disability, fifty per cent of his daily average wages: *Provided, however*, That the period for the payment of temporary disability shall not exceed six months. In all cases where the injury develops or proves to be such as to entitle the workman to compensation under some provision in this schedule relating to cases other than temporary disability, and the workman has been paid compensation for temporary disability, the amount so paid him shall be deducted from the amount to which he shall be entitled under such provision in this schedule. Temporary disability.

SEC. 5. 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 disability and be compensated according to the provisions of this ordinance with reference to total and permanent disability. Loss of both hands, etc.

SEC. 6. Amputation between the elbow and the wrist shall be considered equivalent to the loss of a hand, and amputation between the knee and the ankle shall be considered equivalent to the loss of a foot. Amputations.

SEC. 7. Whenever such workman receives an injury arising out of, and in the course of employment, as a result of which he is partially disabled, and the disability so received is such as to be permanent in character, and such as not to become wholly within any of the specific cases for which provision is herein made, such workman shall be entitled to receive as compensation a sum which bears the same relation to the amount he would be entitled to receive hereunder if he were totally and permanently disabled, that the loss of earning capacity of such workman, by reason of the accident, bears to the earning capacity such workman would have had had he not been injured, the amount in no case to exceed three thousand (\$3,000) dollars. Disabilities not in schedule.

SEC. 8. To illustrate: If said workman were of a class that would entitle him to three thousand (\$3,000) dollars under this schedule if Same.

- he were totally and permanently disabled and his injury would be such as to reduce his earning capacity twenty-five per cent, he would be entitled to receive seven hundred and fifty (\$750) dollars, it being the amount that bears the same relation to three thousand (\$3,000) dollars that twenty-five per cent does to one hundred per cent. Should such workman receive an injury that would impair his earning capacity seventy-five per cent he would be entitled to receive two thousand two hundred and fifty (\$2,250) dollars, it being the amount that bears the same relation to three thousand (\$3,000) dollars that seventy-five per cent does to one hundred per cent.
- Higher rates, when.** Sec. 9. If an injured workman entitled to compensation hereunder shall be paid compensation under any subdivision or part of this schedule, and it shall afterwards develop that he is or was entitled to a higher rate of compensation under some other part or subdivision of this schedule, then and in that event he shall receive such higher rate, after first deducting the amount that has already been paid to him: *Provided, however,* That no compensation under such increased rate shall be paid unless the disability entitling the workman thereto shall develop within two years after the injury.
- Settlements.** Sec. 10. At any time subsequent to the injury the employer and the workman shall have the right to compromise and settle any claim for injury hereunder, and the workman shall have the right to give full satisfaction and acquittance therefor and thereby discharge the employer from further liability, and such satisfaction and acquittance shall be binding upon the said employer, workman, and beneficiary under this ordinance and all other persons whatsoever.
- Medical examinations.** Sec. 11. (1) Where a workman has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstruct the same, his right to compensation and any proceeding under this ordinance in relation to compensation shall be suspended until such examination takes place.
(2) No compensation shall be payable in respect 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 judge, inconsiderable in view of the seriousness of the injury.
- Refusing treatment.** (2) No compensation shall be payable in respect 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 judge, inconsiderable in view of the seriousness of the injury.
- Payments in case of death.** Sec. 12. The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependents, or, if he leaves no dependents, to the person to whom the expenses are due; and if made to the legal personal representative shall be paid by him to or for the benefit of the dependents or other person entitled thereto under this ordinance.
- Dependents.** Sec. 13. Any question as to who is a dependent or as to the amount payable to each dependent shall, in default of agreement, be settled by the judge.
- Investments.** Sec. 14. The sum allotted as compensation to a dependent may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed or as ordered by the judge.
- Deposits in bank.** Sec. 15. Any sum which is ordered by the judge or is agreed to be invested may be invested in whole or in part in the savings department in any chartered bank in Canada by the clerk of the territorial court in his name as such clerk and trustee.
- Medical examinations.** Sec. 16. Any workman receiving weekly payments under this ordinance shall, if so required by the employer, or by any person by whom the employer is entitled under this ordinance to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied with the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to a medical practitioner appointed by the judge, and the certificate of that medical practitioner as to the condition of the workman at the time of his examination shall be given to the employer and

workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his rights to such weekly payment shall be suspended until such examination has taken place.

SEC. 17. Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by the judge. Review of awards.

SEC. 18. Unless with the approval of the judge a weekly payment or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass by operation of law except to a personal representative, nor shall any claim be set off against the same. Assignments.

SEC. 19. Where a dependent is not a resident of the Yukon Territory he shall not be entitled to compensation unless by the law of the place or country in which he resides the dependents of a workman to whom an accident happens in such place or country if resident in the Yukon Territory would be entitled to compensation; and where such dependents would be entitled to compensation under such law the compensation to which the non-resident dependent shall be entitled under this part shall not be greater than the compensation payable in the like case under that law. Comity.

SECOND SCHEDULE.

SECTION 1. Upon application in writing to a judge of the territorial court stating particulars of applicant's claim for compensation, and that the employer from whom such compensation is claimed has failed or refused to pay the amount claimed, the judge shall fix a date for hearing the evidence on behalf of the claimant and of the employer, and shall cause notice of such hearing to be served on such parties as he considers should be notified, and after hearing evidence and making such enquiry and investigation as he shall deem necessary, shall decide the claim in accordance with the terms of this ordinance, and shall make such order for payment of the amount awarded (if any) as he may deem just. Disputes.

SEC. 2. The decision of the judge upon any claim under this ordinance shall be final and conclusive and there shall be no appeal therefrom. Decision.

SEC. 3. Application for hearing, notice of hearing, judgment, and all documents and entries necessary to be prepared and made for the enforcement of any of the provisions of this ordinance, shall be prepared and made by the clerk of the territorial court, and the fees therefor shall be nominal and as far as may be in accordance with the scale of fees applying to small debt procedure under the judicature ordinance. Duty of clerk.

SEC. 4. The judge may award such sum as he may deem reasonable to the successful party to a contested claim for compensation or to any other contested matter as to compensation, for the expenses he has been put to by reason of or incidental to the contest, and an order of the judge for payment by an employer of any sum so awarded shall become a judgment of the court and may be enforced accordingly. Costs.

SEC. 5. An order of the judge for payment of compensation by an employer or any other order for the payment of money made under the authority of this ordinance may, when entered by the clerk of the court, be enforced as a judgment. Enforcement.

SEC. 6. There shall be a special register kept by the clerk of the territorial court in which all matters and causes dealt with or coming before a judge of the territorial court under this ordinance, and all proceedings therein, shall be entered by said clerk. Register.

SEC. 7. Proceedings hereunder shall be entitled in the territorial court and the rules of court applying to originating summons shall as far as may be apply thereto. No proceedings shall be defeated on any technical objection, but the rights of the parties as defined by this ordinance shall be determined and settled by the judge without pleadings or other formality except such as may be necessary for the proper conduct of proceedings for the determination and enforcement of such rights. Procedure.

SEC. 8. [Relates to Whitehorse district.]

Assented to April 24, 1917.

DOMINION OF CANADA.

ACTS OF 1918.

CHAPTER 15.—*Compensation of workmen for injuries.*

Law of place of injury.

SECTION 1. (1) An employee in the service of His Majesty who is injured, and the dependents of any such employee who is killed, shall be entitled to the same compensation as the employee, or as the dependent of a deceased employee, of a person other than His Majesty would, under similar circumstances, be entitled to receive under the law of the Province in which the accident occurred, and the liability for and the amount of such compensation shall be determined in the same manner and by the same board, officers or authority, as that established by the law of the province for determining compensation in similar cases, or by such other board, officers or authority or by such court as the governor in council shall from time to time direct.

Payments made, to whom.

(2) Any compensation awarded to any employee or the dependents of any deceased employee of His Majesty by any board, officer or authority, or by any court, under the authority of this act, shall be paid to such employee or dependent or to such person as the board, officer, or authority or the court may direct, and the said board, officer, authority and court shall have the same jurisdiction to award costs as in cases between private parties is conferred by the law of the Province where the accident occurred.

Fund.

(3) Any compensation or costs awarded hereunder may be paid by the Minister of Finance out of any unappropriated moneys in the Consolidated Revenue Fund of Canada.

Option.

(4) *Provided*, That no employee on the Canadian Government Railways, who is an employee within the meaning of the Intercolonial and Prince Edward Island Railways Employees' Provident Fund Act, shall be entitled to compensation under this act for or on account of any injury for which an allowance is provided under the provisions of the said provident fund act, unless such employee has, prior to the date of the injury for which compensation is sought, given notice in writing to the general manager of the said railways under whom he is employed, electing to accept the compensation under this act instead of such allowance, and no person who has so elected shall be entitled to any such allowance. *And provided further*, That no dependent of any such employee who is killed shall be entitled to any compensation under this act unless such employee has made election as aforesaid.

Regulations.

SEC. 2. The governor in council may make regulations as to the title of the defendant and the effecting of service of process in proceedings under this act.

Assented to May 24, 1918.

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